

NOTICE OF SUBMISSION TO THE PROPOSED OPOTIKI DISTRICT PLAN
PURSUANT TO CLAUSE 6 OF THE FIRST SCHEDULE OF
THE RESOURCE MANAGEMENT ACT 1991

To: Opotiki District Council
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Submitter: Z Energy Limited
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Note: This submission is made by Z Energy Limited on behalf of the wider Z Group, including the Z and Caltex operations in New Zealand, and the submitter is hereafter referred to as '*Z Energy*'

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**PROPOSED OPOTIKI DISTRICT PLAN
SUBMISSION BY Z ENERGY**

1. INTRODUCTION

- 1.1 Z Energy (on behalf of the wider Z Group, including the Z and Caltex operations in New Zealand) is a NZ based fuels company that is publicly listed on the Australian and New Zealand stock exchanges with around 10,000 shareholders. The New Zealand Superannuation Fund is a 10 per cent shareholder.
- 1.2 Z Energy's primary business includes a fuel retail network, pipelines, terminals and bulk storage terminal infrastructure situated around the country. Z Energy supplies fuel to retail customers and large commercial customers like airlines, trucking companies, mines, shipping companies and vehicle fleet operators. It also provides bitumen to roading contractors and manufactures ingredients used in detergents and other household products. Z Energy holds a stake in Refining NZ which runs New Zealand's only oil refinery, and Loyalty New Zealand which runs Fly Buys.
- 1.3 In June 2016, Z purchased the assets of Chevron New Zealand, which sees Z as the wholesale fuel supplier to the network of Caltex-branded Service Stations. The Caltex-branded retail network remains independently owned and operated, with the operators setting their own retail fuel prices.
- 1.4 Z Energy's predominant business interests in Opotiki relate to its Service Station, Truck Stop and airfield fuel supply assets. This submission addresses a range of site specific matters pertaining to this retail and commercial base.
- 1.5 The specific matters submitted on, the rationale for Z Energy's submission on each of the matters, and the relief sought, is described in the following attached schedule which relates to:
1. Zoning.
 2. Activity Status of Service Stations.
 3. Town Centre Zone Policy Area.
 4. The Definition of Service Station and Truck Stops.
 5. Opotiki Airport and Fueling Facility.
 6. Ponding Areas.

7. Hazardous Substances.
8. The Definitions of Industry and
9. The Definition of Earthworks

1.6 In addition, in giving effect to the specific outcomes set out in the following schedule, the following general relief is sought:

- (a) Achieve the purpose and principles of the RMA and consistency with the relevant provisions in sections 6-8 RMA;
- (b) Implement the statutory tests in section 32 and the requirements in the First Schedule RMA;
- (c) Address the relevant statutory functions of the consent authority and the related statutory requirements for the Proposed District Plan;
- (d) Address the considerations identified by the Environment Court for planning instruments in decisions such as Long Bay-Okura Great Park Society Inc v North Shore City Council (and subsequent case law);
- (e) Avoid, remedy or mitigate the relevant and identified environmental effects; and
- (f) Make any alternative or consequential relief as required to give effect to this submission.

2. Z ENERGY WISHES TO BE HEARD IN SUPPORT OF THIS SUBMISSION

3. IF OTHERS MAKE A SIMILAR SUBMISSION, Z ENERGY WOULD BE PREPARED TO CONSIDER PRESENTING A JOINT CASE AT ANY HEARING.

4. Z ENERGY COULD NOT GAIN AN ADVANTAGE IN TRADE COMPETITION THROUGH THIS SUBMISSION.

5. Z ENERGY IS DIRECTLY AFFECTED BY AN EFFECT OF THE SUBJECT MATTER OF THE SUBMISSION THAT—

(A) ADVERSELY AFFECTS THE ENVIRONMENT; AND

(B) DOES NOT RELATE TO TRADE COMPETITION OR THE EFFECTS OF TRADE COMPETITION.

