

11 July 2002

Westgate Transport Ltd
URS NZ Ltd
P O Box 821
AUCKLAND

Attention: Ross Dunlop

Dear Sir

DECISIONS ON SUBMISSIONS TO THE PROPOSED NEW PLYMOUTH DISTRICT PLAN

Thank you for taking the time to contribute to the formulation of a new District Plan for New Plymouth. The process has been lengthy and your patience is appreciated.

All submissions have now been heard, except for those pertaining to Traffic and Transport matters and to rural subdivision issues. These remaining matters will be dealt with by way of variations to the plan later this year.

Appended to this letter is information relating to the submission you made on the Proposed New Plymouth District Plan. This includes:

- a summary of your submission points, including a Hearings Report Reference number.
- the decisions the Hearings Committee made on your submission points, including the reasons for the decisions reached. This information is ordered by the Hearings Report Reference number.
- any relevant attachments (such as associated diagrams, maps or rules) to the decisions.

Full copies of all the decisions and an amended version of the Proposed Plan incorporating the decisions on submissions are available for viewing at the Customer Support Counter and at all service centres and libraries within the District. A copy of the amended plan can be purchased for \$250.00 plus courier costs or can be viewed via the Council's internet website at www.newplymouthnz.com/districtplan from Saturday 13 July.

As a submitter, you have 15 working days from the receipt of the Council's decisions in which to appeal the decisions on your submission points to the Environment Court. The process for making such an appeal (called a "reference") is set out in clause 14 of the first schedule to the Resource Management Act 1991 and in Part I of the Resource Management (Forms) Regulations 1991.

Copies of the Notice of Reference must be served on the Council and on every submitter who made a submission on that provision within specified timeframes. Addresses for submitters can be obtained by contacting the Regulatory Services Policy Team..

If any matters are referred to the Environment Court, the Environment Court will conduct a further hearing into the matter and may confirm or change the Council's decision.

If you would like further information on the appeal process, the Council has copies of a booklet produced by the Ministry for the Environment – "Appeals on Council Decisions". You can obtain a copy of this booklet from the Customer Support Counter or by contacting the Regulatory Services Policy section.

Public notification of the release of decisions will be made on Saturday 13 July 2002. The Proposed New Plymouth District Plan is deemed to have been amended in accordance with the decisions from that date.

If you have any queries please do not hesitate to contact me or any of the Regulatory Services Policy staff.

Yours faithfully



Helen Johnson
SENIOR POLICY ANALYST

cc Westgate Transport Ltd
P O Box 348
NEW PLYMOUTH

Westgate Transport Ltd
Duffill Watts King
P O Box 6017
NEW PLYMOUTH

Attention: Peter Atkinson



Decisions on Submissions - Proposed New Plymouth District Plan

Submission	No. 182	Westgate Transport Ltd
Rules - Industrial - 52 - Assessment criteria		Report Ref: 03.18

Submissions:

Submission 182 (Westgate Transport Limited)
Seeking to delete Assessment Criteria 1) and 8) that apply in respect on rules Ind52 to Ind 63 or that would otherwise apply for the Port Policy Area.

Further Submission 409 (Contact Energy Limited)
Supporting submission 182 suggesting changes to the assessment criteria for hazardous substances.

Decision:

That Submissions 182 and 409 be allowed in part and that:

- a) Assessment Criteria 1 as it relates to Rules Ind 52-63 inclusive be deleted; and**
- b) Assessment Criteria 8 as it relates to Rules Ind 52-63 inclusive be confirmed.**

Reasons for decision:

a) Assessment Criteria 1: "The extent to which the EFFECTS RATIO is exceeded."
The HFSP is essentially a screening tool, a quantitative method designed to determine whether a proposed activity involving hazardous substances should be permitted as of right or should be subject to the resource consent process to determine whether or not it is appropriate to allow its establishment. It is therefore inappropriate to use the extent to which the HFSP might be exceeded as a means of weighing whether or not a resource consent should be granted as it would, in effect, be being used for risk assessment purposes.

b) Assessment Criteria 8: "Alternative locations or methods for undertaking the activity."
Any applicant for a resource consent is required to provide an assessment of effects pursuant to the Fourth Schedule of the ACT. Clause 1(b) of the Fourth Schedule specifically provides for applicants to furnish a description of any possible alternative locations or methods for undertaking an activity where it is likely the activity will result in significant adverse effect on the environment.

