

26 April 2022

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Mr Hirani Sikander
Planning Administration Officer
Ashburton District Council
PO Box 94
Ashburton 7700

Dear Hirani

**Submission on behalf of Environment Canterbury on application lodged by
Waitomo Energy Limited to Ashburton District Council**

Thank you for the opportunity to allow Environment Canterbury to raise submission points on the Waitomo Energy Limited application to use land for the construction, operation and maintenance of an unmanned fuel service station on a site zoned Open Space A.

Please find Environment Canterbury's submission attached.

Yours sincerely

Tammy Phillips

Acting Integrated Planning Team Leader

Encl: Environment Canterbury Notice of Submission on an Application for Resource Consent
– Ashburton District Council

Our ref: C22C/67741
Your ref: LUC21/0114
Contact: Tammy Phillips

Notice of Submission on an Application for Resource Consent – Ashburton District Council

Submission made by electronic means

1. SUBMITTER DETAILS

Name of Submitter: Canterbury Regional Council

Physical Address: 200 Tuam Street

Postal Address: PO Box 345

Email Address: alanna.hollier@ecan.govt.nz

Telephone: 027 615 6582

My Address for service for receiving documents and communication about this application is: by email

2. APPLICATION DETAILS

Application Reference Number: LUC21/0114

Name of Applicant: Waitomo Energy Limited

Application Site Address: Part Reserve 953 Canterbury

Description of the Proposed Activity: Land use consent for the construction, operation and maintenance of an unmanned fuel service station on a site zoned Open Space A

3. SUBMISSION DETAILS

We submit a neutral submission.

The specific parts of the application that our submission relates to are:

- Use and development of a site that is potentially contaminated
- Use and development of a site over three Community Drinking Water Protection Zones (CDWPZs)

The reasons for our submission are:

Contaminated land

1. The Listed Land Use Register (LLUR) Statement for the proposed site identifies activities listed on the Hazardous Activities and Industries List (HAIL) that could result in contaminants persisting in the soil today. The activities present are F6 – Railway Yards (Site 3470) and potential presence of asbestos from former use of asbestos building products.
2. Pattle Delamore Partners (PDP) have undertaken a high-level assessment of the geological conditions and sensitivity of the underlying groundwater aquifer via a desktop survey of the site. It is important to note that PDP explain in their letter, that the assessment does not meet the conditions of a Preliminary Site Investigation (PSI) under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES CS) despite being overseen by a Suitably Qualified and Experience Person (SQEP).
3. No Detailed Site Investigation (DSI) is intended to be undertaken prior to lodging the required consents with Ashburton District Council (ADC), so earthworks required for development will be assessed as a Discretionary Activity under the NES CS. The applicant prefers that consent conditions are imposed on the ADC land use consent to verify and manage any contaminants present. PDP have recommended some proposed consent conditions.
4. CRPS policy 17.3.1 seeks identification of sites historically or presently used for an activity that could have, or has, resulted in contamination, and where appropriate the verification of the existence and nature of that contamination. This policy describes verification as 'appropriate' where there is a high risk of contamination or adverse effects occurring or where a change in land use is proposed.
5. CRPS policy 17.3.2 specifically requires a site investigation to be undertaken on potentially contaminated land to determine the nature and extent of contamination prior to new subdivision, use or development to ensure any actual or potential adverse effects of contaminated land can be avoided, remedied or mitigated. This policy applies a precautionary approach, seeking greater detail about the nature and extent of the contamination when risk of adverse effects occurring from the subdivision, use or development is greater. This policy notes that a 'site investigation' can range from a simple 'desktop' study to a full spectrum analysis of soil and water.
6. Due to the site being located over three CDWPZs, and an unconfined or semi-confined aquifer there is potential for greater adverse effects from potentially contaminated land on environmental and human health. A DSI involving soil

sampling would be required to determine the nature and extent of any contamination present within the site, and if so what remediation or mitigation measures are appropriate. This level of detail would be required in order to ensure consistency with CRPS Policies 17.3.1 and 17.3.2.

