

5 November 19

Hearings Panel: Urban and Services Plan Changes
c/- Eden Edwardson,
Support Assistant,
District Plan Department,
Whangarei District Council

By e-mail: eden.edwardson@wdc.govt.nz

Dear Hearings Panel members

Re: Proposed Plan Changes 82A&B, 88A-J, 109, 115, 136, 143, 144, 145, 147 & 148 - Urban and Services: Hearing Statement on Behalf Of Z Energy Limited

1.0 INTRODUCTION

Reference is made to the abovementioned matters set down for hearing commencing 25th November 2019. This Hearing Statement has been prepared on behalf of Z Energy Limited (“Z Energy”) and represents its views.

Z Energy made submissions to Proposed Plan Changes 82A&B, 88A-J, 109, 115, 136, 143, 144, 145, 147 & 148 - Urban and Services (“Urban and Services Plan Changes”). The broad reasons for Z Energy’s interests in the Urban and Services Plan Changes are as set out in Section A of its submission.

Detail regarding the submissions, including their rationale and the specific relief sought, were included in Z Energy’s submission and are not repeated here. The purpose of this Hearing Statement is to record Z Energy’s position on its submissions taking into account the reporting planner’s recommendations in the Section 42A Report (“s42A Report”).

A summary of Z Energy’s position is included as **Attachment 1** to this Hearing Statement. With the exception of four submission points, Z Energy endorses the recommendations of the Reporting Planner. Below, Z Energy records its reasons for opposing the recommendations relative to those four submission points, and clearly states the relief sought.

For the record, Z Energy did not lodge any further submissions. Two further submissions were lodged in respect of two of Z Energy’s submission points, and these are recorded in the table in Attachment 1.

Z Energy would like to take the opportunity, through this Hearing Statement, to commend the work of the Reporting Planners’ in the execution of the s42A Reports. While the Urban and Services Plan Changes are complex and extensive, the s42A Reports are clear and concise, and relatively easy to work through.



2.0 PART 3 – s42A - COMMERCIAL

Submission Points 62.16 and 62.17

For the reasons clearly set out in its submission, Z Energy seeks that appropriate provision is made for additions, alterations and modifications for existing service stations which are located in the Shopping Centre Zone (“SCZ”). The SCZ is intended to provide for the consolidation of predominantly large comprehensive general retail stores within existing shopping centres. Service stations in the SCZ zone are non-complying, and any works at or to existing service stations would require non-complying activity consent and would not be supported by the policy framework or the information requirements.

Reporting Planner’s Position

At para 450 of the s42A Report, the Reporting Planner concurs with Z Energy that: *providing specific direction for the existing service station is appropriate as it is reasonable to anticipate that maintenance and some minor modifications would be necessary to support the ongoing operation of the existing service station, and that non-complying activity status should be retained for new service stations. The principle of the relief sought is therefore supported by the Reporting Planner.*

At para 451 of the s42A Report, the Reporting Planner recommends accepting the Z Energy submission points (recommendation c) and making changes as set out in Appendix 6 (of that Report).

Z Energy’s Position

Z Energy opposes in part the specific changes recommended in the s42A Report.

The wording of the policy requires grammatical correction and needs to be amended to remove the (inappropriate) promotion of changes to existing operations and repair works, and to focus on maintenance and upgrade activities. The policy also fails to include specific recognition that an existing service station does not really fit within the broader policy intent for the zone.

The wording of the proposed discretionary activity rule is opposed because:

1. Clause 2 of the proposed rule requires compliance with rules SCZ-R3 (height) -R4 (height to boundary), R6 (setbacks) -R7 (impervious areas). Non-compliance with these standards would ordinarily require discretionary activity consent, but in this case, non-compliance would require non-complying activity consent. There is no reason given why non-compliance with these standards should trigger non-complying activity consent and cannot be considered as part of a discretionary activity application, as it ordinarily would. In practice, the requirement to comply with these

standards will most likely trigger non-complying consent. For example, the impervious area of the existing service station will exceed 85% and will, as a consequence, inevitably trigger non-complying activity consent. Non-compliance should be considered as part of the application for discretionary activity consent.

