Commerce Commission Retail Fuel Market Study

BP New Zealand– submissions on the August 2019 Draft Report

1. Introduction and Executive summary

Introduction

1.1 BP New Zealand (**BPNZ**) responds below to the Commission's emerging thinking on the ongoing retail fuel market study as set out in the Commission's "Draft report", published on 20 August 2019 (the **Draft Report**).

1.2 At the outset, BPNZ records its concerns about the time provided to respond to the Draft Report. The Commission has been reviewing the industry for eight months. The Draft Report is over 400 pages long, traverses an enormous number of issues, and is the first time the Commission has set out its thinking on the retail fuel markets in any detail during the process. The Draft Report reaches various conclusions (many of which BPNZ does not agree with) and posits certain options as potential 'fixes' for the issues it says may exist. To seek to explore options to address supposed problems that have not been properly formulated and without any consideration of the risks or unintended consequences of those options, could run counter to the intentions of the study.

1.3 Third parties, including those directly affected, have been given a mere three and a half weeks to digest the 400+ page report, assemble evidence to rebut many of the findings which they disagree with, and draft their responses. This is insufficient.

1.4 Nevertheless, in the time available, this document sets out BPNZ's response to the Draft Report. It is supported by evidence. BPNZ's expert advisor, Charles River Associates (**CRA**), has also prepared a report addressing certain matters set out in the attachments to the report, particularly in relation to the measuring of profitability in Attachment D and the econometric analysis of prices in Attachment F.

1.5 Due to the size of the Draft Report and limited timeframe for written submissions, BPNZ has not responded directly to each preliminary finding. To the extent that BPNZ does not directly address certain draft findings or evidence, this is not an acknowledgement that BPNZ agrees with those findings.

1.6 This response and all associated documents are highly commercially sensitive. In particular, the documents include detailed financial, commercial and strategy information that would not be available publicly. Accordingly, BPNZ requests that all material is kept in the strictest confidence by the Commission and that the Commission informs BPNZ of any requests for this information from any third party and gives it (and any contractual counterparties) the opportunity to submit on the request.

Executive summary

1.7 BPNZ considers that retail fuel markets in New Zealand are workably competitive and serve consumers well. Fuel retailers have invested substantial sums in their businesses to deliver the best overall product to customers, while maximising efficiency through the supply chain. Substantial new entry at the terminal level has occurred via Timaru Oil Services Limited (**TOSL**). At the retail level, independent retailers are rapidly building new sites, increasingly on main streets. These investments would not be occurring if:

(a) TOSL did not believe it could attract resellers; or

(b) if resellers did not believe they could secure competitive access to wholesale fuel on an ongoing basis, via incumbent suppliers or via TOSL.

1.8 No amount of theory can undermine the fact that commercial firms are making these investments and expanding, which is precisely what you would expect in a workably competitive market.

1.9 In BPNZ's view, the contrary findings in the Draft Report are based on material factual inaccuracies and conclusions that cannot be supported by the facts as presented. In particular, the factual matrix and reasoning relating to the operation of the supply chain, the impact of entry and expansion in retail markets and profitability have fundamental flaws.

1.10 These errors of fact and reasoning mean that the Commission's conclusions in relation to the competitiveness of retail fuel markets in New Zealand are not supported. BPNZ requests that the Commission revisit its conclusions in light of these concerns.

1.11 BPNZ's primary concerns in relation to the Draft Report follow.

(a) **The international comparisons of petrol pricing referred to in the Draft Report do not provide an accurate comparison as they do not account for the price of 91 octane petrol which forms the bulk of petrol purchased by consumers.** Also, they do not account for the specific New Zealand specifications (which add to costs) and the distance of the New Zealand market from major refineries. BPNZ has previously raised doubts about the veracity of the MBIE and international comparison data,[1] although these do not appear to have been addressed in the Draft Report. Further, the international comparison is a snapshot and does not reflect that prices in each country will reflect the point in the investment cycle that each country is at, which will differ country by country. (Ref: Draft Report at X6)

(b) **Fuel retailers have not made "excess profits" over time. While profits are higher at some points in time than others, the fuel market has a long business cycle based on investments in long lived assets**. This long cycle can be seen for New Zealand in Figure 2.4 of the Draft Report, which shows that margins today are similar to margins in the late 1990s, which led to significant entry and lower margins in the following years until margins became unsustainable. Higher margins attract new entry which is exactly what happened in the late 1990s and is exactly what the market is exhibiting today. The measures of future profitability used by the Commission in the Draft Report do not accurately describe the competitive pressures that retail fuel suppliers are likely to face over the next few years. It is simply illogical to conclude that profit margins will remain the same or increase when expansion in retail capacity continues to substantially outpace the growth in demand for retail fuel (Ref: Draft Report at X10). The Draft Report's profitability analysis is truncated so that it covers only one part of the cycle, and the Draft Report's finding of "persistent" excess returns that "indicate there are impediments to effective competition" (paragraph 3.67) is based on that truncated analysis.

(c) **The Commission's views on expectations of future profitability are not grounded in fact.** Firms commonly set high internal hurdle rates, frequently well above their WACC. As the enclosed report from CRA (the **CRA Report**) explains, it is common for:

(i) firms in competitive industries to set hurdle rates for new investments of 15% or more and well in excess of their WACC;

(ii) IRRs on approved investment proposals to consequently be at that level or higher; and

(iii) payback periods to be as short as three years.

[1] In BPNZ's response to the Commission's preliminary issues paper dated 31 January.

As CRA describes, this phenomenon is widely reported across industries and therefore cannot be interpreted in the retail fuel context as evidence of expectations of excessive returns. Actual market evidence, including Z's recent earnings downgrade, further contradicts the Commission's preliminary findings in this regard.

(d) **The substantial (and ongoing) growth of independent retail chains, and therefore the growth of overall retail capacity in a flat to declining market, is the strongest possible indicator of strong competition at both the wholesale and retail levels.** Independent retailers clearly have access to a competitive wholesale market that is allowing their expansion and they are expanding in a profitable way by developing new sites and offers. These consist of both full service and lower cost "no frills" offers.

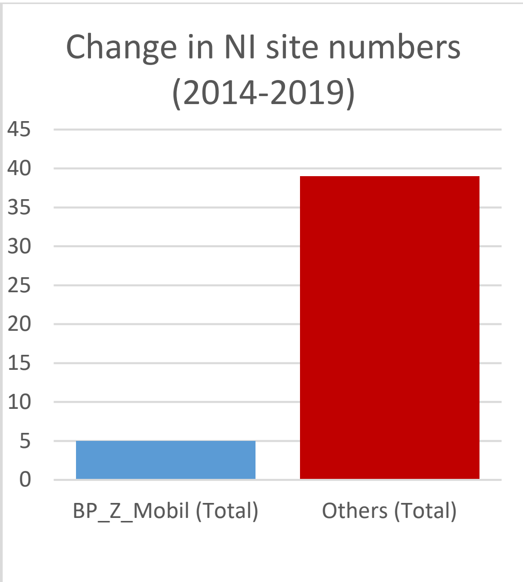
Put simply, the growth of independents in both the North Island and the South Island does not at all sit comfortably with the notion that the wholesale market is broken. These resellers have 'accessed' the major's infrastructure, by way of bilateral contracts as you would expect in a workably competitive market and also, in the case of Gull, by establishing its own terminal [redacted] If the wholesale market was broken, or the majors enjoyed a structural advantage which impacted workable competition, we would not expect to have seen in the last five years:

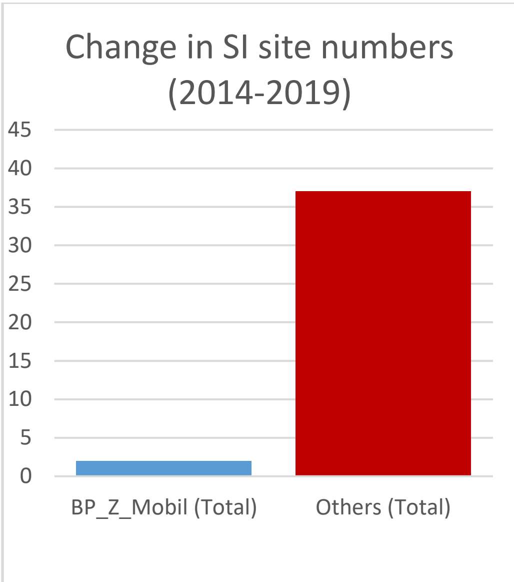
(i) Allied opening 16 new South Island sites and 13 new North Island sites;

(ii) NPD opening 21 new South Island sites;

(iii) Gull opening 12 new North Island sites (with South Island entry announced); and

(iv) Waitomo opening 14 new North Island sites and announcing an intention to expand into the South Island.





This is a substantial amount of new entry and site capacity for the New Zealand market. Further, the entry of TOSL is itself inconsistent with the fact that new importers face barriers to entry.

(e) Other indicators of effective competition are:

(i) the increasing choice available to consumers;

(ii) cost pass-through rates appear to be close to one, demonstrating that competition is effective in delivering the benefits of importer cost reductions through to consumers; and

(iii) beyond new site investment, additional broader investment by the majors and independents in both retail experience for consumers and upstream assets to ensure ongoing security of supply.

BPNZ submits that the market is in fact delivering better long-term outcomes for consumers today than ten years ago, when margins were unsustainably low and retailers were seeking to (and did) exit rather than invest.

(f) **To BPNZ's knowledge, no fuel supplier has ever sought access to Coastal Oil Logistics Limited (COLL) or, at least in the last decade, to Refining New Zealand (RNZ). Indeed, the expansion evident in the market reveals independents do not require access to shared infrastructure in order to effectively compete.** The operation of certain shared infrastructure between the majors (much of the location of which is for historical reasons rather than current 'best practice') is aimed at ensuring that supply and transport of fuel products in New Zealand from RNZ is as efficient as possible given the fixed assets in place (such as RNZ and terminals). However, far from needing access to this shared infrastructure to compete, new entrants can readily establish an equally or more efficient supply chain. This is clear from Gull's strong competitive position using one terminal and imported fuel and the entry of TOSL. Gull has also supplemented its own infrastructure [redacted] as you would expect in a workably competitive market. (Ref: Draft Report at X12.10.)

(g) **The supply chain has sufficient capacity.** A conclusion to the contrary ignores the fact trucking to an adjacent location (bearing in mind catchments overlap) is a much lower cost option than building excess tankage to deal with peaks in demand. Further, the very fact that Gull has successfully developed its business by establishing a single import terminal at Mt Maunganui and trucking fuel around much of the North Island belies this concept. The current location of the terminals used by the majors is closely linked to the regulatory regime that existed pre-1988, which restricted the trucking of product thus requiring fuel companies to hold excess capacity. BPNZ considers that its current levels of terminal capacity and use of trucking is efficient and incentives exist to invest in more capacity for each where required. BPNZ has provided evidence of such investment in tankage. (Ref: Draft Report at X96 to X98).

(h) **The characterisation of fuel refined at Marsden Point as cheaper than imported refined product is incorrect.** The Commission does not appear to have provided any substantial evidence for this assertion. Rather, RNZ pricing is set at a level that effectively makes its users indifferent between imported fuel and New Zealand refined fuel. Any less and it would not be maximising value for its shareholders any more and RNZ users would switch to imports. Furthermore, all of the majors import and therefore the import price is the marginal cost, i.e. the majors have no marginal cost advantage (even if it were accepted that RNZ's cost is lower overall).

(i) **Refinery allocation has no impact on competition.** The costs of obtaining refined fuel for the majors from RNZ, compared to the majors or independents importing, is unlikely to be materially different. Accordingly, the result is that refinery allocation has no impact on competition – any upstream supplier can very easily increase its level of imports to increase its overall supply to cover new customer volumes. BPNZ can, and does, do this very frequently. Again, as noted, no firm has sought access to RNZ in recent history.

(j) **Vertical agreements with dealers and distributors are efficiency enhancing, by ensuring certainty on both sides.** Dealer and distributor contracts do come up for renewal and are hard fought when they do. The runaway success of independent retailers such as Waitomo, Allied, GAS and NPD, acknowledged in the Draft Report, is the clearest evidence of an effective and competitive wholesale market. These firms are deploying real capital to expand, which can only reflect their confidence that they can access competitively priced wholesale fuel.

Indeed, as the Commission notes:

> "It is our understanding that, historically, **dealers or distributors were generally unconcerned** with both pricing discretion and the lack of transparency regarding wholesale prices…
> This was because **dealers and distributors considered that their interests were sufficiently aligned** with the majors, so that the **majors would be incentivised to set wholesale prices at levels that would enable dealers and distributors to compete** in downstream markets.
>
> We understand that this **perception was often backed up by the many years of experience** that various distributors had dealing with specific majors and the fact that dealers and distributors were, and remain, an important route to market for majors. (Emphasis added.)

(Ref: Draft Report at X12.2, and X99 to X109).

(k) **The characterisation of competition between the majors and Gull as being weak is inaccurate**. The majors compete strongly with each other on a range of price and non-price factors. In addition, they face very strong price competition from Gull, along with a broad set of independent retailers (whose networks are growing by the month). Independent retailers and Gull sell half of all retail fuel sold in New Zealand. (Ref: Draft Report at X13 to X14)

(l) **The Commission's view that loyalty and discounting programmes have replaced competition on pump prices is incorrect**. Loyalty and discounting programmes are not unique to the retail fuel sector, but rather are part of the retail offer across a very wide range of sectors. Price board competition remains strong and, if anything, has increased with the expansion of low cost retailers such as Gull, Waitomo, Allied and NPD. This is reflected in the number of price board changes made at BPNZ sites, which has increased substantially in the last 3 years. Loyalty and discount programmes bring material benefits to consumers. (Ref: Draft Report at X59 to X66).

