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21 October 2024

Ministry of Business, Innovation and Employment
Via email: gasfuelpolicy@mbie.govt.nz

Submission on the Location-specific Jet Fuel Regulations Targeted Consultation

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net zero carbon emissions by 2050.

2. This document constitutes our submission responding to your targeted consultation on potential regulations for a location-specific jet fuel stockholding obligation (**the regulations**), made possible through s58(1)(a)(ii), s58(2)(a) and s63(3)(a) of the Fuel Industry (Improving Fuel Resilience) Amendment Act 2023 (**the Act)**.[1]

3. If implemented, the regulations would create new requirements for obligated fuel importers under the Act (**obliged persons**) to comply with to provide a given level of capacity of jet fuel at or near Auckland Airport (**the airport**).

4. We make recommendations in Appendix One and address the nine consultation topics with answers to your questions in Appendix Two.

Key messages

5. We disagree that regulation is the right response to improving fuel resilience in New Zealand. We have not been presented with clear evidence of a market failure or how government intervention can deliver demonstrably better outcomes than the market.

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1 Fuel Industry (Improving Fuel Resilience) Amendment Bill 257-1 (2023), Government Bill – New Zealand Legislation

6. In the specific case of Auckland Airport, the industry is already well advanced in its planning for additional capacity, which is the surest way of improving resilience (compared with the counting of fuel volumes) and is doing so cooperatively and effectively.

7. We believe that the industry will resolve the issue of its own accord more efficiently than the proposals contained in the consultation paper. It is important that policy makers do not underestimate the importance of complex supply and demand networks when judging the time elapsed since the RAP outage (2017 – 2024) and the causes of this (COVID delays, needs for planning and engineering).

8. Any perception that the industry has been sitting on its hands since the RAP outage is ill-conceived as progress has been steady and now in final stages of engineering. This planning requires the careful balancing of multiple factors such as demand, costs, regulatory uncertainty (which includes two years waiting for the inquiry report while Covid depleted demand for fuel) and of course, the complex cross-industry co-ordination required to pull a plan together. No government intervention could outpace these factors working together as only the market can achieve it.

9. From experience in the oil and gas sector, we caution policy makers from inadvertently heading down a similar regulatory slippery slope with intervention leading to more unnecessary intervention and the associated (often unintended) adverse consequences of this.

Background

Jet fuel disruption at Auckland airport in 2017

10. We commend the substantial amount of quality work by officials and industry over many years since the September 2017 pipeline rupture along the Refinery to Auckland Pipeline (**RAP**). Recovery from this event took approximately 10 days and the outage caused significant disruption.

11. After the RAP outage an inquiry into the Auckland fuel supply disruption was undertaken by the Department of Internal Affairs (**the inquiry**) to assess the resilience and recommend improvements of fuel supply in the Auckland region – including for supplying jet fuel specifically to the airport.

12. The supply chain involved in the inquiry included the Marsden Point refinery (which has since closed), the RAP which ends at Wiri, the Wiri to Auckland Pipeline (**WAP**), and the Joint User Hydrant Installation (**JUHI**) at Auckland Airport.

13. The inquiry reported back to the Minister of Energy and Resources on 19 August 2019. In relation to the airport, it concluded that storage for jet fuel stocks at points along the supply chain was important for resilience 'because it provides

cover against surges in demand and supply interruptions, as well as a level of redundancy in case the infrastructure fails'.[2]

14. The inquiry found a troubling rate of decline in days' cover of jet fuel given the predicted increase in demand that would degrade the airport's fuel resilience over the next 25 years (2019-2044).