2. Clause 3 of the proposed rule requires that the redevelopment is internal, within the footprint of an existing building. This Clause has the potential to narrow the application of the rule to “redevelopment” only. The term “redevelopment” is undefined, and it is uncertain whether it includes any or all of repair, maintenance and upgrade. Further, the use of both the term “internal” and the phrase “within the footprint of an existing building” is unnecessary and has the potential to cause confusion. For example, it is unclear whether a redevelopment under the canopy – which is within the footprint of an existing building – would also be considered to be “internal”. Furthermore, this would restrict ordinary maintenance activities, such as retanking, to within an existing tank pit when there may be good reason to replace tanks within a new tank pit. Such activities should not trigger non-complying consent but should be considered as part of the application for discretionary activity consent.
3. Clause 4 requires that the principle entrance to the service station opens directly onto a shopping centre pedestrian connection. Service stations are vehicle orientated activities and the principle entrance will open onto the forecourt, with no secondary entrance. Further, it is not clear why a pedestrian connection is required between a single facility mall, which is designed to provide an inclusive shopping experience, and a service station. While a pedestrian connection may be possible, this should not be required for the sake of it and must be both practicable and safe. Non-compliance should not trigger non-complying activity consent but should be considered as part of the application for discretionary activity consent.
4. The note below the rule states that any application shall comply with information requirement SCZREQ1. SCZREQ1 requires that an application shall include an urban design assessment prepared by a suitably qualified and experienced professional and which includes certain details. The details include how the proposal is consistent with best practice urban design, the relevant objectives and policies and the Shopping Centre Zone building bulk and location standards. This is considered unreasonable and inappropriate because:
 - a. Service stations have functional and operational requirements that mean they may not be consistent with generic urban design principles otherwise applicable to anticipated development in this zone;
 - b. It is inappropriate to require an urban design assessment to any practicable extent for such activities as retanking;

- c. The anticipated characteristics of areas zoned as shopping centres are to enable car-focused shopping ‘destinations’ which consist of comprehensive retail activities and commercial establishments that are planned, developed, and managed as a single facility with commercial multi-branded retail units and common areas. Service stations are not consistent with this; and
- d. As indicated in bullet point 2 above, the proposal may not be consistent with (and indeed may not meet) the bulk and location standards.

Z Energy has experienced a range of interpretations relevant to the acceptance or rejection of a resource consent application, from conservative to permissive. Depending on how this information requirement is interpreted, applying it to this rule proposed could mean that an application is consistently “rejected” by the Council for not “ticking the box” for information requirements.

Relief Sought:

To address its concerns, Z Energy urges the Hearing Panel to accept the principle of the recommendation of the Reporting Planner in the s42A Report. That is, to provide for the existing service station as a discretionary activity within the SCZ by making the following changes to the specific relief proposed in the s42A Report (changes marked in underline (additions) and strikethrough (deletions) against the relief suggested in the s42A Report):

SCZ-P New 1 -Existing Service Stations

To provide for existing service stations within the SCZ ~~by~~ while avoiding or mitigating ~~adverse~~ ~~any~~ adverse effects generated by ~~ongoing operation, maintenance and repair~~ the maintenance and upgrade of existing service stations, having regard to the functional and operational requirements of activities.

SCZ-R New 2 Service Stations

Activity Status: Discretionary

Where:

- 1. The service station is existing at (insert operative date).*
- 2. ~~Any re-development complies with rules SCZ-R3-R4, R6-R7.~~*
- 3. ~~The redevelopment is internal, within the footprint of an existing building.~~*
- 4. ~~The principal entrance(s) of the service station either opens directly on to a shopping centre footpath or other pedestrian connection, or is connected to a pedestrian connection by a smaller formed pedestrian connection.~~*

And either delete the note or amend it to achieve the same intent

Note: Any application shall comply with information requirement SCZREQ1, to the extent that these are applicable to the proposed activity and the functional and operational requirements of service stations.