S92 of the ACT allows for the COUNCIL to seek further information in respect of a consent application by requiring an explanation of any possible alternative locations or methods for undertaking the activity and the applicant's reasons for the proposed choice. Further, in making a decision on an application for a resource consent the COUNCIL is required, pursuant to S104 (1) (i), to have regard to any other matters the consent authority considers relevant and reasonably necessary to determine the application.

In submissions to the Hearing Committee, Submitter 182 requested that the words 'where practical' be added to Assessment Criterion 8. The submitter contends that, in the case of Westgate activities at Port Taranaki, there would be limited scope for consideration of alternative locations or methods beyond the confines of the Port for the siting of hazardous facilities.

The purpose of Assessment Criteria is to list those matters to which the Council has restricted the exercise of its discretion when considering whether to grant or refuse land use consent.

The context within which Criterion 8 will operate will be for the applicant to demonstrate in their assessment of effects, and/or in subsequent submissions to the Council in support of a consent application, that they have considered an alternative site/s or method/s. In so doing, reasons for the proposed choice of site or method would need to be provided. 'Practicality', for whatever reason, may well be a factor in the applicant's selection, but practicality is not something the Council is obliged to give extra weighting to.

Whether or not something is 'practical' is a subjective consideration. What may be practical to an applicant may

include such considerations as operational requirements or matters of business economics. However, an objector may consider an applicants choice of site or method to be 'impractical' for reasons of potential harm to the objector, such as adverse effects on the local amenity or unacceptable risk from the potential adverse effects from hazardous substances. It is such opposing viewpoints that the Council would need to weigh when considering whether or not to grant consent.

It is noted that the example of a comparable provision from another plan that Submitter 182 has provided in evidence does not use the words 'where practical'. The relevant phrase quoted is '... where it is likely that an activity will result in significant adverse effect effects on the environment'. This is an entirely different proposition to 'where practical'. We believe if words were required to be added to the existing Criterion 8, the phrasing quoted from the Auckland Plan would be more helpful. In the event the submitters did not ask for such an amendment.

In summary, Assessment Criteria 8) in respect of Hazardous Substances is considered to be both appropriate and vives.

Appendix - 06.01

Report Ref: 03.24

Submissions:

Submission 182 (Westgate Transport Limited)

Seeking clarification regarding the operation of the HFSP provisions in respect of existing facilities.

Further Submission 409 (Contact Energy Limited)

Opposing submission 182 relating to guidance regarding hazardous facilities existing use rights.

Decision:

That submission 182 be disallowed, that submission 409 be allowed that and the provisions of the plan be confirmed as notified.

Reasons for decision:

Given that the test to be applied for works involving additions or alterations to any existing HAZARDOUS FACILITIES (or additions or alterations to any other existing activity) will always commence with a consideration of 'existing use rights', it is considered there is sufficient guidance in Appendix 6.1; it is not possible to provide any greater certainty or precision.

It is implicit in any consideration of 'existing rights' that the provisions of the Act must be the guiding code for applicants and the Council alike. There is a significant amount of case law to guide 'existing use' considerations.

Where 'existing use' provisions come into play the onus is on the applicant to establish the case for existing use rights and it is not the responsibility of the Council to prove the issue either way. (Refer Hutt CC v Dendra Investments Ltd. W106/97)

Appendix 6.02

Report Ref: 03.29

Submissions:

Submission 80 (Shell New Zealand Ltd)

Seeking to amend Appendix 6 by including exemptions for retail sale of petrol, diesel and LPG.

Submission 182 (Westgate Transport Limited)

Seeking further exemptions to the hazardous facilities screening procedure relating to hazardous substances in transit, and hazardous facilities which have well developed Industry Standards and codes of practice.

Further Submission 409 (Contact Energy Limited)

Supporting submission 182 suggesting further exemptions to the hazardous facilities screening procedure.