Signed for and on behalf of Z Energy Limited as authorised signatory.



.....
Nadine Perera

Dated this 15th day of November 2016

SCHEDULE

1. Zoning

Z Energy’s Caltex branded Service Stations are located on state highways 2 and 35, Z Opotiki is located within the town centre. The Opotiki Airfield facility is located within the Airfield site on Gault Road. These sites all provide for the local community, for travelers on the highway and/or for airfield users. Subject to some amendments to the relevant zone provisions, Z Energy supports the zoning applying to its Service Station sites as follows:

| | | |
|---|--|---------------------|
| Z Opotiki Service Station including truck fueling facility | 83 Church Street (Corner Church and Richard street) | Town Centre Zone |
| Z Opotiki Airport | Gault Road | Aerodrome/Rural? |
| Caltex Opotiki | 121 St John Street (Corner St John and King Street) | Mixed Activity zone |
| Caltex Opotiki Service Station including truck fueling facility | 79 Bridge Street (Corner Bridge Street and Church Street) | Mixed Activity zone |

The Town Centre and Mixed Activity zonings are supported in that Z Energy’s buildings and infrastructure within these environments represent a significant investment forming part of the physical resources of the district.

2. Activity Status of Service Stations

The rules providing for Service Stations as Discretionary activities within the Town Centre (rule 3.3.5.1.8) and Mixed Activity (rule 4.3.5.1.7) zones is supported.

**3. The Town Centre Zone
Policy Area**

The Town Centre Policy Area is located to the north of the Z Service Station on the corner of Church and Richard Streets. Z Opotiki does not have a continuous retail frontage or verandah and is, quite properly, separated from the Town Centre Policy Area by other rural service land uses which similarly do not have verandahs or continuous retail frontages and are not included in the Town Centre Policy Area. This positioning of the Town Centre Policy Area boundary on Planning Map Built Form 5c is supported and Z Energy seeks to ensure that Z Opotiki remains outside of the Town Centre Policy Area.

Insofar as requirements do not apply outside of the Town Centre Policy Area, the Plan's management of streetscapes of sites located within the Town Centre Policy Area and specific reference to the need for continuity of retail frontage and of verandahs within that Policy Area in policy 3.2.2.1 is supported.

4. Definition of Service Station and Truck Stops

The definition of 'Service Station' is supported in that it provides for the land use activities including truck refueling facilities undertaken by Z Energy. This is appropriate, and it is noted that truck refueling facilities are an existing and integral part of the existing Service Station use at the Z Opotiki Service Station (83 Church Street) and Caltex Opotiki (79 Bridge Street).

In the event that truck refueling facilities are not intended to come within the definition of Service Station then any future additions or alterations to those facilities, including retanking, would result in the proposal, as a whole, becoming a non-complying activity. It is considered unreasonable for require future additions and alterations to truck refueling facilities to be considered as a non-complying activity.

In the event that the definition of Service Station is deemed to not include truck refueling facilities then amendments will need to be made to the plan to provide such facilities. Such amendments would involve either specifically including 'Truck Stops' within the Service Station definition, or, specifically excluding 'Truck Stops' from the definition and instead

including them as a discretionary activity in Town Centre Zone rule 3.3.5, and in the Mixed Activity Zone rule 4.3.5.

5. Opotiki Airport and Fueling Facility

Opotiki Airport located on Gault Road is depicted on planning maps 5 and 5e as being within the 'Aerodrome Area'. This area is surrounded by the Rural zone. There are, however, no rules within the plan relating to the Aerodrome Area, and indeed there do not appear to be any references to Aerodrome at all. There are rules within the Rural zone, namely 8.6.2 relating to structures, and 8.6.7.2 relating to light and glare, which apply within the Airport Protection Area in the vicinity of Opotiki Airport. These rules control activities to ensure that land uses do not impact on the operation of the airport.