(m) **BPNZ considers that its premium petrol products (BPNZ Premium 95 and BPNZ Ultimate 98) represent excellent value for money and are competitively priced**. Higher octane purchasers do not reflect confused consumers – many car manufacturers specify higher octane for their car engines. Further, the Commission has substantially overstated the margins on 95 and 98 octane fuel. (Ref: Draft Report at X73 to X77)

1.12 Overall, BPNZ considers that the facts as presented to the Commission during its process do not support the conclusion in the Draft Report that retail fuel markets in New Zealand are not workably competitive. In addition, the Draft Report does not accurately assess the impact of recent, and continuing, entry and expansion at the terminal and retail level on the degree of competition and competitive outcomes. Furthermore, while many of the Draft Report's recommendations for improvements to competition may be achievable, there is risk of undoing what is a highly efficient supply chain structure, to the ultimate detriment of consumers. Indeed, there does not appear to have been any real assessment of the risk of unintended consequences. BPNZ considers that the case for many of the interventions suggested by the Commission is simply not made out.

2. Chapter 2: Characteristics of the New Zealand retail fuel markets

Introduction

2.1 There are some aspects of the Chapter 2 findings which warrant specific mention.

Margins and pricing

2.2 BPNZ considers that the price board components graphic in Figure 2.2 of the Draft Report is inaccurate. It understates importers' costs, particularly in relation to 95 octane and 98 octane fuels. The graphs do not appear to take into account the costs of product quality adjustments, being in the order of [redacted] Product quality adjustments are direct fees charged to importers by suppliers for fuel that meets New Zealand specifications. New Zealand fuel has various superior attributes including in relation to volatility and low sulphur requirements. Accordingly, the Commission has substantially overstated the importer margins. BPNZ is also unable to reconcile the Commission's analysis on diesel pricing (in particular the tax component).

2.3 The Commission's analysis of profitability in the Draft Report does not properly account for changes in the market over time. In particular, Figure 2.4 of the Draft Report shows the importer margins over a 30 year period. This captures several peaks and troughs over time. However, the Commission's subsequent analysis of importer margins in Chapter 3 and in the Profitability Attachments is truncated to focus only on the most recent part of the cycle (from about 2010 onwards) and draws conclusions about "persistent" excess returns. BPNZ understands that the Commission may have data to analyse at least the 20 year period from 1998 to 2018. Such an analysis would capture periods of the business cycle where there was very low profitability (and which resulted in a substantial reduction in site numbers). BPNZ's concerns about the accuracy of the Commission's profitability analysis are set out in more detail at 3.5 to 3.9 below.

Other matters

2.4 BPNZ also has the following comments on Chapter 2 (several of which are expanded upon further in subsequent sections).

(a) In paragraph 12.2, the Commission notes that car manufacturers "recommend" higher octane ratings for some vehicles. However, in many cases this is not a recommendation but a stipulation by a manufacturer of a minimum requirement for that engine. BPNZ returns to premium fuels in response to Chapter 7 of the Draft Report below.

(b) Paragraph 2.118 of the Draft Report concludes that "domestically refined fuel has been cheaper than imported fuel since January 2013, except on one occasion." BPNZ considers that this statement is inaccurate as RNZ values on an import parity basis. See further detail below at 5.12.

(c) Paragraph 2.119.3 of the Draft Report states that "[g]enerally, imported fuel arrives at three ports in New Zealand: Mount Maunganui (Gull and the majors), Wellington and Christchurch (the majors)." Imports to these ports reflect around 75% of all imports into New Zealand. However, that leaves a substantial (25%) proportion imported into other ports, demonstrating that such imports are viable. Importing to other ports is an option open to new entrants (provided they are willing to invest in terminal capacity) as it is to the majors.

3. Chapter 3: Outcomes in retail fuel markets

Introduction

3.1 BPNZ considers that retail fuel markets are serving consumers well. Consumers have a broad range of retailers from which to choose, with strong competition on price and non-price factors. While BPNZ generally agrees with the Commission's assessment of choice and quality factors as well as its assessment of entry and investment in recent years, it does not agree that the industry is enjoying persistent excess profits. In particular, it considers that the industry is one in which cycles are long and the Commission has focused on only the most recent part of the cycle without recognizing the longer-term trend. Retail margins are already beginning to trend downwards as they did in the late 1990s and early 2000s, as entry occurs and independent retail chains expand. This trend shows no signs of abating given the impending entry of TOSL's upstream business and Gull and Waitomo's retail offers into the South Island, along with the continued expansion of firms such as NPD.

3.2 Indeed just this week, Z announced a substantial profit downgrade, due primarily to the unprecedented levels of discounting and price competition in the retail market, negatively impacting its operational performance for the first five months of FY20. Z states that in July and August 2019 there was a significant increase in competitive intensity resulting in increased promotional activity and unprecedented levels of discounting, both on price boards and through loyalty programmes. As a result of this and low refining margins, Z has revised its EBITDAF earnings guidance for FY20 to between \$390 million to \$430 million down from \$450 million to \$490 million.[2] This resulted in ~\$250 million being wiped off its market capitalisation in one day.

Choices available to consumers and fuel quality

3.3 BPNZ agrees with the Commission that retail fuel markets exhibit a high level of diversity of choice. As set out in BPNZ's previous submissions (e.g. BPNZ's response to the Commission issues paper dated 21 February), BPNZ has invested substantially in the look and feel of its retail outlets, its high quality fuel offer with additivised products (Active Technology) and BPNZ Ultimate 98, its convenience store offerings including market leading coffee and food offerings, and its innovative BPMe app, in order to enhance its customer experience and differentiate BPNZ's offer from others in the market. BPNZ considers that the retail offer to consumers is consistent with a strongly competitive retail fuel sector. Greater differentiation in quality correlates to greater differentiation in price. Higher prices that reflect higher quality should not be viewed suspiciously. (Ref: Draft Report at 3.13)

3.4 Equally, BPNZ agrees that fuel quality – both in terms of the product itself and the reliability of supply – is consistent with a workably competitive market (and indeed is driven by a strongly competitive market). As is set out in more detail in response to the Commission's claims in Chapter 5, BPNZ's supply chain is robust, with dry tanks being a very rare occurrence, while also being highly efficient. (Ref: Draft Report at 3.14 to 3.16)

Profitability

3.5 BPNZ does not agree that the industry has been making persistently high profits. BPNZ considers that the Commission has drawn incorrect conclusions from its analysis of payback times and internal hurdle rates. As BPNZ has previously submitted, the retail fuel market is cyclical and can experience long periods of low margins. Z's profit downgrade referred to at 3.2 above is clear evidence of this.

3.6 When the industry makes higher margins, this spurs entry and expansion. This is precisely what is being experienced currently. Gull and Waitomo's entry in to Wellington and announced entry into the South Island, the swift expansion by independent retailers and TOSL's new terminal in Timaru are all entirely consistent with a well-functioning market where entry and expansion reduces margins to normal, long-term levels. BPNZ considers that the Commission's forward

[2] Z Energy Earnings Update, 12 September 2019, http://nzx-prod-s7fsd7f98s.s3-website-ap-southeast-2.amazonaws.com/attachments/ZEL/340763/307441.pdf.

looking estimates of industry profitability are vastly overestimated given the recent developments that the market has experienced. (Ref: Draft Report at 3.24 to 3.67)

3.7 As noted in the CRA Report, it is common for:

(a) firms in competitive industries to set hurdle rates for new investments of 15% or more and well in excess of their WACC;

(b) IRRs on approved investment proposals to consequently be at that level or higher; and

(c) payback periods to be as short as three years.

3.8 As CRA describes, this phenomenon is widely reported across industries and therefore cannot be interpreted in the retail fuel context as evidence of expectations of excessive returns.

3.9 By way of example, CRA cites a recent Reserve Bank of Australia study which found that hurdle rates of around 15% were common, and that some firms adopt much higher hurdle rates of up to 30%. The authors of the study also report that Australian firms that use payback periods as an investment criteria most commonly require payback within three years, and observe that this is consistent with studies of firm behaviour in the United States and the United Kingdom.

Retail fuel prices

3.10 The Commission notes at 3.72 of the Draft Report that New Zealand consumers pay a relatively high price for fuel, even accounting for the high tax burden in New Zealand. The Commission considers that this is the case for both premium and regular petrol, but the chart at Figure 3.8 shows only premium fuel prices. This figure distorts the true price comparison because, while 95 octane fuel is the predominant fuel in most countries, the predominant fuel type in New Zealand is 91 octane. The Commission in the very next paragraph of the Draft Report notes that premium petrol is sold at a 13 to 15cpl margin above regular petrol, suggesting that Figure 3.8 does not provide an accurate international comparison. The Commission provides no evidence for its view that this analysis applies also to 91 octane fuel and does not appear to have taken into account the product quality adjustment costs that apply to New Zealand fuel (see above at 2.2).

3.11 Further, this international comparison is a snapshot as of first quarter 2019 which is near the top of the local New Zealand cycle while it may well be completely different for other countries. Snapshots from other periods may well show a completely different picture. New Zealand has some of the tightest fuel specifications when compared with other OECD countries. In relation to premium fuels, as set out above in response to Chapter 2, BPNZ considers that the Commission has not properly accounted for the additional costs associated with premium fuels, including the product quality adjustment. (Ref: 3.74 to 3.76 of the Draft Report).

Retail fuel discounts

3.12 BPNZ agrees with the conclusion in the Draft Report (at 3.82 to 3.92) that there has been a trend towards greater fuel discounts for consumers, with more and more consumers taking advantage of these. Offering an attractive loyalty and discounting programme is an important way for fuel retailers to engage with, and reward, their customers. BPNZ sets out further detail on this in its response to Chapter 7.

Regional differences in retail prices

3.13 BPNZ agrees that there are some differences in fuel margins across the country. This can be explained by a range of factors including different taxes (e.g. the Auckland regional fuel tax), differentials in the costs to serve different locations and, in some instances, different levels of competitive intensity.

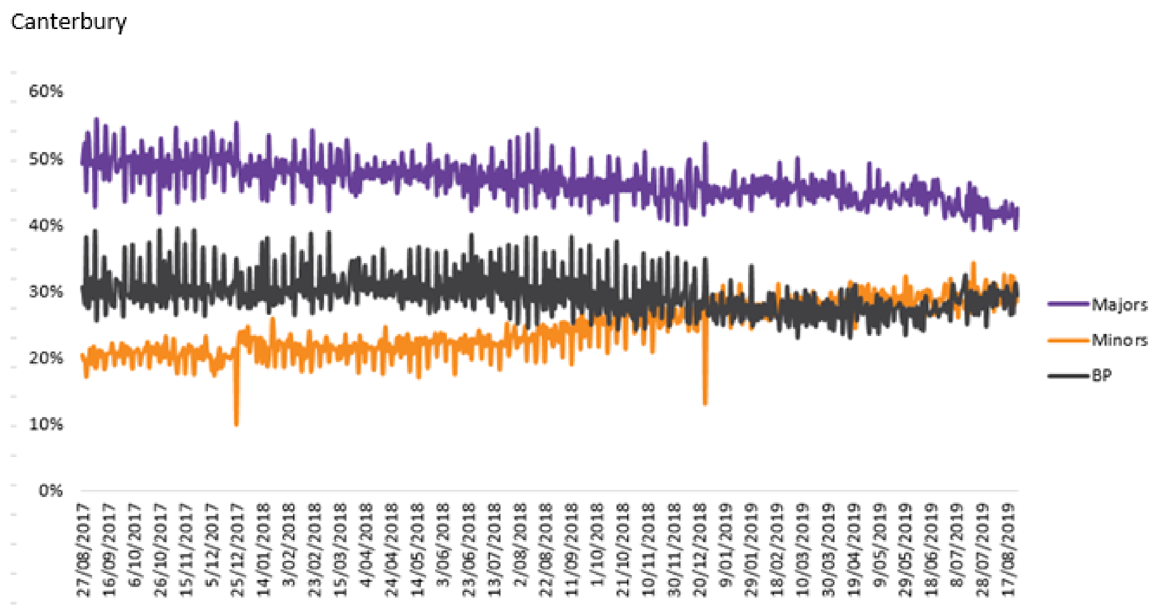
3.14 However, the response of the market to these differences is entirely consistent with outcomes expected in a workably competitive market. Wellington and the South Island, areas that the

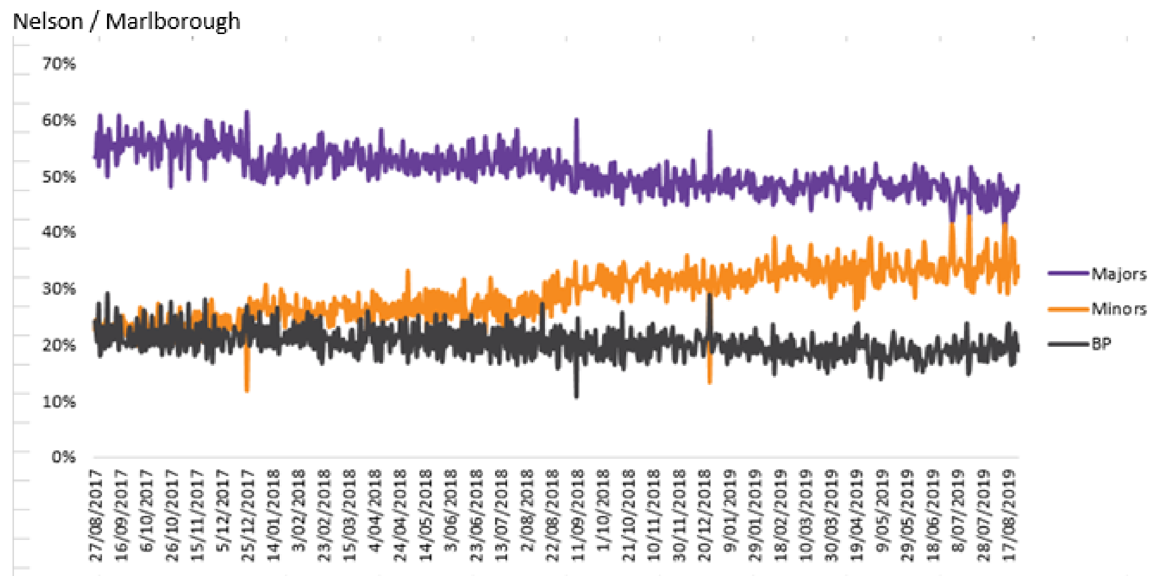
Commission has identified as having relatively higher prices, have both been the target of substantial new (and announced) entry. Both Waitomo and Gull have established sites in Wellington and announced entry into the South Island. NPD has expanded very quickly in the South Island and *now has more sites there than BPNZ*. TOSL's South Island terminal will be operational next year.