Decision:

That Submission 80 be allowed, and that Submissions 182 and 409 be allowed in part and that the plan be amended as follows:

a) Amend Appendix 6.2 (at new '6.2.3 Exemptions') by including the following as activities to be exempted from the Hazardous Facilities Screening Procedure (HFSP):

i) The retail sale of liquid fuel, up to a storage capacity of 100,000 litres of petrol in underground storage tanks and up to 50,000 litres of diesel, provided that the Code of Practice for the Design, Installation and Operation of Underground Petroleum Systems, published by the Department of Labour - OSH, is adhered

to.

ii) Retail LPG outlets, with storage of up to 6 tonnes (single vessel storage) of LPG, provided that the Australian/New Zealand Standard AS 1596:1997 - Storage and handling of LP Gas is adhered to.

iii) Any use of hazardous substances exempted from licensing by regulation 5 of the Dangerous Goods (Licensing Fees) Regulations 1976.

Note: These exemptions are additional to that in respect of the decision relating to submissions 105, 193, 194 and 195.

b) At page 444 of Vol. I remove the words 'or activity' from the definition of HAZARDOUS FACILITY and substitute with the words 'or part of a SITE'

c) At page 444 of Vol. I add a new definition worded as follows:

'HAZARDOUS SUB-FACILITY means a HAZARDOUS FACILITY within a SITE that is:

- designed and operates as a self-contained process or activity; and
- is physically contained within a building and/or by security fencing, bunding or similar means; and
- is or will be located no less than 30 metres from any other HAZARDOUS FACILITY within the same SITE'

d) At page 50 of Vol. II amend the first paragraph under the heading 'Step 2: Compile a hazardous substances inventory' to read as follows:

'Create an inventory of hazardous substances held on the SITE, or where the HAZARDOUS FACILITY is deemed to be a HAZARDOUS SUB-FACILITY, an inventory of hazardous substances for the HAZARDOUS SUB-FACILITY only which is to be subject to the Hazardous Facility Screening Procedure. The inventory should include substances that are only stored or used temporarily such as waste hazardous substances and should list:'

e) At page 61 of Vol. II amend Table 6.7 as follows:

i) In the column headed 'Adjustments Factors for Fire/Explosion Effects Group' in the row 'F3 Separation Factors from Site Boundary' add the words 'and HAZARDOUS SUB-FACILITY' to the row title.

ii) Under the amended heading 'F3 Separation Factors from Site Boundary and HAZARDOUS SUB-FACILITY' delete existing text in cell and replace with the following:

'< 30 metres from closest SITE boundary and any HAZARDOUS SUB-FACILITY = 1

> 30 metres from closest SITE boundary and any HAZARDOUS SUB-FACILITY = 3'

iii) In the column headed 'Adjustments Factors for Human Health Effects Group' in the row 'F2 Separation Factors from Site Boundary (Gases only)' add the words 'and HAZARDOUS SUB-FACILITY' to the row title.

iv) Under the amended heading 'F2 Separation Factors from Site Boundary and HAZARDOUS SUB-FACILITY' delete existing text in cell and replace with the following:

'< 30 metres from closest SITE boundary and any HAZARDOUS SUB-FACILITY = 1

> 30 metres from closest SITE boundary and any HAZARDOUS SUB-FACILITY = 3'

f) Within Appendix 6 (at new '6.2.3 Exemptions') add the following bullet point:

'- hazardous substances IN TRANSIT at a TRANSPORT INTERCHANGE AREA'

g) Within the definitions section of Vol. I add the following definitions:

i) 'IN TRANSIT' means, in relation to HAZARDOUS SUBSTANCES, freight, cargo or goods otherwise being transported that have not reached their final destination and which for the time being are deposited at a TRANSPORT INTERCHANGE AREA and are under the care and responsibility of the TRANSPORT INTERCHANGE AREA operator.

ii) TRANSPORT INTERCHANGE AREA means an area designed for the interchange of freight, cargo or goods otherwise being transported between transport modes or carriers and includes those parts of airports, ports, rail yards, and freight, courier and postal depots designed for that purpose.'

Reasons for decision:

a) Retail sale of petroleum, diesel and LPG:

It is accepted that facilities for the retail sale of petroleum, diesel and LPG have well-developed industry standards and codes of practice based on well-established and understood levels of risk.

