

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 131

IN THE MATTER OF an appeal under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN GENESIS ENERGY LIMITED

(ENV-2022-AKL-000060)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Environment Judge S M Tepania sitting alone under s 279 of the
Act

Last case event: 19 May 2023

Date of Order: 23 June 2023

Date of Issue: 23 June 2023

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the
Environment Court, by consent, orders that:

- (1) rules HAZS-R1 and HAZS-R2 in the Hazardous Substances chapter
of the Proposed Waikato District Plan be amended in accordance with
Appendix A to this order;



- (2) a new rule HAZS-R5 be added to the Hazardous Substances chapter of the Proposed Waikato District Plan in accordance with Appendix A to this order; and
- (3) paragraphs 13 to 19 of the appeal assigned to Topic 20 – Miscellaneous are otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent determination relates to an appeal against the decisions of Waikato District Council (**the Council**) on the Proposed Waikato District Plan (**PDP**) in relation to the storage, handling and use of hazardous substances within Significant Hazard Facilities.

[2] This order resolves the appeal in part.

Background

[3] Genesis Energy Limited (**Genesis**) owns and operates the Huntly Power Station, which meets the definition of a Significant Hazard Facility.

Original submission and PDP decision

[4] Genesis made a submission and a further submission on the PDP seeking a variety of amendments to various PDP provisions, including mapping of significant areas, management of hazardous substances, natural hazards and climate change, and acoustic insulation.

[5] In relation to management of hazardous substances, Genesis' submission expressed concern that the proposed rules relating to hazardous substances in the PDP were a duplication of the requirements in other legislation, specifically the Health

and Safety at Work Act 2015 (**HSWA**) and the Health and Safety at Work (Hazardous Substances) Regulations 2017 (**HS Regulations**). The submission sought either:

- (a) an amended rule that specifically refers to hazardous substances to be managed in accordance with HSWA and the HS Regulations; or
- (b) an exemption from the rule for the Huntly Power Station.

[6] In Decision Report 11 the IHP considered the role of the Council in the management of hazardous substances as the 2017 amendments to the RMA removed the explicit function of local authorities to control the storage, use, disposal, or transportation of hazardous substances. The Panel agreed that duplication of provisions in the PDP with HSWA and the HS Regulations should be avoided and “consent triggers should be reserved for regulatory gaps.”¹ The IHP replaced the notified provisions with new objectives, policies and rules for the management of hazardous substances with a focus on regulating Significant Hazard Facilities to protect the community where these facilities are located. The IHP introduced:

- (a) a definition of Significant Hazard Facility, which captures Huntly Power Station; and
- (b) a new rule HAZS-R2 that makes the storage, handling or use of hazardous substances within Significant Hazard Facilities a discretionary activity in all zones.

Appeal

[7] Of relevance to this order, Genesis seeks amendments to the rules that would apply to the storage, handling and use of hazardous substances at its Huntly Power Station. Genesis is concerned that the rules in the PDP would result in onerous consent requirements applying to the Huntly Power Station.

[8] This point in the appeal was assigned to Topic 20 – Miscellaneous.

[9] No other person sought to join the Appeal on this point.

¹ Decision Report 11: Hazardous Substances and Contaminated Land, at [4.5].

Agreement reached

[10] Genesis and the Council have engaged in direct discussions and have reached an agreement that will resolve paragraphs 13-19 of the Appeal assigned to Topic 20: Miscellaneous.

[11] The agreement reached resolves Genesis' interest in Topic 20. There are three other appeals assigned to Topic 20 that remain unresolved. No other Appellant is concerned with the HAZS provisions.

[12] The Decisions Version of the PDP contains a rule (HAZS-R2) making the storage, handling or use of any amount of hazardous substances in a Significant Hazard Facility a discretionary activity. The Appeal seeks to specifically exclude the Huntly Power Station from the application of the rule.

[13] Genesis and the Council have agreed to exclude Huntly Power Station from HAZS-R2 and insert a new site-specific rule for the storage, handling and use of hazardous substances at the Huntly Power Station with standards for maximum volumes of LPG and diesel. The agreed changes are as follows:

- (a) a new rule HAZS-R5 permitting the storage, handling or use of hazardous substances at Huntly Power Station, subject to standards for maximum volumes of LPG and diesel storage;
- (b) amendments to discretionary rule HAZS-R2, so that it does not apply to Huntly Power Station; and
- (c) amendments to permitted rule HAZS-R1 so that it no longer applies when new rule HAZS-R5 applies.

Section 32AA evaluation

[14] Section 32AA of the Act requires further evaluation for any changes to a proposal since the evaluation report for the proposal was completed. The parties have provided that evaluation as part of their joint memorandum in support of consent orders.

[15] In summary, that evaluation concludes that the agreed changes above are the most appropriate way to meet the objectives of the HAZS, and are preferable to making amendments to the definition of Significant Hazard Facility, or to making no changes. The reasons for this conclusion are as follows:

- (a) the agreed changes will not reduce the efficiency or effectiveness of the HAZS regime, which will continue to apply unchanged to all other Significant Hazard Facilities in the District. It will improve efficiency and effectiveness by avoiding unnecessary regulatory overlap in the operation of Huntly Power Station. It is considered more effective and efficient than changes to the definition of Hazardous Substance Facility which would require additional rule changes in any case;
- (b) there is no cost associated with the agreed changes as the concerns addressed by the decisions version of the provisions will be addressed under the PDP, as well as other regulatory regimes. The agreed changes will have the benefit of avoiding duplication; and
- (c) there is certain and sufficient information about the storage, handling, and use of hazardous substances at the Huntly Power Station, and therefore there is no need to undertake an assessment of the risks of acting or not acting.