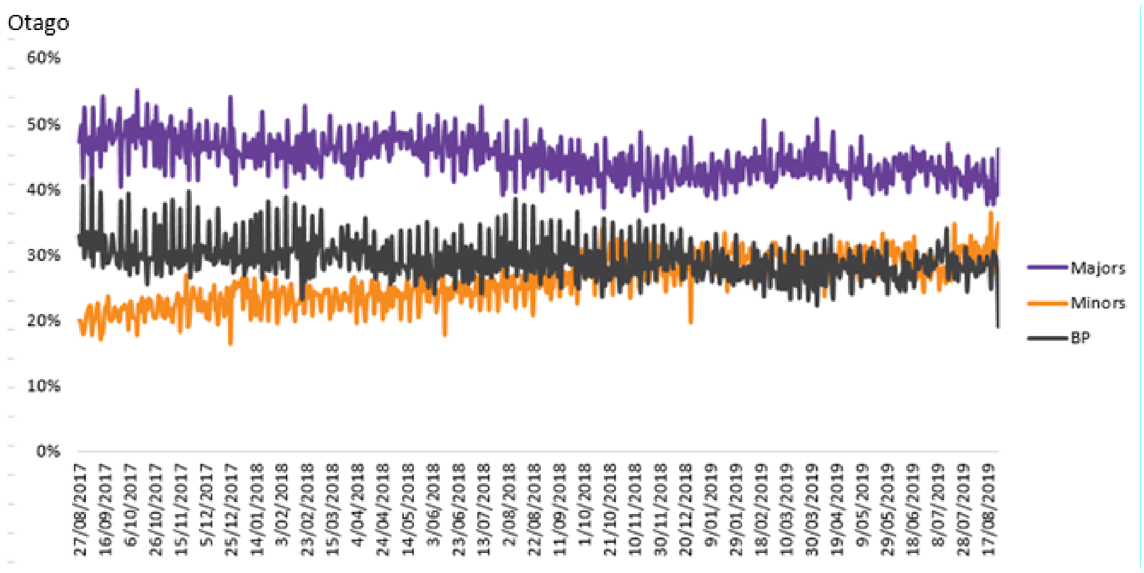
3.15 In paragraph 3.112, the Commission acknowledges this entry and its potential future impact on pricing, noting that the full impact of these market changes may not yet have been felt. BPNZ's experience is that new entry in local areas, whether by low cost unmanned sites or full service outlets, has a substantial impact on competition. This is being felt in local markets including in Wellington and the South Island.

3.16 By way of example, the following charts demonstrate the swift increase in market share gained by independents in the South Island in recent years through expansion of their retail networks and very low prices. These market shares represent "share of wallet" obtained from electronic payment transactions, inclusive of both fuel and shop sales. Accordingly, if anything they understate the share of the independents as these companies will derive a higher proportion of their revenue from fuel sales compared to the majors.

Market share impact of minors in South Island

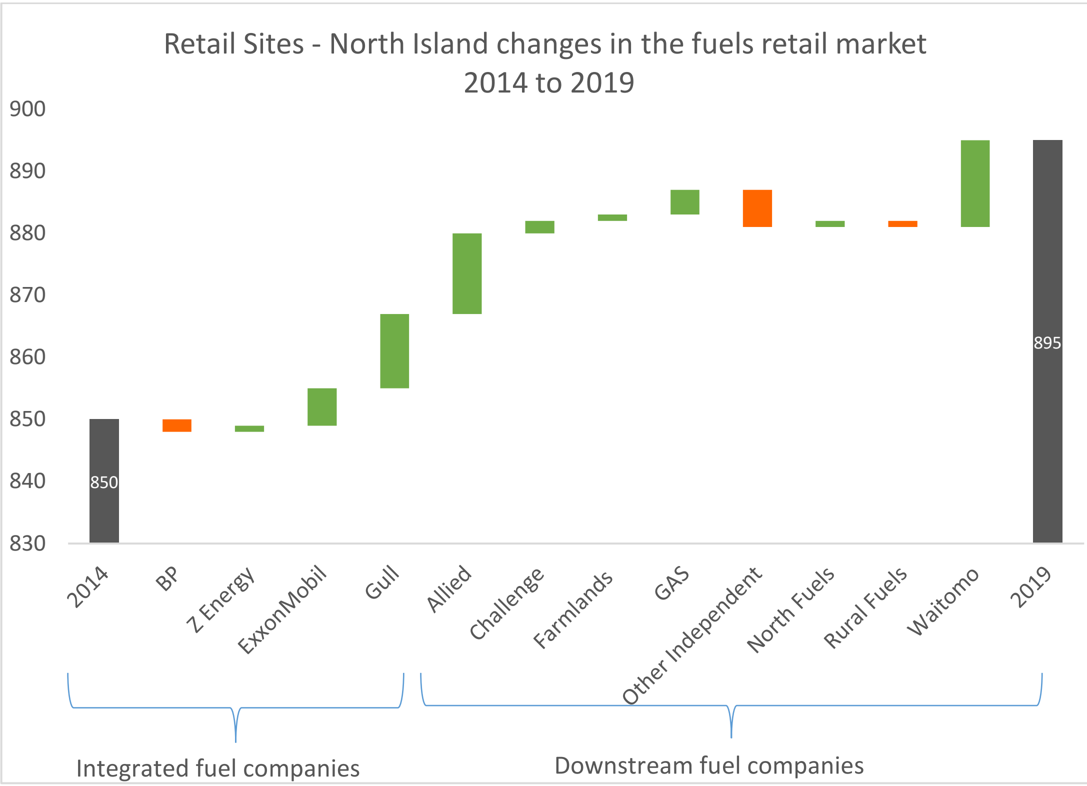


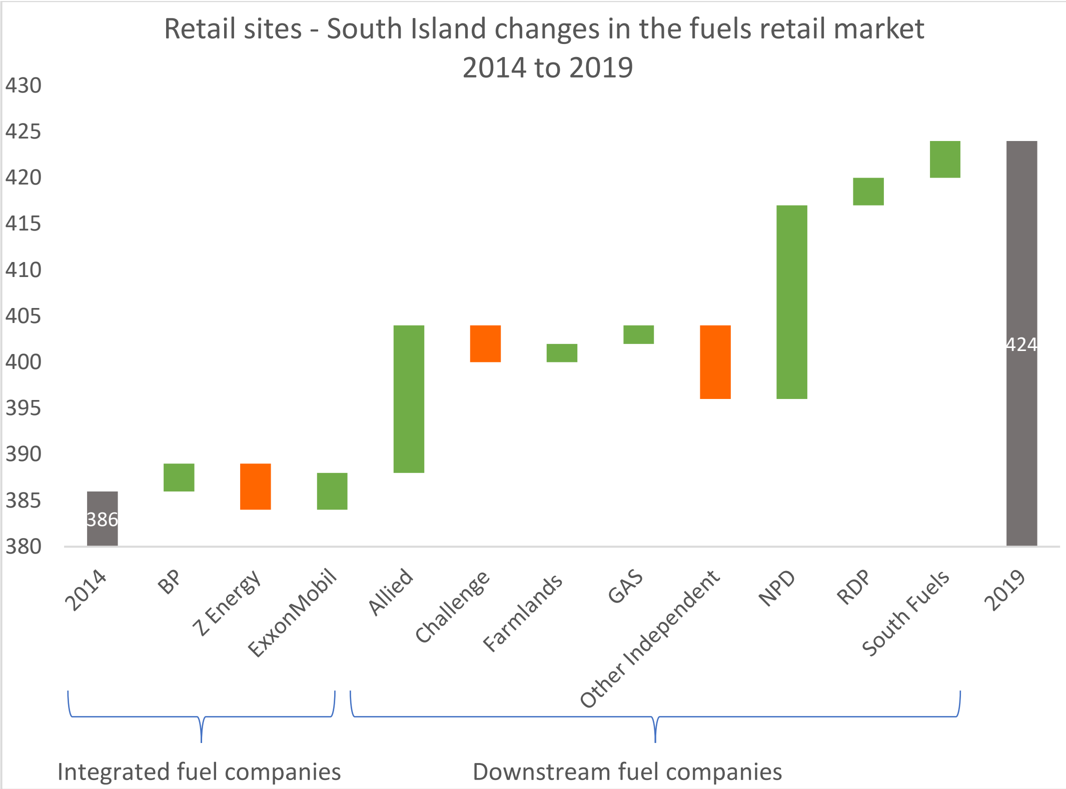




3.17 The charts above illustrate the independents' (including NPD, Allied, Waitomo, GAS and others') market share in three key South Island regions over the past two years to August 2019. The charts show their market share steadily increasing from approximately 20% to approximately 30% (or more) in all regions. This stands in contrast to the steady decrease in BPNZ's market share, and the shares of the majors as a whole, in all regions.

3.18 As set out at 2.11 to 2.13 of BPNZ's 12 July response to the Commission's Pre-meeting Letter, the independents' increases in market share have been accompanied by an increased number of independent retail sites. Allied, Waitomo and NPD in particular have been very active in developing new retail outlets, accounting for the majority of the 38 new sites developed in the South Island and a large proportion of the 45 developed in the North Island. BPNZ includes the below charts previously provided to the Commission by way of illustration:





3.19 However, the expansion of independent retailers in the South Island and Wellington has been a relatively recent phenomenon and the impact of TOSL's entry will not be felt until next year. BPNZ considers that the entry and expansion that has occurred across the country is entirely consistent with a workably competitive market. (Ref: Draft Report at 3.93 to 3.112)

Investment and innovation consistent with a competitive market

3.20 BPNZ agrees with the Commission's views that the retail fuel industry in New Zealand has seen strong levels of investment over recent years. This investment has directly benefitted consumers, including through a better retail experience, but also behind the scenes through ensuring a robust and efficient supply chain. This investment is entirely consistent with a strongly competitive market. (Ref: Draft Report at 3.115 to 3.118)

3.21 The Commission's analysis of local market effects of new entry indicate, consistent with BPNZ's experience, that local entry adversely affects local competitors' volumes and results in reduced prices. There are numerous suppliers actively looking at establishing new sites where they consider it may be profitable to do so, inevitably resulting in a substantial increase in market share transferring to independent retailers. At some point, this entry will cause prices in those areas to decline to such an extent that further entry is no longer attractive. The very fact that this process is occurring apace is a strong indicator that competition is working.

No underinvestment in terminal storage capacity

3.22 BPNZ refutes the claims in the Draft Report that there has been insufficient investment in terminal capacity. The Commission's views appear to be based on:

(a) an assumption that trucking fuel between regions is necessarily inefficient and more expensive than adding terminal capacity; and

(b) an assumption that terminal capacity was previously "sufficient" (rather than excessive) but because fuel demand has outstripped capacity expansion, it is now "insufficient".

3.23 These assumptions are not borne out by the facts. BPNZ considers that terminal storage available to it is optimal by reference to its supply chain and the costs of adding capacity currently vastly outweigh the benefits. This is reflective of how BPNZ optimises it supply chain and not the operation of the Borrow and Loan (**B&L**) system. Indeed, when the business case exists, BP will add storage, e.g. as it has done at Wellington, Dunedin and New Plymouth. Further details of this are set out in its response to Chapter 5. (Ref: Draft Report at 3.136 to 3.144)

4. Chapter 4: Structural and regulatory conditions of entry and expansion

Introduction

4.1 The analysis in Chapter 4 overstates the barriers to new entry, particularly the need to have access to terminals at each port, and significantly understates the impact of actual entry by importers in the form of Gull and now TOSL. This appears primarily to arise from a view that trucking fuel any meaningful distance is inefficient. The Commission has also incorrectly dismissed the ability of importers to import into more than one terminal in the same shipment and has overstated the impact of port depths, which affect all users of a port equally. Indeed, Gull's high levels of profitability, as assessed by the Commission, clearly contradict the Commission's own views that successful entry cannot be achieved through a single terminal and distribution by truck.

4.2 The Commission also appears to overstate the relevance of the B&L system to successful entry. To BPNZ's knowledge, no third party has sought to join the B&L system and it is difficult to see how this would be achievable. Rather, the B&L system has been established to best manage a network of terminals that has been developed largely as a result of the pre-1988 regulatory system and to move product efficiently from RNZ. This system would not be replicated today if the industry were to "start from scratch".

Structural and regulatory conditions of entry

Refining

4.3 BPNZ agrees that the establishment of a new refinery in New Zealand is highly unlikely. As noted by the Commission, RNZ is already a very small scale refinery by global standards, with its daily output falling well below the minimum efficient scale. This gives overseas refineries a much lower unit cost than RNZ. As demonstrated by Gull and TOSL's business models, importing refined fuel into an import terminal is clearly considered a more profitable approach than establishing refining capacity. Their entry also shows that producing refined fuel at RNZ does not create a significant barrier to entry for importers.

