



16 September 2009

GWRC Ref: WGN090320 [27563], [27563] and [27589]

HCC Ref: RM 20-P54-119/03

IN THE MATTER OF the Resource Management Act 1991

AND Applications for resource consents made pursuant to Section 88 of the Act and for a change in conditions made pursuant to Section 127 of the Act

TO Greater Wellington Regional Council:
Ref: WGN090320 [27563], [27563] and [27589]

AND Hutt City Council:
Ref: RM 20-P54-119/03

BY BP Oil New Zealand Limited

IN RELATION TO Works associated with the construction and operation of a new fuel storage terminal, and to convey petroleum products through a 150NB pipeline over the Coastal Marine Area.

AT 119 Port Road, Seaview (terminal) and Coastal Marine Area between Port Road and Seaview Wharf (location of existing 150 NB pipeline)

Decision of Joint Hearing Commissioners

HEARING COMMISSIONERS Robert Schofield (Independent Commissioner; Chair)
Angus Finlayson (HCC Councillor)
Ian Buchannan (GWRC Councillor)

HEARING DATES 17 – 21 August 2009
Deliberation 24 August 2009

DATE OF DECISIONS 16 September 2009

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1. Introduction

BP Oil New Zealand Limited has applied for resource consents from both the Hutt City Council and Greater Wellington Regional Council to construct a new bulk fuel storage terminal at 119 Port Road, Seaview, Lower Hutt. This land is zoned Special Business under the District Plan, which is the City's principal zoning for industrial type activities.

The proposed land use activities involve the construction of seven bulk storage tanks (containing a range of petroleum products and fuels), ranging in volume from 1,500m³ to 8,500m³, a tanker fuelling facility and associated facilities. It is also proposed to re-commission an existing 150NB (150mm nominal bore) fuel pipeline over part of the Coastal Marine Area .

2. Background

2.1 Summary of Consents Sought

Under the Resource Management Act 1991, resource consents are required from the Hutt City Council and Greater Wellington Regional Council for different reasons, due to the distinct statutory jurisdictions of each authority under the Act.

The applicant sought **land use consent from the Hutt City Council** for aspects associated with the development of a new bulk fuel storage terminal on what is currently an unused industrial site, although this site has been used for various industrial purposes over the last 60 years (as we outline later in this decision).

The land use consent sought by the applicant is to construct seven new bulk fuel storage tanks, a slops tank, plus other small ancillary tanks for additive and ethanol slops. Each of the seven new tanks would have a capacity of about 8 million litres; however, the exact capacity would vary, mainly due to differing densities of the products. It is envisaged that three tanks would be constructed in the first of the three stages, with two extra tanks constructed in each of the following two stages. Bunding would be constructed round the tank compound and a fuelling station to fill the bulk road fuel tankers for dispatch across the region.

It should be highlighted that, under the City of Lower Hutt District Plan (the District Plan) zoning, consent is not required for the use of the land itself, but is for the following development and operational aspects of the proposal (as will be outlined in more detail later in the decision):

- For the transportation and storage of hazardous substances over the thresholds for permitted activities
- For an intermittent non-conformance with the District Plan noise standards, and
- For earthworks associated with construction in exceedance with the District Plan permitted activity thresholds.

The applicant also sought **consents from Greater Wellington Regional Council** for three aspects of the proposal:

- Ground improvements
- Recommissioning of the existing 150NB wharflines; and
- Discharges of contaminants to land.

The proposed ground improvements would involve installing stone columns into the ground where the proposed bulk storage tanks would be placed – this activity creates a ‘bore’ and all bores within the Seaview area require consent from Greater Wellington Regional Council (for reasons we elaborate on later).

The applicant is seeking to recommission and use the current unused 150NB wharflines pipe that is suspended above the Coastal Marine Area alongside Marine Drive between the Seaview Wharf and Port Road. This aspect requires a change in the existing consents relating to this pipeline.

Consent is also required to discharge treated operational water from the site which would potentially contain contaminants. This discharge would be into the Hutt City Council’s stormwater network, and technically this constitutes a ‘discharge into land’. The ‘operational water’ would comprise water from:

- The dewatering of fuel storage tanks
- Hydrotesting of pipelines, wharflines, tanks and onsite compounds
- Water blasting
- Fire and testing purposes, and
- Rainfall (stormwater) that falls within the bunded compound area.

All of this operational water would be treated by an American Petrochemical Institute (API) separator prior to discharging to the Hutt City Council stormwater network to ensure a very high level of treatment.

It should be highlighted that:

- The discharge of stormwater from other areas within the site, including the accessway and tanker turning and parking areas, into the City’s stormwater system does not require resource consent, and
- The discharge of stormwater into the Coastal Marine Area from the City’s stormwater system is a permitted activity under the Regional Coastal Plan, and therefore does not require any resource consent.

These were matters that were traversed at some length at the hearing, as it was clear there was some misunderstanding about the reasons for which resource consent was sought.

We will return to address these matters later on in this decision.

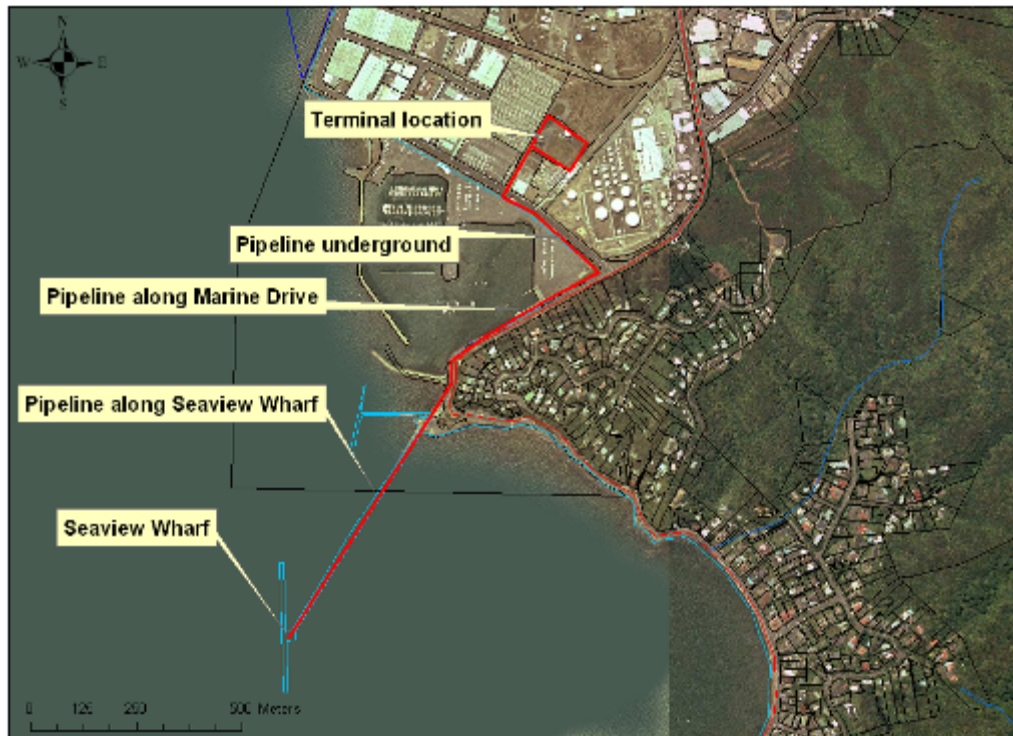


Figure 1 Location of the proposed terminal facility, the route of the existing 150 NB wharfline and the Seaview Wharf located off Point Howard

2.2 Historical Context

Prior to the 1950's, the site was part of Wellington Harbour; the site was reclaimed some time after 1954 by the Wellington Harbour Board. Following the ovens reclamation, the site may initially leased to Shell NZ Ltd for the use of furnace/waste operations, chemical rail siding operations and liquid petroleum gas storage tanks.

The site was then leased to Liquigas Ltd from 1985 to 1995.

From 1995 to 2008, a storage tank for caustic soda on the site was leased to Marstel Terminals Ltd. This tank was located within a 1m high lined brick bunded area. Marstel Terminals Limited was originally granted consent on 17 December 1996 to construct a new 150NB wharfline to convey caustic soda from the wharf to the caustic soda tank within the site. The applicant is now proposing to recommission and use this pipeline to service its proposed fuel storage facility, along with a new pipeline connection from the Seaview Wharf. Again, we will return to the specifics of this activity later in this decision.

3. The Site and its Environs

3.1 Site Description

The site to which these applications relate includes the lot on which the proposed fuel storage and filling facilities are to be located, as well as the pipelines that are proposed to be constructed/recommissioned and used to transport fuel from ships berthed at Seaview Wharf to the site.

117-199 Port Road

The primary component of this application relates to an area of land at 117-119 Port Road, located in the Seaview industrial area: 117 Port Road is 20,330m² in area and 119 Port Road is 10,554m² in area. The site is a rear lot with access to Port Road obtained via a shared right-of-way located off Port Road.

The site is generally flat, and, as described, is reclaimed and has been historically used for industrial type activities, including a furnace/waste operation, chemical rail siding operations, the bulk storage of liquid petroleum gas (in tanks) and, more recently, the storage of caustic soda. The tank in which caustic soda was stored was removed from the site recently, though the remnants of a 1 metre high wall around the perimeter of this old tank remain.

Pipelines

The applicant proposes to use the existing 300NB and 150NB wharflines to connect the new fuel storage terminal with the Seaview Wharf.

To connect with the existing 300NB pipeline would require the relaying of new pipelines under Port Road and down the shared right-of-way to the site. It is noted that this aspect of the proposal, while forming part of the overall proposal, is a permitted land use activity and therefore does not require consent.

There is currently a stainless steel 150NB (nominal bore) wharfline that runs from Seaview Wharf to the proposed bulk fuel storage site at Port Road. The applicant wishes to re-commission this wharfline to transport fuel products to the site at some stage in the future. The wharfline is suspended above the edge of the harbourside for some 1.5 kilometres, attached to either the wharf structure or the road edge (see Figure 1). In places, concrete support structures are fixed to the foreshore to support the various wharflines.

Those areas below Mean High Water Spring are part of the Coastal Marine Area, and come within the jurisdiction of the Greater Wellington Regional Council.

3.2 The Environs

The site is within Wellington's principal industrial area, and is surrounded by industrial type activities:

- The eastern and northern boundaries adjoin a designated but currently disused rail corridor
- The western boundary adjoin a site used as warehousing for Allied Liquor, Jet Transport Ltd, Parcel Express and Full Circle
- The Mobil bulk fuel storage terminal is located to the east of the site, although it is understood that this facility is largely unused
- The sites to the south of the application site are occupied by Bramco Granite and Marble, and HDS (Heavy Diesel Specialist Ltd) – these businesses share the vehicle access to the application site

- The southern boundary is also shared with Wellington Provedoring, Swanson Rigging and Sea City Canvas.

The Seaview Marina is located to the southwest of the subject site across Port Road and accommodates a large number of moored boats and some permanent live-onboard residents and a large area of associated parking.

The elevated residential area of Point Howard, Eastbourne, is located to the southeast of the site, across and above Marine Drive. A number of residential sites have a direct view over the subject site, as well as the wider Seaview/Gracefield industrial area and beyond.

The Seaview Wharf is used to unload bulk fuel tankers, with the fuel piped to and stored at various facilities within Seaview, including a fuel terminal operated by New Zealand Oil Services Limited, a joint venture between Shell and BP Oil.

3.3 The Proposal

The proposal is to construct and operate a bulk fuel storage terminal at the site in three stages over a 15-year period. The proposal includes construction of a new 300NB wharfline to the existing wharfline and the re-commissioning of an existing 150NB wharfline to connect the terminal to the Seaview Wharf.

3.3.1 Stages of Development

The proposal comprises the following three stages of development:

Stage One: Site preparation, three fuel storage tanks, tanker fuelling facility, connecting pipelines

Stage One would include the following activities:

- Preparing the site for development, including earthworks and foundation works (installation of stone column foundations) for the first three tank structures – the earthworks would involve some 2,700m³ of excavation, 5,200m³ of imported fill, and 2,250m³ for the stone columns
- Construction of a bunded tank compound capable of containing 110% of the volume of the largest tank
- The construction of the first three fuel tanks: one 7,900m³ AGO (diesel) tank, and two 8,500m³ motor spirit (petrol) tanks
- Construction of a 240m³ ‘slops’ tank, and some additive tanks
- Construction of wastewater management systems, including an API-type separator
- Construction of the tanker turning area and a one bay tank wagon fill stand (TWFS) and an underground spill tank
- Construction of a fire water tank and two fire water pumps

- The recommissioning of the existing 150NB wharflines to service the proposed tanks
- Construction of a new 300NB connection to the industry wharflines on Port Road, and realignment of the 150NB wharflines connection – these works would involve approximately 1,000-1,200m³ of earthworks
- Refurbishment of the existing administration facilities building (including a new rainwater collection system)
- Upgrading of all security fencing, and the installation of a mechanical gate to control entry onto the site
- Erection of a 19.5m high 15kW wind turbine near the administration building, which would generate a third of the energy needs of the site.

The applicant anticipates that Stage One would be completed within 18 months to two years from the date of resource consent approval.

Stage Two: Two new fuel storage tanks; additional tank wagon filling bay

Stage Two would include the following activities:

- The construction of a second compound and further two fuel tanks (2 x 8,500m³), including associated ground preparation works and associated pipework
- The addition of a second bay to the tank wagon filling stand
- A truck parking area (trucks would park at the existing terminal during Stage One).

The applicant anticipates that Stage Two would be completed within five years of completion of Stage One, and would take up to a year to complete.

Stage Three: Two new fuel storage tanks

Stage 1 would include the following activities:

- Construction of a third compound and the final two fuel tanks (1 x 8,500m³ & 1 x 1,500m³), including associated ground preparation works and associated pipework.

The applicant anticipates that Stage Three would be completed a further five years following the completion of Stage Two, and would also take a maximum of one year to complete.

3.3.2 Ground Consolidation and Construction of the Tanks

Prior to construction of the tanks, the land underlying the tanks would need to be 'improved' to ensure the ground conditions are appropriate. The evidence of Stuart Palmer and John Hillman for BP Oil usefully clarified that underlying ground conditions need improving as the land is a historical reclamation, and comprises some 3m depth of loose and medium density material. This fill lies on top of an approximately 5m deep layer of loose silty sand alluvium ('Taita Alluvium'), which

lies on top of a 10 metre thick layer of silt-clay marine beds ('Petone Marine Beds'). The Petone Marine Beds provide a 'cap' to the Hutt artesian aquifer, from which much of the water supply for the Hutt Valley is sourced.

The applicant's expert engineers have determined that, in order to reduce the risk of liquefaction of the soils at the site during an earthquake, the soils under each tank would need to be consolidated and compacted. The proposed technique of ground consolidation is to insert a multitude of stone columns within the soil profile under each of the proposed tanks. The details of the stone columns would be confirmed at the detailed design stage, but each stone column is likely to be approximately 1m in diameter, 8m deep and spaced at intervals of 2.5m.

The stone columns would be vibrated into the ground. As well as strengthening the ground conditions, these stone columns would 'squeeze' the soil between each of the columns, thereby consolidating the soils in-between each column and further strengthening the ground under the proposed tanks. As described above, installation of these stone columns are defined as a 'bore' under the Regional Freshwater Plan, and therefore require resource consent from Greater Wellington Regional Council.

Once the ground has been adequately consolidated, the construction of the tanks would occur, as a staged process, whereby the roof is constructed first at ground level and then the tank is jacked up and welded in tank shell plates. Once one ring of tank shell plates have been welded into place, the tank is jacked up and another ring of shell plates is welded.

3.3.3 Recommissioning of the 150NB Wharfline

In 1996, Marstel Terminals Limited applied for consent to install a new 150NB stainless steel pipeline to convey caustic soda from ships berthed at Seaview Wharf to the current application site. This 150NB wharfline replaced an existing pipeline that was removed from the pipeline corridor/rack. Marstel installed a caustic soda tank and operated this facility for some time before closing in 2008. The land at Port Road was subsequently leased to BP Oil, and the old caustic soda tank removed from the site, although the remnants of its concrete block containment bund remain.

BP Oil proposes to re-commission this wharfline to complement the 300NB industry wharfline that would also service this site – this pipeline currently services the existing combined BP Oil/Shell terminal at 55 Port Road. BP OIL advised that it would carry out thorough inspections of the pipeline to meet HSNO requirements to identify the nature and extent of any modification works required prior to the change in product occurring.

A check valve would be installed at the wharf head of the pipeline on Seaview Wharf, and the applicant anticipates that there would need to be some associated strengthening work and re-securing undertaken on some of the existing support structures – however, this upgrade and maintenance work is deemed to be a permitted activity under the Regional Coastal Plan and as such does not require consent.

The principal reason for re-commissioning the 150NB wharfline is because the 300NB wharfline is used to convey jet fuel and avgas, and therefore it cannot be used

for biodiesel and ethanol as these products either leave a residue on the wall of the pipeline or, in the case of ethanol, is water miscible (mixes with water). We understand from the applicant that contamination of either jet fuel avgas is unacceptable, and as such, the 150NB would be used to convey these products when BP Oil decides to store ethanol or biodiesel at the facility. This decision would be based on whether the market conditions were right to supply these fuels. In the meantime, the applicant would use this wharfline to convey diesel and petrol products to the new facility alongside the 300 NB wharfline.

The main advantage of the 150NB wharfline over the existing 300NB industry wharfline is its ability to be 'pigged out' - that is, effectively 'cleaned' of product by pressurising the line which moves an internal plug within the pipeline. The 300NB wharfline cannot be pigged out as its diameter varies in places.

3.3.4 Discharge of Treated Operational Water

The ongoing operation of the proposed fuel storage terminal would require the discharge of water from:

- The dewatering of fuel storage tanks
- The hydrotesting of pipelines, wharflines, tanks and onsite compounds
- Water blasting and associated cleaning activities, and
- Fire fighting and fire testing waters.

In addition, rainwater (stormwater) would be collected within the bunded compounds and therefore needs to be discharged. Any water from within the bunded tank area or that may be used for the above purposes may be potentially contaminated, and accordingly the applicant is proposing to treat this water with an American Petroleum Institute (API) separator prior to discharging it to the Hutt City Council's stormwater network, which ultimately discharges to the coastal water within the nearby Seaview Marina.

The applicant addressed the matter of its proposed management and treatment of potential contamination thoroughly, both within the application and through the expert evidence presented to the hearing. The proposed facility would have systems and procedures to limit any contaminated water entering the separator, but if it does, the separator is intended to be the last line of defence against any product migrating its way off-site. We were informed that the proposed API design gravity-fed separator is intended to provide a very high level of treatment. We were also informed that such separators are used throughout the world, with one installed in the upgrade of BP Oil's Lyttelton tank farm development, where sampling tests in the five years of its operation have shown that discharges meet or exceed Ministry for the Environment guidelines.

In addition, the separator would have a hydrocarbon detector, which will sound an alarm if a significant level of product enters the separator.

The evidence of Mr Goodwin outlined how the API separator would operate. The basic operating principle of the separator is based on the specific density differences between petroleum products and water – that is, petroleum floats to the surface of

water. Further to this, water within the separator does not discharge from the top surface, but discharges from under a plate at the bottom the separator. Therefore, we understand that any petroleum product that enters the separator can effectively be trapped on the water's surface and be skimmed off using a rope mop skimmer.

However, the use of ethanol, which can dissolve into water, requires some special monitoring procedures. To this end, the applicant proposed a range of monitoring conditions, which were accepted by the reporting Greater Wellington Regional Council officer. We will address the matter of monitoring later in this decision.

4. Consents Required

4.1 City of Lower Hutt District Plan

The proposed land use activities require resource consent as a *discretionary activity* under Rules 6B 2.3(b), 14D 2.3(a) & 14C 2.2(a) of the City of Lower Hutt District Plan (the District Plan) in relation to non-conformance with the standards for hazardous facilities and the emission of noise.

The proposed earthworks also require resource consent as a *restricted discretionary activity* for non-conformance with the permitted earthworks standards under Rule 14I 2.2 (a).

All other aspects of the proposal, including site access arrangements, traffic generation, all structures (including the tanks and the wind turbine), and associated construction activities, are permitted activities under the District Plan.

Overall, land use consent is required as a *discretionary activity*.

4.2 Regional Freshwater Plan: Ground Improvements

Under Rule 15 of the Regional Freshwater Plan, the construction of any bore is a *discretionary activity*.

The Regional Freshwater Plan defines “bore” as meaning:

...any hole regardless of the method of formation that has been constructed to provide access to groundwater, or which intercepts groundwater in an aquifer, excluding geotechnical investigation bores other than in the Lower Hutt Groundwater Zone shown in Figure 9.3a of Appendix 9

The Seaview area is located within the Lower Hutt Groundwater Zone shown in Figure 9.3a of Appendix 9 of the Regional Freshwater Plan. Thus, the proposed installation of the stone columns required to improve the soil conditions for the new terminal facility are defined as bores.

We note also that the applicant proposes to install groundwater monitoring bores at the site: these again are assessed under the same rule and also require consent under Rule 15 of the Regional Freshwater Plan.

4.3 Regional Plan for Discharges to Land: Discharge of Potentially Contaminated Treated Water into Stormwater Network

Under section 15(1)(a) and 15(1)(b) of the Resource Management Act 1991 no person may discharge any contaminant or water into water; or contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; unless the discharge is expressly allowed by a rule in a regional plan or a resource consent.

Under the Act, “contaminant” has a very wide meaning –

Contaminant includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat—

- (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or*
- (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged*

Thus, even freshwater when discharged into the sea is potentially a contaminant.

Case law has determined that the discharge of the potentially contaminated operational water into a stormwater network is essentially a discharge to land where it may enter water: specifically *Southland Regional Council v Southern Delight Ice-cream Company, District Court* (CRN 5025003972¹).

Under Rule 1 of the Wellington Regional Plan for Discharges to Land it is a permitted activity to discharge any contaminant onto land provided that it is stormwater² and the listed requirements are met. As this issue was in contention at the hearing we would provide this rule in full (emphasis added):

The discharge of any contaminant onto or into land is a Permitted Activity provided

- (a) the contaminants are stormwater discharged into a pipe which then discharges to surface water; or*
- (b) with the exception of Rule 2, the discharge is not regulated by any rule in this Plan; and*
- (c) the discharge would not*

¹ In this case, it was found that a discharge of a contaminant to an existing pipe network is essentially a discharge to land given the definition of “water” in section 2 of the Act (1991).

² Stormwater is defined in the Regional Freshwater Plan as meaning “the water and contaminants from land or the external surface of any structure as a result of rainfall”.

- (i) *result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water in any water body, water supply race, farm drain, or the Coastal Marine Area; or*
- (ii) *create a contaminated site.*

Given the evidence heard, we understand that the following are activities **not** classified as stormwater and therefore cannot be considered to be permitted activities under this rule:

- Water from dewatering of fuel storage tanks
- Water from the hydrotesting of pipelines, wharflines, tanks and onsite compounds
- Water from water blasting cleaning activities, and
- Fire fighting and fire testing water.

All other stormwater (that is rainfall) that would fall into the bunded tank areas would meet the provisions of Rule 1 and be permitted. However, there is an issue of practicality as, in assessing compliance with this rule, a compliance officer could not reasonably be expected to delineate between water that is stormwater from rainwater and water that is from another source. As such, we agree with BP Oil's assertion that consent is sought for the discharge of all water from the bunded area of the site under Rule 2 of the Regional Plan for Discharges to Land as a ***discretionary activity*** requiring consent.

Finally, we note that this consent is only concerned about the discharge from the site to the stormwater system – i.e., the discharge of contaminants to land under section 15(1)(b) under the Act.

4.4 Regional Air Quality Management Plan: Discharges of Contaminants from the Terminal to Air

The main potential for discharges to air is within the terminal facility, although there are minor discharges to air from the wharflines (which we discuss below).

BP Oil advised us that the discharge of contaminants to air from the terminal facility would meet the conditions of Rule 8 (permitted activity) of the Regional Air Quality Management Plan. This was accepted by the reporting officers from Greater Wellington Regional Council, and there was no evidence adduced to the contrary.

Therefore we find that no resource consent is required for the discharge of contaminants from the terminal to air.