15. Recommendation 18 is most pertinent to this consultation:

> ***18. The fuel sector commits to building new infrastructure***
>
> *That the fuel sector make investment decisions without delay in order to enable work to start on the building of new infrastructure that takes into account the resilience-enhancing measures articulated in this report, including:*
>
> - *diversity of supply;*
> - *storage at or near Auckland Airport that provides at least 10 days' cover at 80% of operations, based on the average of the 30 non-contiguous peak days in a calendar year; and*
> - *input capacity into the JUHI that exceeds 110% of peak days' demand.*
>
> *The fuel sector should provide information on progress towards these decisions to all those with an interest (in particular, Auckland Airport, the airlines, and the Government).*

Introduction of the Act and our opposition to the MSO

16. A 'fuel resilience policy package' resulted from the inquiry and a Bill was prepared.[3]

17. In June 2023, we opposed the Fuel Industry (Improving Fuel Resilience) Amendment Bill (**the Bill**) at Select Committee, asserting that New Zealand did not have a proven fuel security problem beyond what the fuel industry can already respond to effectively; and that a Minimum Stockholding Obligation (MSO) would impose unnecessary costs and introduce investment uncertainties.

18. We also recommended several ways to improve the Bill and were pleased that some of our suggested improvements were taken forward into the Act. Our previous submissions are available here (June 2023) and here (January 2024).

19. The Act introduces an MSO for diesel, petrol and jet fuel, coming into effect on 1 January 2025, with the objective of improving fuel resilience while 'avoiding potential adverse impacts on compliance costs and market competition that

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2 Auckland Fuel Supply Disruption Inquiry: Auckland Fuel Line - Final Report - Part E - dia.govt.nz

3 Fuel Resilience Policy Package — Minute of Decision (mbie.govt.nz) 19 October 2022.

would result from requiring fuel companies to hold significantly more stocks than usual'.[4]

20. Despite the Act not yet being in force, the signals to investors contained in it provide little evidence of the likelihood of its success in achieving this objective.

21. It is only fair to ask a new Cabinet to make decisions on further regulating an industry if they have the background to the issue at hand, and at least a flavour of the previous commentary on it. As such, we request that our general comments about the MSO are presented in any Cabinet briefings on this topic and related materials.

The risk of government failure

22. Before getting into the substance of the submission and the issue specifically being addressed, it is worthwhile briefly canvassing the concept of government failure in the context of market interventions by government in managing the Crown minerals estate.

23. Alongside market failure, policy makers must consider the risk of policy failure, also known as government failure in the language of public administration.[5] Extreme care must be exercised when considering regulation, specifically, the weaknesses of political and bureaucratic institutions must be recognised and carefully considered. Too often the costs of government regulations are assessed simply in terms of direct administrative and compliance costs, but this is far too narrow. In addition to considering direct costs, transaction costs and opportunity costs of resources spent on compliance, it is crucial to consider the risks of government failure, which can occur because of:

    a *political failure*: legislation responds to interest groups at the expense of the general public;

    b *bureaucratic failure*: government agencies tend to advance their own interests (e.g., expanding budgets and influence) rather than addressing the original problem that warranted intervention in the first place;

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4 Briefing from Ministry of Business, Innovation and Employment to Hon Dr Megan Woods, Minister of Energy and Resources, "Fuel Resilience Policy Package" 10 November 2023, https://www.mbie.govt.nz/dmsdocument/25592-fuel-resilience-policy-package-proactiverelease-pdf page 4.

5 Note that our use of the term government failure is not intended to convey a political judgement nor is it necessarily pejorative. We use the term in its traditional public economics and public administration sense whereby government policy can lead to a misallocation of resources, or in other words that the government regulatory intervention proposed creates an economic inefficiency, where the inefficiency would not have existed otherwise.

c *judicial failure*: slow, costly and uncertain legal processes can arise from new regulations;

d *regulatory capture*: regulatory agencies can end up captured by stakeholders in the regulated industry; and

e *regulatory creep*: where additional costly regulations are needed to manage unintended consequences of the original policy.

24. The consultation assumes that additional policies are needed and appropriate without recognising and engaging with the risks of government failure which could compromise its own preferred path of regulation.