4.4 Indeed, as the Commission recognises at paragraph 4.45 of the Draft Report, RNZ must constantly improve its operating margins to remain competitive with overseas refineries. This has resulted in the need for substantial investments into its operations and those of the Marsden Point port to seek efficiencies. BPNZ comments in response to Chapter 8 on the potential risks of unintended consequences for RNZ of changes in other aspects of the supply chain. (Ref: Draft Report at 4.26 to 4.45)

Importing

4.5 BPNZ agrees that entry at the importer level is feasible, as demonstrated by Gull and TOSL.

4.6 In relation to shipment sizes, in general the Draft Report is accurate in that it is generally most efficient to ship the largest possible volume that can feasibly be landed and stop only at one port. However the Draft Report does not acknowledge that no importer in New Zealand currently achieves this theoretically optimal shipping voyage. Importers do not import to a single port for a number of reasons, including available tankage and the combination of grades being imported on each vessel. Indeed, it is not only feasible, but is the normal situation for many New Zealand importers to discharge at more than one port, including ports with smaller draft, because the ship will visit the smaller port after discharging much of its cargo. (Ref: Draft Report at 4.51 to 4.64)

4.7 There is no "transport risk" for new entrants importing which would constrain their ability to compete. Even putting to one side the storage provided for by TOSL, to BPNZ's knowledge Gull has been able to successfully manage any such issues it has had in the 20 years since it entered. [redacted] Indeed this is further evidence of a functioning wholesale market.

4.8 Moreover, an importer has a sailing time of around 20 days (+/- depending on source location). Sailing time for the journey to New Zealand varies only by a few days with sailings overwhelmingly coming from global shipping hubs such as Singapore and Korea. (Ref: Draft Report at 4.74)

4.9 In relation to New Zealand's fuel specifications, contrary to the Commission's findings, these affect the majors' import costs as much as they do independents. Again, the fact of Gull's, Challenge's and now TOSL's entry demonstrates that New Zealand's fuel specifications are not a barrier to new entry. (Ref: Draft Report at 4.65 to 4.74)

4.10 The New Zealand fuel specifications are set by the New Zealand government. BPNZ would be happy to participate in a review of the New Zealand fuel specifications to better align with neighbouring countries' fuel specifications. This could reduce cost of product, create freight economies for all players and increase New Zealand's resilience to fuel supply chain events. However, changes to fuel specifications must take into account New Zealand's diverse climatic conditions and the impact on entities such as RNZ.

Terminal storage

4.11 BPNZ agrees with the Commission that terminals are long lived assets not thoughtlessly invested in, due to their high capital cost. BPNZ agrees because it has had to make these investment decisions over a period of 73 years. For example, BPNZ built a new "greenfield" terminal in Seaview, Lower Hutt only 10 years ago, having assessed all of the factors set out in the Draft Report. BPNZ does not agree that another importer cannot work through the same processes and make the same investment decision – indeed that is precisely what Gull has done in the North Island, and what TOSL has done in the South Island. In addition, [redacted] Again, this is precisely the conduct you would expect to see in a workably competitive market.

4.12 It is worthwhile to note that a new "greenfield" build is generally cheaper than building at an existing site, which is a working dangerous goods facility. It is true that adding a tank to an existing facility can give some economic advantages as a significant cost is the secondary containment (bund) and fire protection systems. However, if the new tankage requires modification of existing bunds or retrospective application of fire protection systems, the unit cost of tankage can far exceed a new build. All in all, a new entrant building at a greenfields site is not disadvantaged versus an existing operation when it comes to the cost of new tankage, and can in fact be materially advantaged. (Ref: Draft Report at 4.79 to 4.85)

4.13 The definition of the "optimal" terminal configuration in 4.87 is not controversial – large enough to take the largest bulk delivery and as close to main demand centres as possible. However, that description does not match most of New Zealand's current terminal operations – especially the need for deep water access. Relevantly:

(a) TOSL have not let this stop them from building in Timaru (a relatively shallow port, not located at a large demand centre);

(b) access to land is not insurmountable albeit in cases it will require commercial negotiation and time to secure it. BPNZ went through this very process 10 years ago in Seaview, working with the land owner to agree commercial terms. It is also worth noting that much of the "optimal" land is owned by local government through their ownership in local port companies; and

(c) existing operators also face constraints from resource consents and development of their surrounds. For instance, the WOSL terminal has had restrictions added to its operation, incurred significant cost and is limited in its ability to grow due to the building of a prison adjacent to the dangerous goods tank farm. (Ref: Draft Report at 4.86 to 4.89)

Market share and terminal throughput rates

4.14 The Commission's analysis in paragraphs 4.90 to 4.99 is deficient in several respects. In particular, it does not specifically consider the option of establishing a large terminal in one location and one or more smaller terminals elsewhere. As set out above, there are virtually no instances in New Zealand where a 30,000 MT load is delivered to a single terminal. Dropping imported product at more than one terminal is a common approach for the majors, and there is no reason that the independents could not operate in an equivalent manner were they to make such investments. (Indeed, BPNZ estimates that dropping off product at the two ports rather than one could add in the region of [redacted] of cost across an entire shipment, demonstrating that shipping costs are not a barrier to such an approach.)

4.15 The Commission's analysis in Table 4.2 quite clearly demonstrates that looking at terminal storage and fuel distribution on a regional basis does not provide any meaningful information. If the Commission's analysis were correct, it would suggest that TOSL's investment case was premised on achieving a 90% share of the Timaru region fuel market. This is clearly not the case – TOSL has stated that it intends to service with trucks the area from Bluff to Kaikoura. Equally, Gull's entry case was not premised on only servicing the Bay of Plenty region.

4.16 Building bigger terminals and trucking longer distances clearly is a feasible business model. This can be coupled with bilateral arrangements at a small number of provincial ports to supplement the network [redacted] Equally, the following examples show the cost competitiveness of trucking:

(a) Mobil still chooses to truck to Taranaki despite BPNZ opening a terminal at New Plymouth;

(b) BPNZ chooses to deliver some Invercargill fuel from Dunedin rather than load from Bluff; and

(c) BPNZ sells 98 octane fuel from Mosgiel to Warkworth, despite only having terminal facilities for 98 octane at Mt Maunganui, Wellington and Lyttelton.

Indeed, if BPNZ were to "start from scratch" in building its network, it would operate from a much smaller number of terminals and make more use of trucking.

4.17 BPNZ returns to this further below during the discussion of port storage capacity [redacted] (Ref: Draft Report at 4.90 to 4.99)

Distributing refined fuel by pipeline, coastal shipping and truck

4.18 BPNZ considers that the access to "primary distribution" as opposed to secondary distribution does not have a material influence on retail fuel prices in New Zealand and does not give rise to barriers to entry or expansion. Again, this appears to reflect a fundamental misunderstanding of the efficiency of transporting fuel by truck. In the North Island, Gull has been highly successful in competing across a large majority of the population centres, including recent entry into Wellington. TOSL has indicated it will supply from Bluff to Kaikoura, while there are numerous examples of the majors using trucks in preference to additional terminals (see above at 4.14). As set out elsewhere, the costs of delivering RNZ product to a terminal via COLL are set at parity to the costs of importing to a terminal. Servicing sites further away from a terminal will naturally have a somewhat higher marginal cost, but investments in terminals need to be looked at by reference to the overall volume and average costs to serve. (Ref: Draft Report at 4.18 to 4.120)

4.19 However, irrespective of the importers, the growth of independent retailers demonstrates that obtaining supply from one of the majors is indeed a viable strategy. For example, NPD is a highly successful distributor and retailer that has grown substantially in recent years and now has more sites than BPNZ in the South Island. NPD originated in Nelson and it has around 20 sites in the Nelson / Marlborough region alone. This is despite the fact that NPD is supplied by Mobil, which owns no tanks in the Nelson / Marlborough area. NPD's success demonstrates the effectiveness of the B&L system, as it currently operates, in fostering wholesale supply. Furthermore, it does not limit itself to "secondary sites", but has many locations with full service and directly proximate to sites operated by BPNZ and other majors. (Ref: Draft Report at 4.18 to 4.120)

Retailing refined fuel from retail sites

4.20 BPNZ considers that the Draft Report has failed to reflect the full significance of the recent entry / expansion by independent retailers, including on main roads. The swift increase in market shares, alongside site numbers, of the independent retailers (as set out at 3.18 to 3.19 above) demonstrates the ease of expansion and the ability to gain share.

4.21 In addition, while some new entry is at "secondary sites", there is also substantial new entry in primary sites, including in very close proximity to the majors' sites (as set out in **Annex 1** which provides numerous examples of independents building full service sites and sites in prime locations). Further, the independents are as well placed as the majors to compete for high profile new sites. That they have massively outnumbered the incumbent majors in terms of new sites in both the North and South Islands over the past five years evidences this position. (Ref: Draft Report at 4.123 to 4.145)

5. Chapter 5: Infrastructure sharing arrangements

Introduction

5.1 BPNZ agrees with the Commission's view that the various infrastructure sharing arrangements operating in the fuel supply chain give rise to substantial efficiencies. The arrangements lower the supply chain costs for the supply of fuel that is refined at Refining New Zealand and supplied to the regional ports, compared to the costs of doing so without these arrangements.

5.2 However, BPNZ does not agree that this provides a substantial advantage versus importing product, as the value of the product once distributed from RNZ is the same as the value of the imported product (this is the basis of the RNZ business model).

5.3 BPNZ also agrees that the arrangements have pro-competitive effects by granting participants access to terminals across the country, enabling supply to a range of downstream competitors including the majors' own sites and independent distributors and retailers that they supply. Equally, BPNZ agrees with the Commission's view that the arrangements at the different levels of the supply chain (RNZ, COLL and terminals) have strong interrelationships. Indeed COLL primarily exists to ensure the proper functioning of RNZ by ensuring refined product is lifted in a timely manner and delivered to markets efficiently so that the products are competitive with imported products.

5.4 However, BPNZ strongly disagrees that these arrangements create any barrier to entry or create any impediment to competition in retail fuel markets. BPNZ considers that the Commission's preliminary conclusions in this respect are not consistent with the facts presented to it. In particular:

(a) independent importers do not have a higher cost base than the majors. RNZ product is valued by reference to import parity, such that landed costs to an import terminal will be equivalent over time between users of RNZ and importers. Both face the costs of terminal assets at the relevant point and onward transport of fuel from that terminal;

(b) no independent retailer or importer has ever sought access to COLL or the B&L arrangements (and only historically have they sought access to RNZ). In BPNZ's view, this is not due to an absence of published criteria, but simply due to it not being attractive (at least in part due to the interconnected nature of the arrangements at different levels of the supply chain). Independent importers recognise that much greater efficiencies can be achieved by importing into a single terminal and using road transport, supplemented by more limited bilateral agreements with one of the majors to address gaps in coverage (if desired); and

(c) it is not at all clear how, practically or logistically, an independent retailer or importer would enter the B&L system without being involved in all other aspects of the supply chain. Nor is it at all clear whether an independent would want to contribute to the substantial costs that have been incurred by the terminal owners to develop this infrastructure. First and foremost, COLL and the B&L arrangements exist to take fuel from RNZ to ensure the effective functioning of RNZ. Changes to this system would necessitate changes throughout the supply chain, including fundamental changes to how suppliers access RNZ.

5.5 BPNZ also refutes the notion that there has been under-investment in terminal capacity over the years. Rather, terminal capacity was excessive during the regulated era and only in recent times has fuel demand caught up. The mix of terminal capacity and efficient truck scheduling means that BPNZ (and it believes the other majors) can operate a highly efficient and competitive distribution network. BPNZ has optimised its system to ensure a very high rate of supply reliability, while minimising costs. Where it has identified a lack of terminal capacity, it has invested to increase terminal capacity (e.g. in Dunedin, New Plymouth and Lyttelton).

5.6 Indeed, the fallacy that there has been underinvestment in terminals is best seen by comparing costs of a modest terminal expansion in a smaller port to the continued costs of bridging product from larger terminals. BPNZ's workings indicate that terminal expansion in a port such as Nelson would cost in the order of four times as much per annum as current trucking activity across all suppliers. BPNZ requests that the Commission clarify exactly what it means by underinvestment, by reference to the costs of terminal investment versus the alternative.

5.7 BPNZ could readily take on supply of a new distributor using its current capacity. It has, and will continue to compete strongly to retain its existing customers and serve new customers when opportunities arise to do so.

5.8 In relation to refinery arrangements, BPNZ does not in any way consider that these affect its ability to quickly increase or decrease the amount of fuel it supplies to New Zealand customers. Imports are highly cost competitive and volumes can be flexed readily. Specifically in relation to Auckland, RNZ and the Refinery to Auckland Pipeline (**RAP**) capacity is substantially more than required to meet total Auckland demand, meaning that all majors can readily flex Auckland volumes up and down by increasing or decreasing volumes trucked from Auckland to other demand centres such as Hamilton.

5.9 Nevertheless, BPNZ acknowledges that certain parameters such as allocating capacity based on a three year rolling market share average are largely historical. BPNZ is ambivalent in this regard provided any change is phased so it does not reduce supply chain plans that have already been put forward for 2020 or otherwise adversely affect RNZ users' ability to plan crude supply.

Existing arrangements are highly efficient and pro-competitive

5.10 The Commission is correct to acknowledge the efficient and interconnected nature of the existing supply chain arrangements. It is also correct to identify the efficiencies and cost savings that come about as a result of the various supply chain arrangements. These result in a cheaper supply to customers around New Zealand compared to a scenario without shared terminals.

5.11 However, it is incorrect to conclude that these result in the majors delivering fuel to customers more cheaply than independent importers. Indeed, the value of refining crude oil at RNZ is set by reference to an import parity price at a given port. A simple supply chain of supplying imported product into a single terminal and then delivering to an area within one truck driving shift of the terminal is a highly efficient and effective mechanism for delivering fuel to retail outlets. BPNZ adopts this approach when supplying its imported 98 octane fuel around the country. BPNZ considers that the facts do not bear out the cost differential that the Commission has identified. (Ref: Draft Report at 5.15 to 5.16)

5.12 The Commission's conclusion that the cost of domestically refined product is less than imported product is incorrect for a number of reasons, including:

(a) The Commission's analysis does not take into account the interconnected nature of RNZ with the other transport and storage arrangements in place in the industry (many of which are based on historical regulation). A straight comparison is not meaningful.