4.5 Regional Coastal Plan

4.5.1 Discharges of Contaminants from the Wharfline to Air

Air discharges from the 150NB wharfline over the Coastal Marine Area would be permitted under Rule 63 for the Regional Coastal Plan, which allows for the discharge of contaminants to air during the transfer of hydrocarbons from ships. We find that the effects of any air discharges from the wharfline to be negligible as the pipe is located in an open area and exposed to the weather which would dissipate any odours that may emanate.

4.5.2 Discharge of Stormwater into the Coastal Marine Area

Under Rule 53 of the Wellington Regional Coastal Plan, the discharge of stormwater from the Hutt City Council's stormwater network into the Coastal Marine Area at Seaview Marina is permitted, and therefore does not require resource consent. Thus any stormwater from the application site being discharged via the Hutt City Council's stormwater network into Wellington Harbour is a permitted activity. This includes any stormwater from runoff from the accessway, turnaround area and parking areas and other sealed areas within the site that are not located within a bunded operational area.

4.5.3 Change of Use of an Existing Pipeline

Part of BP Oil's application includes a proposed change of the conditions of an existing consent (WGN970100) which was granted in 1996 to allow the then consent holder, Marstel Terminals Limited, to construct a new 150 NB wharfline to convey caustic soda product to the site at 119 Port Road. Consent was required because it involved a pipeline over part of the Coastal Marine Area.

However, the Greater Wellington Regional Council reporting officer advised us that the consents purpose description was limited to the construction of the pipeline only and the use of the pipeline for caustic soda is not specifically provided for within this consent (WGN970100). Further to this, the applicant and its planning experts advised that the *permitted baseline* for the change of use, should be Rule 10 of the Regional Coastal Plan. Because this matter requires clarification, we propose to outline this matter in some detail.

Rule 10 of the Regional Coastal Plan states:

Any activity undertaken in or on any structure or any part of a structure fixed in, on, under, or over any foreshore or seabed which is not specifically provided for in a rule in this Plan, and:

- (1) *was lawfully occurring at 29 June 1994 (the date of public notification of this Plan as a proposed plan); or*
- (2) *if outside the Lambton Harbour Development Area, is either:*
 - (i) *functionally dependent on a location in the Coastal Marine Area; or*

- (ii) *an activity to support or service those which must locate in the Coastal Marine Area, and which, because of a lack of a suitable space or operational constraints, cannot be located outside of the Coastal Marine Area; or*
- (3) *is occurring on or in a new structure for which a coastal permit has been granted and is complying with the terms and conditions of that coastal permit; or*
- (4) *is a noise sensitive activity and is within a Commercial Port Area or the Lambton Harbour Development Area shown on Planning Maps 4A and 4B;*

*is a **permitted activity** provided it complies with the conditions below.*

Conditions

- (1) *The activity shall comply with the general standards listed in section 14.1*

After examining this matter, the Commissioners agree with the Greater Wellington Regional Council reporting officer that the existing structure – that is, the 150NB wharflines – which lies outside the Lambton Harbour Development Area, meets the terms specified under both Rule 2(i) and 2(ii), as well as the general standards and terms under section 14 of the Regional Coastal Plan, and therefore the activity of conveying petroleum product (as well as caustic soda) is permitted by Rule 10.

It is therefore our conclusion that BP Oil could have reasonably been expected to change the product that is conveyed within the 150NB wharflines *without* requiring consent. However, we accept that BP Oil, for its own reasons, has pursued a ‘zero risk’ consenting strategy for this new terminal, and sought consent for the avoidance of any doubt.

So, in moving forward on this particular matter, we have agreed with the Greater Wellington Regional Council reporting officer and the BP Oil planning experts that the original Marstel Terminal Limited consent should be varied to reflect that the original consent (WGN97 0100 – granted on 17 December 1996), while specifically applying (and granted) consent to *construct* the new 150NB wharflines over the Coastal Marine Area, did mention in the application documents that the expected use would be to convey caustic soda.

Therefore, a change to the ‘general’ condition of this consent is needed to fit with BP Oil’s ‘no risk’ approach and to ensure there is no ambiguity in the future.

Change of conditions are provided for under section 127 of the Act and therefore the application by default must be assessed and determined as a **discretionary activity** pursuant to section 127(3) of the Act.

4.6 Summary of Consent Status

Under the bundling approach to consents, we find that:

- a) Under the operative City of Lower Hutt District Plan, land use consent is required as a *discretionary activity*; and
- b) Under the relevant regional plans, consent is required as a *discretionary activity*.

5. Statutory Framework

5.1 The Resource Management Act 1991

In giving consideration to the proposal, section 104 (1) of the Act states that:

When considering an application for resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –

(a) any actual and potential effects on the environment of allowing the activity; and

(b) any relevant provisions of –

i. a national policy statement,

ii. a New Zealand coastal policy statement,

iii. a regional policy statement or proposed regional policy statement; and

iv. a plan or proposed plan; and

(c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.

The provisions of section 104 are all ‘subject’ to Part 2 of the Act, which means that the purpose and principles of the Act are paramount. Part 2 of the Act sets out the purpose of the Act, which is to promote the sustainable management of natural and physical resources. In Part 2, sections 6, 7 and 8 of the Act set out matters that consent authorities should consider when exercising their functions under the Act. We shall examine these matters in more detail later in this decision.

We must also have regard to sections 105 and 107 of the Act, which raise matters relevant to the grant of certain discharge permits: we shall also examine these matters in more detail later in this decision

5.2 Relevant Planning Instruments and Other Matters

In accordance with section 104 of the Act, in making our decision on the applications, we had regard to the following instruments and documents:

National

- New Zealand Coastal Policy Statement 1994

Regional

- Regional Policy Statement for the Wellington Region 1995
- Proposed Regional Policy Statement for the Wellington Region 2009
- Regional Coastal Plan for the Wellington Region 2000
- Regional Plan for Discharges to Land 1999
- Regional Freshwater Plan for the Wellington Region 1999

District

- City of Lower Hutt District Plan

We were not directed to consider any “other matter” by any party.

5.2.1 Relevant Regional Planning Instruments

Operative Wellington Regional Policy Statement

The Operative Wellington Regional Policy Statement is an overview document that outlines the resource management issues of significance to the region and provides a policy framework for managing the natural and physical resources of the region in a sustainable manner.

The regional plans assist the Regional Council to fulfil the policies of the Operative Wellington Regional Policy Statement.

We consider the following sections of particular relevance to this application: Chapter 4 - The Iwi Environmental Management System; Chapter 7 - The Coastal Environment, Chapter 11 - Natural Hazards; Chapter 14 - The Built Environment.

Proposed Wellington Regional Policy Statement

The Proposed Regional Policy Statement was notified on 21 March 2009, and as such must also be considered pursuant to s104(1)(a)(iii) of the Act. As the Proposed Regional Policy Statement is in its early stages, and has yet to have hearings on submissions, it carries less statutory weight than the operative Regional Policy Statement.

Section 4.2 of the Proposed Regional Policy Statement contains the relevant regulatory policies to be given particular regard when assessing and deciding on resource consent applications.

Wellington Regional Freshwater Plan

The Regional Freshwater Plan contains objectives, policies and rules for the use and development of water bodies, including groundwater bodies. There are a number of objectives and policies of relevance to determining the consent required for the ground improvements, which are deemed bores under the Regional Freshwater Plan.

Chapter 5 of the Regional Freshwater Plan sets out the specific objectives, policies and rules for maintaining water quality throughout the region, including groundwater sources, and is relevant in terms of the monitoring bores in the Hutt Groundwater Zone that forms part of this proposal.

Wellington Regional Plan for Discharges to Land

The Regional Plan for Discharges to Land contains objectives, policies and rules for the discharge of contaminants to land within the region. The Regional Plan for Discharges to Land is the relevant planning document for the discharge of contaminants to land from the operation of the terminal and the discharges of treated operational water and stormwater from the site

Chapter 4 contains general objectives and policies for considering resource consents for discharges to land. Objectives 4.1.1 – 4.1.3, and 4.1.10 and Policies 4.2.1, 4.2.8, 4.2.9, 4.2.10, 4.2.11, 4.2.47, 4.2.48 and 4.2.49 are of particular relevance to this application.

Wellington Regional Coastal Plan

There are a large number of policies within the Regional Coastal Plan that are potentially applicable to this proposal: however, we consider that the most relevant are those objectives and policies that are directly pertinent to the change in use of the wharflines, principally those contained within:

- Chapter 4 which sets out the overall objectives and policies for managing Wellington's Coastal Marine Area.
- Policy 4.2.8 which requires the avoidance, remedy or mitigation of the adverse effects of new activities on legitimate activities in the Coastal Marine Area as far as is practicable.
- Policy 4.2.21 specifically relates to natural hazards and hazardous substances – a matter that is at the centre of this proposal.
- Chapter 6 of the Regional Coastal Plan sets out the relevant objectives, policies and rules regarding the use, construction, alteration, maintenance, removal, etc of structures in the Coastal Marine Area, with the two most relevant policies being:

5.2.2 Relevant District Plan Provisions

The Commissioners accept that the relevant The District Plan provisions are those relating to the *Special Business Activity Area* (Chapter 6), Noise (Chapter 14C), and Earthworks (Chapter 14I) as listed in section 8 of Mr Brophy's report. These

provisions were also outlined and addressed in both the application and in the evidence of Mr Marquand, planning consultant for the applicant.

Having regard to these provisions, we note that the provisions of the *Special Business Activity Area* are generally permissive in intent, and seek to enable industrial - type land uses within the Area, provided actual and potential adverse effects on the receiving environment are avoided, remedied or mitigated. We consider that a precautionary approach needs to be applied when considering granting resource consent to activities that carry a potentially high risk.

Finally, the impact of new development on people's amenity values and the character of the area, including the visual appearance of the proposal and effects of noise, need to be considered in accordance with the objectives and policies of the District Plan.

5.3 Matters Relating to the Grant of Discharge Permits

Whenever an application to discharge a contaminant to land or water is considered, the requirements of sections 105 and 107 must be also met before consent can be granted.

Section 105

Section 105 of the Act lists additional matters that a consent authority must have regard to when considering applications for discharge or coastal permits to do something that would contravene section 15 of the Act:

Matters relevant to certain applications

- (1) *If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—*
 - (a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
 - (b) *the applicant's reasons for the proposed choice; and*
 - (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*

Section 107

Section 107(1) of the Act places restrictions on the grant of resource consents for the discharge of contaminants into water if they cause certain adverse effects in receiving waters after reasonable mixing. The effects listed in section 107(1) and our determination on these matters is addressed in our assessment of the environmental effects of the proposal.

6. Notification and Submissions

6.1 Written Approvals and Notification

No written approvals were supplied with the applications.

The applications were publicly notified in the Dominion Post and the Hutt News on 20 June 2009 and 23 June 2009 respectively. In total, thirteen submissions were received. Two submissions were received in support or conditional support of the proposal, eight submissions were received in opposition, and one neutral submission was received.

The time limits for the two late submissions received by Greater Wellington Regional Council were waived by the Manager, Environmental Regulation, having delegated authority, for the reasons given in the Officer's report.

Two late submissions were received by Hutt City Council, with which we have the delegated authority to make a determination to accept or reject under s37(1) of the Act. The first, from Alan McLellan on behalf of Seaview Marina, was received only one day after the close of the submission period, and the applicant had no objection to the waiver of time limits in respect of that submission. We therefore agree to extend the time limits in respect of that submission. However, a second submission was lodged during the course of the hearing, some 22 working days after the close of the submission period. This degree of lateness would represent an unreasonable precedent if it were to be accepted; we therefore determined not to waive the time limits in respect of that submission, and it is accordingly invalid.

6.2 Summary of Submissions

6.2.1 Issues Raised by Submissions in Support

CentrePort Limited cited the main reason given for its support of the proposal was the benefit to be obtained in reducing the number of days that tanker ships need to be in port in Wellington, and the increased storage capacity provided by the proposal allowing for full tank ship loads to be discharged in one visit. The other submission in support (E Sime Group) did not specify the reasons for their support, nor did they appear at the hearing.

6.2.2 Issues Raised by Submissions of Conditional Support or Neutral Submissions

Regional Public Health was neutral in respect of the application. It did, however, have concerns relating to the potential for contaminated material to be exposed during construction. It was also concerned about the potential for hazardous substances to be released into the environment during the operation of the proposed facility in the event of an emergency situation. However, Regional Public Health was not heard in support of its submission at the hearing

6.2.3 Issues Raised by Submissions in Opposition

In terms of regional consents, the principal concern raised from submissions in opposition related to the discharge of potentially contaminated stormwater into the marina via the Hutt City Council stormwater network.

Other submitters were concerned about the hazards associated with transporting or resting hazardous substances in the Coastal Marine Area and the potential for accidents and spills and the adverse effects these would have on aquatic life and mammals that frequent surrounding coastal environment.

In terms of land use consents, the major concerns were in relation to the potential risks associated with the proposal, as well as noise, traffic and amenity effects.

A summary of the concerns expressed within these submissions is as follows:

Effects of discharge to the stormwater networks (land)

- Concerns regarding the capacity of the separator system
- The potential for uncontrolled discharges to occur during excessive rainfall events
- Unknown capacity for environmental damage
- Potential for discharge of untreated industrial wastewater to the sea
- Potential for contaminants being discharged to the Hutt City Council stormwater then into the Seaview Marina

Spills and leaks from the wharfline

- Potential petroleum product discharge to the sea harming existing marine life
- Requirements for maintenance and safety planning are not sufficient to ensure that spillage does not occur
- Potential to increase Seaview Marina's exposure to fuel spillage

Natural hazards effecting the wharfline (including tsunami and earthquakes)

- General susceptibility of the site to natural hazards and human induced hazards

Fire hazard

- Potential dangers of explosions or fire from the pipeline

Effects on groundwater associated with site works

- Potential damage to the fragile artesian network from the construction of the monitoring bores

Effects of sea-level rise

- General lack of consideration of the effects of sea level rise as a result of climate change

Use of the site

- Oil companies already have a large area of existing storage facilities which are not currently in use and which could be recommissioned; there is existing land at Seaview which could be used for new fuel storage facilities
- Land could be better used for commercial development and the provision of jobs for Hutt City residents
- If the oil terminal application is approved recreational use of Port Road for (Street Drag Racing) would need to be terminated
- The proposed wind turbine would not provide adequate insurance against a failure of the power grid during storms
- The proposal does not appear to provide for unusual events such as power failure, (with no backup water pumps)
- The application does not consider runoff from impervious surface outside the bund areas

Hazardous Facility Risk Effects

- Lack of comment on sea level rise for the subject site
- The proposal adds to the danger of living in a residential area overlooking the Seaview area
- Any non-compliance with the hazardous facility permitted activity conditions should be declined, with no discretion given
- Support for an Emergency Response Plan and Spill Response Plan
- The effect of any emergency situation should be considered
- Tank 1 should be designated for diesel or Jet – A1 only

Noise Effects

- Regardless of the predicted noise level contours, noise is a considerable nuisance to Point Howard residents and any increase is unacceptable
- Any noise generated by the wind turbine would affect Point Howard residents; experience in Wellington with wind farms is that measured noise levels are not a predictor of nuisance level to residents
- Hutt City Council has been unresponsive to noise complaints from Point Howard residents for many years
- Potential noise effects could occur on the roadways which the applicant may argue is out of their control

Traffic Effects

- Due consideration has not been given to the likelihood of increased road tanker traffic
- A submitter proposes that the applicant should consider relocating the load out access to Seaview Road instead of Port Road, or retain/extend the existing load out facility at the Shell/BP Oil terminal

- Potential traffic effects from other business growth within the 15 year construction period have not been considered
- The application states that there would be no increase in the number of tanker movements in the Seaview; this implies there would be no growth in the business in the future, and yet the added storage would allow greater supply to the lower North Island
- The number of tankers visiting the terminal may be in the order of 2,800 per month

Contamination Effects

- The proposed use of the site would confirm the site as a contaminated site and unsuitable for future industrial development
- Potential for hazardous substances to be released when site construction activities take place
- There is support for a Construction Management Plan.

Odour Effects

- The application does not adequately consider odour
- Internal floating covers should be fitted to all proposed tanks, to mitigate any potential odour

General

- There is a lack of consultation with the public
- No consideration of alternative sites or methods has been undertaken
- The proposal is inconsistent with the objectives and policies of the District Plan
- The proposal does not meet the purpose of the Act
- Not enough consideration has been given to cumulative effects of the hazardous facility and that the proposed hazardous facility should meet the District Plan rules with no discretion granted
- The 15 year term of consent needs to be addressed

7. The Hearing

7.1 Hearing Dates

The hearing took place over four days, from 17 August to 20 August 2009 at the Hutt City Council Chamber, 30 Laings Road, Lower Hutt.

The hearing was adjourned at the conclusion of the presentation of legal submissions, expert evidence, submitters and officer's reports and responses. The Commissioners reconvened the following Monday (24 August 2009) to deliberate. The hearing was formally closed at the end of deliberations on that day.

7.2 Applicant's Case

James Winchester, Legal Counsel for BP Oil New Zealand Limited

Mr Winchester presented the applicant's opening legal submissions, along with suggested amended conditions for Hutt City Council and Greater Wellington Regional Council consents. Mr Winchester highlighted the importance of increased supply and distribution capacity in the region, and submitted that the application site was ideal for the proposed activities. Mr Winchester submitted that the application and supporting information were a product of years of industry experience and were considered to be best practice.

Mr Winchester also outlined in some detail a number of legal cases in relation to the consideration of alternatives. In his summary of recent Environment Court decisions, Mr Winchester asserted that the consideration of alternatives was irrelevant in the absence of credible evidence of any significant adverse effects.

Mr Winchester also considered in detail potential risks associated with the proposal and the precautionary approach adopted by the applicant, including the approach to assessing perceived risks. Mr Winchester then outlined to the Commissioners how the applicant had factored in such risks as part of the application, including on natural hazards, fire and sea level rise. Mr Winchester stated that his interpretation of case law was that perceptions of risk are not 'effects', and should be therefore be disregarded in this decision.

Mr Winchester then outlined the statutory framework. With regard to section 105 of the Act, Mr Winchester submitted that, as outlined in the application, the receiving environment was a highly modified low energy environment with relatively low ecological values. In terms of section 107, Mr Winchester submitted that the applicant had provided information to demonstrate that, after "reasonable mixing", the proposed level of discharges are not likely to have any of the specified effects set out in section 107(1) of the Act. He noted that the applicant had also proposed a large number of mitigation measures to ensure any effects are avoided, remedied or mitigated.

Mr Winchester contended that the overall judgement in relation to the granting of consents was that the proposal was consistent with, and indeed complemented by, the objectives, policies, and rules of the relevant statutory documents and that the effects of the proposal are no more than minor, given the mitigation of any relevant effects.

In terms of the permitted baseline, other than failing to meet the permitted thresholds for the hazardous facilities, the standards for earthworks and the permitted noise levels at the site boundary provisions of the plan, Mr Winchester stated the proposal is permitted by rules and standards in the relevant statutory documents.

In terms of environmental effects, Mr Winchester submitted that all relevant actual or potential adverse effects are minor and where relevant can be adequately mitigated. Mr Winchester clarified a number of issues raised by submitters relating to stormwater and the design of the API separator. In particular, he clarified that the terminal would be designed and operated so that fuels do not get into the separator – and reiterated to the Commissioners that the separator is the "backstop" to prevent

product escaping from the site. Mr Winchester then stated his reasoning why it would not be appropriate to require the applicant to construct a boom in the marina. Mr Winchester also confirmed that the use of the proposed internal blanket would reduce vapour emissions from the petrol tanks by up to 96% - and that this was the best practicable option available.

Mr Winchester spoke at length about whether there were any cumulative effects of the proposal on the environment, outlining recent case law on cumulative effects. While Mr Winchester accepted that the additional storage tanks could, if established, result in some further minor cumulative effects on risk levels, he submitted that any risk is minimal, and certainly does not bring the overall levels of risks to a point that is unacceptable. Mr Winchester reiterated to the Commissioners the benefits of good design, construction and operation of the proposed facility in accordance with sound engineering practice and judgement, BP Oil guidelines, the HASNO Act 1996, and a number of relevant regulations/standards.

Mr Winchester submitted that the visual effects of the proposal are acceptable, given the *Special Business Activity Area* is specifically zoned to accommodate hazardous facilities, and that the proposed bulk storage and associated buildings fall within the permitted baseline for bulk and location.

In terms of construction effects, Mr Winchester concluded that these would also be minor and acceptable given the context of the site.

Mr Winchester then addressed the operational effects of the proposal. Firstly, he noted that existing traffic and roading issues in Seaview would not be affected in any way by the proposal and that the anticipated increase in traffic during the construction phase would be minor at worst. He noted that the applicant had accepted the recommended condition of consent to ensure the mitigation of any potential manoeuvring issues between construction and operational vehicles on the right-of-way.

In terms of noise effects, Mr Winchester submitted that the expert evidence has shown the potential noise from fuel tanker movements would be minor. The applicant has also proposed consent conditions requiring noise levels from the wind turbine to comply with District Plan provisions prior to installation. Mr Winchester also reiterated to the Commissioners that the applicant has also proposed a condition that would ensure noise from the weekly testing of fire pumps is controlled at the nearest building, thus avoiding any disturbance. Also on the subject of noise, Mr Winchester noted the applicant's position but recommended that the preparation of an operational noise management plan was unnecessary as the nature of the operational noise offsite is very limited with little scope for future change.

In addressing some submitters' concerns, Mr Winchester reiterated that petroleum products would not be "discharged" into the harbour – or, if they are, they would be at "virtually undetectable concentrations". He noted that the systems are designed primarily to ensure that the product does not reach the separator. If they do reach the separator, Mr Winchester stated that it would reduce the hydrocarbon concentrations down to about 10 to 15 parts per million:

By comparison, the level of hydrocarbons would be little different than runoff from roads but in overall quality could be expected to be better because it does contain the heavy metals that road runoff does (paragraph 81)

Mr Winchester also submitted that there were a number of positive effects associated with the proposal, including the additional storage capacity at Seaview, fewer tank visits required, more efficient use of existing port infrastructure and the introduction of biofuels into the supply chain and the associated climate change benefits.

Mr Winchester then took the Commissioners through the RMA Part 2 assessment, submitting that the proposal is consistent with Part 2.

In response to submitters asserting that the 35 year period for the consent is too long, Mr Winchester submitted that, in the interests of ensuring consistency between the lapsing times of the discharge consent and the wharfline renewal, 2031 would be an appropriate lapsing date (as outlined in the evidence of Mr le Marquand). This would equal a term of approximately 22 years at the most.

Mr Winchester then concluded with the applicant's support for the analysis and conclusions in the Officer's Reports, noting that the recommended conditions are generally acceptable, other than some minor amendments and corrections: a revised version of the conditions with amendments proposed was tabled.

Warren Bolger, Terminals and Logistics Manager for BP Oil

Mr Bolger first outlined the background to the proposal and the applicant's approach to fuels storage facility construction and operation. Mr Bolger stated that the existing bulk storage tank capacity in the region is insufficient to provide the storage required for the supply chain to satisfactorily meet BP Oil customer demands in the short to medium term. Mr Bolger outlined the proposed facility's capability of meeting demand for a variety of fuel products for customers in the lower North Island.

Mr Bolger then outlined the numerous internal standards and practices with which BP Oil's facilities need to comply, and the requirement that all terminal and engineering assets be designed, built and maintained in adherence with numerous engineering technical practices and local HSNO requirements. Mr Bolger then outlined the technological features of the proposed tanks designed to reduce fire risks and protect the environment, including the tank compound design which incorporates concrete bund walls and HDPE liners to provide secondary containment. Mr Bolger stated that the tank and facility design would be completed by COSL, very experienced architects and designers in fuel tank work.

In relation to submitters' concerns about the nature of the tanks, Mr Bolger also clarified that the proposed design fully meets, and in many cases exceeds, all local HSNO and other legislative and regulatory requirements. He stated that the facility has also been reviewed by NZ Oil Services and the proposed auditing and management would ensure ongoing compliance with BP Oil's international operational and integrity management standards, and local legislation and regulatory requirements.

In terms of benefits of the proposal, Mr Bolger noted that the proposal would mean quicker ship turnaround at the Seaview oil berth as a result of being able to discharge tank ships faster and in larger parcel sizes. This faster turnaround would result in about 20 fewer “ship days” at the wharf.