25. If there are market failures in relation to fuel storage obligations (see below for our arguments that there are not), it must be demonstrated that these are residual and material following the primary intervention focussed on externalities (i.e., the MSO). The problem definition must be clearly articulated and then the marginal costs and benefits of intervention must be clearly demonstrated.

26. Even if there are instances where further measures are justified, this is not carte blanche justification for interventions across the economy – each must be clearly justified on its merits with a high degree of confidence that net public benefits will arise. In particular, it must be demonstrated that the net benefits of government intervention are greater than any cost incurred by not intervening (in other words the cure not being worse than the illness). This has also not been demonstrated. In other words, we believe that this intervention will result in a net-public cost.

Plans for providing additional jet fuel at or near Auckland Airport

27. We agree that the airport has distinctive supply chain risks, not least because Auckland is a critical transport connection (meaning it is nationally important) and demand for jet fuel is widely accepted to increase (meaning current supply chain infrastructure is insufficient and new storage will be needed).[6] Tank conversion from petrol or diesel into jet remains a practical and commercial opportunity but must be done at a pace that reflects the risk. The wider Auckland supply chain is also important and the 2017 RAP event should not divert attention from the infrastructure needed beyond the airport.

28. Bringing new capacity online for jet at the airport is unanimously accepted (by experts, industry and officials) as necessary but has not been as straightforward as hoped. The global pandemic severely altered the demand for jet fuel and it

[6] See Inquiry section 17: *There is no permanent, second supply chain for jet fuel to Auckland Airport,* Auckland Fuel Line - Final Report - Part E - dia.govt.nz.

took several years to recover to a level of predictability. This halted plans for increasing capacity by the Joint Venture between Mobil, bp and Z Energy (**the JV**).

29. Plans have since advanced but have not progressed as rapidly as hoped mainly due to the uncertainty around demand during and in the years immediately following the global pandemic (levels are only just beginning to return to 2019 demand in 2024).

30. The proposed regulations simply introduce additional risks to progress. Most importantly they introduce uncertainty which could result in further delays and could disincentivise investment from third parties. The regulations would require JV parties to increase storage capacity beyond what is commercial and slightly earlier than what is feasible. Therefore the costs will increase and will need to be managed where possible and met by consumers where not.

31. We continue to believe that fuel companies are best placed (with contingency management) to solve jet fuel supply problems without regulatory interference.

We oppose introducing location-specific regulations

32. We agree with the findings of the inquiry that the fuel supply system for Auckland needs strengthening and think there was a missed opportunity to target the intervention at the airport rather than a national MSO.

33. The potential regulations at Auckland Airport are aimed at addressing the risk of another RAP rupture, which is low likelihood. However, the focus on storage capacity rather than on counting fuel molecules (as the MSO does) means that it is a more targeted intervention with fewer external interactions.

34. Fuel 'resilience' is primarily fuel infrastructure paired with a complex demand and supply system relying on constant flows of information and networks that respond in real time to actual market dynamics, whereas the MSO is merely an accounting system which is less likely to shift the dial materially to increase resilience. Increasing storage will materially increase resilience.

35. However, resilience is supply above what is needed to meet demand. It comes at a cost. We do not support the potential location-specific regulations for these specific reasons:

    a regulation will introduce uncertainty to the investment and planning already underway and delay additional capacity to supply the airport;

    b there is no point in regulating if obliged persons are already committed to providing additional capacity by late 2026 that sufficiently covers 10 days of operations at 80%, which meets the minimum level of regulation proposed in this consultation;

c any interactions with the nation-wide MSO for jet fuel under the Act could result in confusion and uncertainty, which will likely result in further delays;

d the focus is too narrowly on bookkeeping and compliance to meet the MSO, resulting in costs that the market would not itself tolerate; and

e despite known lead times of three-to-five years for projects of this nature, no leeway is being offered for the years of jet fuel demand destruction from Covid between 2020-2022 and uncertain demand trajectory from 2022-2024, which produced substantial investment uncertainty and delays in making new capacity available.