(b) In addition, the 2014 and 2017 Hale and Twomey reports on which the Commission has relied to reach this conclusion do not show a material cost differential. (If they did, it would indicate that either RNZ users or RNZ shareholders were being disadvantaged, neither of which would be tenable.)

(c) Indeed, the 2017 Hale and Twomey report shows a significant period (5 to 6 years) where the cost benefit of RNZ was marginal or negative. Hale and Twomey therefore rely on a longer cycle (10 years) to explain why the majors still use RNZ, and correctly state that it is a long term strategic involvement with large costs to exit.

5.13 Given RNZ in this decade has been less competitive for long periods, and the Commission has placed most emphasis on the economic conditions of this decade (compared to previous decades) in its analysis elsewhere in the Draft Report, the Commission's conclusion that it is a source of low cost supply appears inaccurate.

Advantages of the RAP

5.14 BPNZ agrees that the RAP is a cost-effective means of transporting fuel from RNZ to Auckland. As set out in more detail below, RNZ and RAP capacity is more than enough to supply the Auckland region's demand. This results in a highly competitive market within Auckland (bolstered further by Gull's deliveries from Mt Maunganui) and deliveries out of WOSL to other demand centres such as Hamilton. However, Gull's success in the Auckland market is strong evidence that an importing / trucking model is capable of competing strongly against New Zealand refined product delivered through the RAP to Auckland. (Ref: Draft Report at 5.18 to 5.22)

Advantages of COLL

5.15 BPNZ agrees that COLL provides a cost-effective means of transporting fuel <u>from RNZ</u> to terminals in New Zealand. This ensures efficient operation of RNZ (as it ensures product is uplifted in a timely manner) and avoids duplication of transportation. (Ref: Draft Report at 5.23 to 5.25)

5.16 Because RNZ values product by reference to import parity "at the terminal" it is not meaningful to attempt to compare COLL's costs of delivering fuel to the use of trucks. All suppliers face trucking costs from the terminal to customers. Further, in the 2014 Hale and Twomey report, on which the Commission has based several of its conclusions on the cost of using COLL / RNZ, it is stated on page 17 that coastal distribution is not comparable with international shipping and has some diseconomies. This is consistent with BPNZ's views – companies must take into account the full costs of operating the entire transport and storage network, including two time-chartered coastal vessels, two terminals, and a JV scheduling company.

Advantages of B&L arrangements

5.17 The B&L system is aimed primarily at operating the network that does exist as efficiently as possible, while meeting the operational needs of RNZ (ensuring product can be shipped from RNZ in a timely way) and the B&L participants (ensuring supply security for their customers and enabling expansion to service new demand as needed). The operation of the B&L system has delivered efficiencies to the, historically regulated, domestic fuel supply chain. It is integrally linked with the operation of COLL and, in turn, RNZ. (Ref: Draft Report at 5.27 to 5.35)

5.18 However, the B&L system is also a necessary outcome of the terminal network that evolved under regulation. That system required participants to hold a large amount of stock across the system due to restrictions on road transport (resulting from an aim to increase use of rail). Accordingly, the New Zealand terminal network was not originally born out of a desire for efficiency.

5.19 Since deregulation, terminal owners have streamlined their terminal networks (including closing some terminals) to improve their supply efficiency. However, even now (as demonstrated by Gull's and TOSL's models), the pattern of having small terminals at a large number of ports is unlikely to be seen as most efficient if the industry were to "start from scratch".

Fuel value chain arrangements are not a barrier to entry

5.20 BPNZ does not agree with the Commission's analysis that in order to compete effectively an importer requires a physical presence at each port around the country from day one. The Commission appears to view different regions as though they were separate islands, with transport between them being cost prohibitive.

5.21 However, this is not grounded in fact. Indeed, Gull's success and TOSL's entry demonstrate that this is not a view shared by industry participants and reveals that access to RNZ, COLL and multilateral B&L arrangements is not a requirement for entry into the markets. Rather:

(a) Gull has shown that it can be a highly effective competitor across a large portion of the North Island. [redacted]

[redacted]

(b) TOSL has indicated that it will service most of the South Island's population centres, being from Bluff to Kaikoura. It is doing this without access to terminals in Bluff, Dunedin, or Lyttelton. While at this point it may not be immediately able to service Nelson cost-effectively (with trucking requiring two truck shifts), there is little stopping it from entering into a bilateral arrangement with one of the majors in relation to the Nelson market, [redacted]

(c) no third party supplier has ever sought access to COLL or the B&L system. BPNZ considers that this is because it would be unattractive absent the need to move product from RNZ rather than any difficulty in accessing terms for such entry. (Ref: Draft Report at 5.38 to 5.39)

5.22 The Commission considers that bilateral arrangements for certain terminals are "limited", "do not always lead to a concluded access agreement" and "may also be commercially unattractive to some access seekers" (paragraph 5.42). BPNZ does not agree that these are valid concerns:

(a) as discussed above, independents can operate a very cost-efficient supply chain by running trucks within one driver shift of their terminals. Accordingly access to a single terminal may well be sufficient to allow coverage to almost an entire Island and suit their business model;

(b) there could be many reasons why commercial agreements are not concluded. There is no evidence that these result from any market power held by a terminal owner – it may equally be unreasonable expectations of an access seeker;

(c) many different distributors operate retail networks from a range of terminals through supply agreements with the majors. They have been extremely successful in developing their retail networks off the back of these agreements. (Ref: Draft Report at 5.42)

5.23 Indeed, in BPNZ's view bilateral agreements are much more likely to be workable and efficient to support expansion by independent importers and retailers. As set out above, the likes of Gull and TOSL can service most of the North and South Islands respectively with a single, efficient import terminal. They are much more likely to be interested in negotiated bilateral access to individual terminals to "fill out" their networks rather than wholesale access to COLL and the B&L system and the available history shows as much.

[redacted]

Terminal capacity has not suffered from underinvestment

5.25 Many of the Commission's conclusions in relation to the competitiveness of New Zealand fuel markets appear to be premised on the incorrect assumption that the terminal network operated by the majors has suffered under-investment and therefore lacks sufficient capacity. BPNZ refutes this conclusion, which is based on an inaccurate view of how the parties manage their supply chains, the actual impact of port coordinations and the relative costs and benefits of adding storage compared to trucks. (Ref: Draft Report at 5.44 to 5.52)

5.26 In the following sections BPNZ addresses some of the comments around industry capacity noted in the Draft Report and reiterates and expands upon materials provided and presented to the Commission setting out why terminal capacity is sufficient.[3]

[3] BPNZ letter of 24 June 2019 and meeting with the Commission on 25 June 2019

Terminal capacity sufficient to meet demand

5.27 BPNZ considers that the assorted industry comments that the Draft Report references (paragraphs 5.62 to 5.65) are highly selective and do not represent an industry view that there is a lack of capacity at terminals. In particular:

(a) the comments offer no insight into what is a "sufficient" level of capacity at terminals. Simply comparing changes in capacity and demand over time is not informative when there was material surplus capacity following deregulation and trucking product has become much more efficient and cost-effective (as demonstrated by the models operated by Gull and, soon, TOSL);

(b) while BPNZ cannot comment on its competitors' supply reliability, BPNZ does not suffer "frequent interruptions of delivery at service stations". Indeed, as set out further below, BPNZ operates a very robust supply chain with an extremely low level of delivery interruptions at service stations that it supplies;

(c) the comment referred to in paragraph 5.65 supports this position. When a supplier considers that terminal capacity is tight, that supplier will be incentivised to invest in expanded capacity. BPNZ has made substantial investments in new terminal capacity over recent years where it has determined it faces tight capacity that could affect its supply reliability, and where doing so is much more efficient than assisted truck movements.

Coordination events not indicative of insufficient capacity

5.28 BPNZ is surprised to see terminal coordination events cited as evidence of insufficient terminal capacity. Terminal coordination events are a way of managing a shared storage system, they provide very little insight into the sufficiency or otherwise of terminal capacity in a supply system.

5.29 With any shared storage arrangement, there needs to be a mechanism to avoid stock shortages. The coordination event mechanism is designed to avoid stock shortages by limiting the parties' ability to take excessive quantities from terminals where stocks are more limited, i.e. preventing a "rush" on terminal volumes. However, this does not manifest in any reduced ability or willingness to supply retail sites (both owned and reseller) with whatever volumes they request. Rather, coordination events simply result in parties managing their networks to move more product from elsewhere in the system if required. This is a much lower cost approach to the alternative (of investing in new terminal capacity) and there is no pricing impact for consumers resulting from a coordination event. Equally, coordination events are temporary and sporadic. They have absolutely no impact on the choice by a supplier to supply a new customer. An increase in supply would be worked out ahead of time and, in the event that there was a port coordination at the time supply commenced, this would be managed in exactly the same way as for other customers.

5.30 The following section reflects material previously supplied to the Commission, but is included here alongside comments on the Commission's apparent reservations about this analysis.

BPNZ views on coordination events

5.31 A coordination event indicates a potential shortage of stock at a terminal ahead of the next delivery. However, all terminals in New Zealand are less than one truck driving shift away from at least one other terminal. Accordingly, for many locations between terminals there is little difference in cost to supply from one terminal over another. From BPNZ's perspective, a coordination event simply triggers some slight changes to its delivery schedules to use one terminal more than another.

5.32 For example, if New Plymouth were to go on coordination for 91 octane fuel, BPNZ may switch to supplying 91 octane fuel to Whanganui and surrounds from New Plymouth to Wellington. The distance from Wellington to Whanganui is 194 kms, which is less than other sites serviced from Wellington as a matter of course (for example, Taihape which is 230 kms away). In this case such an adjustment, part of ongoing supply chain management, ensures all sites have adequate supply whilst easing demand at New Plymouth.

Longer coordination events more efficient

5.33 The Draft Report raises concerns with the frequency of coordination events by reference to the number of days that ports terminals are under coordination (paragraph 5.71). However, the earlier a coordination event is triggered (i.e. the more days that a terminal is on coordination ahead of a delivery) the more efficient BPNZ's response to it can be.

5.34 To demonstrate this, we again consider the New Plymouth example above. If BPNZ was given very late notice of a coordination event at the New Plymouth terminal, it may need to address this by using loads from Wellington to several Taranaki retail sites over a few days. By contrast, if the New Plymouth terminal is put on coordination two weeks out from the next delivery, BPNZ could respond by shifting only a few sites (such as those in Whanganui) over the longer period, with the same impact on BPNZ's fuel offtake from the New Plymouth terminal. Because Whanganui is close to equidistant between Wellington and New Plymouth, the longer coordination allows BPNZ to address the coordination event at virtually no cost (whereas a smaller number of longer hauls from Wellington may incur some cost to the network). This incentivises BPNZ to call a coordination event earlier rather than later.

5.35 Therefore the number of days a port is under coordination should be assessed in this light. It is in no way reflective of a shortage of capacity.

Adjusting tanker deliveries is efficient and cost effective

5.36 Bridging involves adjustments to truck movements, which is a normal, efficient and cost-effective part of BPNZ's overall logistics network. BPNZ has truck capacity that anticipates bridging activity as part of day to day operations. It is not an unexpected cost that BPNZ would seek to avoid by limiting volumes available in a local area.

5.37 For the most part, only very few truck movements are required in order to manage coordination events. By way of a worked example, Figure 5.1 of the Draft Report shows that premium unleaded fuel is on coordination in Nelson around 35% of the time.[4] However, this represents a very small volume, which is readily addressed through additional trucking:

(a) BPNZ's expected 2019 demand for 95 octane fuel from Nelson port is forecast to be [redacted]

(b) even if BPNZ had to truck 35% of that demand from Christchurch (i.e. it took no product from the terminal during coordination events) this would only be [redacted] which is extremely minor considering that BPNZ loads and delivers [redacted] and is dwarfed by the cost of new terminal storage.

5.38 As the example above demonstrates, "bridging" is not a particularly costly or "extreme" event. BPNZ has considerable trucking capacity which it uses to manage its network and ensure customers are supplied across the country. Coordination events result in slight tweaks to its logistics arrangements, not wholesale changes.

5.39 Furthermore, often, only one product is on coordination at a time, meaning that backhaul loads can be taken to even further reduce trucking costs. In the Nelson example above, if diesel were not on coordination in Nelson, BPNZ might take a truck of 95 octane fuel from Christchurch up to Nelson and then supply customers with diesel from Nelson during the backload journey. Accordingly, the costs of trucking 95 octane fuel to Nelson would be offset to a large degree by the ability to backload.

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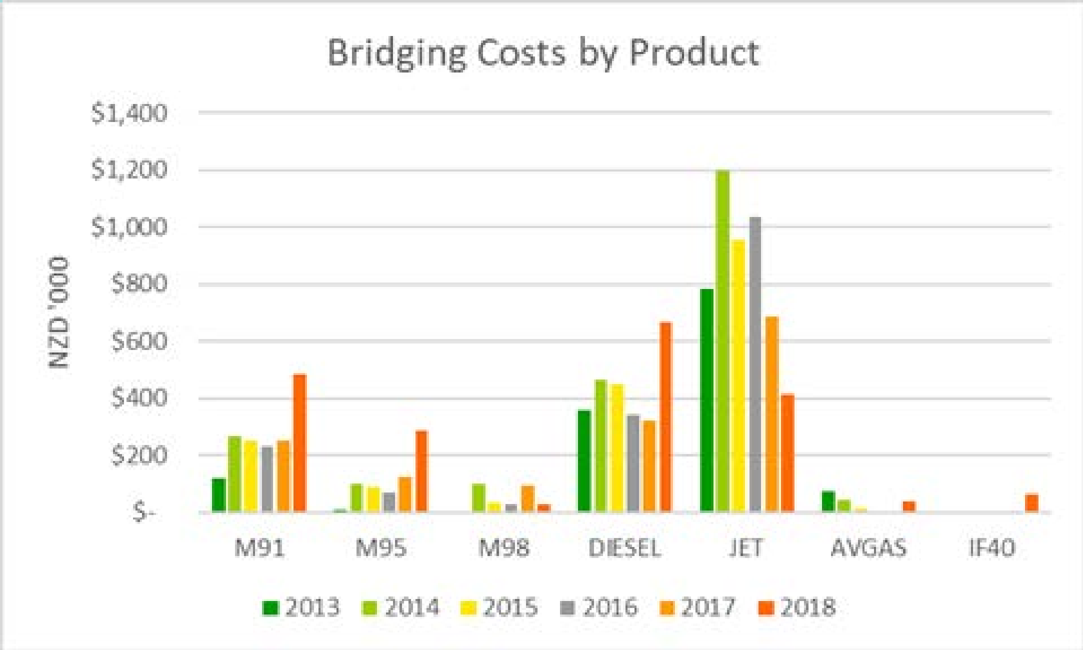
[4] This often happens during the height of summer due to holiday traffic in the region. Accordingly, were capacity to be increased to reduce instances of Nelson being "on coordination", this extra capacity might only be used for a short period during each year. However, BPNZ notes that during 2018 there were no coordination events in Nelson for PULP.