Activity Status when compliance not achieved: Non-Complying

3.0 PART 4 – s42A – CENTRES

Submission points 62.7 and 62.8

For the reasons clearly set out in its submission, Z Energy seeks:

- an amendment to Policy LC-P1 to recognise the individual characteristics of each specific LC area, as described in the Zone Overview, and to encourage the maintenance or enhancement of its unique character; and
- the adoption of a new policy which recognises that some activities (such as service stations) have functional or operational design requirements that preclude meeting the urban design objectives, but which are both established and entirely appropriate within the Local Commercial Zone.

The Reporting Planner's position

At para 60 of the s42A Report, the reporting planner states that Policy LC-P1...

seeks to identify the characteristics that define the amenity and character of the LC, including recognising that the zone has a low to medium intensity and scale of built development and a mix of type and scale of activities. Service stations are a discretionary activity in this zone and therefore an assessment of the existing environment and any effects of the activity that may alter the existing environment will be required as part of any application. Through the resource consent process the benefits of the proposal as well as any functional or operational design requirements that preclude meeting the urban design standards will be assessed and taken into account. For these reasons I do not consider that the suggested change is required. I note that I have however recommended several exemptions to the land use rules in relation to service stations.

Z Energy acknowledges that the existing environment is a mandatory consideration in the resource consent process, however such a consideration relates to the assessment of effects of a proposal and not to the assessment against the objectives and policies of the Plan. The zone focuses on preserving a traditional main street environment with retention of active pedestrian frontages, while recognising the need for on and off-street parking reflecting the fact that they serve a wider catchment than the immediate neighbourhood. Z Energy maintains that a new policy is therefore required to recognise that some activities (service stations are just one) found within these zones have functional or operational design requirements that preclude meeting such urban design objectives or limit the extent to which

they are met, but which are both established and may be appropriate within the Local Commercial Zone.

The inclusion of a new policy is entirely consistent with, and provides a basis for, the exemptions to various land use standards (eg: car parking, verandahs, building frontages) as both proposed and as recommended by the Reporting Planner.

If such a new policy is included, Z Energy accepts that changes to Policy LP-C1 as sought, will be less critical.

Relief Sought:

To address these concerns, Z Energy urges the Hearing Panel to reject the recommendation of the Reporting Planner in the s42A Report in respect of submission point 62.8, and to instead include a new policy which recognises that some activities (such as service stations) have functional or operational design requirements that preclude meeting the urban design objectives, but which are both established and entirely appropriate within the Local Commercial Zone. This could be worded along the following lines (new text underlined):

When changes are proposed to existing activities not meeting the traditional main street design outcomes sought in other policies, to consider whether the nature and extent of the change, in combination with the functional and operational requirements of the activity, provides an opportunity to make a positive contribution to the streetscape and character of its surroundings.

Z Energy considers that wording to be consistent with the relief sought, which was to adopt a new policy which recognises that some activities (such as service stations) have functional or operational design requirements that preclude meeting the urban design objectives, but which are both established and entirely appropriate within the Local Commercial Zone.

4.0 CONCLUDING STATEMENT

If the Hearing Panel has any matters of clarification in relation to the matters above, please contact the undersigned on 021 2333 906.

Kind Regards,



Karen Blair
Principal Planning and Policy Consultant
4Sight Consulting Limited

Attachment 1: Urban and Services Plan Changes

Statement summarising Submissions of Z Energy, recommendations of the Reporting Planner, and the position of Z Energy with respect to the same
Changes from the text of the Plan Change as it was when proposed are shown as additions underlined and deletions in strikethrough