It is also not clear from the planning maps if the airport is zoned Aerodrome, with no rules applying, or if it is in fact zoned rural.

The terms used in the rules and on the planning maps need to be consistent. The easiest way to do this would be to amend the reference on Planning Maps Built Form 5, 5a, 5e from 'Aerodrome' to 'Airport Protection'. Together with this the 'Airport Protection' area needs to be depicted on the planning maps as a policy area overlay, similar to the 'Town Centre Zone Policy Area' within the Rural zone and airport activities including the fueling facility should also be provided for within the zone.

The airport and fueling facility would appear to be covered under the definitions of industry and Rural Industry. Although these definitions are supported on this basis, activities provided for under these definitions are discretionary within the Rural zone. The Opotiki Airport is an existing resource that should be sustainably managed. It is appropriate to provide for the continued operation of the airport together with ancillary activities including the storage and dispensing of fuel as a permitted activity. Amendments to the Rural zone rules are therefore necessary to ensure that future development of the fuel facility such as alterations, additions, maintenance and or upgrades including retanking are provided for as a permitted activity.

6. Ponding Area

A ponding area is located to the north west of Z Opotiki on the corner of Church and Richard Street. The Service Station is separated from the ponding area by other rural service land uses. The positioning of the ponding area on Natural Form Map 5C is supported and Z Energy seek to ensure that Z Opotiki remains outside of the ponding area. In so far as those requirements do not apply outside of the ponding areas, the Plan's management of proposed development within these ponding areas is supported.

7. Hazardous Substances

The management regime contained within the plan for hazardous substances is largely supported insofar as the management of hazardous substances is largely left to the relevant hazardous substances legislation. Such an approach is supported, particularly in light of:

- The level of potential duplication with the HSNO Act and associated regulations and codes of practice;
- The current guidance from MfE that controls on hazardous substances in district plans should be the exception and not the rule and only included where a clear need for such provisions has been demonstrated through robust s32 analysis; and
- The intention signalled by the Government in the last RMA amendment bill to remove the control of hazardous substances from the role of territorial authorities and regional authorities under s31 and s32 of the RMA.

Specific reference to hazardous substances is supported within the following provisions:

- The definitions for hazardous substances, which is the same as for HSNO, and contaminant, which is the same as for the RMA;
- The identification in 1.11.3 for discretionary activity applications that consideration of matters relating to hazardous substances may be included if relevant;
- Additional information requirements for sites within the Mixed Activity Zone in 1.16.3(vi), being the location of areas for the use, storage, or disposal of hazardous substances;
- Rural zone policy 8.2.3.1; and
- Network Utilities standards 17.5.3.3.

However the definition for hazardous facilities should be deleted. The term is not actually used in the Plan, even though it is defined. The inclusion of a definition is therefore unnecessary and inappropriate.

Furthermore, the written information requirements of 1.16.2(vii) are opposed in part. Provision 1.16.2(vii) requires the following;

The type, volume and nature of any hazardous substances to be stored, use, disposed of, or transported off or onto the site. The facilities where the substances are to be stored and/or used, the volume and frequency and route for transporting the substances to the site, procedures for transferring, handling, and disposing of the substances, and procedures for containing any spillages of the substances on the site.

References in 1.16.2(vii) to controls on the route of transportation of hazardous substances are opposed. There is no need for a district council to control the transportation of hazardous substances, or mode and route selection. The transportation of hazardous substances is controlled by other legislation. As an example, the transportation of hazardous substances is controlled under the Land Transport Act, 1998, through the Ministry of Transport's Land Transport Dangerous Goods Rule which is enforced by the NZ Police. There is no need for duplication. Furthermore, choices involved in making mode and route selections are generally best made in the context of the prevailing conditions (including having regard to such matters as traffic congestion) and are not matters that the Council should be seeking to control.