[5] Each truck has a capacity of [redacted]

5.40 The following chart demonstrates the comparatively insubstantial costs (compared to total logistics costs and the cost of new terminals) that BPNZ faces every year as a result of trucking adjustments related to coordination events.

[redacted]



5.41 Figure 1 shows that costs in BPNZ's network associated with adjustments to truck schedules to address coordination events for any given motor vehicle fuel product are generally less than [redacted]

5.42 This is not seen as "incremental" cost resulting from exceptional events, but rather forms a regular part of BPNZ's logistics arrangements. It certainly does not cause BPNZ to forgo volume to resellers or at its retail outlets in an effort to avoid such costs. Indeed, across all products, [redacted]

5.43 Overall costs associated with bridging tend to amount to less than $[redacted] per annum, compared to a 2019 logistics budget overall of $[redacted] This figure is spread across 10 locations and 5 grades (91, 95, AGO, Jet, 98) and, in that context, it is quite small. This is important as fixing a "shortage" is location and grade specific: building a 91 tank doesn't reduce bridging for diesel, 95, 98 or Jet so investment must be multiplied by 5 and then across at least a subset of the 10 ports.

Little correlation between coordination events and actual dry tanks at retail outlets

5.44 As set out above, the coordination event mechanism aims to substantially reduce the risk of stock outages to a retail outlet or direct customer, by putting the parties on notice that they will need to make alternative arrangements within their networks in order to ensure that customer demand is met. BPNZ operates a very effective logistics network to avoid stock outages at retail premises (both owned and reseller sites).

5.45 This is demonstrated by the following chart, which tracks the frequency of coordination events against the frequency of dry tanks at a customer site. In the following chart:

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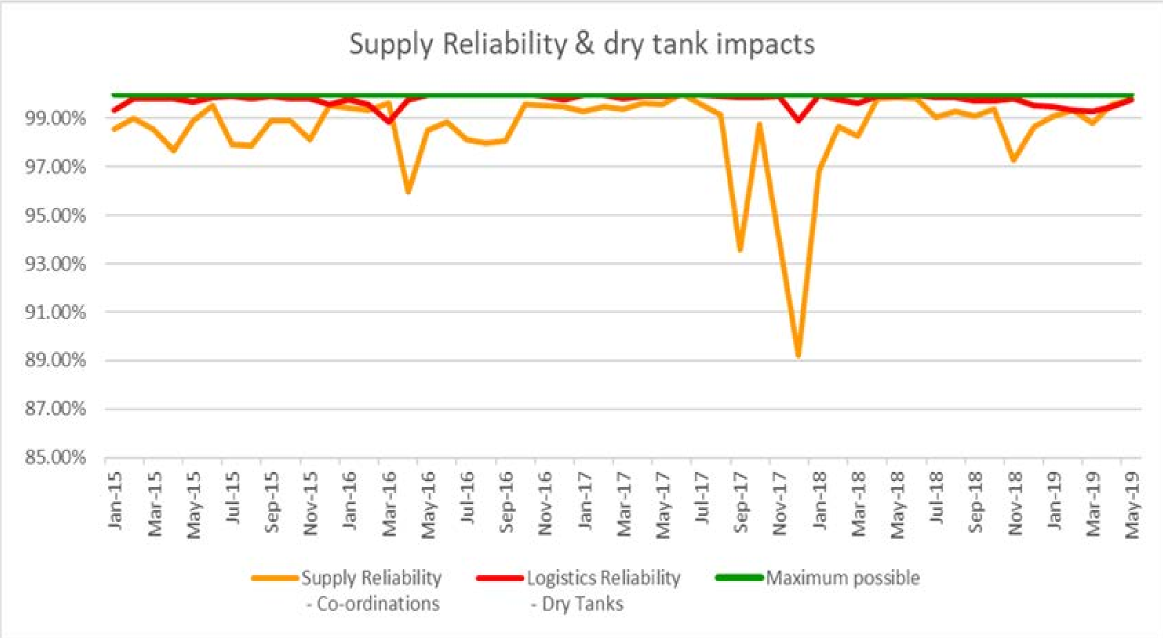
[6] Jet bridging costs were high from 2014 to 2017 as demand at Queenstown Airport had increased materially. This led BPNZ to invest Jet tankage in Dunedin to meet the increased demand.

(a) the green line represents the ideal 100% supply reliability;

(b) the red line represents actual supply reliability. It is measured by the number of “dry tanks” (i.e. the incidents of one or more of a customer’s tanks being dry at the time of a fuel delivery) compared to total fuel drops (and is expressed as 1-dry tanks/total fuel drop);

(c) the yellow line represents supply reliability, being the instances of short supply volumes from a terminal (with the short volume being taken from COLL co-ordination reports) as a proportion of demand (expressed as 1-volume short/demand).

Figure 2 – relationship between coordination events and customer supply reliability



5.46 Figure 2 demonstrates that BPNZ’s logistics network is highly effective at covering potential supply shortages at terminals to ensure very high supply reliability to customers (only very infrequently dropping below 99%). Those instances where BPNZ has had issues with supply reliability to customers (i.e. where it has dropped below 99%) are not as a result of the operation of the B&L arrangements, but rather reflect other external factors (such as the RAP outage, delivery driver shortages etc.).

5.47 Importantly, it is BPNZ’s logistics network, and not any changes to how BPNZ acts in the retail/wholesale market, that results in this level of reliability.

<u>Coordination events do not affect elasticity of supply</u>

5.48 Against this background, it is clear that the Commission’s concerns around coordination events resulting in reduced elasticity of supply are unfounded.

5.49 As set out above, instances of “dry tanks” are extremely rare (for either BPNZ’s owned sites or its customers). A coordination event in place at a nearby terminal does not create any disincentive for retail sites to continue competing hard for fear of running out of fuel. Retail outlets (either owned or supplied) are not informed of coordination events and no changes to their operations are made as a result of coordination events.

5.50 Furthermore, the costs of bridging product to address coordination events is low. [redacted] BPNZ has no reason to expect that its competitors take any different approach. Accordingly, there is no sense that BPNZ can "pull its punches" in local areas as a result of an expectation of less aggressive behaviour by competitors when a nearby terminal is under coordination.

5.51 Consistent with the above, BPNZ in no way reflects coordination events in its pricing mechanisms. A coordination event is not a relevant factor when setting retail prices at COCO sites. [redacted]

B&L system incentivises terminal investment

5.52 The analysis set out above also demonstrates why coordination events are not indicative of a lack of investment in terminal capacity. The terminal capacity in New Zealand is sufficient to support a highly competitive retail market. In particular:

(a) the bridging costs faced by BPNZ are not substantial by contrast to the capital required to invest in a new terminal. It would not be efficient to invest in new terminal capacity for a product simply because it is frequently on coordination. For example, while Premium 95 is frequently on coordination in Nelson (see paragraph 2.8 above), this is highly seasonal and relates to volumes that are very readily transported from Christchurch. It is not the B&L system that limits investment in capacity for Premium 95 in Nelson, but rather the fact that such an investment would be wholly unwarranted in order to save a small number of truck movements per year; and

(b) if terminal capacity were inadequate, BPNZ would not be able to achieve the high degree of supply reliability that it does ([redacted] reliability other than in exceptional circumstances). Rather, this would manifest in a much greater number of dry tank events.

5.53 Furthermore, the B&L system does create incentives to expand capacity where it is beginning to become tight. Incentives come from:

(a) throughput charges to competitors for use of terminal infrastructure;

(b) reduced trucking costs (while trucking is often highly efficient, in some instances volumes become sufficient to make a terminal investment attractive); and

(c) improved efficiency in importing product.

5.54 By way of example:

(a) BPNZ has recently invested in terminal capacity for Jet fuel in Dunedin as the volumes it was trucking to Queenstown airport from Christchurch increased materially, justifying the terminal investment [redacted]

(b) [redacted]

5.55 Finally, it is important to consider how terminal infrastructure investment would look absent the B&L arrangements and COLL. BPNZ expects that such an environment would result in much lower incentives to invest in terminal capacity around the country, and would instead incentivise suppliers to invest in their own, larger terminals in fewer geographic locations (possibly limited to one terminal per Island, similar to Gull's approach).

Commission's concerns about bridging activity

5.56 Despite the information above (which the Commission has seen during the process), the Draft Report (at 5.80 to 5.81) appears to maintain that coordination events provide evidence that terminal capacity is insufficient. In particular, the Commission is concerned that:

(a) "in an environment of overall tight supply there appear to be limits to these trade-offs [between increasing terminal capacity and using trucks] because there is less likelihood of surplus fuel being available in one region to truck into another region where supply is constrained due a port coordination event" (paragraph 5.80);

(b) "these trade-offs are likely to underestimate the total costs of coordination events because they do not take account of the costs of tight fuel supply on the majors' customers, which we have been told can be considerable" (paragraph 5.81); and

(c) "the trade-offs do not take account of the effects on competition in wholesale and retail markets more generally. As discussed below and further in Chapter 6, impediments to competition at the wholesale level can be expected to affect the retail prices that consumers pay for fuel, as can the additional costs described above"

5.57 BPNZ addresses these issues in turn below.

5.58 The Commission's concern that bridging activity does not address supply issues because of overall tight supply (paragraph 5.80) is unfounded. The Commission offers no evidence for this view. The data that BPNZ has supplied to the Commission demonstrates that it is readily able to supply its customers through coordination events by making relatively minor changes to its trucking schedules.

5.59 It is extremely rare that fuel is tight across the entire system such that these coordinations are not feasible (and would likely result from a major system-wide supply constraint such as a refinery outage where additional terminal capacity would be unlikely to make a material difference).

5.60 Indeed, it is the smaller terminals (and demand centres) that are more frequently on coordination. As demonstrated by the Nelson example above, the amount of fuel needed to address a coordination event is extremely small, particularly in the context of a market like Christchurch from where the extra fuel would likely be trucked.

5.61 In fact, with the exception of the unique issue with the RAP, there have been no meaningful supply outages in recent history. The last such event of any note was South Island diesel shortages in the South Island in 2014, but that was not a function of a lack of terminal investment, but rather refinery maintenance which took longer than expected coupled with two shipments of diesel to cover that issue being off-spec.

5.62 The Commission's analysis appears premised on adding expensive tankage in multiple locations, versus adding relatively cheap trucks which are mobile between locations. The former would be highly inefficient. BPNZ strongly prefers the latter which, within the limits of its economics and its high supply reliability targets, are much more efficient.

5.63 To illustrate this point, it is useful to provide a worked example. Taking Nelson again (Nelson is likely to have amongst the highest cpl bridging costs due to its location), a simple business case demonstrates the point:

(a) In 2018 BPNZ's shortage of regular unleaded petrol was [redacted] litres (it had no shortages of premium unleaded petrol in Nelson during 2018 at all).

(b) BPNZ's trucking cost ex-Christchurch is [redacted] giving an annual trucking cost for BPNZ of $[redacted] Based on 25% BPNZ market share, it estimates that the overall industry cost of trucking would be in the region of $[redacted] per annum.

(c) By contrast, an expansion of terminal capacity would cost in the order of [redacted] Even using the Commission's proposed fair return, a WACC of 8%,[7] this would cost in the order of $[redacted] annually, nearly four times the cost of bridging via trucks.

5.64 In BPNZ's view, the example above is not isolated – if anything, the equivalent calculations across other ports would provide even greater support for trucking vs additional storage.

5.65 Furthermore, the Commission has not provided any evidence that coordination events result from insufficient investment in terminal capacity as opposed to how that capacity is used. As the Commission acknowledges (paragraph 5.73), [redacted] It may be that greater levels of stock holding in terminals, without expanding those terminals, could reduce the number of coordination events. However, that would not be efficient. BPNZ achieves upwards of 99% supply reliability currently and holding extra stocks solely to avoid coordination events (which have relatively little connection with a terminal's capacity for the reasons above) would raise costs without any benefits.

5.66 BPNZ strongly disagrees that its customers are adversely affected by coordination events (paragraph 5.81). As set out above, BPNZ maintains a very high supply reliability to its customers. Coordination events are an ordinary part of its supply chain and it has no difficulty in amending truck schedules to ensure that "dry tanks" are an extremely infrequent occurrence.

5.67 Furthermore, there are no economic signals to customers arising from coordinations. Coordination events do not affect pricing to distributors and dealers and nor do they affect the pricing decisions made by BPNZ at its COCO sites.

5.68 With specific reference to distributors, it is not at all clear from the Draft Report what costs are borne by distributors when undertaking bridging activity. [redacted] This is taken into account when negotiating prices with distributors. Were BPNZ forced to build a new terminal to avoid a distributor needing to make adjustments to its fuel deliveries (of the nature described above) then costs would be substantially higher.