In response to submitters, Mr Bolger also discussed the future use of the facility, and in particular, the efficiencies of trucking and vehicle loadings in relation to other facilities in the North Island. Mr Bolger anticipated approximately 350 tanker loadings on average per month would occur within the proposed new terminal – compared with approximately 2000 tanker loadings per month currently taking place out of the three present fuel terminals at Seaview.

Mr Bolger also discussed security at fuel terminals generally and the security arrangements proposed application for the site. Mr Bolger concluded with the applicant’s safe maintenance and operation of fuels terminals for well over 50 years at Seaview and his confidence that potential effects and risks would be suitably managed.

Mr Bolger also responded to a number of questions about the proposal, including the training of operators in discharging of tanks, the surveillance of the pipeline during discharge and the substantial training and certification requirements for truck drivers regarding spills and operation. Mr Bolger also answered questions on the international supply and demand of oil.

David Goodwin, Managing Director of Enginuity Limited

Mr Goodwin presented his statement of evidence on the engineering details of the proposed facility. Mr Goodwin spent some time outlining the specific elements and the function of the proposed development, including design and construction methodologies (including the staging of works), consideration of alternatives, risk management issues (including fire risks, natural hazards, isolation distances and site security) and the delivery of product via an existing wharfline and a new offtake.

Mr Goodwin outlined details of the proposed stormwater management system, including the role and functioning of the API separator, as well as the venting of tanks and vapour/odour issues, clarifying a number of matters raised by submitters and more detailed engineering aspects. He provided detail on the engineering aspects of the proposal to reduce risks or potential adverse environmental effects.

Mr Goodwin then summarised the issues raised in the URS risk assessment peer review as well as a number of issues raised by submitters. He paid particular detail to the submission of John and Patricia Dickens in relation to site access arrangements, the fitting of internal floating blankets on Tank 1, the maintenance of existing pipelines and historical pipe leakage as well as the redundant tanks on the Mobil site. Mr Goodwin also addressed in detail a large number of concerns raised by other submitters, including Sherry Phipps, East Harbour Environmental Association, Laurence Sherriff (Environmental Challenge), Victor Crooks, Sirkkn Siivonew and Seaview Marina Limited.

Mr Goodwin also addressed the opposing submission of Ewen McCann, particularly in relation to the role of the separator and stormwater management. Mr Goodwin

stated that the proposed API separator was ‘best practice’, and clarified the stormwater management capacity of the proposed facility in terms of high rainfall events and the critical systems back-up power supply to allow safe shut-down of the terminal. In responding to Mr McCann’s submission, Mr Goodwin also stated that the stormwater discharged from the proposed terminal site would be of a better quality than the stormwater runoff from the roads in the area, citing the results of recent monitoring by NIWA and the oil industry internationally.

Mr Goodwin also responded to a number of questions from the Commissioners regarding the operation and maintenance of such facilities, soil testing, leak detection liners, other hazards, pipeline surveillance and the installation of the proposed stone columns as supporting structures. Mr Goodwin spent some time discussing the timing of construction and what aspects of construction were likely to generate noise. Mr Goodwin clarified that the applicant did not construct during night hours for safety reasons and that a number of the noisier techniques used historically to construct tanks were no longer used or required on site (including the use of steel rollers or steel guillotines).

Angel Casal, Principal Risk and Safety Consultant for BP Oil New Zealand Limited

Mr Casal presented his statement of evidence on matters relating to risk assessment. In addition to clarifying a number of matters relating to risk assessment, Mr Casal also addressed a number of issues raised by Council officers and submitters.

Mr Casal outlined the two differing risk assessments that he undertook for the proposal, a personal safety risk assessment and an environmental risk assessment, to fulfil the requirements of the Hutt City Council and Greater Wellington Regional Council. Mr Casal concluded that the risk assessment met the requirements of the District Plan, and it determined that the risk level associated with the proposed development is acceptable. He also submitted that, using a conservative approach, it can be concluded that the proposed development is compatible with the surrounding land uses. Mr Casal clarified that the Risk Peer Review undertaken by URS for Hutt City Council agreed with the approach and the results of the risk assessment in all respects.

In response to consent conditions recommended by the risk peer reviewer, Mr Casal outlined why, in his opinion, the requirement to present a Safety Case is not justified and that the construction, operation, maintenance and emergency response plans for the proposed development must, and will, provide an adequate degree of protection to the surrounding community and local environments. Mr Casal agreed with the proposed conditions requiring an Emergency Response Plan to be prepared prior to commissioning of the terminal (proposed Hutt City Council condition 10). Although agreeing with the Hutt City Council’s risk peer reviewer as to notifying Hutt City Council prior to the date of commissioning, Mr Casal considered that 6 weeks would be a more appropriate notification period than 6 months.

Finally, in response to a number of submitters in opposition, Mr Casal concluded that the risk levels in the residential area located 300m to the southeast of the proposed development would not be increased by the proposal.

Mr Casal also concluded that a 1 in 500 year earthquake is not expected to cause loss of containment events in the proposed terminal that would result in effects over and above those of the seismic event itself. Mr Casal also clarified that the distances between the existing land uses, including the nearest residential area, and the proposed development are adequate, and concluded that the proposed development is compatible with the surrounding land uses.

Mr Casal also responded to a number of questions from the Commissioners on the evaporation of petroleum vapours, potential risks associated with mechanical failures, and the effects of smoke associated with hydrocarbon fires.

Damien Ellerton, Acoustic Consultant, Marshall Day Acoustic Consultants

Mr Ellerton presented his statement of evidence on noise. Mr Ellerton concluded that construction noise would not exceed the guideline values given in *NZS6803:1999 - Acoustics Construction Noise*, at all stages of the proposed site development, and that (with a limited exception) the proposed day-to-day operation would comfortably comply with the permitted activity noise limits under the District Plan. The exception he noted is the proposed weekly testing period of the fire pumps (approximately 10 minutes), which would only occur during normal working hours and would not exceed 80dBA L_{eq} at the nearest boundary.

Mr Ellerton noted that, unlike the 1984 standard referenced in the District Plan, the NZS6803:1999 was a full standard and should be used to determine an appropriate level of noise from construction activities. Mr Ellerton used the SoundPLAN computer programme to model noise effects on residential dwellings at Point Howard. The modelling predictions he undertook indicated that any potential noise effects would comply with the numerical limits provided in Table 2 of NZS6803:1999. He also stated that predicted construction noise levels at houses are around 45dBA L_{eq} versus a limit of 70dBA L_{eq} .

In terms of operational noise, Mr Ellerton outlined the potential noise sources from day-to-day operations, including the bulk fuel delivery trucks, the proposed wind turbine and the two fire pumps. Mr Ellerton's predicted noise levels for the day-to-day operation are 32-52dBA L_{eq} compared to the District Plan noise limit of 62dBA L_{10} . Mr Ellerton confirmed that the 52 dBA value is for the short duration that the fire pumps would be tested on a weekly basis and noted that the actual noise from the site would be more in line with the 32dBA L_{eq} . Mr Ellerton stated that, at a noise level of 32dBA, he would not expect any disturbance to residents to arise.

In the absence of reliable information on the proposed noise turbine, Mr Ellerton proposed that a suitably qualified and experienced noise consultant shall certify to the Hutt City Council that the expected noise levels from the wind turbine would comply with District Plan provisions prior to installation.

In response to issues raised by Hutt City Council's peer review report, Mr Ellerton agreed with the amendments proposed by the applicant to satisfy concerns. However, Mr Ellerton outlined his reasons for not requiring an operational noise management plan documenting how future compliance is to be achieved, primarily because of the limited nature of the operation. Mr Ellerton agreed with the conclusion of Hutt City Council's reporting officer and that the suggested conditions

regarding noise are generally acceptable. However, Mr Ellerton considered that requiring a greater standard than DIN 4150 for vibration was inappropriate. Mr Ellerton also re-emphasised his opinion that an operational noise management plan in condition 28 was unnecessary and would only duplicate information outlined in his earlier assessment.

In response to questions from the Commissioners, Mr Ellerton clarified his certainty that the noise would not exceed the guideline values given in *NZS6803:1999* for all stages of the proposed site development. Mr Ellerton also referred to a noise condition that had been proposed by the applicant and that had been accepted by Hutt City Council that would ensure noise from the maintenance operation of fire pumps is controlled at the nearest building (the neighbouring warehouse) and thus avoiding disturbance of that adjacent business.

Richard Galloway, Traffic Consultant, Traffic Design Group

Mr Galloway presented his statement of evidence on traffic. Mr Galloway described the traffic environment and local roading network, summarised traffic count data and road accident statistics from the NZ Transport Agency's Crash Analysis System. In terms of trip generation and distribution, Mr Galloway stated that the proposed facility would not generate any new heavy traffic into the Seaview area, since a proportion of truck movements would simply be transferred from the present terminal. Mr Galloway reiterated that the purpose of the new terminal is not to provide for an increased demand for fuel, but instead to provide efficiencies in the supply and storage of fuel. Overall, Mr Galloway concluded that the only effect on existing truck movements would be a shift in route for a portion of the vehicles, from the existing terminal to the proposed terminal, with some vehicles using Seaview Road rather than Port Road

In terms of construction traffic, Mr Galloway expected up to 1,500 truck deliveries would be made with the majority concentrated in a three month period, equating to an average of 1.3 truck movements per working hour. Overall, Mr Galloway stated that the level of traffic associated with constructing the terminal would be readily accommodated on the road network. As such, he submitted that its effect on the road network would be no more than minor.

In relation to parking and loading facilities, Mr Galloway considered the proposed parking spaces provided would be sufficient to accommodate the six staff plus any visitors or drivers. Similarly, in terms of site access, he submitted that the proposal complies with the relevant District Plan standards and relevant separation distances. Mr Galloway also stated that the proposal complies with all other District Plan transport-related permitted activity standards.

In response to issues raised by submitters in relation to future growth, Mr Galloway stated that the predicted growth in tanker movements were taken into account in his assessment, and that the 24 truck visits per day (or around 700 per month) represented the likely ongoing level of traffic at the new terminal. In concluding, Mr Galloway noted that the proposed fuel terminal is located in an area specially zoned for this type of activity and that the surrounding roads are wide and have no recorded safety issues that warrant attention in relation to this proposal.

During questioning, Mr Galloway commented that it would be appropriate to include as a condition of consent a requirement to address “traffic management during each stage of construction, with particular regard to operation of the access right-of-way and the need to avoid conflict between construction and operational vehicles.”

Chris Hillman, Ground Contamination Assessment Consultant, Tonkin and Taylor

Mr Hillman presented his statement of evidence relating to ground contamination. Mr Hillman discussed the historical use of the site, the results of historic investigations for contamination, and remedial works undertaken in response to the results of historical testing. Based on the results of his earlier Ground Contamination Assessment report and associated testing and laboratory analysis, Mr Hillman concluded that the site investigation data indicates no significant public health risk from ground contamination at the site in terms of the proposed land use. Mr Hillman stated that the data indicates that ground contamination is unlikely to present a significant constraint to the proposed development.

Mr Hillman concluded by stating that the results of the testing indicated that contamination levels within soils and groundwater at the site are below human health criteria for industrial land use and also below relevant environmental criteria. However, Mr Hillman noted that isolated localised areas of hydrocarbon contamination could potentially be present within the northeastern corner of the site. Mr Hillman considered that the body of historic and recent contamination investigation data indicates that contamination concentrations at the site are above background levels, but are unlikely to present an immediate or long term risk to human health in an industrial setting or to the environment. Based on the information available, Mr Hillman did not consider the site to meet the Greater Wellington Regional Council definition of a contaminated site.

Mr Hillman noted that the peer review report agreed that, in general, ground contamination at the site presents no practical constraint to the proposed industrial development and that no further information is currently required for Hutt City Council to grant conditional consent. In terms of issues raised by the officer’s report, Mr Hillman generally agreed with the conditions, but suggested that the order be amended so that the condition refers first to general conditions relating to soil, before moving to treatment of potentially contaminated sites. In response to questions from the Commissioners, Mr Hillman referred to paragraph 68 regarding the wording of condition 24(4)(d) and recommended an alternative condition. Mr Hillman considered the Hutt City Council condition had the potential to be unduly onerous.

Mr Hillman stated that there is potential for encountering previously unidentified contamination during the proposed construction works, and he accordingly recommended a condition setting out appropriate actions should potential contaminants be encountered during excavations.

Stuart Palmer, Geotechnical Consultant, Tonkin and Taylor

Mr Palmer tabled his statement of evidence on geotechnical issues, namely the geological profile to the site, groundwater conditions, geotechnical considerations, liquefaction, ground improvement, bearing capacity, settlement and the artesian

aquifer. In relation to the existing site, Mr Palmer spoke of a variety of methods available to improve ground to mitigate the potential for liquefaction and the technique of stone column construction selected for this proposal.

In response to issues raised in submissions by Sirrkn Siivonew and Laurence Sherriff, Mr Palmer clarified that the artesian aquifer is to be protected by avoiding penetrating the Petone Marine Beds. In concluding, Mr Palmer clarified that he was satisfied that any potential geotechnical issues hazards have been adequately addressed in the design; namely incorporation of a reinforced concrete ring foundation beneath the tank walls, ground improvement by stone columns and monitored preloading of the foundation soils with the tanks filled with water.

David le Marquand, Planning Consultant, Burton Consultants

Mr le Marquand presented his statement of planning evidence, in which he outlined in some detail the planning framework and the statutory context. Mr le Marquand also outlined his assessment of the proposal against the policy and statutory framework, responded to matters raised in submissions, and provided comment on the officers' reports.

In terms of the permitted baseline, Mr le Marquand stated that it is appropriate to recognise the extent to which the proposed development meets existing district and regional plan permitted activity provisions. Mr le Marquand stated that this was particularly relevant in that the degree of compliance with permitted activity conditions is a discretionary assessment matter in the District Plan. Mr le Marquand's assessment therefore focused on those areas of non-compliance with the standards: i.e., risks from hazardous facilities, noise and earthworks.

Mr le Marquand outlined a number of aspects of the proposal from a natural hazards perspective. On the basis of the evidence that the development is designed to withstand a 1 in 500 year earthquake, Mr le Marquand did not anticipate any significant adverse or long-term environmental effects. Mr le Marquand also discussed the potential for sea level rise associated with climate change and tsunamis. In terms of risk, Mr le Marquand agreed with Mr Casal's assessment that the fire, explosion and environmental risks of the proposed development are no more than minor. Mr le Marquand then reiterated the key conclusions of the applicant's experts in relation to discharges.

In relation to effects upon land and groundwater, Mr le Marquand drew on the evidence of Mr Palmer and Mr Hillman, concluding with the Greater Wellington Regional Council's site classification that the site is "suitable for industrial/commercial use". Mr le Marquand then stated his support for the proposed conditions recommended in relation to managing potential contamination issued during the construction phase of the project via a Construction Management Plan.

In terms of potential discharges to ground, Mr le Marquand reiterated the applicant's expert's opinion that the site design and operation procedures would ensure that non-at-risk areas would not be subject to potential product spill. Further, he submitted that the risk of minor leaks or major spillages from pipework or tanks would be minimised through the proposed design and testing procedures and secondary containment systems.

Mr le Marquand then considered the potential effects upon the Coastal Marine Area. For the non-“at-risk” areas, Mr le Marquand noted that the ultimate discharge of stormwater into the Coastal Marine Area is permitted by Rule 53 of the Regional Coastal Plan. For the “at-risk” areas, Mr le Marquand reiterated that it is proposed to design the separator on the same basis as recently installed at the Lyttelton terminal, designed to comply with the Ministry for the Environment’s *Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand*, 1998. Mr le Marquand noted that, to his knowledge, this level is equivalent to the permitted level found in a number of Regional Plans throughout New Zealand. Mr le Marquand then discussed the results of independent water quality monitoring from the recently installed Lyttelton terminal in some detail. Mr le Marquand proposed some minor amendments to the Greater Wellington Regional Council discharge consent that will, in his opinion, provide an appropriate level of discharge quality to ensure the protection of the receiving environment and ensure any adverse effects are no more than minor.

Mr le Marquand drew on the traffic evidence of Mr Galloway, reiterating that the development would meet the permitted District Plan requirements and that there is adequate parking and on-site manoeuvring and there would be no net general increase in traffic specifically arising from the development.

Mr le Marquand also highlighted the noise and vibration assessments, confirming that both construction and operational noise from the proposal would comply with the District Plan noise limits for most activities (with the exception of the pump maintenance testing and possibly the wind turbine when subject to high winds). In Mr le Marquand’s opinion, based on the expert evidence and implementation of the proposed conditions, the majority of the noise effects (with the exception of the short duration fire pump testing) would be no more than minor, with the overall noise effects, even having regard to fire pump testing, not being significant. Mr le Marquand reiterated that the extent of vibration during construction remains uncertain while the methodology for the stone piling has not been finalised. Given this uncertainty, Mr le Marquand recommended inclusion of a consent condition requiring compliance with German Standard DIN 4150/3 1999-3 *Effects of Vibration on Structures*.

In terms of amenity values, Mr le Marquand submitted that the proposed development is compatible in character and amenity terms with the surrounding environment and would not give rise to adverse amenity effects that are more than minor. Mr le Marquand noted that concerns raised regarding potential cultural effects have been addressed by consent conditions to address the potential for contaminants entering the Waiwhetu aquifer or Wellington Harbour.

Mr le Marquand did not consider it necessary to address cumulative land use effects, given his opinion that the effects of the proposed development are in accordance with the District Plan’s zoning strategy, and that the development is not at odds with its objectives and policies. Mr le Marquand stated that the potential for cumulative effects can therefore only be considered in relation to risk, noise, earthworks, and discharges. In summarising, Mr le Marquand considered the evidence and assessments provided by the applicant to be comprehensive and reliable, and accordingly, in his opinion, any actual, potential or cumulative effects of the

development on the environment of allowing the activity would be no more than minor.

Mr le Marquand then provided a summary of his detailed assessment of the policy and planning instruments in his appendices tabled with his evidence. Overall, Mr le Marquand summarised that the collective suite of objectives and policies seek to provide for appropriate activities while ensuring adverse effects are appropriately avoided, remedied or mitigated. In Mr le Marquand's opinion, the overall purpose and direction of the planning instruments is to recognise and provide for this type of regionally significant infrastructure, subject to acceptable levels of effects. Mr le Marquand then reiterated his assessment that he did not identify any areas where the proposal is in direct conflict with or opposed in nature to these provisions.

Mr le Marquand deemed the MfE *Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand*, 1998, is a relevant consideration to this application, and contended that it is appropriate to adopt the thresholds in the MfE guidance as a performance condition for discharges from the site separator.

Mr le Marquand's discussed his detailed Part 2 assessment, concluding that the application was largely consistent with sections 6, 7 and 8 of the Act. The sections 105 assessment noted that the proposed API interceptor system and management system are capable of delivering a relatively high quality level of discharge compared with the normal range of urban stormwater runoff. Mr le Marquand noted that there was nothing about the sites receiving environment that would suggest that higher standards should be applied than those in the MfE Guideline. Mr le Marquand considered that there are no potential effects arising from the discharge into Hutt City infrastructure, and subsequently into the Coastal Marine Area, that merit further consideration of other alternative methods or receiving environments.

Mr le Marquand then proceeded to outline the matters raised in submissions, reiterating the relevant applicant's expert's responses to submitters. Mr le Marquand stated that the submitters have not raised any issues or effects that either have not been considered in the proposed design and operation of the development, been adequately mitigated by conditions, or that require further consideration.

In response to the Hutt City Council's officer's report, Mr le Marquand highlighted that the officer has reached the same conclusion in terms of the proposal meeting the statutory tests, noting that the Officer has recommended approval subject to a number of conditions. Mr le Marquand indicated that the applicant sought to delete the last sentence of Condition 3 in relation to vibration.

Mr le Marquand responded to a number of questions from the Commissioners on matters relating to earthquake hazards, and foundation requirements for the site, and he clarified that the applicant was satisfied with a condition limiting ground improvement to stone columns. Mr le Marquand noted that the applicant had considered this approach to be the best method of mitigating the risk of liquefaction. Mr le Marquand also responded to a number of questions about the use of the separator and potential discharges.

7.3 Council Consultants and Officers

The section 42A reports of Greater Wellington Regional Council's reporting officer, Nicola Addison, and Hutt City Council's reporting officer, Jeremy Brophy were taken as read. Both Officers responded to matters arising during the hearing, including questions from the Commissioners.

In regard to the recommended conditions, Ms Addison suggested that it could be appropriate for a condition to specify the methodology to be used in the stone column construction. Alternatively she suggested that the condition could have the actual methodology submitted to the Greater Wellington Manager of Environment Regulations for prior approval.

In regard to the duration of consents, Ms Addison accepted that an expiry on a common date could be appropriate (that date being 17 December 2031).

Mr Jeremy Brophy, reporting officer for Hutt City Council, agreed with the applicant's planner's scenario of the permitted baseline. Mr Brophy also stated that from a noise and traffic perspective, he considered the application to be consistent with the relevant objectives and policies of the District Plan.

Mr Brophy then responded to a number of questions from the Commissioners. Firstly, he stated that he did not consider it necessary to place a condition of consent for the applicant to upgrade the triangular area of footpath outside the entrance to the site as the footpath's condition was not directly related to this application.

Mr Brophy then discussed the amended changes to conditions of consent tabled by the applicant. In terms of notifying the Hutt City Council of the date of commissioning, he indicated that Hutt City Council was satisfied that six weeks is appropriate (as opposed to 6 months). In terms of Conditions 10 and 11 (relating to completion of a safety case), Mr Brophy stated that Hutt City Council's Risk Consultant has reviewed this and agreed that the conditions can be deleted, largely because the safety case regime has not been regulated in New Zealand, and that the risk assessment of the proposed development has demonstrated that the proposed development is compatible with the surrounding development and a Safety Report is not justified. Mr Brophy noted that a similar requirement would be covered off by Condition 6 which requires the development of a Facilities' Operation Manual.

In relation to the suggested amendments to Condition 7 (Emergency Response Plan), Mr Brophy indicated that he was satisfied with the condition as recommended but had no objections to the suggested amendment by BP Oil to add "approval shall not be unreasonable withheld", noting that he could not see why Council would withhold approval to the response plan.

In regard to Condition 24 (requiring a vibration report as part of the construction management plan), following the Council's acoustic expert's advice, Mr Brophy stated Hutt City Council had no concerns with amending the condition requiring that the applicant certify that no vibration is discernable beyond the boundary of the site as a result of the piling and any other mechanical equipment on the site. Mr Brophy also indicated he was satisfied with the suggested reordering of Condition 24(4) to ensure any contaminated soil was appropriately tested and treated as part of the site

excavation and soil disposal. Mr Brophy also noted that Hutt City Council had recommended Condition 24(D) be amended to incorporate a trigger to ensure council is notified if contamination is encountered. Mr Brophy did not consider such a requirement to be onerous and would allow other works to continue whilst necessary remedial work is undertaken.

In considering the evidence of Mr Casal in relation to the changes proposed to Condition 28 (preparation of a noise management plan), Mr Brophy recommended that Condition 28 be amended to require certification demonstrating the proposed wind turbine can comply with the District Plan noise limits prior to installation. In light of the evidence from Mr Ellerton and Hutt City Council's acoustic expert, Mr Brophy also stated he was satisfied with the deletion of the requirement in Condition 28 for an operational noise management plan, including the need to consult with neighbours, and considered such a requirement to be unnecessary and disproportionate (given that the sole issue of non-compliance relates to the weekly testing of the emergency fire pumps).

Mr Brophy sought to amend the conditions on noise so that Condition 25 was split into three separate conditions for improved clarity.

Mr Brophy then responded to a number of questions from Commissioners. Firstly, in relation to the installation of stone columns, Mr Brophy was advised by Bruce Simms of the preference for a condition restricting ground stability work to stone columns and the required methodology.

In regard to noise impacts from construction in the morning, Mr Brophy clarified that this matter was adequately covered by application of the NZS6803:1999 *Acoustics – Construction Noise*.

7.4 Submitters Heard at the Hearing

Eight submitters spoke to their submissions at the hearing.

Mr Hyde, on behalf of CentrePort Limited

Mr Hyde spoke on behalf on Centre Port Limited, the landowners of the site and the Seaview Wharf, which had lodged a submission in support. Mr Hyde advised the Commissioners that there was now limited land available within Seaview to construct a suitable tank facility and that this piece of land must be utilised for this purpose as it is ideally sited near the wharflines. Mr Hyde also commented on efficiencies to be gained by enabling ships to unload a full tanker at Seaview.