Town Centre Zone rule 3.6.2.1 relating to yards and setbacks, is also opposed. This rule requires storage of hazardous substances as a permitted activity to be set back 4.5m from the site boundary. Separation distances from hazardous substance storage are set out in HSNO, and the Council should not be seeking to duplicate those controls.

The intent of Rule 3.6.8.1 lacks clarity. The rule reads as follows:

Spillage containment *The site of any activity which uses, stores or produces potentially contaminating hazardous substances, shall be designed so that stormwater run-off or accidental spillage is contained and disposed of in accordance with Bay of Plenty Regional Council's standards.*

Z Energy opposes this rule on two grounds. First, if the Regional Council's standards are not complied with, then regional resource consent is required. It is inappropriate to use the regional rules to trigger both regional stormwater discharge and district land use consents. Second, the reference to 'potentially contaminating hazardous substances' is inappropriate, in that it requires potentially hazardous substances to be prevented from entering the stormwater system, even where, for example, they are not in sufficient quantity to, or of a nature to, generate an adverse effect. In effect, the rule sets a zero tolerance threshold that would mean that even discharges through an interceptor would trigger consent. In the first instance, it is considered that stormwater quality controls should be left to the Regional Council.

Network utility standard 17.5.3.2(2) is opposed. The standard requires: *That appropriate spill containment measures are provided to prevent potentially hazardous substances from entering the stormwater system.*

Standard 17.5.3.2(2) is opposed for the same reasons given above, in opposition to Rule 3.6.8.1. Again it is considered that stormwater quality controls should be left to the Regional Council and clause 17.5.3.2(2) should be deleted.

8. Earthworks Definition

The definition for earthworks requires amendment to exclude the installation of underground infrastructure including tanks and to permit retanking activities. Such activities generally only occur once in the life of any statutory plan and are temporary in nature generally lasting only one to two weeks. Likewise, land contour change occurring as a result of these activities only occurs during the temporary construction period.

8. RELIEF SOUGHT (Additions in underline, deletions in ~~striketrough~~)

A. Proposed Plan Maps

Retain the zoning applying to the following sites:

| | | |
|--|--|---|
| Z Opotiki Service Station including truck fueling facility | 83 Church Street (Corner Church and Richard Street) | Town Centre Zone |
| Caltex Opotiki | 121 St John Street (Corner St John and King Street) | Mixed Activity zone |
| Caltex Opotiki Service Station including truck fueling facility | 79 Bridge Street (Corner Bridge Street and Church Street) | On State highway 2 Mixed Activity zone |

AND

B. 3. TOWN CENTRE ZONE

3.3.5 DISCRETIONARY ACTIVITIES

Retain rule 3.3.5.1.8 providing for Service Stations as a discretionary activity within the Town Centre Zone as notified:

3.3.5.1. The following activities may be established after Land Use Consent has been granted by Council. The Council may grant or refuse resource consent for a Discretionary Activity:

.....

8. *Service Station*

AND

C. 4. MIXED ACTIVITY ZONE

4.3.5 DISCRETIONARY ACTIVITIES

Retain rule 4.3.5.1.7 providing for Service Stations as a discretionary activity within the Mixed Activity Zone as notified:

4.3.5.1 *The following activities may be established after Land Use Consent has been granted by Council. The Council may grant or refuse resource consent for a Discretionary Activity:*

.....

7. *Service Station*

AND

D. TOWN CENTRE POLICY AREA

Ensure that Z Opotiki continues to not be affected by the Town Centre Policy Area, and that its integrity is maintained by only relating the policy area to sites where the functional requirements of land uses enable continuity of retail frontage and verandahs. This can be achieved by:

Planning Map - Built Form 5c

Retention of the location of the Town Centre Policy Area in the location depicted on the planning map Built Form 5c as notified. This location specifically avoids the Z Service Station on the corner of Church and Richard Street.

AND

E. Retain policy 3.2.2.1 as notified

3.2.2.1 Development within the zone 'Policy Area' will be required to provide continuity of retail frontage and of verandahs.