Further, there are a wide range of specified uses of hazardous substances that, while having to comply with the various requirements of the Dangerous Goods legislation relating to the protection of property, persons and public safety are exempt from licensing requirements. Those uses exempted from the licensing requirements relate to the storage only of various classes of dangerous goods and are at the lower end of the scale in terms of probability and potential to significantly adversely impact on the environment.

There are a number of activities listed in Appendix 6 of the Plan (refer Appendix 6.2) that are not subject to the HFSP. Making an exception from the HFSP for those uses that are exempt from dangerous goods licensing requirements would add clarification to the exceptions in the Plan. Subjecting such specified uses to the HFSP would not add any value to environmental protection.

b) Existing Uses and the HFSP:

The screening procedure as notified may create difficulties for plan administrators and resource users when endeavouring to give consideration to additions to existing facilities or new 'stand- alone' facilities.

For Westgate, the port operational area (west of Ngamotu Beach) with the exception of one or two small titles is comprised in one land title. Accordingly the HFSP requires that all hazardous substances within this 'site' (i.e. a title) at the Port be included in the inventory required by Step 2, and the 'top 10' be accorded priority status as required by Step 3, when a new or existing hazardous facility to be expanded is proposed.

Thus, notwithstanding that a proposed new hazardous facility may not of itself exceed the Environment Area trigger level, regardless of it's separation distance from other hazardous facilities, the HFSP will be triggered on every occasion that a new facility is proposed by virtue of the existing hazardous facilities present on the site. This issue has been addressed using the concept of a 'Hazardous Sub-Facility'. The sub-facility concept determines that where there is to be more than one Hazardous Facility established within a site, they will be treated as separate entities for the purposes of the HFSP provided they are separated by a distance of 30 metres or more from the site or Environment Area boundary or from any other Hazardous Facility within the site.

Including the sub-facility concept in the HFSP should overcome the limitations identified by the submitter.

c) Hazardous Substances in Transit:

Hazardous substances being transport by sea (and air and road) must comply with international codes for packaging.

The general approach to the handling of hazardous substances at Port Taranaki is that, as with all cargo, it is moved through the Port as quickly as possible for reasons of good customer service and port profitability.

Hazardous substances are generally conveyed within cargo handling containers at Port Taranaki. There is no area or building set aside specially for the standing of hazardous substances in transit. If goods need to stand awaiting shipping or road transport it is usually limited to a few days.

Given the particular characteristics of hazardous substances in transit as outlined above, and recognising the port is not the final destination for such cargo, there would be significant practical difficulty in applying the HFSP.

It is accepted that an exemption specifically for hazardous substances in transit as cargo or freight would add clarity to the plan provisions. However, it is considered attempting to define goods in transit by an absolute time limit will inevitably result in a circumstance where goods can genuinely be regarded as being in transit but will exceed the time limitation. Other parameters such as the cargo not being at its final destination, and being for the time being in the care of someone who is not the owner, are equally valid considerations relating to goods in transit. A definition generic to a port, airport, freight or courier depot will also be required.

Submissions:

Submission 105 (Natural Gas Corporation - Transmission)
Seeking to amend this rule.

Submission 115 (Shell Todd Oil Ltd)
Seeking that the provisions of the rules remain as written or if altered, the standards and terms are reduced in significance ie discretionary to controlled.

Submission 182 (Westgate Transport Limited)
Assuming that the Council accepts the Company's Port Policy Area, a clear exemption within those provisions in respect of the controls on pipeline location for the underlying Industrial D zone; or

The deletion of Rule Ind 22 as it applies to the Port area.

Submission 193 (Fletcher Challenge Energy)
Seeking to amend the proposed rule by changing the conditions of a permitted activity.

Submission 194 (Shell Todd Oil Services Ltd)
Seeking to amend the proposed rule by changing the conditions of a permitted activity.

Submission 195 (Petroleum Exploration)
Seeking to amend the proposed rule by changing the conditions of a permitted activity.

Decision:

That submissions 115 and 182 be allowed in part and submissions 105, 115, 193, 194 and 195 be disallowed and that: Rule Ind22 be deleted.