Mr Hyde outlined the historic purpose of the Seaview area, and noted that the area has been used by CentrePort and its predecessor (the Harbour Board) as a heavy industrial area. He noted that the site's owners have always sought to ensure that the area's heavy industry status is not compromised, including by objecting to residential activity adjacent to Port Road. Mr Hyde also highlighted the area's regional significance and considered it appropriate for the proposed use. In summary, Mr Hyde supported the recommendations of those reports and the conditions that are relevant to CentrePort's interests.

Ray Smith, on behalf of East Harbour Environmental Association

Mr Smith stated that the Association was primarily concerned with the risks of fire and that a simple human error could cause a catastrophic event. He asked that the effects and risks of the increased total fuel storage in the area be carefully considered, but noted that he remained adamant that the level of risk was unacceptable and the application did not constitute a 'rigorous' examination.

Mr Smith expected that sea level rise would increase, and that, in his opinion, the assessment of sea level rise undertaken by the applicant was minimal and should not be considered an authoritative document. Accordingly, Mr Smith considered that a shorter consent term of 21 years as proposed by the applicant and Greater Wellington was still too long.

Ian Young, Chair of the Eastbourne Community Board

On behalf of the Eastbourne Community Board, Mr Young expressed a number of concerns regarding the proposal, but was principally concerned about the risk of a rupture or accident causing contamination to the Harbour. He considered that the applicant should do all that is possible in an engineering sense to reduce the amount of potential contamination from any discharge.

Mr Young stated that he had a number of concerns about aspects of the information provided in relation to the proposal, and whether the proposal was in the long-term public interest. Mr Young identified a number of specific aspects of his submission, including issues associated with emergency situation, and the potential lack of access to / from Eastbourne during such an emergency, as well as general concerns at the uncertainty involved with projections of the growth of supply over 35 years (being the term of consent sought).

Mr Young submitted that the local community was concerned that the existing noise from the Port area still wakes residents at night. Linked to the issue of noise, he submitted that the community also had concerns at the expected increase in truck movements and the impacts of the local wind turbine, and the subsequent effects on amenity for residents. Accordingly, Mr Young strongly opposed granting consent for 35 years without review. Mr Young also sought increased engineering controls on the proposal so as to future-proof it.

Mr Young also expressed concern about the proposed long duration for the consent and considered that a shorter term should be appropriate so the consent could be reviewed in light of changes to the community and industry. In response to questions regarding the term of the consent, Mr Young indicated he would be comfortable with that approach so long as the conditions and how they could be complied with were suitable.

Alan McLellan, Manager, Seaview Marina

Mr McLellan put forward the views of the operators and users of the Seaview Marina, noting that the estimated value of the boats in the marina was well over \$10 million. He was concerned that the contaminants from the facility that would enter the coastal waters could damage the expensive coating on the boats and would

generally degrade the overall amenity of the area. He considered that the boom that was removed from the stormwater outfall pipe should be reinstated.

Ewen McCann, Point Howard Resident

Mr McCann presented an extensive submission, including a critique of the evidence of Mr Goodwin for the applicant. Mr McCann was primarily concerned with potential contamination of the harbour and sought to ensure that water quality is not degraded any further. It was his conclusion that consent should not be granted if it allowed unfettered and uncontrolled contamination of the harbour.

In response to questions on the discharge of water and the risk of contamination from adjacent trucks, Mr McCann confirmed his position that all site water should go through the separator. Mr McCann also confirmed that he does not accept that the proposed API separator would remove the total probability of contaminated water exiting the site and sought that BP Oil be not permitted to discharge any contaminated water subject to conditions, including conditions requiring that the standards of the plan have to be adhered to.

Mr McCann also expressed strong opposition to the possibility of contaminated stormwater from the uncontrolled sealed areas of the site, including the vehicle accessway and turning area, to enter the harbour via the Hutt City Council stormwater disposal network.

John Dickens, Point Howard Resident

Mr Dickens, a local businessman, expressed the reasons for he and his wife's opposition to the application. He was concerned about the discharge aspect of the proposal, stating that this discharge would create an adverse effect on the area and the marine life that frequented the area, including seabirds, fish and on occasion blue penguins and seals. He also expressed concern about the recommissioning of the 150NB wharfline as he considers this pipe is most 'at risk' as it sits as the outermost pipe over the Coastal Marine Area and would be impacted first, should a vessel in the marina lose control. Mr Dickens noted that he had only limited concerns with the current terminal and operations, largely as they were used to them and any effects were relatively short and infrequent.

Mr Dickens also raised questions regarding the potential failure of the separator and diversion requirements for sewer and stormwater. He concluded his submission that all water that is proposed to be discharged to the stormwater network should be directed to the Hutt City Council sewer network, and that no contaminated water be allowed to enter coastal water. He also sought to have the 150NB wharfline be moved inwards from its outermost position. Mr Dickens sought to make certain that noise was not a problem, and considered the current District Plan rules were insufficient to mitigate noise effects.

Laurence Sherriff, Point Howard Resident

Mr Sherriff presented his statement, outlining in detail his concerns with the proposal. Mr Sherriff also discussed the proposed noise management plans and

hours of work, and outlined his concerns at the varying noise from the Seaview Marina during differing times of the day. Mr Sherriff had particular concerns with the construction aspects of the proposal, particularly the considerable length of the construction period. Mr Sherriff suggested that the construction works would not maintain or enhance the amenity value of the area.

Mr Sherriff also questioned whether the noise levels in the District Plan are appropriate and also whether the NZS6803 would provide appropriate noise levels at the interface as opposed to other standards. Mr Sherriff did not think that the amenity values of the area would be adequately protected, let alone enhanced, as required by the policies of the District Plan.

In response to a suggestion about potentially imposing ongoing reviews of the conditions of construction management plans for different stages of construction, Mr Sherriff indicated that ensuring clarification as to the times when the activities would occur would assist greatly and remove current uncertainty. Mr Sherriff expressed a preference for such an approach prior to consent being granted – preferably linked to limiting construction activities to within normal working hours. Mr Sherriff outlined his concerns about construction occurring outside normal working hours and that the NZ Standard for noise does not restrict work in the weekend. Mr Sherriff sought that the condition should reflect the quietness of the existing area and that there be no activities outside working hours. However, Mr Sherriff also acknowledged that there were large traffic noise effects during the weekend.

Mr Sherriff clarified that the condition that would be most important to protecting the amenity of Point Howard residents related to restrictions around times and possibly the use of the construction noise standards to ensure greater certainty before the application is granted. Mr Sherriff indicated that, in relation to a possible condition on the use of noise barriers, he would be satisfied with anything that blocks noise, or possibly imposing restrictions on use of the pump to working hours. Mr Sherriff tabled a list of recommended conditions of consent.

In concluding, Mr Sherriff suggested that it would be beneficial for BP Oil to try and develop a relationship with the residents of Point Howard so as to ensure better communication and regular updates, including likely loud noises.

7.5 Response of the Reporting Officers

Ms Addison for Greater Wellington Region Council

In response to matters arising during the hearing, particularly concerns about the discharge of contaminants, Ms Addison focused on why consents were required and what some of the key issues were. She reconfirmed that her recommendation is to grant the resource consent, as she considers the activity meets the relevant objectives and policies within the statutory documents, and overall is in accordance with sustainable management under Part 2 of the Act.

Ms Addison advised the Commissioners, that overall, the activity of recommissioning the 150NB wharflines to convey hydrocarbon products is acceptable, and recommended an extensive set of consent conditions focussing on pressure-testing the pipeline, inspecting regularly for corrosion or other

imperfections, and inspections while product is being conveyed through it from wharf to shore. She noted that these conditions reflect those already in place for the larger, shared, 300NB wharfline.

Ms Addison then discussed the consents required by the applicant for discharge. She confirmed that, as the discharge from the site was to a stormwater pipe, it was defined through case law as being a discharge to land under the Act. She finally went on to discuss a range of conditions that require testing prior to discharge and that an operating plan would be required for the API Separator.

Mr Brophy for Hutt City Council

Mr Brophy firstly tabled a late submission (received on the day of the hearing) and it was agreed not to accept the submission. Mr Brophy then reiterated to the Commissioners that no further detailed comment was required in relation to operational noise associated with the proposal, stating that in his opinion the peer review of the acoustic report found it to be robust. Mr Brophy also spoke in relation to the transport issues raised by Mr McCann in terms of the use of the right of way – and reiterated his position that Hutt City Council’s traffic peer review is robust and consistent with the application.

Following advice from Hutt City Council’s geotechnical adviser, Mr Brophy tabled a possible condition of consent outlining the requirement for prior Council approval of the actual final form of the methodology for the proposed installation of the stone columns.

Finally, Mr Brophy elaborated on his discussions with Environmental Health officers in relation to the complaints over the logging operation, noting that there had been no complaints received. Mr Brophy concluded his evidence by stating that the application should be granted by the Commissioners subject to conditions.

7.6 Applicant’s Right of Reply

Mr Winchester presented the right of reply on behalf of the applicant. He began by discussing the recommended changes to the updated conditions, firstly outlining the reasons why the applicant was dissatisfied with the proposed revision to the Hutt City Council Condition 13 in terms of prior approval of the stone column construction. Mr Winchester submitted that, until ground works have commenced, the applicant cannot determine whether the wet method or dry method is the most effective way to construct steel columns.

Mr Winchester agreed that, in relation to noise from compaction, the proposed conditions could also limit activities to a particular method (in this case – vibrating) to take into account residents’ concerns. Mr Winchester stated that the applicant would be satisfied to be limited to one vibration method.

In regards to the Greater Wellington Officer’s presentations and comments, Mr Winchester stated his view that it was appropriate that the stormwater from the compounds goes through the separator to be treated to appropriate standards prior to entering the Hutt City Council stormwater pipes.

In response to questions from the Commissioners on jurisdictional issues and non “at-risk” areas, Mr Winchester considered that it would be unfair and inappropriate to require a higher standard for the applicant than elsewhere in the region given that discharges from non “at-risk” areas are permitted. Mr Winchester also noted that resource consent conditions cannot control accidents or spills on roads.

Mr Winchester submitted that nothing raised by submitters undermined the strength of the applicant’s case or undermines the expert advice – he stated that ultimately he considered quite an orthodox methodology has been proposed which provided certainty over potential adverse effects. Despite some scepticism as to the potential adverse risks raised by submitters, Mr Winchester considered that no evidence has been heard that suggests that risks raised by submitters are actual or indeed probable. He stated that, ultimately, the applicant bears the risk and consequences of any spills and cleanup required.

Mr Winchester also noted that the duration of consent only relates to the discharge consent and that this has been dealt with the shorter expiry period by volunteered by the applicant (to 2031).

In response to Mr Sheriff’s evidence and construction noise, Mr Winchester noted that the application complied with relevant standards for construction noise and also indicated his opinion that Hutt City Council’s expert, Mr Lloyd, is a very conservative noise expert. Mr Winchester also reiterated that it was the applicant’s view and those of Hutt City Council’s experts that there was no need for explicit conditions dealing with hours of the operation or construction.

In response to Mr McCann’s statement, Mr Winchester suggested that the submitter’s concerns largely arose from a fundamental misunderstanding of the proposal.

Mr Winchester clarified that the applicant’s traffic expert, Mr Galloway, had determined that trucks could past safely along the right of way and thus the likelihood of accidents and spills suggested by submitters is extremely remote.

In response to potential effects associated with odours, Mr Winchester noted that the applicant would install floating blankets to control such issues. Mr Winchester also stated his understanding from the various experts was that any noise created as part of this application would be indiscernible and not of any significance.

Finally, in responding to Greater Wellington Regional Council’s request to extend the emergency spill plan to unbundled areas, Mr Winchester considered such a requirement to be unnecessary and that there was no credible evidence to justify such an approach.

8. Potential Effects on the Environment

There is a wide range of actual and potential effects resulting from the proposal. Before addressing these effects, we first turn to the matter of whether there is an appropriate permitted baseline against which we should assess the effects of the proposal. We then acknowledge the positive effects of the proposal.

8.1 Permitted Baseline

As part of our deliberations, we have considered whether there is an appropriate permitted baseline of acceptable environmental effects that can be determined by reference to those effects that could occur from the development and operation of non-fanciful industrial activities that complied with the conditions for permitted activities within the Special Business Activity Area.

Because the proposed facility does not meet the permitted activity conditions for compliance with the Dow Hazard Index or the Hazardous Facility Screening Procedure, the Commissioners consider the permitted baseline is not relevant when assessing risk effects generated by the hazardous facility.

However, in considering the scope of effects that could occur from compliance with other conditions for permitted activities in the *Special Business Activity Area*, we find that there is a considerable ‘envelope’ of effects against which a valid comparison may be drawn. In this case, the permitted baseline includes activities that meet the conditions for permitted activities and that are not otherwise specified as a controlled, discretionary, or non-complying activity. The permitted baseline relevant to this proposal consists of the following permitted activity conditions that are relevant to this application:

- Building and structures have a maximum height of 20m
- There may be 100% site coverage, subject to compliance with yards, screening and off street parking, loading and unloading requirements
- All outside areas have to be sealed, surfaced, or managed appropriately so that there is no dust nuisance beyond the boundary of the site
- Activities shall be carried out in such a manner so as to ensure that there is not an offensive odour or fumes beyond the site boundary
- All noise emissions from construction and ongoing operational activities must comply with the specified standards
- Activities that cause vibration shall be managed to ensure that no vibration is discernable beyond the boundary of the site
- Hazardous facilities are permitted if they do not exceed 100 on the DOW Hazard Index as detailed in Appendix Special Business 1 or the effects ratio of 1 in the environmental effects group of the Hazardous Facilities Screening Procedure
- Use of the land at all times shall be in accord with the principles of fire safety specified by NZS 923:1971

Thus, we find that a wide range of industrial and other activities could occur within the *Special Business Activity Area* that could comply with these conditions. In particular, we consider that there is an applicable permitted baseline for this proposal when considering the visual bulk of the proposed tanks and wind turbine. There is also a permitted baseline in terms of assessing the effects of noise, traffic movement, vibration, dust and odour. Accordingly, we consider the permitted baseline under the District Plan as outlined above to be useful in assisting with our assessment of

potential adverse effects on the environment that will or may be created by the proposed fuel storage facility.

In terms of regional consents, legal counsel for the applicant, Mr Winchester, submitted that, in accordance with *Beadle v Minister of Corrections* (A074/02), the permitted baseline is that provided by those rules in regional plans that permit activities, including discharges. Mr le Marquand, the planning consultant for BP Oil, contended that, in considering the effects from the proposed change in use of the 150NB wharfline, Rule 10 of the Regional Coastal Plan would permit a range of uses of structures within the Coastal Marine Area with the same effect as that sought by the proposed change in condition.

In addition, we note that the discharge of stormwater into the Coastal Marine Area from the Hutt City Council's stormwater disposal network is a permitted activity under the Regional Coastal Plan, and observe that such stormwater typically containing contaminants from roads, accessways, roofs and other surfaces and the activities that occur on them. We shall return to this point later.

8.2 Positive Effects and Benefits

As submitted by BP Oil's legal counsel, we acknowledge that the proposal will have a number of benefits and positive effects, namely:

- The provision of additional fuel storage capacity at Seaview, including the facilitation of adding bio-fuels into the supply chain,
- The more efficient use of underutilised Special Business zoned land, which specifically provides for this form of activity, and
- The reduction of the amount of time that ships have to spend at Seaview Wharf.

8.3 Potential Adverse Effects of Discharge to the Stormwater Network

First, we accept that, from a practical perspective, it would be impossible to distinguish between rainwater and operational water entering the Council's stormwater system, and therefore it is preferable to consider how *all* water discharged from the bunded areas of the proposed facility would be controlled and treated – this a pragmatic and appropriately cautious approach.

The applicant and specifically its principal project engineer, Mr Goodwin, is confident that any water discharged from the bunded area of the proposed terminal facility to the API Separator would be largely free of contaminants after being processed. A chartered professional engineer, Mr Goodwin has worked in the oil industry for more than 25 years, including conceptual design, project management, inspection and assessment of oil terminals. Furthermore, the applicant's proposed systems have been reviewed by both the Hutt City Council and Greater Wellington, both of which are satisfied about the design and operation of the proposed control system from managing discharges into the stormwater network.

Mr Goodwin confirmed that the water discharge from the site would be designed in accordance with the Ministry for the Environment's Guideline "*Water Discharge – Environmental Guidelines for the Petroleum Marketing Companies*". In his evidence, he presented the results of water testing conducted at a similar new terminal constructed at the Port of Lyttelton, near Christchurch, a facility which uses the same form of API separator as that proposed at Seaview. Mr Goodwin advised that the amount of hydrocarbon in the discharges have been 0.2 – 0.7 g/m³, which is so low that it is near the detection limit for the testing method.

Based on the evidence, therefore, we accept that the proposed stormwater management and hydrocarbon interceptor system will be an effective method of controlling and eliminating the discharge of contaminants above unacceptable levels.

We note for the record the concerns of some of the submitters, particularly Messrs McCann and Dickens, who expressed some reservations about the effectiveness of the proposed stormwater management and treatment systems, and the significance of the risks if the proposed systems fail. Mr Dickens sought to have all operational water discharge into the Hutt City Council sewer and treated as trade waste. Mr McCann, contended that –

The wording of the consent application by BP Oil New Zealand Ltd is for an unrestricted and unconditional right to discharge potentially contaminated water to the stormwater system and thence to the Wellington Harbour.
[Paragraph 1]

With respect, this is incorrect. It appeared that Mr McCann had an underlying misunderstanding of the application in a number of respects.

First, the applicant is seeking consent to discharge *potentially* contaminated water into the stormwater system, but is intending to construct and operate a system in which the risks of any significant level of contamination are very low. The proposed system for capturing and treating all operational water, including stormwater within the bunded areas, would ensure that the level of contaminants entering the system and from thence into the Coastal Marine Area is very low, well within the Ministry for the Environment limits, and almost at the lower level of measurement.

Given the inherent design principle of the separator, in that any petroleum product would float to the surface, with water being discharges from the base of the unit, we have every confidence that a very high quality of discharge would result from the use of this unit. We understand that this unit is best industry practice, and has been applied throughout the world. No evidence to the contrary was presented. As Mr le Marquand stated:

The proposed interceptor system and management system are capable of delivering a relatively high quality level of discharge compared to the normal range of urban stormwater runoff. [Paragraph 118]

Given the proposed level of treatment, we do not consider that it would appropriate to require all operational water to discharge into the Hutt City Council's sewerage system.

Secondly, the proposed operational water management system will be bound, not only by industrial and company best practice requirements, but, more importantly, the proposed set of conditions that would impose a range of restrictions and requirements on the design, installation, maintenance and monitoring of the system. We note that the applicant would be subject to enforcement proceedings, should it not comply with these conditions, and thus any consent to discharge potentially contaminated water will be fully restricted and conditional.

We note that Mr McCann did state that:

If the Commission decides to impose conditions then it is recommended that BP Oil be held to its own word. The company should be explicitly required, as a condition of discharge, to operate the installation in the way that includes the ways that Mr Goodwin's submission says that it would be operated...
[Paragraph 19]

In our view, we consider that the recommended conditions of consent are comprehensive, and would appropriately address all facets of the design, installation, operation, maintenance and contingency aspects of the proposed operational water management and treatment system. Under the RMA, the applicant would face potentially large penalties for non-compliance with these conditions.

We were satisfied that the recommended conditions would result in any adverse effects on the marine environment, where the discharge would eventually end up, being no more than minor after reasonable mixing.

The third areas of misunderstanding is in respect of the disposal of non-operational water from other "non at-risk" areas of the site that would not be subject to treatment via the API separator. Mr McCann, in particular, expressed concern about the potential risks of contaminants entering the Hutt City Council's stormwater system from the use of the accessway and tanker turning and parking areas. His contention was that these areas should be regarded "at risk" because of the risks from tanker rupture occurring as a result of vehicle accidents.

We agree with Mr McCann that there would always be a risk of vehicle accident in the right-of-way or in the vehicle manoeuvring, loading and parking areas. We note that BP Oil would share the right-of-way with the other businesses that use this accessway. However, we were not convinced that the risk of any significant collision leading to a tanker rupture and consequential spillage of contaminants into the stormwater system would be anything other than very low. Tanker drivers using the right-of-way and the manoeuvring, loading and parking areas are likely to be using a degree of care, and would be travelling at relatively slow speeds. We note also the evidence of Mr Bolger that trucks would use the safest route to and from the site: i.e., a left turn in from Port Road, and a left turn out onto Port Road as to avoid crossing the centre line. If there is an accident leading to a tanker rupture and spill, the applicant would be subject to potential prosecution and requirements for cleaning up and environmental restoration.

We note that such risks occur wherever tanker vehicles travel – on the open roads (where the vehicles are travelling at much greater speeds), at service stations, and many other places.

In addition to this, we were advised by Mr Bolger about the degree of training and contingency training that all tanker drivers are required to undertake. He also advised us that all tankers carry spills kits which the drivers are trained to use. There is, as we see it, a duty of care that BP Oil has to handling these hazardous substances wherever they travel. This duty applies as much to the use of the access, loading, manoeuvring and parking areas on the site, as anywhere else.

A number of submitters, including Seaview Marina, considered that an oil containment boom should be reinstated at the stormwater outlet within the Marina. We note that, while a boom may seem, prima facie, an acceptable solution, source control is the most appropriate and effective option – a boom is, in our view, very much “an ambulance at the bottom of the cliff”. We also consider it unreasonable to expect the applicant to pay for the installation and maintenance of such a boom, (as) any contamination that does enter the Marina via the stormwater outlet may come from a wide range of sources.

And finally we turn to the matter of conditions. There was a large degree of agreement for the proposed consent conditions between the applicant and the reporting officers and their advisers. In reviewing these conditions, we find that they are extensive and robust, and would ensure that the design, installation, operation and monitoring aspects of the control and treatment of water from at risk areas would satisfactorily managed.

Our Findings

Having regard to the evidence presented, and having regard to the backdrop of potential contaminants from other sources into the stormwater system, such as from roads and parking areas, we find that any adverse effects from the potential discharge of contaminants into land (the stormwater system) would be no more than minor.

8.4 Potential Adverse Effects from the Change of Use of Product within the 150NB Wharfline

Product being transferred or being ‘rested’ within the 150NB wharfline could enter the marine environment either from a leak, or from a rupture caused by a hazard event such as an earthquake or tsunami.

The applicant addressed the environmental risk of spills from the wharfline in its Assessment of Environmental Effects, and also in the evidence presented to the hearing.

8.4.1 Risks from Leakages or Spills from Accidental Rupture of Wharfline

The applicant acknowledged that adverse effects, particularly on the marine environment, could occur because of a leakage or spill. The level of impact on the environment, however, depends on the type of product spilt. While petrol is highly flammable, it floats on the surface of water, and is inherently biodegradable and non-persistent, and would tend to evaporate from water very quickly. The evidence is

that petrol has a half life of around four hours, which means that 0.1% of product is left after 40 hours.

In comparison, diesel is semi-volatile and spills on water form a film, which can damage organisms. However, in open water it can be expected to dilute rapidly. Diesel can be expected to completely degrade within a couple of months.

Ethanol evaporates reasonably quickly and would readily dissolve in water. At low concentrations it is readily metabolised, and, while at high concentrations it can have acute effects on a range of biota, it has, however, a low toxicity and takes time to biodegrade, using significant quantities of dissolved oxygen as it does. Within the Coastal Marine Area, the experts expect that an ethanol spill would be mixed reasonably quickly, thereby minimising potential adverse effects.

In comparison, caustic soda (the substance currently permitted to be transferred by the pipeline) is very soluble in water, where it forms a strong alkaline solution when dissolved in water. It has the potential to be slightly toxic to aquatic animals.

We were informed by the Greater Wellington reporting Officer that any of the products transferred via the wharfline would have an impact on marina flora and fauna should they be spilled. Seabirds, in particular, have a high risk of contact with a spill due to the amount of time they spend on or near the surface of the sea and foreshore – of particular note is the little blue penguin, which is known to nest in the area and may be present at all times during the year.

Other marine animals such as fish and shellfish would also be affected by a spill in the Coastal Marine Area.

However, we were informed that there have been no recorded leaks or spills from the pipeline in recent times. We were also informed that the construction of the vehicle barrier along the coastal edge of Marine Drive has appeared to be effective in preventing vehicles leaving the road and landing on the pipelines, thereby greatly reducing the potential risks of pipeline rupture and spills.