Other points to consider about the MSO

36. Proponents of the MSO argued that New Zealand is at greater risk of supply shocks since the Marsden Point refinery closed in 2021.[7] We have consistently argued this risk is low, and that our resilience has improved because we have better systemic supply diversity. New Zealand previously had a single point of failure on one refinery. However, we now have the option to source product from multiple locations, and are no longer reliant on one refinery for the majority of New Zealand's fuel.

37. We have a national MSO target that was set without defining the risk it is trying to address, with the potential of additional costs to the economy to address what we consider to be a low risk problem.

38. The MSO is a blunt instrument and is unlikely to materially strengthen fuel resilience for three key reasons:

a fuel suppliers operate on a commercial basis to meet demand based on consumption and forecasting;

b the compliance obligations incentivise shifting and trading of fuel stocks between obliged persons and between locations to meet individual MSO and reporting requirements; and

c supply diversity (with strong networks and a responsive Fuel Sector Coordinating Entity and National Fuel Emergency Plan) improves resilience and targets actual disruptions without unnecessary costs.

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7 Supply shocks could be of a domestic nature (natural disaster, bad shipments, infrastructure or transport issues such as a pipeline rupture, reductions in market commercial viability for example) or international (escalations of political conflict in the Middle East or Russia and Ukraine, economic downturns, pandemic for example).

Our thoughts on timing

39. The likelihood of significant supply disruption is unknown but likely to be very low. Indeed, the inquiry concluded there was a low likelihood of a similar pipeline disruption repeating, but also concluded that the three fuel companies that own the Wiri terminal, the WAP, and the JUHI (the JV parties) would make timely decisions to invest in need infrastructure and that the lead time to make investment decisions can take many years. This has proven to be true (taking the Covid years into account as redundant).

40. Regulating now will not hasten additional storage capacity but will more likely delay the investment as investors will now reassess the changed regulatory and commercial landscape. In fact, that has already been the case as those working on the JV have needed to redirect their resources to responding to this consultation and third-party investors have been spooked.

41. There has not been an event at Auckland airport since 2017 and that event was a once in 100-year event. The low likelihood of another event should be considered as trade off against the additional costs of regulation.

Appendix One: Recommendations

1. We oppose location-specific jet fuel regulations and they should not proceed.

2. However, despite our advice should Cabinet decide to proceed with intervening, we provide responses to all the consultation questions in the following appendix (Appendix Two) with a focus on improving any potential regulations rather than simply arguing that they should not be imposed.

3. Our recommendations should not be seen to imply that there is a net public benefit from intervening (we do not believe this to be the case) rather we do this to improve potential regulations so that the net-public costs of the interventions and any uncertainty associated with their implementation is minimised, so that additional capacity can be up and running as soon as practicable.

4. We recommend:

    a introducing any regulations after mid-to-late 2025 or as soon as the additional capacity is known to be feasible, noting that regulations would delay current plans for providing additional capacity through the JV;

    b electing for 10 days' cover at 80% of jet fuel storage at or near Auckland Airport;

    c accepting non storage options to increase capacity of the Auckland Airport supply chain;

    d obligating fuel importers as individual legal entities, the same as the MSO legislation;

    e officials understand that strict quality and safety requirements will restrict new entrants' participation in the market, so there will be negligible impact from regulating them either in or out;

    f not adding any new fuel grades to the obligation;

    g counting stocks at or near Auckland Airport as per the inquiry, excluding the WAP as it requires jet fuel at Wiri for jet fuel to be in the pipeline (the WAP is a jet only pipeline so it is logical to exclude it);

    h refer to industry advice on the formula for translating minimum days' cover to volume, noting that the most appropriate basis is using the average of the 30 contiguous peak days, which aligns with MSO reporting; and

    i any decisions to regulate beyond what is commercial must be subject to cost benefit analysis and proper process.