Reasons for decision:

a) The Ministry of Commerce administers the Gas Act 1992, which regulates distribution pipelines in that it requires them to be constructed so that they are safe. Distribution companies operate safety systems that refer to relevant NZ Standards regarding the construction of distribution pipelines.

b) The following legislation and Standards control the installation of transmission pipelines to ensure that they are safe:

- The Health, Safety and Employment Pipelines Regulations 1999
- ANSI 31.8 1995 Gas Transmission and distribution piping systems
- ANSI 31.4 1992 Liquid transportation systems for hydrocarbons, liquid petroleum gas, anhydrous ammonia, and alcohols
- NZS2885 1997 Pipelines -Gas and Liquid Petroleum.

c) The Department of Labour administers the recently adopted Health, Safety and Employment Pipeline Regulations (HSEPR), which specify industrial standards for the installation and maintenance of all gas lines of greater than 2000 kilopascals. Liquid lines and bunkering lines in the port area are also administered by the Department of Labour under the Dangerous Goods Act 1974 and pipeline regulations (including NZS 2885:1997).

These regulations adopt a risk approach to the locating of pipelines that is relative to the density of the population and land uses in the locality. The company installing the pipeline is required to obtain third party certification that the relative standards have been met and the certification is lodged with the Ministry of Commerce or the Department of Labour (as applicable). Audits of the third party assessors are regularly undertaken.

One of the purposes of this legislation (HSEPR & Gas Act), regulations and standards is to ensure that both transmission and distribution pipelines are installed so that they are safe. Companies wishing to install pipelines need to get landowner approval for the pipeline as they have to gain approval for physical access to the land and negotiate easements for the pipeline.

d) As the relevant legislation and regulations address the same issue as the rule in the proposed plan was included to address, the rule is unnecessary. There is no need for the safety of pipelines to be assessed by the Council through the resource consent process when it is already assessed by other organisations with more expertise in this area. This applies to all the rules in the Proposed Plan that relate to the maximum gauge pressure levels for pipelines.

e) Maintenance of the pipelines is likely to be able to be carried out under Section 10 of the RMA without the need

for a resource consent if the maintenance result in effects that are the same or similar in character, intensity and scale to those that existed prior to the maintenance. Any upgrading and alteration of pipelines should be subject to the specific rules of the Environment Area in which they are located like any other activity that occurs in the District.

Planning Maps - A10, B31, C06, C21, C22, D05, D21, D22, E04, E05, E06, E21, E22, F05

Report Ref: 10.41

Submissions:

A10, B31, C06, C21, C22, C23, D05, D21, D22, E04, E05, E06, E21, E22, F05

Submission 105 (Natural Gas Corporation - Transmission)

Seeking to amend the planning maps by having the additional pipelines shown and the correction of the location of those incorrectly shown.

Submission 182 (Westgate Transport Limited)

Seeking to identify and show all energy pipelines on Port land on maps C21, C22 and C23.

Further Submission 409 (Contact Energy Limited)

Supporting submission 105 relating to the identification of pipelines.

Decision:

That submissions 105 and further submission 409 be allowed, submission 182 allowed in part and that:

- a) Planning maps rural A10, C06, D05, E04, E05, E06, E21 & F05 and urban maps B31, C21, C22, D21, D22 & E22 be altered to accurately reflect the location of the energy pipelines.**
- b) No change be made to planning map C23 in this regard.**
- c) The Key to the Planning Maps be amended by adding the following wording: "(incomplete information)" after "Energy Pipelines".**

Reasons for decision:

a) The provision of this information on the planning maps is useful information for the public. The Council has mapped the information that it currently has on the location of High Pressure Petroleum Products Pipelines in the Proposed Plan. Both Westgate Taranaki Limited and Natural Gas Corporation have supplied information pertaining to the Port area and the more accurate data has been used. Note: No additional pipelines have been identified on planning map C23.

b) It is not considered necessary to have a rule in the Plan that requires this information to be provided to the Council by petroleum exploration companies. Instead the Council will advocate to network utility operators for the provision of this information to the Council so it can be used for information purposes on the Planning Maps. A Plan Change will need to be undertaken to update the Planning Maps when new pipeline information is received. It is important that this is stated in the plan as this means that the information on the maps regarding the location of High Pressure Petroleum Products Pipelines will be incomplete.

c) The location of some of the pipelines on the planning maps is incorrect. These mapping errors have been rectified.