Our Findings

The peer review of the applicant's Risk Assessment concluded that the applicants have considered all potential causes of spills into the Coastal Marine Area and have adequately addressed them. The existing conditions of consent (WGN970100) require that the pipelines are continually monitored for leaks. In addition, the use of isolation valves and frequent maintenance programmes also seek to ensure the risks of leakages or spills are minimised. There was no evidence that the current consent conditions are not effective in managing the risks of leakages and spills from the wharflines, and we were satisfied that the change in the existing consent condition (WGN970100) to allow the 150NB wharfline to be used for other products would not lead to any additional risks.

8.4.2 Risks from Ruptures of the Wharfline by Natural Hazards

Seaview is located in an area of significant seismic activity, and is subject to the risks of moderate to large earthquakes. The potential adverse effects arising from an earthquake include ground shaking, lateral spreading, liquefaction and tsunami.

In the expert evidence heard from Mr Casal of Lloyds Register, we understand that in a 1 in 500 year return period earthquake, there would likely be extensive damage to the Seaview wharf, and most probably the wharfline would collapse, spilling any product within the line.

In their submissions, Victor Crooks and Laurence Sherriff raised concerns regarding the susceptibility of the wharfline to damage during an earthquake event, and the potential for pipe ruptures and discharges to create adverse effects on the environment.

However, we are satisfied that the applicant is, as far as practicable, seeking to mitigate the risk from earthquakes to the wharfline through structural upgrades and the proposed strengthening of the support structures of the pipe. There would also be continual monitoring of the structural integrity of the pipeline, with scheduled maintenance of the pipeline throughout the year. We believe these measures are acceptable and would address the concerns raised by submitters.

There will always remain an amount of ‘residual’ risk that cannot, practically, be fully avoided. While we accept that there would be adverse effects when a large earthquake does occur, we do not feel that this risk alone should prevent a consent being granted.

In terms of the risks of wharfline rupture from tsunami, Regional Public Health and Seaview Marina both expressed concern about this aspect of the proposal.

The risks and potential adverse effects of tsunamis were also assessed by Lloyds, Register, which categorised the risk of tsunami as “moderate”. We were informed that, during the same earthquake event as described above, a tsunami in the order of 3.6 metres could occur, which could cause the wharflines to rupture. We were also informed that any tsunami event of lesser less magnitude would likely to submerge the wharflines, but that the potential for a rupture to occur is minimal.

Our Findings

Having considered the evidence before us, we are satisfied that the change in use of the 150NB wharfline would not significantly exacerbate the risks to the environment from leakage or from a spill caused by accident. If there is a spill, the extent and severity of adverse effects are likely to be reduced because of the nature of the product being transferred through the pipeline

We also find that the proposed change in use would not significantly exacerbate the risks to the environment from natural hazards, particularly earthquakes and tsunami. While we accept that there would be adverse effects when a large earthquake and/or tsunami did occur, such effects would occur against a wide range of adverse effects

caused by damage to other facilities and structures throughout the region. We do not feel that this issue alone would prevent a consent being granted.

8.4.3 Fire Hazard Potential to the Wharfline

Two submitters, Sirkka Siivonew and Victor Crooks, expressed concern about the risks posed by the use of the 150NB wharfline to transport petroleum products in regard to explosions and fire hazards.

The applicant addressed the risks from fire and explosion as part of its overall risk assessment, which has been peer reviewed. The risk assessment outlines that if ignition of the spills does occur, there may be potentially life threatening effects. We were informed by Mr Casal that smoke from a fire would also have a potential short term health effect, but the principal effect would be mainly visual.

Our Findings

We were informed that the pipelines are continually monitored, through visual inspections and pressure testing, to ensure that the likelihood of ruptures occurring under 'normal' operations is therefore minimised. Furthermore, stringent monitoring during a shipment occurs to ensure that, if there is a spill or a leak, it would be dealt with immediately, as would any fire.

We consider these measures would satisfactorily address the potential risks and the concerns of submitters. We therefore find that the proposed change in use of the 150NB wharfline would not significantly exacerbate the risks to the environment from fire or explosion.

8.4.4 Effects of Sea Level Rise on the Wharfline

In its submission, the East Harbour Environmental Association raised the issue of sea level rise and the potential for rising sea levels to impact on the wharfline.

In his assessment, Iain Dawe, Greater Wellington's Coastal Hazards Analyst, estimated that sea levels are likely to rise by an average of 1.8mm/year in Wellington Harbour. He concluded that, if this is the case, by 2031 (the consented duration of the pipeline), sea levels are likely to have risen by a margin of approximately 4 centimetres. In her assessment, Greater Wellington's reporting Officer, Ms Addison, concluded that this level of rise is unlikely to have a potential impact on the pipeline, but that this matter can be reconsidered at the time of re consenting.

Mr le Marquand, the applicant's planning consultant, stated that:

The effects of climate change induced sea level rise will be widespread and will require comprehensive community consideration and response. In my view there will be time to consider a range of responses, both community and individual [paragraph 42]

Our Findings

We accept the assessment of the Greater Wellington's coastal hazards' analyst, and concur with the conclusions of both Ms Addison and Mr le Marquand that the predicted rise in sea levels over the foreseeable future is unlikely to have a potential impact on the wharflines over the current duration of the consent, and does not need to be addressed through any condition.

8.5 Potential Adverse Effects from Ground Improvement Works

The proposed terminal site is located over the Waiwhetu artesian aquifer, which is a part of the Lower Hutt Groundwater Zone, which is a highly productive groundwater resource within the region, supplying about one third of Wellington's water demand.

The installation of the proposed stone columns required to improve the soil conditions under each tank has the potential to adversely impact on the aquifer. We were provided with comprehensive evidence from the applicant's geotechnical expert, Mr Stuart Palmer, of Tonkin and Taylor. This aspect of the proposal was also carefully assessed by Doug McAlister, a Groundwater Scientist at Greater Wellington Regional Council, who recommended that any potential effect on the aquifer be avoided by restricting the depth the stone columns are placed to a depth of 10 metres. The applicant concurred with Mr McAlister's recommendation.

Our Findings

We find that any adverse effect on the area's highly important groundwater resources would be satisfactorily avoided by imposing a 10m limit to the depth of the proposed stone columns.

8.6 Potential Adverse Effects on Amenity Values

The Seaview/Gracefield area has long been a principal industrial area for the region, and contains a wide variety of industrial and servicing activities. The area's position near the Seaview tanker wharf and its proximity to major transport routes has also ensured that the area is an important location for bulk fuel storage facilities to service the lower North Island.

The character of the area is accordingly industrial in nature, given the presence of manufacturing, servicing, transportation and bulk storage activities. Typical of industrial environments, many of the activities in Seaview/Gracefield use large vehicles and heavy machinery, with properties surrounded with security fencing.

As outlined by the Hutt City Council reporting Officer, the District Plan provides for the functional requirements of industrial activities of sites within the Seaview area through a relatively permissive planning regime, allowing a maximum height of 20m for structure and maximum site coverage of 100%, subject to compliance with yards, screening and car parking requirements.

Bulk fuel storage has also long been associated with the Seaview/Gracefield area, with fuel tanks of various sizes and height located in parts of the area, including immediately adjacent to the site (Mobil).

The proposed structures fully comply with the bulk, height and setback requirements of the Special Business Activity Area, and therefore the effects of the proposal fall within the permitted baseline of the zoning. As shown on the visual simulations provided by the applicant, the proposed facilities would be compatible with the character of the immediate vicinity. In addition, the tanks are to be painted with non-high gloss white paint, as are other tanks in the area. The Hutt City Council reporting Officer considered that the proposed tanks “would blend into the existing industrial environment and would be comparable to other existing land uses” [Paragraph 7.14]. Mr le Marquand, the applicant’s planning consultant, stated that:

The proposed development is, in my opinion, compatible in character and amenity terms with the surrounding environment and will not give rise to adverse amenity effects that are more than minor. [Paragraph 89]

Our Findings

In terms of character and visual amenity, we consider that the proposed white tanks would be viewed in context with the Mobil bulk storage terminal and are consistent with the height of nearby tanks. Although we agree that the proposed tanks would be visually prominent from some sites, including Seaview Road, we consider that the height, scale and colour of the proposed tanks would blend into the existing industrial environment and would be comparable to other existing land uses in the immediate and wider area. We also note the site is a rear lot, and would be partially screened from off-site by the existing buildings, including the Mobil fuel storage depot.

We concur with the reporting Officer and the applicant that the proposed bulk storage tanks and associated buildings fall within the permitted baseline for bulk and location and are comparable to the use of adjoining sites such as the Mobil terminal.

Accordingly, we find that the visual effects of the proposal on the amenity value of the area would be no more than minor.

8.7 Potential Adverse Effects on Traffic Safety and Efficiency

A number of submitters referred to the existing level of heavy traffic in the Seaview Industrial area and expressed concern that the proposed terminal would create congestion.

The applicant stated that the proposal would involve approximately 24 tanker movements per day when all the seven tanks are established. The proposed terminal would employ six permanent staff and therefore a small number of car movements would also occur. The proposed terminal development would provide nine onsite staff and visitor carparks, and a looped accessway which would allow fuel tankers to access and exit the site in a forward direction.

The applicant's traffic engineer, Mr Galloway, provided his analysis of the proposed use against the nature of the surrounding roading network, road safety records and District Plan provisions. Council's Consultant Traffic Engineer, Mr Barclay, concurred with Mr Galloway that the surrounding roads have no safety issues that warrant attention, and that the proposed terminal would not generate any additional fuel tanker movements into Seaview but would rather relocate such traffic movement from the nearby existing BP Oil terminal (55 Port Road) to the subject site. Mr Galloway noted that this relocation may result in some of the tankers using Seaview Road rather than Port Road, particularly departing tankers, which would take an easier left turn out of the site onto Port Road, and thence onto Seaview Road.

The Seaview/Gracefield industrial area is characterised by heavy vehicle movements to and from storage, warehouse and industrial activities. Both the applicant's experts and Hutt City Council's traffic consultant agree that the carriageways of both Port Road and Seaview Road are generally sufficiently wide enough to safely accommodate the additional heavy vehicles without adversely affecting the roads' safety and capacity.

The Hutt City Council reporting Officer, Mr Brophy, stated that the construction and operational traffic generated by the proposed terminal falls within the permitted baseline for the site, in that the expected traffic patterns fall within that which occurs as of right with a permitted activity on the site.

Our Findings

Having considered the evidence before us, we agree with the reporting Officer, and find that any adverse environmental effects on traffic safety and efficiency would be no more than minor, and would fall within the permitted baseline for the site.

8.8 Risk Effects Associated with the Proposed Hazardous Facility

A number of the submitters from Point Howard expressed concerns about the potential risks associated with the proposed hazardous facility.

The applicant provided a full risk assessment prepared by Lloyds Register, which was outlined in the evidence of Mr Casal. The risk assessment was peer reviewed by Hutt City Council's risk consultant Richard Langley of URS, who concurred with the findings that the proposal is considered to be acceptable when considered against the NSW qualitative assessment criteria. Council's Risk Consultant also considered that the risk assessment adequately describes the consequences of chosen scenarios hazard identification, and has correctly identified both individual fatality risks and environmental risks. Mr Langley also considered that the application has appropriately considered all the criteria listed as matters for discretion within the Special Business Activity Area and the Hazardous Facility chapter of the District Plan.

A number of conditions of consent were proposed by the applicant to ensure the construction of the tank foundations, operation of terminal, adequacy of emergency plans and final commissioning of the terminal is monitored, reviewed and certified to ensure that the 18 potential risks identified in the risk assessment are minimised.

Council's Risk Consultant reviewed the proposed conditions and agreed that the conditions are appropriate for managing construction and operational activities. Overall the Council's Risk Consultant considers that the risk assessment methodology is robust and that the correct conclusions have been reached.

Several submitters expressed concerns about the additional risks that they perceived the proposal would bring about to the area, notwithstanding the applicant's risk assessment. For example, Mr Smith's, of East Harbour Environmental Association, opinion that the level of risk was unacceptable and the application did not constitute a 'rigorous' examination. On this aspect, the applicant's legal counsel submitted that the Environment Court's decision in *Beadle v Minister of Corrections* (A074/02) was relevant, in which the Court said that:

If it is found on probative evidence that there would be no adverse actual or potential effect on the environment of allowing the activity, then the fact that some people remain fearful and unconvinced by the weight of the evidence is not a relevant matter that can be taken into account. [Paragraph 724]

We note that that the residential areas of Point Howard are located outside the maximum effects distance of the proposed terminal, and accordingly the risks from the proposal are within the accepted guidelines for hazardous facilities.

We note that the Hutt City Council reporting Officer commented that the District Plan explicitly provides for hazardous facilities by grouping hazardous facilities in the Special Business Activity Area.

Our Findings

In taking into account the findings of the Lloyds Register risk assessment for the applicant, and the conclusions of the Hutt City Council's Risk Consultant review of that assessment, we find that cumulative effects of the proposed hazardous activity, including risks from fire, vapour releases and explosions, have been sufficiently addressed. We also find that that proposed set of mechanical and procedural controls associated with the proposed terminal development, including the proposed design and compliance standards, maintenance of tank separation distances, and installation of appropriate fire protection systems, would satisfactorily mitigate the risks to be as low as reasonably practical.

Overall, subject to the recommended conditions of consent, we consider any risk effects generated by the proposal terminal to be acceptable and represent a low probability of potential risk effects.

8.9 Risk Effects Associated with Ground Settlement and Liquefaction

As noted by the Hutt City Council's Reporting Officer, given that the proposed site is reclaimed land, and the size and use of the proposed tanks, site stability is very important when considering the potential risks that may arise from ground stability failure. It was commonly accepted that the site could be subject to significant risks from liquefaction during a major earthquake.

The applicant's geotechnical report found that, using the settlement rates for the existing tanks at the terminal at 55 Port Road, the estimated settlement rates for the proposed facility would be at the upper range of acceptable settlement deformations. The geotechnical assessment concluded that the risk of settlement deformation would be reduced by pre-loading the tank footprint using water (and allowing re-levelling if required). The geotechnical report states that "water weighs approximately 20% more than the final storage and hence acts as a pre-load causing settlement to occur".

The applicant also undertook an assessment of potential liquefaction risks during a major earthquake. The application states that the proposed tanks would be designed to withstand a 1 in 500 year earthquake. However, to mitigate the potential for tank foundation deformation or tank rupture due to ground movement during liquefaction, the applicant's advisers considered the use of ground improvement methods, and recommended the use of stone column foundations for this project as the most effective means of mitigating the potential liquefaction risk to acceptable levels. We note that Council's Consultant Geotechnical Engineer agrees with the findings of the applicant's report that sub-grade and sub-soil foundations improvement works would be required to provide adequate foundations. Council's Consultant Geotechnical Engineer also concurred with the engineering recommendations and solutions that have been proposed by the applicant's engineer, and he considers further certainty on the stability of the earthworks can be provided with appropriate conditions of consent.

Our Findings

Having considered the evidence before us, we find that the risks from ground settlement and liquefaction can be appropriately mitigated to a level that is acceptable. However, given the potential geotechnical risks outlined by the applicant's experts, we consider that it is appropriate to include as conditions of consent requirements –

- To have the installation of the foundations monitored by a suitably qualified geotechnical professional
- To provide reporting of the ground improvements that have taken place and whether any further ground improvement works are required
- The submission of final geotechnical completion reports to certify that the tanks have been installed in accordance with plans and specifications

8.10 Potential Adverse Effects from Noise Emissions

All of the submitters from Point Howard expressed concern about the potential noise effects that may be generated by construction and operational activities related to the proposed terminal, particularly the noise from heavy vehicle movements. In regard to this latter aspect, several submitters expressed concern about the noise of tankers occurring 24 hours 7 days a week, and about the cumulative effects created by the projected frequency of truck movements totalling 2800 per month on top of existing heavy vehicle movements, particularly from Peter Baker Transport operations on Port Road.

Several submitters, including Mr Sherriff and Mr Dickens, expressed concern about the effects of noise emission occurring at night, both during construction and as part of the 24 hour operation of the facility. In his written statement to the hearing, Mr Sherriff provided a list of conditions he recommended, should consent be granted.

Mr McLellan, of Seaview Marina, expressed concern about the potential adverse effects of noise on the marina, particularly on those who lived on board their boats.

A number of submitters expressed concern as to the effects of noise from the proposed wind turbine on adjacent residential areas.

The applicant's acoustic expert, Mr Ellerton of Marshall Day Acoustic consultants, provided evidence on the noise emissions, and stated that there is unlikely to be any noise adverse effects in excess of the 62dBA L₁₀ limit on adjacent residential properties, given the number of heavy vehicles already travelling along Port Road. Mr Ellerton also concluded that the proposed construction activities would readily comply with the limits set out both in *NZS6803P:1984 "Measurement and assessment of Noise from Construction, Maintenance and Demolition Work"* and in the more recent *NZS6803P:1999*.

The Council's Consultant Acoustic Engineer, Nigel Lloyd, was satisfied that the proposed terminal would meet acceptable levels of noise, subject to a number of conditions of consent to avoid noise nuisance, including a condition of consent that noise compliance shall be met on the boundary with nearby residential areas, and that acoustic certification be submitted that the proposed wind turbine would comply with the District Plan noise standards.

In regard to the proposed wind turbine, the applicant's acoustic report concluded that, using a conservative approach, the turbine would meet noise standards for the site. However, the applicant accepted a proposed condition that an acoustic expert certifies compliance with the noise standards prior to the installation of the wind turbine.

The applicant's assessment of the noise to be generated from the proposed fire pump testing, which would operate for a period of 10 minutes each week during working hours, indicated that the testing would not comply with the daytime noise limit of 65dBA L₁₀, on the nearest boundary of the site to the fire pump – i.e., with the western boundary, next to the large warehouse building on the neighbouring property. In particular, the noise modelling indicated that 80dBA L_{eq} would be produced on the western boundary of the site, breaching District Plan Rule 14C 2.1.6(b) which allows a limit of 65dBA at all times. However, at the Hearing, Mr Ellerton confirmed his earlier assessment that the pumps would comply with the noise limited on all other site boundaries, and with the residential noise limits.

In his evidence, Mr Ellerton determined that, provided the noise emissions from the fire pump testing did not exceed 80dBA L_{eq} on the western boundary, the internal noise conditions with the affected building would be satisfactory.

An operational noise management plan was originally recommended by Council officers as a condition of consent. This Plan would require consultation with neighbours and would identify appropriate noise mitigation and the best time for

testing of the fire pumps. A construction noise management plan was also recommended, to provide further detail on on-site noise control.

However, these recommendations were both rejected by the applicant, who considered that, provided compliance with the relevant noise standards was met, there was no need for any form of noise management plan.

In terms of vibration from the proposed ground conditioning works, Mr Ellerton disagreed with the Council's Reporting Officer that there was a need to impose a condition that "no vibration is discernable beyond the boundary of the site". Mr Ellerton considered this requirement would be more stringent than the requirements of DIN 4150 in regard to establishing appropriate levels of vibration from construction. This point was accepted by the Council's Reporting Officer.

Our Findings

We agree that the proposed terminal would generate some noise effects when construction is taking place, and when the terminal is fully operational. However, we concur with the Hutt City Council's Reporting Officer that the District Plan noise rules are intended to accommodate activities that generate noise through industrial processes and the use of heavy machinery and vehicles in accordance with the industrial nature of the Seaview area.

The evidence before us indicates that the expected noise emissions from the proposed construction and operation of the fuel storage terminal would comply with the relevant standards. The only exception would occur when the fire pump is routinely tested for maintenance purposes for 10 minutes per week. In that regard, the evidence is that the non-compliance would only occur at the western boundary, with the neighbouring industrial building, but that the internal noise environment within that building would meet acceptable noise levels. The expert evidence indicates the fire pump testing would comply with the noise standards in all other areas, including the nearest residential area.

In this regard, we consider that the non-compliance would not generate substantial noise effects as it would be limited in extent and duration. Our decision takes into account the important safety purpose of the fire pumps and requirements for fire fighting facilities.

In regard to construction and operational noise, we agree with Mr Ellerton that, given his modelling indicates compliance with District Plan rules, there is no necessity for either a construction or operational noise management plan. In reaching this finding, we were satisfied that there were no unusual elements to either the construction of the terminal or its operational characteristics that would indicate that noise emissions would be significantly out of character from, or greater than those emitted by permitted activities in the Seaview/Gracefield area.

However, we acknowledge the submitters' concerns about noise, and consider that it would be appropriate for the Construction Management Plan to include noise management, and for the Construction Management Plan to be reviewed prior to the commencement of the next stage of works to ensure that any issues that arose during the previous construction phase are suitably addressed.

As such, we find that any noise effects generated by the proposed construction and operation of the terminal are acceptable and would be no more than minor.

8.11 Potential Adverse Effects from Contamination

The subject site has a history of activities involving the storage and handling of potential contaminants. The site is identified in the Greater Wellington Regional Council selected land use register (SLUR) as “contamination acceptable managed/remediated for industrial commercial use”. While there are no land use rules within the District Plan relating to site contamination, as a discretionary activity, this aspect can be addressed as part of the wider consideration of issues.

The applicant engaged Tonkin & Taylor (T&T) to investigate and assess the site for potential contamination: T&T’s report was included with the application, and Mr Chris Hillman of T&T presented evidence at the hearing on site contamination matters.

Mr Hillman stated that the soil and groundwater results were well below acceptable industrial /commercial human health criteria:

I consider that the body of historic and recent contamination investigation data indicates that contamination concentrations at the site are above background levels, but are unlikely to present an immediate or long-term risk to human health in an industrial setting or to the environment. [paragraph 55]

He noted, however, that there were areas of hydrocarbon contamination that could potentially be present within the northeastern corner of the site. In this regard, Mr Hillman recommended that it would be prudent to make allowance for the potential presence of localised areas of contaminated soils to be encountered during redevelopment works by requiring any unsuitable soil to be removed off site.

Hutt City Council engaged Pattle Delamore Partners (PDP) to review the applicant’s site contamination assessment. PDP concluded that the information provided by the applicant was satisfactory, and that, overall, the site is considered to be suitable for the proposed development, subject to conditions of consent that would require onsite management procedures if soil is being carted from the site to avoid dust or tracking from the trucks. PDP also concluded that no additional investigation or remediation works is warranted.

Our Findings

Based on the information provided by the experts, it is clear the site has a history of contamination, but that past remediation has provided an adequate level of background contamination to protect those who will be involved with construction on the site and those who will work on the site.

Accordingly, we find that the actual and potential environmental effects from contaminated soil on human health are considered to be acceptable and no more than minor, subject to the imposition of conditions of consent to control earthworks to avoid off-site tracking of contaminated soil (if off site disposal is required) and

avoiding any dust being blown beyond the boundaries of the site, and disposal in a licensed landfill.

8.12 Temporary Adverse Effects from Construction

A number of submitters raised concerns about the temporary adverse effects that may occur during the staged construction of the terminal. There appeared to be some confusion about the total duration of construction activities on the site, which was clarified during the hearing. The applicant explained that, while the total staging of development would occur over a 15-year duration, the actual total time envisaged to construct each stage was considerably less: about 18 months for the first stage and less than 12 months for each of the two other stages of site development.

The movement of trucks and heavy machinery on the site during construction could potentially generate dust nuisance for adjoining sites. While the application states that water is available on site to dampen down potential dust, all parties agree that it will be important to ensure that the potential for dust nuisance to occur is minimised during the construction period.

We have already addressed the potential effects from construction noise. We consider it reasonable to expect that any industrial construction project would create some disturbance for the surrounding area. However, the applicant's acoustic expert and Hutt City Council's acoustic consultant both agree that construction of the first three tanks over 18 months is not considered to create a noticeable increase in existing noise, given the existing busy nature of Seaview Road and the surrounding industrial area.

Nevertheless, the applicant agreed to a condition requiring a construction management plan that would address traffic, dust, vibration, noise, earthworks, contamination and sedimentation. This Construction Management Plan would provide details of how the construction activities would be managed to limit potential adverse effects while construction takes place. We agree with submitters that the longer term of construction sought by the applicant strengthens the requirement for a robust Construction Management Plan.

Our Findings

Overall, taking into account the recommended conditions of consent, particularly the requirement for the use of a Construction Management Plan, we find that the potential temporary construction effects can be suitably controlled to avoid disruption to adjoining sites and the surrounding roading networks.