AND

F. 19. DEFINITIONS

SERVICE STATION

EITHER

Retain the definition of Service Station as notified in the Plan including insofar as it provides for truck refueling facilities

Service Station

Means any activity where the dominant activity is the retail sales of motor vehicle fuels (including petrol, LPG, and diesel) and may also include one or more of the following:

1. *Retail sales of kerosene, alcohol based fuels, lubricating oils, tyres and batteries, vehicle spare parts and other accessories normally associated with motor vehicles (including motorcycles, caravans, boats and trailers, and domestic equipment).*
2. *Warrants of fitness testing*
3. *Ancillary sale of convenience goods*
4. *The mechanical repair and servicing of motor vehicles.*
5. *And other retail sales subsidiary to the main use of the site.*

OR

G. In the event that the above interpretation is not the case amendments to the plan will be required to provide clarification that truck refueling facilities are provided for. This can be achieved by:

EITHER

Include truck refueling facilities within the definition for Service Station as another land use that service stations may include as follows:

Service Station

Means any activity where the dominant activity is the retail sales of motor vehicle fuels (including petrol, LPG, and diesel) and may also include one or more of the following:

1. *Retail sales of kerosene, alcohol based fuels, lubricating oils, tyres and batteries, vehicle spare parts and other accessories normally associated with motor vehicles (including motorcycles, caravans, boats and trailers, and domestic equipment).*
2. *Warrants of fitness testing*
3. *Ancillary sale of convenience goods*
4. *The mechanical repair and servicing of motor vehicles.*
5. *And other retail sales subsidiary to the main use of the site.*
6. *Truck Stops.*

OR

- H. Provide for truck fueling facilities as a discretionary activity within the Town Centre and Mixed Use zone. This can be achieved by the addition to the Discretionary Activity rules in the Town Centre Zone, rule 3.3.5, and in the Mixed Activity Zone, rule 4.3.5 the following:

'Truck Stop'

AND

- I. Planning Maps - Built Form 5, 5e and 5a.

Ensure that the terms utilised on the planning maps and in the rules in relation to the Opotiki Airfield are consistent. This can be achieved by:

Deleting reference to '~~Aerodrome~~' on the Planning Maps - Built Form 5, 5a, 5e and in the legend and replacing it with '**Airport Protection**'. The '**Airport Protection**' Area to be depicted on the Planning Maps as a policy area overlay (similar to the Town Centre Zone Policy Area) over the Rural zone.

AND

- J. 19. DEFINITIONS

INDUSTRY AND RURAL INDUSTRY

Retain the definitions of industry and rural industry in that these terms provide for the airport and associated fuel facility at Opotiki airport.

Industry

Means the production, processing, assembly, servicing, testing, repair, cleaning, painting, storage and/or warehousing of any materials, goods or products, vehicles or equipment, and also includes transportation service activities, and includes tradesmen's' depots, and contractors' depots.

AND

Rural industry

Means an industry undertaken within the rural areas of the district, and where the industrial activity is associated with the predominant rural activity undertaken on the site.

AND

- K. On the basis that the definitions of Industry and Rural Industry provide for the airport and associated fuel facility at Opotiki airport insert a new permitted activity as follows:**

##. Airport and Rural Industries within the Airport Protection Policy Area at Opotiki Airport as depicted on the Planning Maps.

OR

- L. Insert a new permitted activity in rule 8.3.1 providing for the airfield and ancillary uses to read as follows:**

##. Airport and ancillary uses including fuel facilities (storage and dispensing) within the Airport Protection Policy Area at Opotiki Airport as depicted on the Planning Maps.

AND

- M. Ensure that the plan's management of ponding areas within the Town Centre zone to minimize potential effects of activities on ponding areas is maintained by:**

Planning Map - Natural Form 5c

Retention of the location of the ponding areas within the Town Centre zone in the location depicted on the planning map Natural Form 5c as notified. This location avoids the Z Service Station on the corner of Church and Richard Street.