Rules - new rules proposed - activity specific

Report Ref: 12.01

Submissions:

Submission 182 (Westgate Transport Limited)

Seeking to establish a Port Policy Area (PPA) overlay zoning for the entire area which is related to existing and future Port operations, and create new rules accordingly.

Further Submission 298 (Re-Source Exploration)

Supporting submission 182, specifically the proposal put forward for a "port plan" relating to the area affected by Port operations.

Further Submission 300 (Geosphere Exploration)

Supporting submission 182 relating to the establishment of a Port Policy Area and associated matters, particular reference to use of the eastern reclamation.

Further Submission 409 (Contact Energy Limited)

Opposing submission 182 relating to development of an activity-based recognition of the port (the PPA) and associated rules.

Further Submission 421 (Wikitoria Beamish and Whanau and Friends)
Opposing submission 182 relating to the formulation of a Port Policy Area.

Further Submission 421 (Wikitoria Beamish and Whanau and Friends)
Opposing submission 182 relating to the use of the port area.

Further Submission 427 (Ngati Te Whiti Hapu Society Inc)
Opposing submission 182 which request the implementation of a Port Policy Area for the Port, Ngamotu and environs.

Further Submission 435 (Taranaki Healthcare)
Supporting submission 182 relating to establishment of a Port Policy Area with associated rules.

Further Submission 453 (Standard Port Submission (grouped))
Opposing submission 182 relating to the development of a Port Policy area.

Decision:

That submissions 182, 298, 300 be disallowed, that further submission 435 be allowed in part, and that further submissions 220, 221, 226 to 235, 237, 239 to 258, 260 to 288, 307 to 313, 315 to 329, 331 to 385, 390 to 392, 394, 396 to 402, 445 (represented in this decision by the Port Submitters Standard Submission - 453) and further submissions 409, 421 and 427 be allowed, and that a separate Port Policy Overlay Area, with associated rules, not be introduced.

Reasons for decision:

In essence, the Port Policy Area as proposed constitutes a separate zoning for all of Westgate's land holding, with policies and rules specific to its activities. Given the two distinct environment character areas readily evident at Port Taranaki, i.e. industrial and recreational, the Council does not believe a separate zoning for the Port is either appropriate or justifiable. The Proposed Plan deals with the effects of activities; it does not provide for specific types of activities. The overlays are intended to recognise and protect specific values (such as heritage and natural values) within the district - not to exempt particular activities from meeting the standards within the plan or from the requirement in the Act to avoid, remedy or mitigate adverse effects of those activities on the environment.

The proposed zoning of Port Taranaki and environs is not dissimilar to the general zoning pattern in the Transitional District Plan. The Industrial D area reflects the extent of the Port P1 zone (including the underlying zoning for the area designated for port purposes) and the Open Space B and Open Space Port Taranaki Environment Areas will reflect the Port 2 (Interim Recreation) zoning.

The proposed zoning arrangements and relevant policy and rule framework have been constructed to manage the likely adverse environmental effects relative to the two Environment Areas being considered. Further, the format of the proposed plan has been written in such a way, unlike the transitional plan, so as to avoid the listing of activities. While this approach applies to all Environment Areas, it is a particularly important consideration insofar as future development at Port Taranaki is concerned.

Ngamotu Beach has long been freely accessible to the public for recreational use and is highly valued by the community in this regard. The area is also of cultural significance as alluded to by Submitters 421 and 427. However, the land on which it is situated is port company land and may eventually be required for port purposes. Zoning this land OPEN SPACE PORT TARANAKI ENVIRONMENT AREA recognises the cultural and recreational values while signalling that it is part of the port-related commercial undertaking. Any developments undertaken by Westgate at Ngamotu Beach that meet the rules for a permitted activity with the OPEN SPACE PORT TARANAKI will be able to take place as of right. Those that don't will be subject to resource consent procedures. By contrast, the Port P2 (Interim Recreation) zoning in the Transitional Plan requires that where 'essential harbour works or facilities' are required to be undertaken a zone change is required to be notified (ref: Ordinance 701-33-2). It should be noted that the open space zoning does not constrain what 'types' of activities can occur there just the effects those activities have.

The provisions of the Proposed District Plan will strike an appropriate balance between maintaining the character of Ngamotu Beach as an Open Space recreational area while at the same time recognising the property interests of the port operating company and its future commercial and operational needs.