8.13 Potential Adverse Effects from Earthworks

The proposed earthworks are required to prepare the site for development, and to install the tank foundations. Hutt City Council's officer noted that, due to the flat nature of the site and its separation and screening from Seaview and Port Roads, the earthworks would not be visually prominent over the 15-18 months while construction takes place. In the longer-term, the area of earthworks would be sealed,

grassed or covered by the proposed tanks. We were informed that the subject site is not scheduled as being prone to erosion, landslip or flooding within the District Plan.

Our Findings

In considering the nature and duration of the earthworks, against the context of the site and its immediate surroundings, we find that the proposed adverse effects of earthworks on visual amenity values would be no more than minor.

8.14 Potential Adverse Effects on Cultural Values

The application included a Cultural Impact Report which stated that the site does not contain any Maori cultural sites of significance, but that the area does have strong cultural connections to the old Waiwhetu Pa.

The Wellington Tenth Trust and Port Nicholson Trust Board do not consider an archaeological site examination is required with respect to the earthworks for the proposed terminal. The Cultural Impact report did not make any recommendation that there should be condition placed on the resource consent for accidental discovery of Maori cultural material on the site.

Our Findings

In considering the comments from the Wellington Tenth Trust and the Port Nicholson Block Settlements Trust, we therefore find that the proposal would not have adverse impacts on existing cultural values.

8.15 Cumulative Effects

We have discussed the potential for cumulative effects in some detail in relation to risks above. In summary, we do not consider that there would be any definitive cumulative adverse effects on the environment.

Given the number of existing pipelines along Seaview Wharf, in particular the proximity of the existing industry wharflines³, we note that there is the potential for cumulative effects arising from a simultaneous failure of the proposed 150NB wharflines and the existing 300NB industry wharflines. However, we consider this is only likely to occur in a low probability event (such as a major earthquake).

In terms of synergistic effects of fire or explosion, the applicant submitted that the proposed design and operational procedures, including the fire fighting systems within the proposed facility, would be sufficient to safeguard against any issues arising from BP Oil's own site, and therefore will be able to mitigate against adverse effects arising from events on neighbouring sites (le Marquand, paragraph 94). There was no evidence to the contrary.

³ An existing 300NB pipeline that runs along Seaview Wharf and conveys petroleum product.

Accordingly, we find that any cumulative effects on the environment would be no more than minor.

8.16 Other Matters

No other matters of particular relevance in determining the resource consent application were raised with us, and we are satisfied we have considered all relevant matters necessary to determine the applications.

9. Policies and Objectives

Having assessed the effects of the proposal we now turn to assess the proposal against the policy ‘tests’ under section 104 of the Act. In particular, we assess whether the application is contrary to the relevant objectives and policies in the Regional Policy Statement, Regional Plans and the District Plan.

The assessment completed by the officers for each council in their section 42A reports comprehensively covers all of the relevant objectives and policies to this application. A full catalogue of the objectives and policies that we have considered is contained in Appendix 2 in Miss Addison’s report and within Mr Brophy’s report. We intend to only focus on the principal objectives and policies of relevance to our determination.

9.1 Operative Wellington Regional Policy Statement

In considering the proposal against the provisions of the Operative Regional Policy Statement, and having regard to the mitigation measures that are proposed or would be implemented by way of conditions of consent, we are satisfied that the establishment of the new terminal facility and the associated operation of the 150NB wharfline would be consistent with the objectives and policies of the operative Regional Policy Statement.

Chapter 11 contains objectives, policies and methods that seek in broad terms to reduce the impacts of natural hazards. We consider that Policy 2 is particularly relevant to this proposal. Policy 2 specifies a number of matters to be considered when making decisions on new subdivision, use and development in areas which are known to be susceptible to natural hazards. This consideration must include the probability of occurrence and magnitude of the natural hazard, the potential consequence of a natural hazard event, the measures proposed to mitigate the effects of a natural hazard, and any alternatives to the proposal that would minimise or mitigate the effects of a natural hazard.

The applicant completed an extensive and robust risk assessment, which assisted us in our consideration of the proposal against the matters listed in Policy 2. We find that the proposal, overall, is consistent with this Policy.

We find that the proposal meets Chapter 7 of the Operative Regional Policy Statement as the natural character of the coastal environment would be largely

unchanged by the proposal, given that there would only be minor changes that would occur as a result of the proposed strengthening works, which are permitted by rules in the Operative Regional Coastal Plan.

Policy 6 of the Operative Regional Policy Statement is particularly relevant to this proposal. It requires a precautionary approach be used in the evaluation of risk when making decisions that affect the coastal environment, recognising that some risks would have a low probability of occurring, but a high potential impact in terms of adverse effects on the environment. Such events include earthquakes and tsunami and major shipping accidents – all of which are potential risks from this proposal but fall well within the ambit of risks that are of a ‘low probability’. These events could, as we heard in the evidence from the applicant’s risk experts, cause a release of contaminants into the Coastal Marine Area. However, we consider that the applicant has taken a precautionary approach in assessing the risks of the proposal, and therefore we consider that the intent of Policy 6 is met.

Chapter 9 provides objectives, policies and methods for protecting and enhancing ecosystems within the region. Under this Chapter, Policy 4 requires the avoidance, remediation or mitigation of the adverse effects of activities on ecosystems. We accept that the use of the wharflines for conveying petroleum product has the potential to impact on coastal ecosystems, should a spill occur. However, the likelihood of a spill occurring has been assessed as being low, and measures proposed by the applicant would further avoid the risk of spills as far as practicable. Accordingly, we find that the intent of Policy 4 has been met, as the applicant has put forward a range of mitigation measures to reduce the risks of leakages and spills, including regular pressure testing and physical inspection of the wharflines while product is being discharged from tankers.

9.2 Proposed Wellington Regional Policy Statement

We have given consideration to the Proposed Regional Policy Statement when making our decision; however, we have given it little statutory weight given that it has yet to go through the submissions and subsequent hearing process.

However, having regard to the mitigation measures that are proposed or would be implemented by way of conditions of consent, we consider that the establishment and operation of the proposed new fuel terminal and associated operations would be consistent with the objectives and policies of the Proposed Regional Policy Statement.

9.3 Wellington Regional Coastal Plan

As outlined in the Council’s Reporting Officer’s report, there are a large number of policies within the Regional Coastal Plan that are potentially relevant to some degree to this proposal. However, we shall focus only on those provisions that are particularly relevant to the proposed change in use of the 150NB wharflines.

These policies are contained within Chapter 4 of the Regional Coastal Plan: in particular, Policy 4.2.8 is directly relevant as it requires the avoidance, remedy or mitigation of the adverse effects of new activities on legitimate activities in the

Coastal Marine Area as far as is practicable. Legitimate activities can be interpreted as including those activities which have a reasonable need to be located in the Coastal Marine Area.

We consider that the use of the existing pipeline along Marine Drive is the most appropriate way to convey fuel products from Seaview Wharf to the terminal site and therefore it is reasonable for the activity to be located within the Coastal Marine Area. Further, while the proposal has the potential to impact on the existing uses of Seaview Marina, the risks of such effects are low, and if they did occur the effects would be able to be remedied or mitigated. Accordingly, we find that the proposal is consistent with this policy.

Policy 4.2.21 specifically relates to natural hazards and hazardous substances within the coastal environment. The issues associated with natural hazards and hazardous substances was been fully assessed as part of the application. Policy 4.2.42 requires particular regard to be had to the objectives and policies of the relevant district plan(s) when assessing an application for an activity which spans the Coastal Marine Area boundary, and where appropriate, to deal with such applications through joint hearings, as has occurred in the processing and hearing of this application.

Policy 4.2.6 seeks to recognise the importance of the Coastal Marine Area as a place for the safe and convenient navigation of ships and aircraft, and to protect these activities from inappropriate use and development. We find that the proposal would have negligible impact on the navigation of ships and aircraft as the wharfline is an existing structure, well contained on the edge of the harbour, located at some distance from routes taken by ships and aircraft. We also note that Greater Wellington Regional Council's Harbours' Department was directly notified of the proposal and made no submission on the proposal.

Policies 4.2.19 and 4.2.20 seek to recognise the importance of amenity values in the Coastal Marine Area, and the importance of the Coastal Marine Area for recreational activities, respectively. These policies are directly relevant given the neighbouring Seaview Marina. In this regard, we find that the proposed reuse of the 150NB wharfline would have little impact on the existing amenity values of the Coastal Marine Area in this part of the Harbour. In terms of the discharge consent, we have concluded that the level of treatment to be achieved onsite would be very high, and consequently there should be negligible effects on the Seaview Marina's water after reasonable mixing.

Chapter 6 of the Regional Coastal Plan goes on to set out the relevant objectives, policies and rules regarding the use, construction, alteration, maintenance, removal, etc. of structures in the Coastal Marine Area. Policy 6.2.2 is of particular importance as it requires that structures should not be used where there would be (among other things) significant adverse effects on the risk from natural hazards. In this regard, we find the applicant has satisfactorily shown that the proposal, while it would be affected by a major natural hazard event, as would all existing facilities, in a lesser event there would only be minor effects, which can be satisfactorily mitigated or remedied.

Policy 6.2.12 is to manage hazardous facilities so that the adverse effects to the environment are avoided, remedied or mitigated, including the contamination of soil,

water or air, short or long term damage to ecosystems, and damage through fire and explosion events. It is our determination that the proposal has the potential to cause such effects, but, overall these effects have a low likelihood of occurring and can be adequately remedied or mitigated through consent conditions or the applicant's proposed mitigation measures.

In summary, we find that the proposal is consistent with, and certainly not contrary to, the relevant objectives and policies of the REGIONAL COASTAL PLAN.

9.4 Wellington Regional Freshwater Plan

The Regional Freshwater Plan contains objectives, policies and rules for the use and development of water bodies, including groundwater bodies. We have considered the following policies in determining the consent required for the proposed ground improvements, which are deemed bores under the Regional Freshwater Plan.

Chapter 5 of the Regional Freshwater Plan sets out the specific objectives, policies and rules for maintaining water quality throughout the region, including groundwater sources, and is relevant in terms of the monitoring bores in the Hutt Groundwater Zone that are proposed as part of this development. The most relevant policy is Policy 5.2.7, which specifies that all groundwater in the Wellington region must be managed so that there are no net adverse effects on its quality as a result of discharges to surface water or groundwater. Furthermore, Policy 6.2.4 seeks to ensure that land use permits to construct a bore/well avoid damage to the structural integrity of an aquifer, or contamination of an aquifer from external sources.

We consider that the proposal is consistent with these policies, as the monitoring bores are shallow, and would not penetrate the main aquifer of the Hutt Groundwater Zone. In addition, it is recommended that a condition be imposed to limit the depth to 10 metres, and a requirement that, should the aquifer be accidentally punctured, the puncture must be backfilled to a specific standard.

9.5 Wellington Regional Plan for Discharges to Land

The Regional Plan for Discharges to Land contains objectives, policies and rules for the discharge of contaminants to land within the region. The Regional Plan for Discharges to Land is the relevant planning document for the discharge of contaminants to land from the operation of the terminal and the discharges of treated operational water and stormwater from the site to the Hutt City Council stormwater system.

We find Policy 4.2.27 is of particular relevance, which requires that certain matters are taken into account when assessing proposed facilities where hazardous substances are stored. These matters include (among others) the susceptibility of the site to hazard events (in particular earthquakes and flooding) and the potential for adverse effects on the environment in the event of a natural hazard affecting the facility. On these matters, we accept the findings of the applicant's risk assessment and the subsequent peer review of the assessment. These both conclude that these risks are moderate, and that appropriate steps are proposed to minimise the risks.

In the same vein, Policy 4.2.28 seeks to ensure that the potential for unplanned discharges of hazardous substances is minimised. The applicant has systems in place as part of the proposal to ensure that, if any petroleum product enters the API separator, the product is removed before discharge, thus reducing the potential for unplanned discharges of a hazardous substance. Accordingly, we consider the proposal is consistent with this policy.

Policy 4.2.41 requires particular consideration to be given to the purpose of the discharge, the characteristics, concentration and quantity of hazardous substances to be discharged, the potential for the substance to enter water, the contamination potential of the discharge, and the cumulative effect of the discharge, among others, when assessing permits for the discharge of a hazardous substance to land. We have considered these matters, and consider the proposal meets these policy requirements.

Overall, we are satisfied the applicant's proposal is consistent with, and certainly not contrary to, the relevant objectives and policies contained in the Regional Plan for Discharges to Land.

9.6 City of Lower Hutt District Plan

The Hutt City Council reporting Officer outlined in detail the objectives and policies that are relevant to the application. We have reviewed his assessment in the light of our findings on the potential adverse effects on the environment, and concur with his conclusion that the proposal is consistent with the objectives and policies in the District Plan.

We do not intend to traverse the full set of District Plan provisions of relevance to this application, but shall focus on those objectives and policies relating to the two key issues of submitters; namely –

- The emission of noise, from construction and operational activities
- The risks of the proposed hazardous facilities

The principal objectives and objectives to which we have had regard are as follows:

Objective 6B 1.1.1⁴ – *To protect the community and the receiving environment from the risks associated with the location and operation of hazardous facilities in Seaview and Gracefield*

Policies

- (a) That the location of hazardous facilities be managed to avoid an unacceptable level of risk to the community and the receiving environment.*
- (b) That effects likely to be generated by hazardous facilities are managed to avoid adverse effects from creating an unacceptable level of risk to the*

⁴ We note that, under 14D 1.1.1 of the District Plan, "Risk Associated With Hazardous Substances", the objectives and policies largely mirror those under 6B 1.1.1.

community and/or causing irreversible damage to the receiving environment.

- (c) That appropriate safety measures be adopted by activities using, handling and storing hazardous substances and hazardous wastes to avoid or mitigate any adverse effects on human health and the receiving environment.*
- (d) That appropriate measures be taken during transportation of hazardous substances and wastes to ensure the safety of the general public and the environment.*
- (e) That the disposal of hazardous wastes be undertaken in an environmentally safe manner and where co-disposal is appropriate, in compliance with the requirements of the Silverstream landfill to protect human health and the receiving environment.*

Objective 6B 1.1.2 – *to enhance the image and visual appearance of the main entrance routes of the City where they pass through the Special Business Activity Area*

Policies

- (a) That the design and appearance of sites fronting main transport routes be maintained through landscaping, screening and sealing of yards, to avoid adverse effects on the visual quality of the routes and the surrounding area.*
- (b) That the effects of activities fronting Seaview Road, Parkside Road, and Port Road be managed to enhance the image of these main entrance routes and avoid adverse effects on the amenity values and character of the surrounding areas.*

Objective 6B 1.1.3 – *To avoid or mitigate adverse effects on the amenity values of the area and neighbouring areas, and the receiving environment*

Policies

- (a) That effects likely to be generated by each activity are managed to avoid or mitigate adverse effects on the amenity values and character of both the Special Business Activity Area and interface areas.*
- (b) That effects likely to be generated by each activity are managed to avoid or mitigate adverse effects causing harm or damage to the receiving environment.*

Objective 6B 1.2.1 – *To maintain and enhance the character and the amenity values of the activity area and neighbouring areas*

Policies

- (a) That each site, structure and building is designed and maintained to enhance the amenity values and character of both the Special Business Activity Area and adjacent activity areas.*

Objective 14C 1.1 – *To maintain or enhance the amenity value of all activity areas by ensuring that the adverse effects of excessive noise on the environment are avoided or mitigated.*

Policies

- (a) To recognise that background noise levels are markedly different throughout the City.*
- (b) To recognise that acceptable noise levels will vary according to the nature of the principal activities occurring within activity areas.*
- (c) To ensure that residential activity areas are protected by establishing appropriate noise levels at the interface between residential activity areas and non residential activity areas.*
- (d) That maximum noise levels are established within each activity area to ensure that amenity values are protected.*
- (e) To make provision for those situations where there has already been considerable history to the establishment of specified noise conditions.*
- (f) To recognise that noise levels may be different through a construction phase.*
- (g) To recognise that Noise Management Plans may be appropriate to manage matters beyond those addressed in this District Plan.*

Management of the Risks from Hazardous Facilities

As a general observation, we note that the Special Business Activity Area is permissive in the type of land uses anticipated in the Seaview area. Moreover, Mr Brophy noted in his report that the Special Business Activity Area is intended to provide for hazardous facilities within Hutt City (paragraph 7.26). A number of such facilities are well established activities within the Seaview/Gracefield area, including the Mobil terminal adjoining the application site.

Whilst the proposal fails to meet the minimum permitted activity standards for hazardous facilities, these thresholds act as triggers for resource consent to ensure that any proposed facility is fully assessed against all the matters listed in the District Plan (refer to Rule 6B 2.3.1 (c)). In other words, we do not consider that non-compliance with the hazardous facilities thresholds is, by default, indicative that a proposal is contrary with the objectives and policies of the District Plan.

We are satisfied that the applicant has fully met the intent and purpose of the District Plan in regard to the management of hazardous facilities within Seaview/Gracefield. The applicant has provided comprehensive risk assessment, as well as provided a design that we are satisfied addresses all foreseeable contingencies and hazard scenarios. This information has been peer reviewed by the Hutt City Council's consultant experts, who are satisfied about the proposed design and operational procedures, subject to the imposition of a number of conditions of consents, many of which we consider to be a 'belt and braces' approach to the management of risks and potential adverse environmental effects. We find this cautious approach to be fully appropriate given the potential consequences of any plant or systems failure.

Overall, we are satisfied that:

- The proposal represents an appropriate use of the site; and
- That all potential adverse effects and risks to the environment of the proposal can be suitably avoided, or mitigated and overall the proposal is not anticipated to give rise to any more than a minor adverse effect on the environment.

Accordingly, we find the proposal is consistent with the objectives and policies of the District Plan in regard to the management of risks associated with the location and operation of the proposed hazardous facility.

The Effects of Construction and Operational Noise

As noted by the Council's Reporting Officer, the District Plan provides for a higher permitted noise levels in the Seaview/Gracefield area than elsewhere (paragraph 8.43). While several submitters were not satisfied that the current District Plan noise standard adequately protects their amenity values, nevertheless we must be guided by the baseline of effects that these standards have established.

The Council's Consultant Acoustic Engineer concurs with the applicant's acoustic report that finds that the only area of potential non-compliance with the noise standards will occur from the proposed emergency fire pump testing, which will breach the day-time limit of 62dBA L₁₀ on the nearest boundary by 8dBA for 10 minutes each week. The internal noise environment of the industrial building affected by the non-compliance would be satisfactory. The acoustic assessment concluded that the emergency pump testing would comply with the residential noise rules. The pump testing would be undertaken during the day-time and would produce only temporary effects, a necessary procedure to ensure the effective maintenance of fire hazard management. In the interests of ensuring site safety, we are satisfied that this proposed breach is acceptable, and consistent with the intent of the District Plan.

In all other respects the evidence indicates that the noise emissions from the construction and operation of the proposed terminal will meet the appropriate NZ standards. As we determined earlier, we are satisfied that there are no unusual characteristics of the proposal that would warrant the preparation and application of a noise management plan.

Accordingly, we find that the proposal is consistent with those objectives and policies relating to the management of noise.

10. New Zealand Coastal Policy Statement

The two main policy directions of the operative New Zealand Coastal Policy Statement of relevance to this application are to maintain the natural character of the coastal environment and to promote development to consolidate within existing areas of development.

This part of the coastal environment of Wellington Harbour is highly modified, and the proposed development is compatible with the existing character: therefore we find the proposal is consistent with this aspect of the New Zealand Coastal Policy Statement. We also find that the proposal is also consistent with the principle of promoting the consolidation of development to existing urban areas within the coastal environment.

11. Sections 105, 107 and 108 of the Act

11.1 Sections 105 and 107 (Grant of Discharge Permits)

We now turn to the matters in sections 105 and 107 of the Act relating to the grant of discharge permits.

Under section 105 of the Act we must have regard to these matters as one of the applications is a discharge to land – the Hutt City Council stormwater system. Under section 105, in addition to the matters we have already covered, we must have regard to:

- (a) The nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
- (b) The applicant's reasons for the proposed choice; and
- (c) Any possible alternative methods of discharge, including discharge into any other receiving environment.

We accept the experts' opinion that the Seaview area is a moderately sensitive receiving environment. We have heard from submitters about the marine life in the area – penguins, seal and fish life. The area also has a number of important recreational values, and is also the location of the Seaview Marina, which serves an important community purpose by allowing people to access the harbour and beyond by boat. Notwithstanding these values, the Coastal Marine Area in this part of the harbour has long received stormwater from a variety of sources, much of which contains contaminants from road and other runoff.

The applicant's proposed choice of discharge has been somewhat limited by the fact that there is feasibly only one other option – to discharge all operational and stormwater from the bunded area to the Hutt City Council trade waste (sewerage) system. The applicant explained that, because the proposed treatment of the discharges would achieve a very high quality discharge (through the API separator), there is no practicable reason for the water to be discharged into the sewerage system. On the basis of the evidence before us, we accept this reasoning, and

consider the sewerage system should be reserved for those discharges that cannot, no matter the level of treatment, ever be acceptable to discharge into the stormwater system and thereby enter either fresh or coastal water.

We conclude that, given the monitoring that would be required, as well as the opportunity to review the conditions of consent should the intended outcomes not be met, the proposed discharge of contaminants to land would not have significant adverse effects on the receiving environment. Accordingly, we find that the proposed system of management is the most appropriate method of treatment.

Section 107(1) of the Act places restrictions on the grant of resource consents for the discharge of contaminants into water if they cause certain adverse effects in receiving waters after reasonable mixing. The relevant part of section 107 is subsection (b) which is specific to discharges to land that may enter water – such as the case we have before us. It states that the discharge should not be allowed if:

... after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters: ...

- (c) The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:*
- (d) Any conspicuous change in the colour or visual clarity:*
- (e) Any emission of objectionable odour:*
- (f) The rendering of fresh water unsuitable for consumption by farm animals:*
- (g) Any significant adverse effects on aquatic life.*

The proposal we have before us is a resource consent application for a discharge into a stormwater system, being defined as 'land'. In this assessment we can only assess what goes into the stormwater network at the site. We are not consenting what comes out of the stormwater pipe at the Marina – this discharge is permitted under Rule 53, subject to conditions (we note that these conditions draw from section 107 (c-g) above).

However, we are confident that the applicant's proposed method of treatment would meet (c) above as the API separator, and specifically the rope mop skimmer would remove all floatable material, scums, oil and films. We also consider that there will, because of the high level of treatment 5e, no effects on aquatic life that can be considered 'significant' in terms of clause (g). We find that clauses (d), (e), (f) are not applicable to this application

11.2 Section 108 of the Act (Conditions of Consent)

11.2.1 Appropriateness of Recommended Conditions

For the reasons outlined above, we agree with the applicant and reporting officers that conditions of resource consent should be provided to ensure any potential adverse environmental effects and risks are avoided, remedied or mitigated.

We are satisfied that the conditions suggested by both the applicant and the officers over several iterations represent practicable and robust measures that would avoid, remedy or mitigate potential adverse effects on the environment as a result of the proposal. The consent conditions are included in Schedules 1 and 2 to this decision.

Under the conditions of consent, various management plans and operating procedures are required to be formulated by the applicant. We note that these conditions cannot be changed without being endorsed by relevant authorities. This allows for the review of management documents to ensure they maintain their ongoing effectiveness.

11.2.2 Greater Wellington Regional Council Consent Conditions

The conditions outlined in Schedule 1 largely reflect those put forward and agreed between the applicant and the Greater Wellington Regional Council officer. We have made a number of minor changes to the conditions, mostly for clarification purposes or better referencing.

The principal difference is that we have clarified what actions shall be undertaken when the hydrocarbon alarm is set off. This change would lead to a more certain monitoring regime – for both the consent holder and compliance officer.

Another change is that the monthly sampling requirements have been combined into one condition.

In regard to the proposed bores, the principal condition imposed would restrict the drilling of any bore to 10 metres to protect the underlying Hutt Artesian aquifer from accidental puncture.

In regard to the recommissioning of the 150NB wharfline, we have required that the consent holder provide Greater Wellington Regional Council with the results of pressure testing of the 150NB wharfline, prior to it being used for product. This would ensure the wharfline is fit for purpose.