AND

- N. Maintain as notified the management regime for hazardous substances by retaining the following provisions:**

- The definition for hazardous substances;

Has the same meaning as Section 2(1) of the Hazardous Substances and New Organisms Act 1996.

- The definition for contaminant:

Has the same meaning as Section 2(1) of the Resource Management Act 1991.

- *Assessment Criteria for Hazardous Substances 1.11.3 Discretionary Activities*

When considering an application for a Discretionary Activity the Council will have regard to those matters stated in Section 104(1) of the RMA. In addition, the Council will have regard to matters which may include, but are not limited to, the following:

.....

7. Hazardous substances.

- *1.16.3 Additional information for sites within the Mixed Activity Zone*

.....

(vi) The location of areas for the use, storage, or disposal of hazardous substances.

- *Rural Zone Policy 8.2.3.1*

Provide for the use, storage and transport of hazardous substances that is compliant with the requirements of the relevant legislation and industry standards.

- *Network Utilities Standards 17.5.3 Stormwater*

17.5.3.2 Any commercial, industrial or business activity or development shall ensure:

- 1. That stormwater is detained to discharge at levels no greater than the pre-development levels from a 2% AEP 24 hour rainfall event.*

17.5.3.3 Trade wastes directed to the stormwater system shall have appropriate measures in place to ensure contaminants/hazardous substances do not enter the stormwater system.

AND

- O. Delete the definition for hazardous facility in its entirety as follows:**

Hazardous facility

~~*Means any activity involving hazardous substances and sites, including vehicles for their transport, at which these substance are used, stored, handled and disposed.*~~

AND

- P. Amend the written information requirements of 1.16.2(vii) to remove references to the control of transportation of hazardous substances. This can be achieved by making the following changes:

The type, volume and nature of any hazardous substances to be stored, used, or disposed of, ~~or transported off or onto~~ at or from the site. The facilities where the substances are to be stored and/or used, the volume ~~and frequency and route for transporting~~ of the substances ~~to the site~~, procedures for transferring, handling, and disposing of the substances, and procedures for containing any spillages of the substances on the site.

AND

- Q. Delete Town Centre Zone rule 3.6.2.1 relating to yards and setbacks and rely on HSNO rules to address risk issues as follows:

~~• Town Centre Zone 3.6.2 Yards/Setbacks~~

~~3.6.2.1 All buildings and activities within the zone shall be set back at least 4.5m from a Residential Zone or Mixed Activity Zone boundary, except for storage of non-hazardous substances and carparking areas.~~

~~Provided that:~~

~~In respect to this Rule, activities do not include access within sites, on-site carparking, and landscaping.~~

AND

- R. Delete Rule 3.6.8.1 as follows:

~~**Spillage containment** The site of any activity which uses, stores or produces potentially contaminating hazardous substances, shall be designed so that stormwater run off or accidental spillage is contained and disposed of in accordance with Bay of Plenty Regional Council's standards.~~

AND

- S. Delete network utility standard 17.5.3.2(2) as follows:

~~That appropriate spill containment measures are provided to prevent potentially hazardous substances from entering the stormwater system.~~

AND

- T. Include an advice note to the remaining Stormwater Standards of 17.5.3 to read as follows:

Advice Note: The quality of stormwater discharges is controlled by the Bay of Plenty Regional Council.

AND

- U. Amend the definition of earthworks to exclude the installation of underground infrastructure including tanks and to permit retanking activities. This can be achieved by amending the definition to read as follows:

Means the alteration of land contours on any site including, without limitation, deposition, disturbance of land by moving, removing, placing or replacing soil by excavating, cutting, filling or back-filling and re-compacting existing ground, but does not include domestic and reserve gardening, quarrying and normal agricultural and horticultural practices, or works associated with installation, maintenance or upgrade of underground infrastructure where land contours are altered for a temporary period during construction.