Submission	Submission of Z Energy	Section 42A Report	Response of Z Energy
PART 8 – s42A - ZONING			
62.1 refer para 39 of the s42A Report	Supports the zoning of the Z Porowini Service Station and the Caltex Western Hills Service Station as “Commercial Zone”, as shown on the Planning Maps.	At Paragraph 62 of the s42A Report, the Reporting Planner recommends acceptance of the Z Energy submission point (recommendation a).	The Hearings Panel is urged to accept that recommendation.
62.5 refer paras 101 and 102 of the s42A Report	Supports the zoning of the Z Kensington Service Station and the Z Kamo Service Station as Local Commercial Zone, as shown on the Planning Maps.	At Paragraph 103 of the s42A Report, the Reporting Planner recommends acceptance of the Z Energy submission point.	The Hearings Panel is urged to accept that recommendation.
62.13 refer para 127 of the s42A Report	Supports the zoning of the Z Energy site (34 Kioreroa Road) as ‘Light Industrial Zone’.	At Paragraph 137 of the s42A Report, the Reporting Planner recommends acceptance of the Z Energy submission point (recommendation a).	The Hearings Panel is urged to accept that recommendation.

<p>62.15 refer para 40 of the s42A Report</p>	<p>Seeks to amend the zoning of Caltex Lower Tarewa Road, at 15 Lower Tarewa Road, Morningside, from Shopping Centre Zone (SCZ) to Commercial (COM).</p>	<p>At Paragraph 40 of the s42A Report, the Reporting Planner states: <i>I acknowledge that the COM is a more enabling zone with respect to service station activities than the SCZ. In my opinion, the requested relief is not appropriate because COM (if located adjacent to SCZ) has the potential to permit activities and environmental effects that are not compatible with SCZ and to create cross boundary issues with the SCZ that are not managed within the COM. I note that Z have [sic] asked for an alternative means of relief, to provide for existing service stations which are established within the SCZ. I have responded to that request within Part 4 [sic- should be Part 3] of the s42A report and I have recommended a bespoke rule and a policy to provide for the existing Caltex service station at Tarewa SCZ in a way that supports objectives, policies and intended development within the SCZ. I do not consider rezoning the Caltex service station site to be either necessary or appropriate.</i></p> <p>At Paragraph 62 of the s42A Report, the Reporting Planner recommends rejection of the Z Energy submission points (recommendation a).</p>	<p>The Hearings Panel is urged to accept that recommendation, <u>subject only to</u> accepting the Reporting Planner’s recommendations in Part 4, to accept submissions 62.16 and 62.17.</p>
<p>PART 3 – s42A - COMMERCIAL</p>			
<p>62.2 and 62.3 refer Para 335 of the s42A Report</p>	<p>Supports the application of a building setback exemption for service stations, as included in Rule COM-R3.1, and the application of a building frontage exemption for service</p>	<p>At Paragraph 360 of the s42A Report, the Reporting Planner recommends acceptance of the Z Energy submission points (recommendation a).</p>	<p>The Hearings Panel is urged to accept that recommendation.</p>

	stations, as included in Rule COM-R5.2.		
62.4 refer Para 365 of the s42A Report	Supports the activity status for service stations in the Commercial Zone, as provided for in Rule COM-22.	At Paragraph 379 of the s42A Report, the Reporting Planner recommends acceptance of the Z Energy submission point (recommendation a).	The Hearings Panel is urged to accept that recommendation.
62.16 and 62.17 refer Paras 433 and 434 of the s42A Report	Seeks that appropriate provision is made for additions, alterations and modifications for existing service stations which are located in the SCZ.	At para 450 of the s42A Report, the Reporting Planner states that: <i>There is an existing service station located within the SCZ at Tarewa Shopping Centre. I acknowledge that this service station has existing use rights. While I consider that new service stations are not anticipated within the SCZ and should be non-complying, I agree that providing specific direction for the existing service station is appropriate. I agree with Z that there has been considerable investment with the existing use, and I consider that it is reasonable to anticipate that maintenance and some minor modifications would be necessary to support the ongoing operation of the existing service station. I support making special provision for the existing service station for the reasons set out in s32AA analysis contained in Appendix 1. I consider that a new rule that provides for existing service stations as a discretionary activity which is supported by a bespoke policy would be appropriate and I support wording of a new rule and insertion of new policy as a consequential amendment, as set out in Appendix 6. I do not consider that additional consequential amendments are necessary or appropriate.</i>	Refer to the discussion and recommendation in Section 2 of the Hearing Statement. The Hearings Panel is urged to accept the relief sought in the Hearings Statement.