To prevent excess amounts of fuel being spilled into the Coastal Marine Area should a breach of the wharfline occur during a natural hazard event, we have required that the applicant install a valve on the line to prevent product stored on land backflowing into the Coastal Marine Area.

To ensure the wharfline is operated in accordance with best industry practice, we have required that the applicant prepare a Standard Operating Procedure for the wharfline. In the same vein, we also require the submission of a Spill Prevention and Response Plan, in the unlikely event that an event occurs.

To ensure the wharfline continues to be maintained, we have required the applicant to pressure test the pipeline, for a start, each month, reducing to every quarter. The applicant must also physically inspect the wharfline every 12 months, repairing any faults they find.

In regard to the discharge of treated water into the Hutt City Council stormwater system, the conditions on this consent are extensive. First, the final design specifications of the API separator must be provided to Greater Wellington Regional Council, including certification from a chartered engineer that the design meets industry guidelines.

To ensure the API separator operates as advised by the applicant's experts, we have required that a standard operating procedure for it be supplied to Greater Wellington Regional Council. This document would be the day-to-day manual for the API separator.

We have also imposed a condition that requires that a hydrocarbon sensor is operated and maintained at the outlet of the separator – this sensor would raise an alarm should hydrocarbons be detected and appropriate action would be undertaken as defined in the standard operating procedure. Most importantly, should the sensor sound an alarm, we have required the applicant to cease the discharge immediately. The consent holder will also be required to undertake lab testing to establish the level of contamination.

Monthly water testing is also required under the conditions of consent. This testing process would sample for the presence of hydrocarbons, suspended solids and ethanol (and BOD) once these are being stored at the site. We have set limits on each of these contaminants. If they exceed these, extra treatment must occur.

A Spill Prevention and Response Plan is also required by a consent condition; this condition requires the consent holder to prepare a comprehensive plan that would ensure any spill can be dealt with fast and effectively.

11.2.3 Hutt City Council Consent Conditions

There was also a large measure of agreement on the conditions to be imposed on the land use consent between the applicant and the Council's Reporting Officer and his advisers.

The key conditions include:

- Specifications as to the design and use of the proposed facilities
- The development of a Facilities Operating Manual and an Emergency Response Plan.
- Corrosion protection requirements
- Conditions on the ground improvement works and tank foundations
- The submission of and compliance with a Construction Management Plan, which is to be reviewed prior to the commencement of construction work on the each of the next two stages of development

- Maximum noise limits
- Acoustic certification of the compliance of the proposed wind turbine with District Plan noise limits

We note that we considered the suggested additional conditions of consent recommended by one of the submitters, Laurence Sherriff. While we acknowledge his concerns about potential noise effects, we were not satisfied that these conditions would be necessary or appropriate, given the conditions as set out in Schedule 2. In particular, we are satisfied that there are no unusual characteristics to the proposed types of construction that would require additional restrictions and requirements over those proposed by the applicant's and Councils acoustic advisers.

12. RMA Part 2 considerations

12.1 Section 5

In considering the application, we have had regard to the purpose and principles of the Act as set out in Part 2 of the Act. In particular, we considered whether the proposal is consistent with promoting the sustainable management of natural and physical resource. Under section 5(2) of the Act, 'sustainable management' means:

... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

In considering the matters raised by submitters, and the evidence of the applicant's experts and those of the Councils, we find that, on balance, the proposal is consistent with section 5 of the Act, as the proposal promotes the sustainable management of natural and physical resources. In particular, we find that the proposed facility would enable the social, economic, and cultural wellbeing of the Wellington region to be better served by increasing the region's fuel storage capacity. The proposed use is located in an appropriate environment for such activities, and would make more efficient use of an underutilised area of valuable industrial land.

We further consider that the conditions of consent would suitably and appropriately avoid, remedy and mitigate the adverse effects of the proposal.

12.2 Section 6, 7 and 8

Section 6(a) requires that the preservation of the natural character of the coastal environment, and its protection from inappropriate use and development. We find that the proposal would bring about less than minor effects on this highly modified part of the coastal environment.

While the harbour and its margins provide a habitat for various fauna, we consider there to be a low risk that the proposed activity would cause any significant adverse effect on the ecological functioning of the area.

We also had regard to the other matters listed under section 7 of the Act, the most relevant matters being:

- (a) Kaitiakitanga
- (b) The efficient use and development of natural and physical resources
- (c) The maintenance and enhancement of amenity values
- (d) Intrinsic values of ecosystems
- (f) Maintenance and enhancement of the quality of the environment
- (g) Any finite characteristics of natural and physical resources
- (j) The benefits to be derived from the use and development of renewable energy.

We took into account the evidence given by the applicant and the assessments of the Council Planners and their experts, and concluded that the proposal was consistent with these matters.

We did not consider that the application is contrary to the principle of kaitiakitanga, given that due regard was given to the views and values of tangata whenua through the commissioning of a Cultural Impact Report.

We determined that the proposal was consistent with promoting the efficient use of a finite physical resource through the development of a valuable and strategically located area of industrial land to service the fuel requirements of the lower North Island. The proposal would also maintain the amenity values of the area in a manner that is compatible with the existing environment. The quality of the environment and the intrinsic values of ecosystem would, in our view, be protected by the proposal.

Finally, the proposal would allow for the storage of bio-fuels in future, which is a renewable energy source.

Section 8 of the Act requires the Commissioners to take into account the principles of the Treaty of Waitangi. We consider that the applicant appropriately consulted with tangata whenua and gave due consideration to their views and values.

In conclusion, we find that the proposal is consistent with Part 2 of the Act.

13. Duration of Consents

13.1 Regional Consents

The panel considers that the following durations to be appropriate.

- The duration of coastal permit [27563] (to change the use of an existing 150NB wharflines by changing the substance conveyed through the wharflines, and allowing the wharflines to rest on product) remains unchanged pursuant to section 127(1)(b) of the Act, which does not allow for a change in the duration of a consent. The expiry of the consent therefore remains as **17 December 2031**.
- For land use consent [27588] (to construct up to 10 bores for groundwater monitoring purposes and for stone columns ground improvement works for tank foundations at the Port Road terminal facility), the recommended term of consent is for an **unlimited** duration pursuant to section 123(b) of the Act.
- For the discharge of water, we consider that aligning the expiry date of the discharge to the wharflines consent is a pragmatic solution, as this would allow the use of the wharflines to be considered as a whole should the consent holder wish to continue the activity. As such, the consent [27589] (to discharge treated operational water and stormwater potentially containing product into the stormwater network) would expire on **17 December 2031**.

13.2 Hutt City Council Consent

The applicant requested a 15 year lapsing period for the land use consent, on the basis that this is the timeframe required to put the consent into effect given the anticipated staged construction programme. This 15 year lapsing period was supported by Hutt City Council's reporting officer and we concur that such a period is acceptable.

14. Conclusions

Having considered the application, submissions, evidence and the relevant statutory provisions, we are satisfied that the proposed fuel storage facility is an appropriate development, in that it represents an efficient use of resources that would provide for the ongoing wellbeing of the community. We have also concluded that acknowledged potential adverse effects of the proposal can be appropriately mitigated by the measures to be imposed as consent conditions.

We conclude that the proposal aligns well with the relevant objectives and policies of the Operative and Proposed Regional Policy Statements, the relevant Regional Plans and the District Plan. Where issues have been raised in terms of specific objectives and policies in relation to reducing risks and the maintenance of water quality, existing noise levels and general amenity, we consider these can be satisfactorily addressed by mitigation measures imposed as conditions of consent.

In particular, we consider that any adverse effects of the proposal on the surrounding neighbourhood (including the industrial area of Seaview and the adjacent residential area of Point Howard) would be satisfactorily avoided or mitigated, and have not been demonstrated to be of such magnitude as to warrant refusing consent to this proposal. Furthermore, we consider the applicant's proposed adherence to best practice construction, maintenance and monitoring practices would also ensure that the adverse effects on the environment would be satisfactorily avoided or mitigated.

Based on the submissions received and the evidence presented, it is our opinion that the conditions detailed in Schedules 1 and 2 are necessary and sufficient to avoid, remedy and mitigate potential adverse effects. The Commissioners find that, mitigated by those conditions, the proposal would give effect to the sustainable management purpose of the Act and merits a grant of consent.

15. Grant of Consents

15.1 Consents Sought from Greater Wellington Regional Council

The Hearing Commissioners acting pursuant to the powers delegated to it by the Wellington Regional Council under Section 34 of the Act, and subject to Sections 104, 104B, 105, 107 and 108 of the Act, hereby **grant** the consents listed in section 13.1 above, for the reasons stated in section 15.3 of this decision and subject to the conditions listed in Schedule 1 to this decision and for the durations stated in section 13.1 of this decision.

15.2 Consents Sought from Hutt City Council

The Hearing Commissioners, acting pursuant to the powers delegated to them by the Hutt City Council under Section 34 of the Act, and subject to Sections 104, 104B and 108 of the Act, hereby **grant** consent to the application for resource consent by BP Oil NZ Limited for the reasons given in section 15.3 of this decision and subject to the conditions listed in Schedule 2 to this decision for a duration of 15 years.

15.3 Reasons

The reasons for granting consent and imposing the conditions in Schedules 1 and 2 are discussed earlier in this decision and can be summarised here as:

- c) The proposal is an appropriate use of the site and is consistent with the existing Special Business zoning of the site under the District Plan, which is the principal zoning for this type of industrial activity.
- d) The anticipated noise and traffic effects can be suitably mitigated and are considered to be consistent with the Special Business zoning of the site and the associated adjacent land uses.

- e) All potential adverse effects and risks to the environment of the proposal can be suitably avoided or mitigated, and overall the proposal is not anticipated to give rise to any more than a minor adverse effect on the environment
- f) The proposed fuel storage facility would be in the wider regional interest in terms of supplying fuel within the lower North Island, and would enable people and communities to provide for their social and economic well being.
- g) The mitigation measures and conditions would ensure groundwater is not contaminated from construction of the fuel storage tanks within the site.
- h) The proposed systems and procedures associated with the terminal would limit any contaminants from entering the separator, and any contaminated water that does enter the separator would be satisfactorily collected and treated to a high level prior to any water being discharged into the Hutt City Council's stormwater network
- i) Although the movement of trucks and machinery associated with both the construction and the ongoing operation of the fuel storage facility are expected to create additional noise in this locality, that noise is expected to be within the limits permitted by the District Plan.
- j) We have imposed conditions that we consider to be necessary and appropriate to avoid or mitigate potential adverse effects.
- k) The proposed fuel terminal is consistent with the sustainable management purpose of the Act and with the relevant objectives and policies of the Councils' policies, statements and plans.

For the Greater Wellington Regional Council and Hutt City Council:



Commissioner Robert Schofield (Chair)

Date: 16 September 2009

On behalf of the Commissioners

16. Schedule 1: Conditions imposed on Greater Wellington Regional Council Consents

Coastal permit WGN970100 (Original file number to remain with new ID) [27563] to change the use of an existing wharfline by changing the substance conveyed through the wharfline, and allowing it to rest on product.

Standard Conditions

15. ~~This consent is subject to all relevant provisions of the Resource Management Act 1991, its amendments and any regulations made thereunder. It is the obligation of the consent holder to comply with all the statutory requirements relating to the exercise thereof.~~
26. ~~The consent holder may keep all such records as may be reasonably required by the Greater Wellington Regional Council and shall, if so requested, supply this information to the Greater Wellington Regional Council.~~
37. ~~This consent is subject to the Greater Wellington Regional Council or its servants, or its agents, being permitted access at all reasonable times for the purpose of carrying out inspections, measurements and the taking of samples.~~
48. ~~The design and maintenance of any works relating to the exercise of the consent must be to a standard adequate to meet the conditions of the consent.~~
59. ~~An annual charge, set in accordance with section 36(2) of the Resource Management Act 1991, shall be paid to the Greater Wellington Regional Council for carrying out its functions in relation to the administration, monitoring and supervision of resource consents, and for carrying out its functions under section 35 (duty to gather information, monitor and keep records) of the Act.~~

Additional Conditions to Resource Consent WGN 970100

610. ~~That the location, design, implementation and operation of the works shall be in accordance with the consent application dated 22 November 1996 and associated plans dated 10 December 1996, lodged with the Greater Wellington Regional Council.~~
711. ~~That the Manager, Consents Management, Greater Wellington Regional Council, shall be given a minimum of 48 hours notice prior to the works commencing~~
812. ~~That the works shall be carried out with minimum disturbance to the foreshore, and tidy up on completion of the works shall be to the satisfaction of the Manager, Consents Management, Greater Wellington Regional Council.~~

⁵ Condition cancelled under 127 of the Act, granted 16/9/2009

⁶ Condition cancelled under 127 of the Act, granted 16/9/2009

⁷ Condition cancelled under 127 of the Act, granted 16/9/2009

⁸ Condition cancelled under 127 of the Act, granted 16/9/2009

⁹ Condition cancelled under 127 of the Act, granted 16/9/2009

¹⁰ Condition cancelled under 127 of the Act, granted 16/9/2009

¹¹ Condition cancelled under 127 of the Act, granted 16/9/2009

¹² Condition cancelled under 127 of the Act, granted 16/9/2009

- 9¹³. ~~The consent holder shall keep the coastal marine area free of any debris resulting from the consent holder's activity.~~
- 10¹⁴. ~~The consent holder shall maintain all facilities covered by this consent in good order and repair.~~

Standard Conditions

1. The exercise of this permit shall be in general accordance with the application, its associated plans and documents, and additional information lodged with the Greater Wellington Regional Council on:
 - 22 November 1996 (original application);
 - 10 December 1996 (plans associated with the original application);
 - 24 April 2009 (change of consent conditions application); and
 - Drawing number 7208 RC008 Rev B (site plans submitted 24 April 2009 with application).

For the avoidance of doubt, where information contained in the application and associated plans received by the Greater Wellington Regional Council on 24 April 2009 is contrary to the original application and plans (received on 22 November 1996 and plans received 10 December 1996), the information contained in the application dated 24 April 2009 and the conditions of this permit shall prevail.

Note 1: Any change from the location, design concepts and parameters, implementation and/or operation may require a new resource consent or a change of consent conditions pursuant to section 127 of the Resource Management Act 1991.

Note 2: For the purposes of this permit 'product' is defined as petrol, diesel, aviation gasoline, jet fuel, ethanol and biodiesel only.

2. The Manager, Environmental Regulation, Greater Wellington Regional Council shall be given written notice a minimum of 48 hours prior to the first occasion that the wharfline is rested on product.

Note 3: Notifications can be emailed to notifications@gw.govt.nz. Please include the consent reference (WGN970100) and the name and phone number of a contact person responsible for the proposed works.

3. A copy of this consent shall be held on site for the duration of the activity and be made available to any Greater Wellington Regional Council officer on request.

¹³ Condition cancelled under 127 of the Act, granted 16/9/2009

¹⁴ Condition cancelled under 127 of the Act, granted 16/9/2009

4. The permit holder shall pass a copy of this permit, including any relevant site plans and attachments, to any necessary persons involved in the operation of the wharflines, prior to the exercise of the permit.

Requirements prior to resting the Wharflines on product for the first time

5. The permit holder shall provide to the Manager, Environmental Regulation, Greater Wellington Regional Council, at least 20 working days prior to resting the wharflines on product the results of the strength test of the 150NB wharflines.

Note 4: Strength test is defined as a high pressure test to a minimum of 24 bar (g) as required under the Hazardous Substances and New Organisms Act 1996.

6. Prior to resting the wharflines on product, the permit holder shall:
 - undertake all necessary modifications to allow the wharflines to safely rest on product;
 - install an isolation gate valve and check valve; and
 - install a thermal relief system.

An outline of the modifications and additions carried out shall be provided to the Manager, Environmental Regulation, Greater Wellington Regional Council, at least 20 working days prior to the wharflines being rested on product.

Note 5: Modification may include the installation of a sight glass, hose drain pump and associated pipework and valving at the wharf head.

Note 6: These modifications are required to prevent backflow of product in the event of a rupture in any section of wharflines over the Coastal Marine Area.

Standard Operating Procedures for the Wharflines

7. The permit holder shall prepare and submit a **Standard Operating Procedure** for the operation of the wharflines to the Manager, Environmental Regulation, Greater Wellington Regional Council, at least 20 working days prior to resting the wharflines on product. The **Standard Operating Procedure** shall include, but not be limited to:

- Ship unloading and product transfer procedures;
- Wharflines maintenance including wharflines inspection and operation;
- Monitoring regime for the wharflines, including frequency of inspection during transfer of product;
- How the wharflines valves will be secured so that the contents of the pipe cannot be released by any other person except the permit holders' staff or delegates;
- Details of how pressure testing of the wharflines as required by condition 16 will be carried out including methods to be used and standards followed.

- Persons responsible for managing environmental matters onsite.

The wharfline shall not be rested on product until the Manager, Environmental Regulation, Greater Wellington Regional Council has certified in writing that the **Standard Operating Procedure** lodged by the permit holder fulfils the requirements of this condition. Such certification shall not be unreasonably withheld.

The permit holder must operate the wharfline in accordance with the approved **Standard Operating Procedure** at all times.

8. No amendments may be made to the **Standard Operating Procedure** certified under Condition 7 of this permit without prior approval which is to the satisfaction of the Manager, Environmental Regulation, Greater Wellington Regional Council. Such approval shall not be unreasonably withheld.
9. The permit holder shall undertake a review of the **Standard Operating Procedures** required under Condition 7 at least every three years. Details of the review, and an updated **Standard Operating Procedure** (if applicable) shall be submitted to the Manager, Environmental Regulation, Greater Wellington Regional Council within one month of the review being completed.

Hazardous Substances Spill Prevention and Response Plan

10. The permit holder shall prepare and submit a **Hazardous Substances Spill Prevention and Response Plan** for the wharfline to the Manager, Environmental Regulation, Greater Wellington Regional Council, at least 20 working days prior to resting the wharfline on product.

The purpose of the **Hazardous Substances Spill Prevention and Response Plan** shall be to prevent the possibility of spills of hazardous substances occurring that could contaminate coastal waters and to ensure the permit holder has spill response equipment available at all times to enable efficient and effective containment of spills.

The **Hazardous Substances Spill Prevention and Response Plan** shall include, but not be limited to:

- the prevention measures that will be undertaken in order to avoid a spill of product (including specific measures to be implemented during pressure testing of the wharfline);
- the equipment available to contain and/or remove spills of product and how staff will be trained to use it;
- the training staff will receive to prevent, contain and clean up spills;
- how the product collected during clean up of any spill will be appropriately disposed of; and
- the procedures to report any spills of product to the Greater Wellington Regional Council

The wharfline shall not be rested on product until the Manager, Environmental Regulation, Greater Wellington Regional Council has certified in writing that the **Hazardous Substances Spill Prevention and Response Plan** lodged by the permit holder fulfils the requirements of this condition. Such certification shall not be unreasonably withheld.

11. No amendments may be made to the **Hazardous Substances Spill Prevention and Response Plan** certified under Condition 10 of this permit unless the amendments are to the satisfaction of the Manager, Environmental Regulation, Greater Wellington Regional Council. Such approval shall not be unreasonably withheld.

Operational Conditions and Restrictions of the Wharfline

12. The permit holder shall notify the Harbour Master, Harbours Department, Greater Wellington Regional Council, whenever the wharfline is resting-on petrol.
13. The wharfline shall never be rested on aviation gasoline or jet fuel.

General Maintenance of the Wharfline

14. The wharfline, valves and associated product transfer equipment shall be operated and maintained in an efficient working order to prevent discharges into the Coastal Marine Area.

Pressure Testing of the Wharfline

15. Operating pressure tests shall be undertaken on a monthly basis for the first three years from the commencement date of the permit. Thereafter, the permit holder may undertake operating pressure tests on a quarterly basis, with approval from the Manager, Environmental Regulation, Greater Wellington Regional Council.
16. The operating pressure tests required under Condition 15 shall be to 10.5 bar (or 150% of the current maximum operating pressure), and if carried out resting on product, shall be diesel or ethanol.

A report detailing the results of the pressure tests shall be supplied to the Manager, Environmental Regulation, Wellington Regional Council within one month of the tests being undertaken.

Annual Inspections of the Wharfline

17. In addition to the operating pressure tests outlined in Condition 15, the permit holder shall carry out yearly inspections of the wharfline to determine the extent of any corrosion, damage or weakness that could adversely affect the structural integrity of the wharfline. A report detailing the results of this inspection shall be supplied to the Manager, Environmental Regulation, Greater Wellington Regional Council, annually within one month of the inspection being undertaken.

A report detailing the results of this inspection shall be supplied to the Manager, Environmental Regulation, Wellington Regional Council, annually, within one month of the inspection being undertaken.

Complaints

18. The permit holder shall maintain a permanent record of any complaints received alleging adverse effects from or related to the exercise of this permit. This record shall include:
- the name and address of the complainant;
 - the date and time that the complaint was received;
 - details of the alleged event;
 - weather conditions at the time of the complaint; and
 - any measures taken to mitigate/remedy the cause of the complaint.

This record shall be made available to the Manager, Environmental Regulation, Greater Wellington Regional Council, on request.

Incident Conditions

19. The permit holder shall notify the Manager, Environmental Regulation, Greater Wellington Regional Council, of any incident which may have caused a breach of condition of this permit within 24 hours of the incident occurring.
20. In the event of a spill from the wharfline, the permit holder shall, at the discretion of the Manager, Environmental Regulation, Greater Wellington Regional Council, provide a written report detailing, but not limited to:
- The nature, manner and cause of the spill;
 - The steps taken to remedy and control the spill; and
 - The steps taken to prevent any future spills of a similar nature.

Should this be requested, the information shall be supplied to the Manager, Environmental Regulation, Greater Wellington Regional Council, within one week of the incident occurring.

Review Condition

21. From the exercise of this permit the Greater Wellington Regional Council may review any or all conditions of this permit by giving notice of its intention to do so pursuant to section 128 of the Resource Management Act 1991, at any time within three months of the first, fifth, tenth, fifteenth, twentieth, anniversary of the granting of this consent for the purpose of:
- Dealing with any adverse effects on public safety and the environment which may arise from the exercise of this permit, and which it is appropriate to deal with at a later stage; and
 - To review the adequacy of any plan prepared for this permit and/or the monitoring requirement so as to incorporate into the permit any modifications to any plan or monitoring which may be necessary to deal with any adverse

effects on the environment arising from the management or operation of the wharfline.

The Greater Wellington Regional Council shall be entitled to recover from the consent holder the costs of any review, calculated in accordance with and limited to the Council's scale of charges in force and applicable at that time pursuant to Section 36 of the Resource Management Act 1991.

Note: For the purposes of this condition the "exercise of the consent" is deemed to be once the works authorised by this consent have commenced.



Land use consent WGN090320 [27588] to construct up to ten bores for groundwater monitoring purposes and stone column for ground improvements at the Port Road terminal facility.

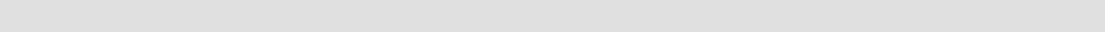
Conditions

1. The location, design, implementation and operation of the bores and stone columns shall be in general accordance with the consent application and its associated plans and documents lodged with the Greater Wellington Regional Council on 24 April 2009.
2. The consent holder shall ensure that the depth any bores and stone column is no more than 10 metres (from existing ground levels of the site).
3. Prior to the bores and stone columns being constructed, the consent holder shall provide a copy of this consent to the driller who will construct the bores or stone columns.
4. This resource consent will lapse five years from the grant date if no bore or stone column construction work has taken place in this period.
5. Within one month of the completion of the bores or stone columns, the consent holder shall submit to the Manager, Environmental Regulation, Greater Wellington Regional Council, a copy of the Bore Log Form as completed by the driller who constructed either the bores or from the contractor who constructed the stone columns.
6. The bores and stone columns shall be constructed and maintained (and decommissioned, as the case may be) in accordance with the New Zealand Environmental Standard for Drilling of Soil and Rock (NZS 4411:2001).
7. The material used to backfill the stone columns shall consist of cleanfill and be restricted to natural materials such as clay, gravels and rock.
8. The consent holder shall make available any relevant information relating to any bore or stone column to the Manager, Environmental Regulation, Greater Wellington Regional Council, on request.
9. If the consent holder intercepts the aquaclude with either a bore or stone column, the Manager Environmental Regulation, Greater Wellington Regional Council shall be notified immediately, and the section of the bore or stone column within the aquaclude must be filled and sealed with a bentonite clay plug, prior to backfilling.
10. All groundwater monitoring bores associated with this consent shall be capped or sealed to prevent direct contamination of groundwater.