5.69 More specifically, depending on the terminal, BPNZ takes one of two approaches with its distributors (depending on which works best for all parties):

[redacted]

[redacted]

As is clear from these approaches, BPNZ carries the costs of bridging in order to ensure a high degree of supply reliability. At present, this represents a much lower cost than further terminal investment.

B&L arrangements retain incentives to invest in terminals

5.70 BPNZ does not agree with the conclusion drawn by the Commission at paragraphs 5.83 to 5.86 that the B&L system results in disincentives to invest. As BPNZ has demonstrated through its own investments in terminal capacity in recent years, when it feels that storage capacity is tight in

[7] BPNZ notes that this figure is used for illustrative purposes only as it sits within the Commission's range of estimates for industry WACC as set out at Schedule C to its Draft Report. BPNZ comments separately on the accuracy of this estimate.

a location, it invests accordingly. The primary reason that the Commission has not found evidence of greater levels of capacity development is set out above in the worked example of investment calculations for Nelson Port storage (at 5.63). It is simply illogical to invest in additional storage capacity when this is four times the cost of the alternative solution.

5.71 BPNZ acknowledges that the operation of the B&L can make incentives to invest more difficult to discern compared to retail investments where suppliers' operations are completely independent. However, fundamentally, the incentive to invest remains if expected returns justify it. When adding capacity to the system, the benefits of increased throughput charges to other terminal users are fully accounted for. As a result, capacity increases are incentivised by reference not only to a supplier's own requirements, but those of the overall system. (Ref: Draft Report at 5.83 to 5.85)

5.72 The Commission's concern at 5.86 is similarly unfounded. As set out in detail elsewhere in this response, a coordination event at a port is <u>not</u> evidence of insufficient capacity. BPNZ has a robust supply chain in place that ensures it can supply fuel to its customers (and could readily expand to add customers) irrespective of coordination events. As set out above, BPNZ's [redacted] Aside from distributors whose contracts incorporate bridging requirements, most customers would be wholly unaware of the existence of a coordination event. There is simply no basis to conclude that suppliers are "insulated" from competition as a result of coordination events.

Existing capacity allows for competition for new accounts and expansion

5.73 BPNZ wholly disagrees with the Commission's assessment at paragraphs 5.87 to 5.100 of the Draft Report. The Commission's concerns in these paragraphs appear to be premised on a fundamental misunderstanding of how the supply chain (including coordination events) operate. As set out above, supply is not "tight" in the industry and there has not been a "lack of investment". BPNZ is completely ready and able to supply new customers, whether that is an individual dealer site or a large distributor.

5.74 BPNZ agrees that security of supply is indeed an important factor for a distributor or dealer when considering competing bids for supply (paragraph 5.91). Indeed BPNZ has won business as a result of its excellent track record of supply reliability. The fact that BPNZ can achieve excellent security of supply clearly demonstrates that the supply chain arrangements in place are working effectively. The same arrangements apply for the other majors and there is no reason that they could not achieve similar standards.

5.75 The Commission's concerns at paragraphs 5.92 to 5.95 are based on an erroneous assessment of supply capacity. BPNZ's analysis of this is set out earlier in this section. BPNZ is fully willing and able to supply new customers. Such supply would require straightforward adjustments to BPNZ's supply chain. For example, in 2018 BPNZ won over [redacted] Over a year this is the equivalent of [redacted] that BPNZ can add to its imports.

5.76 Contrary to the Commission's assertion, the points it refers to in paragraph 5.97 of the Draft Report do not provide any evidence to support its view of a lack of capacity in the ground fuel supply chain. As set out in 5.97.1 the reference to use of private storage in winning a customer does not relate to ground fuel. The supply considerations with ground fuel and jet fuel are very different (and BPNZ understands that the latter has not formed part of the Commission's review). Moreover, the information at 5.97.2 fundamentally support's BPNZ's position. Making minor supply chain adjustments for three months as part of a change management process is immaterial in the context of winning a new customer. Supply adjustments are necessary when gaining a new major customer in almost any industry.

5.77 In summary, BPNZ considers that there is no capacity shortage and that no further steps are required to address such perceived shortage. As set out above, BPNZ's own investments in terminal capacity show that investment will be made where justified. However, arbitrary additional investment in terminal capacity would be wholly inefficient by reference to the comparative costs of continuing to achieve supply security through a mix of terminal storage and trucking and will (and do) only occur when the economics are justified.

Refinery allocation mechanism has no impact on ability or incentive to compete

5.78 BPNZ considers that the method of allocating refinery capacity has no impact on the ability or incentive of suppliers to increase supply in the short or long term. As noted in the Draft Report, it considers that market dynamics are set by imports of refined product. Due to the ability to transport fuel around the country, it does not see that this changes materially region by region. In particular:

(a) with respect to Auckland (paragraphs 5.105 to 5.109), BPNZ understands that all of the majors supply the Auckland market with RNZ refined fuel rather than imports. However, their respective shares of RNZ refined fuel and RAP capacity are such that their supply positions of motor fuels at WOSL substantially exceed their respective levels of demand in the Auckland region (i.e., while RNZ and the RAP operate at full capacity, this capacity is substantially in excess of what is required to service Auckland alone). Accordingly, they are strongly incentivised to gain new customers in Auckland and can simply do so by reducing the amount of fuel trucked out of Auckland to other regions and increasing the amount of fuel supplied into those other regions through imports and/or coastal shipping;

(b) the Waikato region (particularly Hamilton and surrounds) is a large demand centre and is equidistant from WOSL and Mt Maunganui. Accordingly, all suppliers are fully incentivised to chase customers in the Waikato, with the choice of supplying them (at effectively the same cost) with RNZ refined fuel from WOSL or imported/coastal shipped fuel from Mt Maunganui (and in Gull's case, with imported fuel from its Mt Maunganui terminal). The growth of the likes of Gull and Waitomo suggests that this is precisely what is occurring.

5.79 In light of the above, it is clear that RAP and RNZ capacity allocations are of much less relevance to competition than the interplay between RNZ refined and imported product. The Waikato region represents "swing" demand that can readily be serviced by each, at a similar cost. (Ref: Draft Report at 5.103 to 5.109)

Alternative allocation mechanism

5.80 Irrespective of the analysis above, BPNZ recognises that the capacity allocation mechanism at RNZ is largely a result of a historical decision rather than any specific efficiency goal. Accordingly, BPNZ would be open to exploring an alternative allocation mechanism at RNZ if this improved efficiency of supply (including ensuring that RNZ users' ability to effectively plan crude deliveries is not compromised). (Ref: Draft Report at 5.110 to 5.116)

Industry arrangements do not allow for accommodating behaviour

5.81 The efficient and effective operation of RNZ, COLL and the B&L system require the provision by users of certain information. BPNZ considers that such information is treated appropriately.

5.82 Nevertheless, BPNZ can see the benefit of taking this opportunity to revise operating and information protocols to ensure these are up to date. It may be that as part of this, certain third party audit functions will need to be introduced to ensure accuracy of information that each party submits. However, BPNZ is willing to explore such solutions. (Ref: Draft Report at 5.117 to 5.139)

6. **Chapter 6: Wholesale supply arrangements**

Introduction

6.1 BPNZ disagrees that the wholesale fuel market is not workably competitive. While switching occurs relatively infrequently, competition for dealers and distributors is strong and results in very attractive supply terms. The 76 new sites opened by independents since 2014 (spread roughly 50/50 across the North and South Islands), with Waitomo, Allied, NPD and Gull being the principal players, would not have occurred if they were not comfortable they could secure competitive wholesale supply. The arrival of TOSL will only intensify this.

Initial comment

6.2 By way of an initial comment, BPNZ disagrees with the Commission's classification of GAS as a distributor. Distributors purchase fuel on an ex terminal basis for resale to both bulk and retail customers. Distributors own trucking fleets, receive a full tanker load of product and manage the distribution to the customer. As logistics companies, BPNZ distributors also have fuel cartage contracts with BPNZ.

6.3 By contrast, GAS does not own any trucking fleet with BPNZ scheduling all deliveries to GAS sites. Rather, the basis on which GAS is supplied is more equivalent to a large multi-site dealer with its own brand. However, for the sake of simplicity and ease of reading this document BPNZ has included GAS in the definition of "distributor" as per the Commission's approach (except as otherwise specified).

Non-contractual aspects of wholesale supply relationships

No restrictions on distributors' retail sites

6.4 BPNZ distributors are free to establish retail sites and commercial relationships as they see fit.

6.5 In any event, in such a crowded retail environment, even if a major's distributor located further away from the major's outlets, there are many more retailers that will be located closer. For example, BP-supplied distributors will have no issue locating close to a Mobil, Z or Gull site. Similarly, a Mobil distributor will happy locate close to a BP, Z or Gull site, etc. This is not dissimilar to franchise arrangements, e.g. franchises such as McDonalds tend to be spaced out geographically, but they still need to compete against other fast food outlets. Accordingly, it is difficult to see any competition concern arising.

6.6 Furthermore, site locations have not affected BPNZ's (or its competitors') incentives to seek supply contracts with other distributors. For example, BPNZ has actively sought to supply [redacted]

Distributors have security of supply

6.7 BPNZ agrees that security of supply is important. As set out in detail above, it has a robust supply chain that ensures that stock outages are very infrequent. There is not a lack of terminal capacity in New Zealand.

6.8 Like BPNZ does for its own sites, its distributors can and do bridge product from alternative terminals if needed. Port capacity has no bearing on where BPNZ establishes sites and this should not be any different for distributors. As set out in section 5 above, when there are coordination events there is an established mechanism to ensure that distributors are supplied, [redacted]

6.9 As set out in Chapter 5, BPNZ would readily be able to supply additional dealers or distributors by making slight adjustments to its supply chain. (Ref: Draft Report at 6.31)

Ability to participate in fuel card programmes does not contribute to a competition issue

6.10 The Commission is concerned (paragraph 6.34) that "…participation in a particular fuelcard programme could disincentivise distributors from switching wholesale suppliers. If alternative wholesale suppliers are not willing or able to offer an attractive fuel card option." BPNZ considers that this concern is unfounded:

(a) fuel cards are only one of a number of factors which go into the mix when resellers are considering who to buy from, along with (amongst others) brand, reliability of supply, development contributions, ongoing marketing, cost of wholesale fuel, etc.

(b) in any event, if a product is appealing to customers and they place a value on that when considering who to buy from, that is not a competition issue – quite the reverse;

(c) all the majors have fuel card offers, as do many independents. There are also universal card offers such as Cardlink; and

(d) there are instances where distributors have opened retail sites notwithstanding BPNZ has not agreed to the site being a BPNZ Fuelcard acceptance site (e.g. because it does not add to the breadth of the Fuelcard coverage for end users).

Contractual provisions do not hinder competition

6.11 BPNZ considers that the Commission's concerns around the vertical supply contracts in the industry are unfounded. From what BPNZ has been able to discern from the Commission's analysis, vertical supply contracts vary widely between different suppliers and customers. This is to be expected in a workably competitive market. The contractual terms represent one of many aspects of competition alongside price, supply security etc. BPNZ considers that parties to the agreements have balanced negotiating positions and that no provisions in its contracts are overly restrictive.

Relative bargaining power of suppliers and distributors

6.12 BPNZ does not agree that there is a mismatch of bargaining power between it and dealers / distributors when negotiating supply agreements. BPNZ is always keen to gain more supply volume and competes hard to win new and retain existing dealer and distributor volumes. Set out below is a description of several recent negotiations that BPNZ has been involved in (which includes in summary form information previously provided to the Commission in response to its Pre-Meeting Letter of 18 June 2019).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Contractual provisions are not "overly restrictive"

6.13 BPNZ does not agree that the existence of various contractual provisions in supply agreements (which are not uncommon in supply agreements across a range of industries) is resulting in arrangements "by-passing" the wholesale market. As set out above, many of the terms are included to benefit the dealers and distributors. To the extent that they provide more certainty of ongoing volumes etc. to suppliers, then the more valuable the agreements are to suppliers. As a result they can, and do, compete hard to win over or maintain these agreements.

6.14 That switching may occur relatively infrequently is not a sign of a lack of competition. Rather, it can equally reflect incumbent suppliers providing a strong service and price offering to secure the retention of the customer's business (as demonstrated by [redacted]

Long-term, minimum volume and / or exclusive supply agreements

6.15 It has not been BPNZ's experience that distributors and dealers are being forced into signing contracts longer than they would like. Rather, BPNZ considers that the length of dealer agreements is premised on ensuring certainty for both parties and protecting relationship specific investments. They are arm's length agreements reached by third parties as you would expect in a workably competitive market. Again, the substantial expansion by distributors/resellers (a net 36 new South Island sides and a net 40 new North Island sites since 2014 (compared with only 2 and 5 in total by the majors) would not have occurred if they could not secure competitive wholesale terms.

6.16 From BPNZ's perspective, longer terms and minimum volume requirements allow it to [redacted]

6.17 In any event, while dealers have a preference for longer term contracts, there remains a material number of BPNZ sites up for contract negotiation every year (alongside sites trading under other banners) and switching does occur. As demonstrated by the graph below, the number of BPNZ dealer contracts expiring annually [redacted] Further evidence of dealers being free to switch is observed in [redacted]

[redacted]

6.18 Furthermore, TOSL would not have entered if it had concerns about being able to secure new business. That such an investment has been made is compelling, actual, evidence that downstream business can be secured, i.e. distributors/dealers are not ‘locked up’.