Appendix Two: Responses to consultation questions

#	Topic	Description
1	**Implementation period**	Commence in July 2026 to align with the timeframe provided by the fuel companies for additional storage to be delivered at Wiri according to current plans.
• **Is this timeline achievable? If it is not, what do you suggest and why?** The earliest feasible option is end of 2026. An alternative could be two years after the regulations are passed *if not before*, which in practice could give until early 2027 and would reduce investment uncertainty.		
2	**Persons to which the obligation applies**	We are considering the following options: • Persons with the right to draw fuel from the JUHI. This is currently bp, Mobil and Z Energy, in a joint venture agreement. • Joint ventures at Wiri/JUHI as one obliged entity. • bp, Mobil and Z Energy as individual fuel companies.
• **Do you have views on who the obliged persons should be?** Obliged persons should be those with legal access to draw fuel from the JUHI, this does not need to be as one obliged entity – but those parties should be able to organise themselves to meet the obligation. In practice this means the fuel companies Mobil, bp and Z Energy. • **What should we be aware of when deciding where to place the obligation - i.**e. **what are the practical implications of each option?** Legal entities must be incorporated in their own right to meet the definition of obliged person in the MSO regs.		
3	**Fuel on which the obligation is based**	• Jet fuel (that meets ASTM D1655 and ASTM D7566).
• **Should the regulations cover other fuels?** Other fuels to cover would include new fuels such as SAF but these should be technically identical to A1 jet fuel so it should be up to the standards to ensure new fuels are enabled and automatically included in the obligation simply because they meet the standards.		

#	Topic	Description
4	**Location where stock is counted**	We are considering the following options: • Wiri and the JUHI (including additional or replacement JUHI facilities). • Wiri, the WAP and the JUHI (including additional or replacement JUHI facilities). Jet fuel in the Ruakaka to Auckland Pipeline would not be counted.

- **Are we correct to allow fuel beyond Wiri to be counted towards meeting the obligation?**

Yes, fuel in the JUHI should be counted as well as at Wiri.

- **What would be the implications of including the WAP?**

The WAP cannot be included because it is a single grade pipeline. It needs jet fuel at Wiri to be there to pump through the pipeline.

- **If we specify these areas in regulations, would we limit future development that might occur in other locations near the airport?**

We do not think so. These regulations are likely to evolve over time and can always be amended. However, for simplicity, the regulations could say 'near the airport' which could probably include anything downstream of the RAP in future.

#	Topic	Description
5	**Number of days' cover**	We are considering the following options: • 10 days cover at 80% peak days' demand (Inquiry's recommendation) • 12 days cover at 80% peak days' demand (in the 2017 jet fuel supply disruption caused by the rupture of the RAP, the fuel outage lasted 12 days, including 10 days to repair and two days to recommission the pipeline).

- **Would 10 days or 12 days be a more appropriate level of cover for the locations identified above?**

10 days would be more appropriate.

- **What would be the additional cost for the higher cover of 12 days?**

Not quantifiable, but would result in significant additional costs, delays and could undermine the objective of improving fuel resilience while 'avoiding potential adverse impacts on compliance costs and market competition.

- **Would it be feasible to introduce a phased approach of 10 days requirement initially with a 12 days' cover requirement introduced at a later date?**