Standard Notes, Comments, and Recommendations

- a) Copies of the Environmental Standard for Drilling of Soil and Rock can be obtained from Standards New Zealand (www.standards.co.nz). Note in particular that these

standards specify that the bore/well headworks shall be constructed and maintained to prevent leakage of groundwater to waste, and to prevent foreign material, surface water, spillage or other leakage entering the bore.

- b) Please consult with Environmental Regulation, Greater Wellington Regional Council, if any alterations are planned for the bore/well (e.g. deepening or re-screening a bore/well). Following consultation, you may be required to lodge an application for either a new permit or a variation to your existing permit.
- 

Discharge permit WGN090320 [27589] to discharge treated operational water and stormwater potentially containing product to the stormwater network.

Standard Conditions

1. The exercise of this permit shall be in general accordance with the application, its associated plans and documents, and additional information lodged with the Greater Wellington Regional Council on:
 - 24 April 2009 (change of consent conditions application); and
 - Drawings contained in Appendix 3 of the application (submitted 24 April 2009 with application).

For the avoidance of doubt, where information contained in the application is contrary to conditions of this permit, the conditions shall prevail.

Note 1: Any change from the location, design concepts and parameters, implementation and/or operation may require a new resource consent or a change of consent conditions pursuant to section 127 of the Resource Management Act 1991.

Note 2: For the purposes of this permit 'product' is defined as petrol, diesel, aviation gasoline, jet fuel, ethanol and biodiesel.

2. The Manager, Environmental Regulation, Greater Wellington Regional Council shall be given a minimum of 48 hours notice, in writing, prior to the commissioning of the discharge commencing from the API separator.
3. A copy of this consent shall be held on site for the duration of the activity and be made available to any Greater Wellington Regional Council officer on request.
4. The permit holder shall pass a copy of this permit, including any relevant site plans and attachments, to any necessary persons involved in the operation of the API separator, prior to the exercise of the permit.
5. This consent shall expire on 17 December 2031.

Final Design of API Separator and Certification

6. The permit holder shall prior to construction commencing submit to the Manager Environmental Regulation, Greater Wellington Regional Council the final design details of the API separator. The API separator shall:
 - Have a minimum capacity of 20,000 litres;

- Be designed in accordance with the Ministry for the Environment 'Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand' (1998); and
 - Remove hydrocarbon globules down to 150 micron in size.
7. The permit holder shall provide to the Manager, Environmental Regulation, Greater Wellington Regional Council, certification from a chartered engineer that the API separator meets the requirements of Condition 6 of this permit.

Standard Operating Procedures

8. The permit holder shall prepare and submit a **Standard Operating Procedure (SOP)** for the operation of the API separator (outlined in Condition 6) to the Manager, Environmental Regulation, Greater Wellington Regional Council, at least 20 working days prior to commencing discharge of operational water to the separator.

The **Standard Operating Procedure** shall include, but not be limited to:

- Maintenance procedures and reporting details for the separator;
- Monitoring regime for the API separator, including frequency of inspection during operation;
- Reporting procedures for any containment spill greater than 20 litres which enters the system;
- Procedures and actions to be taken relating to instances where the hydrocarbon sensitive detector (Condition 13) sounds an alarm;
- Procedures relating to batch testing for ethanol and the actions to be taken in respect of any exceedences of the ANZECC guidance levels specified by conditions of this permit;
- The applicable standards to be followed when testing for the presence of hydrocarbons;
- The applicable standards to be followed for batch testing for the presence of ethanol;
- Procedures to ensure that valves from the bunded area to the API separator remain closed and are only opened under manual supervision;
- How the hydrocarbon sensor will be operated and maintained;
- Procedures and actions to be taken relating to incidences of product being detected in the outlet of API separator by the hydrocarbon sensor;
- How the API separator will be inspected for the presence of hydrocarbons and sediment and how regularly these inspections will occur;
- If product is present, what appropriate action is undertaken to reduce the amount of product present within the operation water prior to it being drained to the API separator; and
- Persons responsible for managing and inspecting and maintaining the API separator.

Discharge from the API separator shall not commence until the Manager, Environmental Regulation, Greater Wellington Regional Council has certified in writing that the **Standard Operating Procedure** lodged by the permit holder fulfils the requirements of this condition.

The permit holder must operate the API separator in accordance with the approved **Standard Operating Procedure** at all times.

9. No amendments may be made to the Standard Operating Procedure (SOP) certified under Condition 8 of this permit without prior approval that the amendments are to the satisfaction of the Manager, Environmental Regulation, Greater Wellington Regional Council. Such approval shall not be unreasonably withheld.
10. The permit holder shall undertake a review of the **Standard Operating Procedures** required under condition 8 at least every three years. Details of the review and an updated **Standard Operating Procedure** (if applicable) shall be submitted to the Manager, Environmental Regulation, Wellington Regional Council within one month of the review being completed.

Operational Water Restrictions, Operation and Treatment

11. The nature of the discharges from the site shall be limited to operational water from the bunded bulk fuel tank area and tank wagon filling stations as shown on “Chapman Oulsnam Spiers Limited Plan 7208-Sheet RC005 – Rev A” dated 4 March 2009 received with the application, this includes water from:
 - The dewatering of fuel storage tanks;
 - Hydrotesting of pipelines, wharflines, tanks and onsite compounds;
 - Water blasting;
 - Stormwater; and
 - Fire and testing purposes; and

It **does not** include:

- Fire fighting foam; and
- Water used in cleaning the inside of tanks.

Note 3: Stormwater discharges from the non bunded areas (carpark, office building, roofs and driveways) are permitted to be discharged to the stormwater network via the separator under Rule 3 of the Regional Plan for Discharges to Land for the Wellington Region (1999)

12. The permit holder shall ensure that all operational water is treated by the API separator prior to discharge to the Hutt City Council stormwater network.

Monitoring of Operational Water

13. The permit holder shall install, operate and maintain an alarmed hydrocarbon sensitive detector located before the API separators discharge outlet. Should an alarm sound, the discharge from the API separator must cease immediately and sampling of the water shall be carried out as soon as practicable to assess if the following limits are exceeded:
- Total petroleum hydrocarbons: 15 milligrams per litre;
 - Total suspended solids: 100 milligrams per litre; and
 - Ethanol: 2.4 milligrams per litre and BOD 30 milligrams per litre

Tests should be verified with a second sample.

If testing indicates that the contaminants level have, following the second sample results, fallen below the limits specified above, the permit holder may recommence discharge; **or**

If testing indicates that the contaminants level have, following the second sample results, not fallen below the limits specified above, liaise with the Manager, Environmental Regulation, Wellington Regional Council on an appropriate course of action.

The results of the sampling shall be submitted to the Manager, Environmental Regulation, Wellington Regional Council one month after the date of sampling.

14. Water and contaminants entering the API separator must be inspected for the presence of hydrocarbons, and batch tested for the presence of ethanol (should ethanol be stored on site) **prior** to discharge to the API separator.

If product is present, the permit holder shall ensure that appropriate action is undertaken to reduce the amount of product present within the operation water prior to it being drained to the API separator.

Sampling of API Separator

15. The permit holder shall undertake sampling of the discharge **after** treatment by the API separator and **prior** to entering the stormwater network.

The sampling shall measure:

- The total petroleum hydrocarbons (mg/l);
- The total suspended solids (mg/l); and
- Ethanol (mg/l) and BOD (mg/l) (if ethanol is stored onsite).

The limits are:

- Total petroleum hydrocarbons: 15 milligrams per litre;

- Total suspended solids: 100 milligrams per litre; and
- Ethanol: 2.4 milligrams per litre and BOD 30 milligrams per litre

The sampling shall occur every month, for the first six months of the API separators operation. Thereafter, the frequency of monitoring shall be agreed upon by the Manager, Environmental Regulation, Wellington Regional Council.

The results of the sampling shall be submitted to the Manager, Environmental Regulation, Wellington Regional Council one month after the date of sampling.

16. If the concentration of contaminants in the samples (required by Condition 15) exceed the limits specified the permit holder shall:
- Cease discharge and implement all necessary measures to reduce the concentration of contaminant;
 - Notify the Manager, Environmental Regulation, Wellington Regional Council, within two working days of receipt of confirmed laboratory results;
 - Verify the results with a second sample, and supply these results to the Manager, Environmental Regulation, Wellington Regional Council within two working days of receipt of the confirmed laboratory results;
 - If testing indicates that the contaminants level have, following the second sample results, fallen below the limits specified above, the permit holder may recommence discharge; **or**
 - If testing indicates that the contaminants level have, following the second sample results, not fallen below the limits specified above, liaise with the Manager, Environmental Regulation, Wellington Regional Council on an appropriate course of action.
17. The permit holder shall ensure that all sampling undertaken during the exercise of this permit is carried out by suitably qualified staff and analysed by an accredited authority.
18. The permit holder shall prepare and submit a **Hazardous Substances Spill Prevention and Response Plan** for the operation of the API separator to the Manager, Environmental Regulation, Wellington Regional Council, at least 20 working days prior to discharges from the API separator commencing.

The **Hazardous Substances Spill Prevention and Response Plan** shall include, but not be limited to, details on:

- The prevention measures that will be undertaken in order to avoid a spill of product to the API separator and the stormwater network;
- Immediate measures to be undertaken to clean up any spillage of petroleum product or ethanol;
- The equipment available to contain and/or remove spills of product and how staff will be trained to use it;

- The training staff will receive to prevent, contain and clean up spills;
- How the product collected during clean up of any spill will be appropriately disposed of;
- The procedures to report of any spills of product to the Wellington Regional Council; and
- Notification signs to be placed in the Coastal Marine Area to notify users of the area, and circumstances when these will be required.

Discharges from the API separator shall not commence until the Manager, Environmental Regulation, Wellington Regional Council has certified in writing that the **Hazardous Substances Spill Prevention and Response Plan** lodged by the permit holder fulfils the requirements of this condition. Certification shall not be unreasonably withheld.

Complaints

19. The permit holder shall maintain a permanent record of any complaints received alleging adverse effects from or related to the exercise of this permit. This record shall include:
- the name and address of the complainant;
 - the date and time that the complaint was received;
 - details of the alleged event;
 - weather conditions at the time of the complaint; and
 - any measures taken to mitigate/remedy the cause of the complaint.

This record shall be made available to the Manager, Environmental Regulation, Wellington Regional Council, on request.

Incident Conditions

20. The permit holder shall notify the Manager, Environmental Regulation, Wellington Regional Council, of any incident which may have caused a breach of any condition of this permit within 24 hours of the incident occurring.
21. In the event of a spill that enters the API separator, the permit holder shall, at the discretion of the Manager, Environmental Regulation, Wellington Regional Council, provide a written report detailing, but not limited to:
- The nature, manner and cause of the spill;
 - The steps taken to remedy and control the spill; and
 - The steps taken to prevent any future spills of a similar nature

Should this be requested, the information shall be supplied to the Manager, Environmental Regulation, Wellington Regional Council, within one week of the incident occurring.

Review Condition

22. From the exercise of this permit the Wellington Regional Council may review any or all conditions of this permit by giving notice of its intention to do so pursuant to section 128 of the Resource Management Act 1991, at any time within three months of the first, fifth, and tenth anniversary of the granting of this consent for the purpose of:
- Dealing with any adverse effects on public safety and the environment which may arise from the exercise of this permit, and which it is appropriate to deal with at a later stage; and
 - To review the adequacy of any plan prepared for this permit and/or the monitoring requirement so as to incorporate into the permit any modifications to any plan or monitoring which may be necessary to deal with any adverse effects on the environment arising from the discharge of operational water.

The Wellington Regional Council shall be entitled to recover from the consent holder the costs of any review, calculated in accordance with and limited to the Council's scale of charges in force and applicable at that time pursuant to Section 36 of the Resource Management Act 1991.

Note: For the purposes of this condition the "exercise of the consent" is deemed to be once the works authorised by this consent have commenced.

17. Schedule 2: Conditions Imposed on Hutt City Council Consent

General

1. The consent holder shall contact the Council's Environmental Enforcement Officers on (04) 560 1044 or emailed at enforcement@huttcity.govt.nz at least 48 hours prior to any physical work commencing on the site and advise the Officer the following:
 - The date the work shall commence
 - The name of the contractor(s) and their contact details including phone number and postal address
2. Once work commences on the site a copy of this resource consent decision shall be available on site at all times once work commences and made available upon request.
3. Pursuant to section 125(1) of the Act, this land use consent shall lapse on the expiry of fifteen (15) years from the date of granting of the consent.
4.
 - (a) The consent holder shall construct no more than 5 x 8,500m³, 1 x 7,900m³ and 1 x 1500m³ product storage tanks within the three bunded containment compounds with associated pipelines, fittings and associated structure in general accordance with the plans submitted with the consent application and three additive tanks (10.8m³) and two slops tanks (240m³ and 10.8m³);
 - (b) The largest tanks shall have a nominal volume not exceeding 8,500m³ and a maximum height not exceeding 18 metres finished above natural ground level;
 - (c) Tanks are to be painted with a non-gloss white paint finish.
 - (d) Tank 1 shall only be used to store diesel or Jet A-1. If it is to be used for motor fuel or ethanol, an internal floating blanket shall be fitted prior to storage of those products.
 - (e) The development shall be generally in accordance with approved plans held on Hutt City Council File RM20-P54-119, file 3 (Drawings Numbered: Project No, 7208; Sheets RC001 Rev A, RC002 Rev A, RC003 Rev B, RC004 Rev A, RC005 Rev A, RC006 Rev A, RC007 Rev A, RC008 Rev B, RC009 Rev A. Plans prepared by Chapman Oulsnam Spiers Limited).
5. BP Oil shall notify Hutt City Council of the date of commissioning 6 weeks prior to the intended date of commissioning of the terminal.

Hazard Risks

6. Prior to commissioning of the facility, a Facilities Operating Manual shall be developed for the site and shall include procedures for the following:

- (a) commissioning and start-up;
 - (b) emergency response procedures;
 - (c) terminal maintenance and operations procedures;
 - (d) tank ship unloading and tank filling procedures;
 - (e) wharf line maintenance, inspection and operation;
 - (f) site operational water management and API separator monitoring;
 - (g) management procedures;
 - (h) groundwater monitoring procedures;
 - (i) fire fighting testing procedures;
 - (j) compound and tank inspection and testing procedures;
 - (k) tanker wagon loading procedures;
 - (l) site administration;
 - (m) maintenance requirements;
 - (n) ignition source management; and
 - (o) consent condition compliance.
7. (a) An Emergency Response Plan (ERP) shall be prepared for the site prior to commissioning of the facility and shall form part of the Facilities Operating Manual [required in condition 6 directly above]. The ERP and any subsequent changes shall be approved in writing by Team Leader Resource Consents. Approval shall not be unreasonably withheld;
- (b) The site occupier shall operate the facility in accordance with the most recent approved version of the ERP.
8. Bunding shall be maintained to ensure that a containment volume equal to or greater than 110% of the largest tank on site is retained at all times. The bunding shall be completed prior to hydro-testing of the tanks.
9. (a) All sections of hydrocarbon conveying pipework shall be pressure tested to certify that the integrity of the pipework is adequate to prevent leakage, within 3 months of commissioning of the tanks.
- (b) The records of all pipework testing shall be submitted to Council to be held in records.
10. All emergency, terminal operating procedures and terminal maintenance procedures relating to safety critical plant would be in place prior to commissioning of the terminal.

11. The buried sections of the 300NB line and realignment of the 150NB pipeline shall be protected from corrosion within the inert wrapper and by a suitable cathodic protection system and maintained in working order for the duration of the consent. The cathodic protection system shall be certified by a person experienced in design and installation of cathodic protection systems as being installed and commissioned to adequately protect the pipelines from corrosion for the design life of the pipelines. These sections of wharfline shall be managed, operated and tested on the same basis as that provided for in consent WGN 970100.
12. The cathodic protection system shall be maintained while the pipeline remains in use for the transport of hazardous substances, and shall be tested annually by a person competent in such testing from the date the section of pipeline is commissioned. The results of the tests shall be submitted to Council in a report to be kept on record.

Foundation Design

13. Prior to work commencing upon the subject site, the consent holder shall submit a report undertaken by a Chartered Professional Engineer (Geotechnical) detailing the extent of ground improvement required through the use of stone columns, through the use of a vibration methodology as described in paragraph 32 of the evidence by Stuart Palmer (repeated in full in Note 10 below). The report shall be undertaken with reference to the Tonkin and Taylor Geotechnical Report submitted as part of the application (T&T Ref: 26118/v1.2) and is to be approved in writing by Team Leader Resource Consents.
14. Construction monitoring shall be undertaken by a suitably qualified Geotechnical Professional, giving regard to the following:
 - 1) Construction in close proximity to surrounding infrastructure;
 - 2) Excavation testing of the stone columns;
 - 3) Backfilling/capping for the foundation of the proposed storage tank; and,
 - 4) Construction of the stone columns.
15. (a) The tank shall be hydro-tested, prior to commissioning.

(b) Tank filling shall be in stages as needed and under supervision of a suitability qualified Geotechnical Professional practicing in geotechnical engineering.
16. A Geotechnical Completion report prepared and certified by a Chartered Professional Engineer (Geotechnical), responsible for designing the tank's foundations shall be submitted to Team Leader Resource Consents within 30 days of commissioning the installation to certify that they have been installed and constructed in accordance with the plans and specifications.
 - (a) Permeability testing shall be carried out for the compound at the completion of the proposed works and thereafter at least once every 10 years.

- (b) Results of the permeability tests shall be submitted to Council to be placed on record and to be approved in writing by Team Leader Resource Consents.
- 17. At the commencement of each stage, the consent holder shall submit “as built” plans for the subject site detailing the location and depth of fill and the position and type of any subsoil and permanent drains that have been installed to the Team Leader, Resource Consents for Council records.
- 18. The storage tanks, pipelines, fittings and associated structures shall be designed and constructed in a manner that minimises the effects of settlement and seismic movement in general accordance with the recommendations in the Geotechnical Investigation Report Appendix 5.
- 19. The design and construction of the tanks and pipelines shall be executed to a standard approved by ERMA New Zealand under the Hazardous Substances and New Organisms Act 1996 for above ground storage of hazardous substances; and shall be under the supervision of a Chartered Engineer experienced in tank and pipeline construction.
- 20. A certificate signed by the person(s) responsible for designing the tank’s installation shall be submitted to the Council’s Consents Manager within 30 days of commissioning the installation to certify that they have been installed and constructed in accordance with the plans and specifications.

Temporary Construction

- 21. Prior to construction activities for any stage starting onsite a Construction Management Plan (CMP) shall be developed addressing each stage of construction, to be submitted for approval in writing by Team Leader Resource Consents prior to any works being undertaken on site. The CMP shall address the following:
 - a) Management of any potential odour and dust issues.
 - b) Traffic management during each stage of construction. This report must give particular regard to operation of the access right -of -way and the need to avoid conflict between construction and operational vehicles.
 - c) A vibration report shall be prepared by a suitably qualified and experienced professional. This report shall identify potential mitigation measures and compliance with respect to the German Standard DIN 4150/3 1999-2.
 - d) Excavation and soil disposal during the construction of the development must be controlled to ensure that:
 - i) The tracking of soil off-site by vehicles is avoided.
 - ii) Any soil disposed of off-site shall be tested by a suitably qualified environmental scientist/engineer to determine a suitable disposal location. Prior confirmation shall be obtained from the proposed

receiving facility confirming they are able to receive the waste; and certificates of acceptance shall be provided by facility receiving the waste confirming final disposal.

- iii) If potential contaminants are suspected or encountered during excavations, the Hutt City Council shall be notified and material shall be tested or investigated by an environmental scientist/engineer, and appropriate management procedures shall be implemented as required. Details of proposed on-site inspections and testing, along with the excavation and management procedures to be adopted shall be submitted to the Team Leader Resource Consents for approval in writing.
- iv) If following testing or investigation the soil is found to be contaminated, the contaminated soil is to be stockpiled temporarily pending disposal. This shall be done in a manner to prevent contamination of clean ground and to mitigate the potential for stormwater runoff from the stockpile.
- e) A sediment control plan shall be prepared which would manage stormwater onsite during earthworks and potential for sediment discharges. The plan shall contain the following matters:
 - a) A map detailing the location and type of sediment control measures on the subject properties;
 - b) Calculations relating to the size of the catchment and the design storms shall be provided which support the stormwater pipes proposed.
 - c) Procedures for monitoring and mitigating of any offsite discharges (for example, surface water runoff and discharges from sediment control structures) during construction and deposition works;
 - d) Quality procedure for the removal of materials from the site;
 - e) Outline where material (topsoil and vegetation) would be disposed;
 - f) The maintenance procedures for the sediment control measures;
 - g) Location of stockpiles on site;
 - h) Identification of the person/s responsible for the erection, maintenance and removal of sediment control measures including contact cell phone number;
 - i) Timeframe for removal of sediment control measures.
- f) A construction noise management plan shall be prepared by a suitably qualified and experienced acoustic engineer in accordance with the recommendation of NZS6803:1999. The management plan shall detail

the times when the various construction activities can take place (for example, tank fabrication may not be appropriate at night).

22. Construction activity noise shall be measured, managed and controlled by reference to NZS6803:1999 Acoustics – Construction Noise and by the Long Term Duration limits in Table 2 of the Standard.
23. All development on the site shall be undertaken in accordance with the approved construction management plan.
24. Prior to any construction works for Stage 2 or 3 commencing, the Construction Management Plan shall be reviewed by the consent holder and submitted for approval in writing by Team Leader Resource Consents.

Acoustic

25. All activities shall be managed to not exceed the following, assessed within any Residential Activity Area:

7.00am – 10.00pm	62dBA L ₁₀
10.00pm – 7.00am	45dBA L ₁₀
Sundays and public holidays	45dBA L ₁₀
10.00pm – 7.00am	75dBA L _{max}

26. All activities shall be managed to not exceed the following, assessed within any Special Business Activity Area:

At any time on any day	65dBA L ₁₀
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Except during the routine weekly (approximate 10 minutes) testing period of fire pumps which must occur only during normal working hours (between 9.00am and 5.00pm Monday to Friday) and not exceed 80dBA L_{eq} measured at the nearest site boundary.

27. Noise shall be measured in accordance with NZS6801:1991 Measurement of Sound and assessed in accordance with NZS6802:1991 Assessment of Environmental Sound.
28. A report prepared by a suitably qualified and experienced acoustic engineer demonstrating that the expected noise from the wind turbine can comply with the District Plan noise limits at all times and in all conditions shall be submitted to the Team Leader Resource Consents prior to installation of the wind turbine.

Notes

The following may be considered as notes on the consent:

1. A development contribution is payable for the re-development.
2. This resource consent is valid for fifteen years (15) from the date it was granted.
3. The proposed activity must comply with the Building Act 2004 and all relevant Council bylaws.
4. This resource consent is specific to the application received by Council. Any changes to the proposal may require a new resource consent and additional application fee.
5. Plans submitted with the application have only been checked for compliance with the Resource Management Act 1991.
6. Any building work associated with the proposed activity should not commence until a building consent has been obtained under the Building Act 2004.
7. The applicant is reminded that this resource consent is not a licence to create adverse effects. You still have a duty under the Act to avoid, remedy or mitigate adverse effects. Notwithstanding any resource consents held, section 17 of the Act continues to apply and would take enforcement action where necessary.
8. Council may issue an abatement notice if the conditions of this resource consent are not complied with. Contravention of an abatement notice may incur a fine up to \$200,000.
9. The applicant for resource consent, consent holder or any person who made a submission on the application may also appeal this decision to the Environment Court within 15 working days of notice of the decision being received.
10. Paragraph 32 of Stuart Palmers evidence states: *Stone columns would most likely be installed via use of a vibrofloatation process. In this process, an 8m long and 0.4m diameter vibrating probe suspended from a crane is used to penetrate the ground. Water jetting from the end of the probe aids penetration. Once the full depth is reached, the probe is pulled back and gravel is poured into the annulus between probe and ground. The vibrating probe is then lowered again to compact the introduced gravel. This probe lifting, gravel introduction and probe lowering process is continued until a column of gravel (stone column) is provided. Similar stone columns are provided on a grid across the area to be improved.*