7. It is important to note that the CRPS requires the site investigation prior to land use and development, and not specifically prior to lodgement of a consent application with the consenting authority.
8. Resource consent from Environment Canterbury for dewatering will be required on the basis that dewatering will be occurring on potentially contaminated land. Resource consent will also be required for earthworks occurring over an unconfined or semi-confined aquifer with matters of discretion including assessment of '*actual and potential adverse environmental effects on the quality of water in aquifers*'.
9. Resource consent from Environment Canterbury may be required for stormwater (including construction phase stormwater). The application notes that stormwater will be discharged into the reticulated stormwater network with some of the stormwater pre-treated, and some not pre-treated depending on where on the site the stormwater originates from. Rule 5.93A outlines that if written permission is obtained from the owner of the network then resource consent from Environment Canterbury is not required. If written permission is not obtained, then a discretionary activity resource consent would be required under LWRP Rule 5.97.
10. To fully assess any actual or potential effects from the proposed land use and development through the Environment Canterbury resource consent processes it is very likely that a DSI would be required with consent lodgement to confirm the nature and extent of contamination.

Storage of hazardous substances

11. The proposed site is located within three CDWPZs. All three Community Drinking Water Supply bores are upgradient of the proposed site.
12. CRPS Objective 18.2.1 and Policy 18.3.1 set firm direction on the management of hazardous substances, particularly within sensitive environments. Clause 2 specifically requires any actual or potential effects from the storage, use or disposal of hazardous substances within CDWPZs are avoided. CRPS Policy 5.3.2(d) also seeks the protection of sources of water for community supplies from development through ensuring that adverse effects are avoided, remedied or mitigated.
13. The Supreme Court guidance in relation to the meaning of the word 'avoiding' under Section 5(2)(c) of the RMA, was essentially considered to have the same meaning as 'preventing the occurrence of something', concluding that 'avoiding' (or

‘preventing’) has the ordinary meaning of ‘not allowing’ (Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC).

14. The LWRP includes rules for the management of hazardous substances within CDWPZs. LWRP Rules 5.181 and 5.182 manage the use of land for the storage, other than in a portable container, and use of a hazardous substance, including diesel and petrol. Conditions 5(a) and 5(b) of Rule 5.181 specifically relate to the storage of hazardous substances within a CDWPZ. It is possible that in order to meet the LWRP permitted activity conditions, the proposed site layout or construction plans for the fuel storage facility/tanks may need to be altered.

Amenity

15. The proposed site is zoned Open Space A under the Ashburton District Plan 2014 (ADP). The ADP outlines that the purpose of the Open Space A zone is to provide *‘...for both passive activities such as walking and recreational activities...’*. Specifically, the Open Space A zone is *‘...intended to provide for areas such as neighbourhood reserves, and the Ashburton Domain’*. The proposed unmanned fuel service station is a non-complying activity within the Open Space A zone.
16. There are numerous provisions within Chapter 5 of the CRPS relating to amenity. Objective 5.2.1 encourages sustainable economic development in appropriate locations and Policy 5.3.1.4 seeks sustainable development patterns through maintaining and enhancing identity and character of urban areas and that development contributes to high-quality urban design, including the maintenance and enhancement of amenity values. The discussion associated with the policy includes managing nuisance effects from excessive traffic, noise, odour and contaminants. Assessment of the application against these provisions will aid in ensuring urban identity, character and amenity values are maintained, or preferably, enhanced.

The decision we would like the Council to make is: (give details including, if relevant, the parts of the application you wish to have amended and the general nature of any conditions sought).

17. That the Council notes there are regional planning requirements for this type of activity at this site, notably the location being within Community Drinking Water Protection Zones.
18. The appropriateness of this activity in this location under the Land and Water Regional Plan will likely be determined on the ability of the application to avoid any adverse effects from the storage of hazardous substances on this site. We recommend that the applicant contacts the Environment Canterbury Consents Team to discuss consenting requirements for the storage of hazardous substances within

a Community Drinking Water Protection Zone, to ensure any adverse effects can be avoided.

19. We recommend that the applicant obtains a DSI so that both local authorities will be able to make an informed decision on any actual or potential effects from potentially contaminated land.

4. SUBMISSION AT THE HEARING

We do not wish to be heard in support of our submission

5. SIGNATURE

Acting Integrated Planning Team Leader

26 April 2022

Tammy Phillips