Consideration

[16] In making this order the Court has read and considered:

- (a) the notice of appeal dated 1 March 2022; and
- (b) the Joint Memorandum of the parties dated 19 May 2023.

[17] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and

- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[18] The Court is satisfied that the changes sought are within the scope of the Genesis submission and appeal.

Order

[19] The Court orders, by consent, that:

- (a) rules HAZS-R1 and HAZS-R2 in the Hazardous Substances chapter of the Proposed Waikato District Plan be amended in accordance with **Appendix A** to this order;
- (b) a new rule HAZS-R5 be added to the Hazardous Substances chapter of the Proposed Waikato District Plan in accordance with **Appendix A** to this order;
- (c) paragraphs 13 to 19 of the appeal assigned to Topic 20 – Miscellaneous are otherwise dismissed;
- (d) the remaining parts of the appeal set out below are unresolved:
 - (i) paragraphs 8-12 – Topic 3 Ecosystems and biodiversity;
 - (ii) paragraphs 20-25 – Topic 17 Natural hazards and climate change;
and
 - (iii) paragraphs 26-29 – Topic 5 Infrastructure Reverse Sensitivity / Setbacks (noting this part of Genesis' appeal is the subject of other consent documentation filed with the Court on 17 May 2023).

(e) there is no order as to costs.



S M Tepania
Environment Judge



Appendix A

HAZS-R1	The storage, handling or use of hazardous substances except where Rule HAZS-R2, HAZS-R3, or HAZS-R4 <u>or HAZS-R5</u> apply	
All zones	(1) Activity status: PER Activity-specific standards: Nil.	(2) Activity status where compliance not achieved: n/a
HAZS-R2	The storage, handling or use of hazardous substances in a Significant Hazard Facility	
All zones <u>(except the HIZ at Huntly Power Station which is covered by HAZS-R5)</u>	<p>(1) Activity status: DIS For discretionary activities, the following criteria identify those matters which Council may assess the activity against. However, for discretionary activities Council's assessment is not restricted to these matters:</p> <p>(a) Risk assessment comprising:</p> <ul style="list-style-type: none"> (i) The probability and potential consequences of an accident leading to the release or loss of control of hazardous substances; (ii) Potential risks and effects on people and neighbouring activities, with an emphasis on sensitive activities such as residential activities, educational facilities and community facilities; (iii) Potential risks and effects on natural ecosystems and the life supporting capacity of land and water, waterbodies and sources of potable water; (iv) Potential risks and effects on sites of significance to tangata whenua, sites of historical or archaeological significance and Outstanding Natural Features and Landscapes; (v) The potential for natural hazards to impact on the operation of the hazardous facility; and (vi) The potential for cumulative adverse effects of hazardous substances. <p>(b) Alternative locations:</p> <ul style="list-style-type: none"> (i) An assessment of alternative locations, having particular regard to locations both within the site and outside the site; <p>(c) Records for existing activity:</p> <ul style="list-style-type: none"> (i) The record of compliance and acceptable risk management of any existing activity where expansion of an existing activity is proposed. 	
HAZS-R3	Significant hazard facility	
<ul style="list-style-type: none"> • LLRZ – Large lot residential zone; • GRZ – General residential zone; • MRZ – Medium density residential zone; • RLZ – Rural lifestyle zone; 	(1) Activity status: NC	

<ul style="list-style-type: none"> • SETZ – Settlement zone; or • RPZ – Rangitahi Peninsula zone 		
HAZS-R4	Any new storage or use of hazardous substances with explosive or flammable intrinsic properties within 12m of the centre line of a National Grid Transmission Line	
All zones	(1) Activity status: NC	
HAZS-R5	<u>The storage, handling or use of hazardous substances at Huntly Power Station</u>	
<u>HIZ – Heavy Industrial Zone at Huntly Power Station</u>	<p>1) Activity status: PER</p> <p><u>Activity-specific standards:</u></p> <p style="padding-left: 40px;"><u>(a) The aboveground storage of diesel does not exceed 1.2 million litres at any one time; and</u></p> <p style="padding-left: 40px;"><u>(b) The storage of LPG does not exceed 24 tonnes at any one time.</u></p>	<p>(2) Activity status where compliance not achieved: RDIS</p> <p><u>Council’s discretion is restricted to the following matters:</u></p> <p><u>(a) Risk assessment comprising:</u></p> <p style="padding-left: 40px;"><u>(i) The probability and potential consequences of an accident leading to the release or loss of control of diesel or LPG;</u></p> <p style="padding-left: 40px;"><u>(ii) Potential risks and effects on people and neighbouring activities, with an emphasis on sensitive activities such as residential activities, educational and community facilities; and</u></p> <p style="padding-left: 40px;"><u>(iii) Potential risks and effects on natural ecosystems and the life supporting capacity of land and water, waterbodies and sources of potable water.</u></p> <p><u>(b) An assessment of alternative locations for storage within the site.</u></p> <p><u>(c) The record of compliance and acceptable risk management of hazardous substances at the site.</u></p>