		<p>At para 451 of the s42A Report, the Reporting Planner recommends accepting the Z Energy submission points (recommendation c), by making the following changes:</p> <p>Appendix 6:</p> <p><u>SCZ-P New 1 -Existing Service Stations</u> <u>To provide for existing service stations within the SCZ by avoiding or mitigating adverse [sic] any adverse effects generated by ongoing operation, maintenance and repair of existing service stations.</u></p> <p><u>SCZ-R New 2 Service Stations</u></p> <p><u>Activity Status: Discretionary</u></p> <p><u>Where:</u></p> <ol style="list-style-type: none"> 5. <u>The service station is existing at (insert operative date).</u> 6. <u>Any re-development complies with rules SCZ-R3-R4, R6-R7.</u> 7. <u>The redevelopment is internal, within the footprint of an existing building.</u> 8. <u>The principal entrance(s) of the service station either opens directly on to a shopping centre footpath or other pedestrian connection, or is connected to a pedestrian connection by a smaller formed pedestrian connection.</u> 	
--	--	--	--

		<p><u>Note: Any application shall comply with information requirement SCZREQ1.</u></p> <p><u>Activity Status when compliance not achieved: Non-Complying</u></p>	
PART 4 – s42A - CENTRES			
62.6 refer Paras 34 and 38 of the s42A Report	Supports the recognition in the Zone Overview of the contribution of the existing service stations to the commercial character of the Kensington and Kamo Local Commercial areas	At Paragraph 42 of the s42A Report, the Reporting Planner recommends acceptance of the Z Energy submission point (recommendation a).	The Hearings Panel is urged to accept that recommendation.
62.7 refer Para 58 of the s42A Report	Seeks an amendment to Policy LC-P1 to recognise the individual characteristics of each specific LC area, as described in the Zone Overview, and to encourage the maintenance or enhancement of its unique character.	At Paragraph 63 of the s42A Report, the Reporting Planner recommends rejection of the Z Energy submission point (recommendation a).	Refer to the discussion in Section 3.0 of the Hearing Statement. The Hearings Panel is urged to accept the recommendation of the Reporting Planner <u>subject only to</u> the inclusion of a new policy which recognises that some activities (such as service stations) have functional or operational design requirements that preclude meeting the urban design

			objectives, but which are both established and entirely appropriate within the Local Commercial Zone.
62.8 refer Para 110 of the s42A Report	Seeks the adoption of a new policy which recognises that some activities (such as service stations) have functional or operational design requirements that preclude meeting the urban design objectives, but which are both established and entirely appropriate within the Local Commercial Zone.	At Paragraph 114 of the s42A Report, the Reporting Planner recommends rejection of the Z Energy submission point (recommendation a).	Refer to the discussion and recommendation in Section 3.0 of the Hearing Statement. The Hearings Panel is urged to accept the relief sought in the Hearings Statement.
62.9 refer Para 140 of the s42A Report	Seeks to amend Rule LC-R3.2 to exclude buildings for existing service stations from specific building setback requirements.	At Paragraph 149 of the s42A Report, the Reporting Planner recommends accepting in part the Z Energy submission point (recommendation a) by making the following changes to the rule (with the change recommended to address this submission highlighted in red, noting that other changes shown are in response to submissions by others): ... 2. The building is setback from <u>within</u> 0.5m of the road boundary at ground floor for the entire length of the street <u>site frontage</u> for any front site, except:	The Hearings Panel is urged to accept that recommendation.