#	Topic	Description
It could be feasible at the expense of the objective, stated above. • **How long would it take to achieve a 12 days' cover?** Considerably longer than late 2026. • **Are there any other days' cover we should consider and why?** No change to status quo – in other words, what is otherwise covered by the MSO in the Act without regulation for location-specific capacity at Auckland Airport.		
6	**Formula for translating minimum days' cover to volume**	We are considering the following options: • Peak days calculated as the average of the 30 non-contiguous peak days in a calendar year, based on drawings from the JUHI (Inquiry's recommendation). • Peak day is calculated as the daily average demand for jet fuel, based on drawings from the JUHI, across the peak month of a calendar year. • As above but there would be two peak months – one for summer and winter months.
• **Since demand varies throughout the year, should we allow the minimum days' cover to also vary? Or do we set the level at peak demand and require that level be maintained throughout the year?** We think using the average of the 30 *contiguous* peak days, which aligns with MSO reporting, is the most appropriate option. This reflects Auckland's jet fuel supply chain demand. This is largely dictated by the peak summer demand period. It makes sense to use the storage capacity needed at the peak month. • **What are the compliance costs given the calculation methodology is different to that in the MSO?** There would not be unnecessary compliance costs if the calculation methodology aligned with the MSO, as above.		
7	**Information disclosure requirements**	We are considering the following requirements in addition to what is required by the MSO: • Data for WAP: Data from WAP is currently not covered in the disclosure requirements under the MSO. These regulations would require disclosure of data on the volume of fuel in the WAP.
• **Are there additional compliance costs for reporting on the information disclosure requirements?** We are unsure what value that data would provide if the WAP is excluded from the obligation.		

#	Topic	Description

The MSO imposes unnecessary costs on fuel users that can be avoided by achieving its objectives by more effective means. Costs are associated with administration, compliance, building new fuel storage (likely to become stranded assets in a declining petrol and diesel market, not so for jet fuel), and transport infrastructure beyond what is commercially justifiable.

We strongly advise caution against unnecessary information disclosures, especially given the fuel industry is already providing top quality data.

8	**Open access arrangement**	Open access refers to access arrangements for infrastructure where suppliers have equal rights to access the infrastructure through a fee-based, non-discriminatory pricing agreement with the owners or operators of the infrastructure. The Inquiry stated that an open access arrangement would not guarantee resilience but may enhance resilience by removing barriers to new entrants and diversifying the supply chain.

- **Would opening access to the jet fuel infrastructure improve jet fuel resilience?**

We think it would be negligible. The strict safety and quality requirements would set a high bar for a new entrant to access the infrastructure.

- **What would the advantages and disadvantages be of providing for an open access arrangement?**

Again, negligible. In principle it should be supported and as there are practical barriers only, we see no need to restrict new entrants through the regulations. We think it would be best to draft them with the open access available **but** communicating in the Cabinet paper that the effect on fuel resilience will be negligible.

9	**Anything else**	Are there any additional factors that should be considered for the proposed regulations?

- **Do you agree that doing nothing would harm New Zealand's overall fuel resilience?**

We do not agree. Doing nothing means not regulating. We support commercially led increases in jet storage at the airport, which we are seeing through the plans of the JV.

Additional storage (capacity) at the airport is important in relation to these regulations, which have a narrow application, but supply diversity and New Zealand's oil stock ticketing arrangements with the IEA are the best systemic defences against supply disruptions.

According to advice from officials and independent experts, and the fuel industry themselves, the closure of Marsden Point refinery has not materially affected

#	Topic	Description
New Zealand's fuel resilience. If anything, the shift to an import-only model has increased resilience to domestic disruption scenarios because it has avoided the single point of failure risk. We can now accept (and order more) shipments of refined fuels that are ready for use and can be redirected to ports where needed. • **Do you believe that this regulatory mechanism would be appropriate and effective?** As above we do not support regulation but do see additional jet storage at the airport as important, and support storage increases in line with jet demand increases over time and on a commercial basis. • **What potential challenges do you foresee in implementing the proposed regulations?** Challenges will largely fall on the administrative side and in defining the role of the regulator (MBIE). Compliance costs should be kept to a minimum. • **Are there any other issues that we have not considered?** Weather events or natural disasters pose the most significant risk for domestic disruptions – raising the age-old questions across all areas of the economy about what level of risk we are prepared to accept and balancing that with the willingness to pay and where that burden should fall.		