		<p>a. <u>A-One setback of up to 1.5m for a maximum width of 2.5m to allow for a recessed pedestrian entrance, and</u></p> <p>b. <u>For service stations, Emergency Services and Grocery Stores this clause does not apply.</u></p>	
62.10 refer Para 160 of the s42A Report	Supports the exclusion in Rule LC-R6 for service stations to comply with the requirements for the main pedestrian entrance to be within 3m of the site frontage	At Paragraph 170 of the s42A Report, the Reporting Planner recommends accepting the Z Energy submission point (recommendation a).	The Hearings Panel is urged to accept that recommendation.
62.11 refer Para 171 of the s42A Report	Seeks to amend Rule LC-R7, to make it clear that the rule relates to any building that fronts (not simply faces) a road.	At Paragraph 178 of the s42A Report, the Reporting Planner recommends rejecting the Z Energy submission point (recommendation a). The reason for this is set out at paragraph 175 as follows <i>With regard to the submission from Z Energy I consider that the existing wording is appropriate, and the proposed amendment would introduce more ambiguity into the rule. It is expected that most buildings will be fronting the road given the controls in LC-R3 (setbacks).</i>	Refer to the discussion and recommendation in the cover letter. The Hearings Panel is urged to accept the relief sought in the cover letter.
62.12 refer Paras 188 and 192 of the s42A Report	Seeks to amend Rule LC-R12 to exclude sites for existing service stations from car parking locational requirements.	At Paragraph 193 of the s42A Report, the Reporting Planner recommends accepting the Z Energy submission point (recommendation b) by making the following changes to the rule (with the change recommended to address this submission highlighted in red, noting that other changes shown are in response to submissions by others): <i>Activity Status: Permitted</i>	The Hearings Panel is urged to accept that recommendation.

		<p>Where:</p> <p>No <u>The car parking space is not located between the building frontage and road boundaries of the site, <i>except for carparking spaces at Service Stations and Grocery Stores.</i></u></p>	
<p>PART 5 – s42A - INDUSTRY</p>			
<p>62.14 refer Paras 178 and 185 of the s42A Report</p>	<p>Supports (in part) Rule LI – R20 which permits services stations within the Light Industrial Zone and otherwise provides for them as restricted discretionary activities except to delete the matter of discretion pertaining to the capacity of the three waters management. Three waters capacity is dealt with elsewhere in the Plan and inappropriately included as a matter of discretion for a rule that relates to landscaping for amenity (not infrastructure) purposes.</p>	<p>At para 185 of the s42A Report, the Reporting Planner agrees that three Waters infrastructure is proposed to be managed by a district wide chapter and that services will be sufficiently addressed by the rules and matters of discretion in that chapter. Accordingly, at Paragraph 188 of the s42A Report, the Reporting Planner recommends accepting the Z Energy submission point (recommendation c).</p> <p>Z Energy records that:</p> <p>Commercial Centres Limited lodged a further submission in support of the amendment sought to the matters of discretion for the LI zone (Three Waters).</p> <p>Nga Tai Oro - Public Health Northland lodged a further submission in opposition to the amendment sought, because it <i>“is important that the matters of discretion for non-complying activities within LI zone be consistent: for eg “capacity of three waters networks” is included under LI-R7 to LI-R11”</i>.</p>	<p>The Hearings Panel is urged to accept the recommendation in the s42A Report.</p> <p>Furthermore, Z Energy acknowledges the concern raised in the further submission by Nga Tai Oro - Public Health Northland, and confirms that, in making its decision, the Hearings Panel is urged to remove the matter of discretion entirely (ie: insofar as it applies to L1-R7 to L1-R11). The matter is dealt with elsewhere in the plan and it is inefficient and inappropriate to duplicate regulatory provisions. Z Energy’s</p>

			<p>submission seeks, in respect of each submission point, that any additions, deletions or consequential amendments necessary as a result of the matters raised in the submission are made, and considers that this provides the scope to address the concern raised by Nga Tai Oro - Public Health Northland.</p>
--	--	--	--