6.19 Regarding distributors’ contract terms, BPNZ does not consider there to be any competition concern with current arrangements. The average term of BPNZ’s contracts with non-equity distributors is currently [redacted]

6.20 For the record, BPNZ agrees with the Commission’s view that exclusivity of supply to dealers is critical due to fuel quality (both relating to additives and also being able to guarantee quality of fuel). (Ref: Draft Report at 6.67)

Termination periods and rights of renewal

6.21 BPNZ considers that its termination provisions and renewal rights are fair and reflect a negotiated outcome between it and its dealers and distributors. Again, for the record, BPNZ does not terminate contracts due to dealers [redacted] and nor does it [redacted]

Restrictions on transfer of ownership is justified

6.22 BPNZ considers that all restrictions in its contracts in relation to change of ownership/control are entirely justified. While the Commission accepts that these are appropriate in dealer contracts, BPNZ considers that they are equally important in distributor contracts given that distributors represent an important part of BPNZ’s supply chain. Such provisions are common in supply agreements in a range of industries – essentially because suppliers want to know who they are dealing with. (Ref: Draft Report at 6.74 to 6.79)

[redacted]

Restraint of trade clauses

6.23 BPNZ agrees that the fuel card non-solicitation provisions, [redacted] are justified as fuel card customers are direct customers of BPNZ and BPNZ invests substantial resources in acquiring and maintaining these customers. (Ref: Draft Report at 6.80 to 6.84)

Exclusive territories

6.24 BPNZ's distributors have access to specific terminals, they are free to operate anywhere from these terminals. BPNZ does not see a competition concern with this arrangement. (Ref: Draft Report at 6.85)

Restrictive covenants

6.25 BPNZ considers that restrictive covenants do not have anticompetitive effects. They are aimed at protecting investments made by BPNZ in dealer sites or its own sites [redacted] uel suppliers generally do not find it difficult to obtain a site for a new retail development, as demonstrated by the proliferation of new sites opened by independent retailers in recent years (including in high profile locations).

Majors do not have significant control over wholesale pricing

6.26 BPNZ considers that its pricing terms in its wholesale contracts are fair and transparent and reflect a competitive wholesale market. Its pricing terms (and other terms) in no way hinder retail competition. BPNZ considers that the Commission's concerns in this regard are unfounded because:

(a) any wholesale agreement for a product that experiences frequent price fluctuations would be expected to have mechanisms to adjust the price (with the alternative being an extremely high price that accounts for the risks of such fluctuations). Furthermore, by definition, any wholesale supply is necessarily going to have an impact on the downstream customers' cost base, irrespective of the industry;

(b) BPNZ's resellers need to remain competitive against resellers supplied by the other majors in addition to Gull (and shortly TOSL) which import product directly;

(c) dealers and distributors have operated successfully for decades without the imposition of external constraints on their freedom to contract. Indeed, as the Commission notes:

> "It is our understanding that, historically, **dealers or distributors were generally unconcerned** with both pricing discretion and the lack of transparency regarding wholesale prices…
>
> This was because **dealers and distributors considered that their interests were sufficiently aligned** with the majors, so that the **majors would be incentivised to set wholesale prices at levels that would enable dealers and distributors to compete** in downstream markets.
>
> We understand that this **perception was often backed up by the many years of experience** that various distributors had dealing with specific majors and the fact that dealers and distributors were, and remain, an important route to market for majors. (Emphasis added.)

6.27 The Commission appears concerned about a lack of formal RFPs being run by distributors. But there is nothing to say that RFPs are necessary to secure competitive pricing. Many commercial arrangements take place without formal RFPs. Indeed, as the Commission notes (at footnote 508, "This reseller previously ran a competitive tender process, but did not run one in their most recent round of supply negotiations." The only inference that can be taken from this was that the reseller, having had direct experience with an RFP process, took the view they were better off not running one. That is powerful, real world evidence, that an absence of RFPs cannot be interpreted as indicating a lack of competitive tension. It also reflects the [redacted]

6.28 Notwithstanding that independent firms have entered into contractual arrangements that, by the Commission's own admission, they appear comfortable with, the Commission is concerned that things might change in the future. That is not a sound basis on which to recommend policy changes. The fact is that throughout New Zealand there are industries where some firms are vertically integrated and others are not, and who depend on competitors for supply. Those arrangements will be negotiated, with a whole myriad of approaches to pricing struck in response depending on particular circumstances. There is nothing to suggest that fuel is somehow different and downstream customers are worse off.

6.29 In fact:

(a) the growth of the number of independents (rather than the vertically integrated majors); and

(b) the fact that Waitomo – supplied by Mobil, and currently expanding in Auckland, Wellington and Christchurch – was the cheapest retailer (according to Gaspy data);[9]

suggests the wholesale market is not 'broken', or that consumers cannot secure attractive pricing from resellers such as Waitomo, such that heavy handed intervention is required.

6.30 In BPNZ's view the Commission's concerns about a lack of transparency are overstated. [redacted]

Market outcomes do not indicate competition is weak at wholesale level

6.31 BPNZ strongly disagrees with the premise that there is weak competition at the wholesale level. The success of independent distributors and retailers, bringing choice and price competition to consumers, is strong evidence that this conclusion is incorrect. In particular:

(a) as set out above, the infrequency of competitive tenders is not evidence of a weak wholesale market – it simply indicates that resellers can obtain competitive terms without the need for a formal tender;

(b) at least insofar as it applies to BPNZ, it is wholly inaccurate that distributors get worse pricing than commercial customers (or makes higher margins). [redacted]

(c) dealer profitability in no way reflects a "profit sharing" arrangement as an exchange for "restrictive wholesale supply arrangements". Distributors' profitability is more likely to reflect their efficiency and their use of new technologies for retailing fuel (such as unmanned pumps);

(d) in relation to dealers, BPNZ considers that its dealers obtain highly competitive supply terms that enable them to run a successful business. To the extent that dealers are not profitable, this is likely to reflect a highly competitive retail market (as described elsewhere in this submission);

[9] https://www.stuff.co.nz/business/money/113102233/waitomo-has-topped-cheapest-fuel-charts-throughout-year-gaspy-data-shows

(e) the Commission's understandings set out in paragraphs 6.124 to 6.125 of the Draft Report do not reflect BPNZ's understanding of the Australian market. In particular, BPNZ is aware of numerous instances of longer term wholesale supply agreements than those set out by the Commission. In any event, it is not informative to compare a select set of contractual terms for distributors and dealers with other countries as the Commission is attempting to do (paragraph 6.124 to 6.125). There are many differences between arrangements in place in New Zealand and other countries (including Australia) including the level of development allowances paid in New Zealand and the lack of a range of other fees (such as brand fees etc.). To the extent that the Commission seeks to rely on an international comparison, BPNZ submits that this should involve a much more detailed analysis of the respective terms and the market realities underlying those terms.

These wholesale relationships may adversely affect competition in retail markets

6.32 For the reasons above, BPNZ strongly disagrees that there is a lack of wholesale competition. Wholesale competition manifests across a broad range of factors including price, reliability of supply, contractual terms etc.

6.33 Furthermore, retail competition, which is increasing in intensity will exert even more pressure on wholesalers to ensure a highly competitive offer. If resellers (whether dealers or distributors) supplied by wholesalers become uncompetitive, they will come under even greater competitive pressure in relation to wholesale supply contracts.

7. Chapter 7: The retail price and product offer

Introduction

7.1 For the reasons set out elsewhere in this response, BPNZ considers that the Commission's concerns about a lack of switching at the wholesale level and wholesale agreements creating a barrier to entry are unfounded. The evidence in the market directly contradicts the Commission's concerns:

(a) the retail market is vibrant and exhibiting substantial growth and price competition from independent retail chains supplied by the majors. The fact they do not switch is because their supply terms have been such that they can compete hard and continue to expand;

(b) if wholesale agreements were a real barrier to entry TOSL would not be establishing its terminal in Timaru. This is a material investment and would not have been undertaken unless its owners considered that they could access customer demand.

7.2 In relation to the retail level, BPNZ also considers that the Commission's concern is unfounded:

(a) retailers' efforts at differentiating their products through improving service offerings to customers is an outcome of strong competition, not a barrier to it;

(b) in addition to competing on service offerings, loyalty programmes, convenience offerings, new technology and other parameters, price board competition remains fierce. The Commission's analysis of the competitive impact of Gull and new distributor sites impacts is inconsistent with that of BPNZ and substantially underestimates the degree of such constraint.

7.3 Specifically in relation to loyalty programmes, BPNZ strongly refutes the Commission's assertion that these are a substitute for price board competition or make it difficult to compare offers. BPNZ considers that its AASF programme delivers excellent value for its customers, and is easy to understand – being a straight cent per litre discount. But again, the market is reacting to consumer behaviour/demand, which is why BPNZ has more recently been adding its AASF programme prices for its most popular grade, 91, to price boards (an initiative that others appear to also be adopting).

7.4 In relation to premium petrol, BPNZ does not agree that customers are not well informed of prices, particularly with the widespread use of pricing apps, such as Gaspy. BPNZ considers that premium fuel can result in substantial benefits to motorists, although it agrees that the level of benefit is dependent on the type of engine, driving style and conditions and other factors. Many vehicle manufacturers (particularly European car manufacturers) specify 95 octane fuel as a minimum for most, if not all, of their vehicles.

Wholesale competition is strong

7.5 BPNZ does not agree that fuel is a homogenous product. BPNZ has made significant investments into its fuel additive 'Active Technology' and in particular into its 98 octane fuel product. (Ref: Draft Report at 7.8)

7.6 BPNZ considers that wholesale competition is indeed strong. There have been examples of switching in the market, but even without switching, independent retailers can and do extract highly competitive prices from wholesale suppliers as set out at 6.17 above. (Ref: Draft Report at 7.10 to 7.11)

Retail competition is strong

Number of independent retailers indicative of strong competition

7.7 Contrary to the Commission's assertion, BPNZ considers that the fact that independent resellers and Gull sell half of all retail fuel sold in New Zealand is indicative of strong competition. The Commission in paragraph 7.13 refers to its previous chapters to support its conclusion that "the [supplier/reseller] relationships appear to have led to a pattern of retail investment that limits direct competition between majors and resellers." However, this appears to be a misinterpretation of the Commission's own analysis:

(a) the Commission's findings at paragraph 6.26 are that "distributors" retail networks have evolved to be largely complementary to, rather than competing directly with, the retail network *of the major that supplies them*; and

(b) even if this analysis is correct, it says nothing about the competition between the majors *and distributors supplied by their competitors.*

7.8 Accordingly, the Commission's view as to the level of competitive constraint exercised by the large number of independent retail chains appears to be based solely on a misinterpretation of its own analysis. The Commission cannot use this to base its conclusions.

7.9 Rather, when properly assessed, it is clear that Gull and independent retailers are major drivers of competition, particularly in relation to board pricing. The market share tables set out in BPNZ's response to chapter three are strongly indicative of a trend of increasing penetration and competition from these chains. Furthermore, contrary to the Commission's view, these retailers all have a mix of unmanned sites and full service sites in close vicinity to, and competing directly with, BPNZ sites. Examples of these sites and relevant photos are set out at **Annex 1**.

Wholesale prices are competitive

7.10 The Commission's analysis at paragraph 7.15 to 7.18 is also premised on incorrect factual assumptions and analysis. Again, the fact that there are many independent retail chains, which are growing quickly through expansion in site numbers and strong price board competition, is stark evidence of strong wholesale competition. Strong retail competition belies the assumption that wholesale prices are "inflated".

7.11 Equally, TOSL's entry demonstrates that reseller contracts are not a barrier to entry by a new importer and infrastructure owner.

Retail competition is strong

Discounting and loyalty programmes are beneficial for consumers

7.12 BPNZ disagrees that the level of price board competition has diminished. If anything, this has increased over the past few years, particularly as independent retailers have expanded their networks. The trend towards discounting is consistent with a range of other retail industries and is highly beneficial to customers.

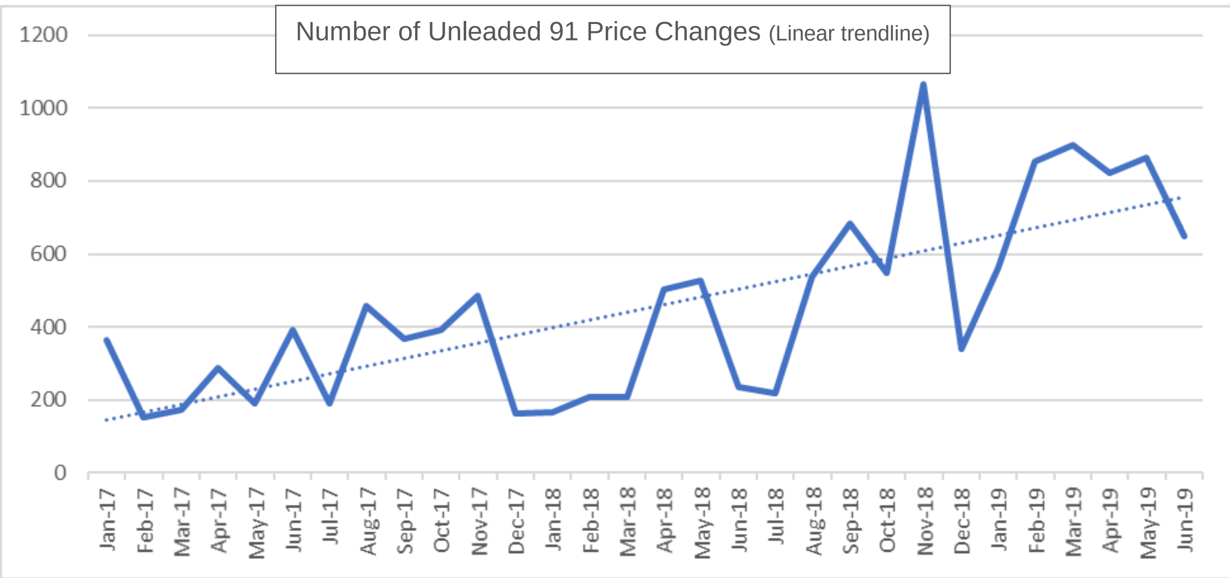
7.13 In relation to the Commission's analysis of board price margin and discounting (para 7.27.1), BPNZ considers that the basis for this analysis appears to be inaccurate. This data does not reflect BPNZ's views of discounts and margins (and it may reflect some of the errors referred to above in relation to quality adjustment costs).

7.14 BPNZ does not in any way manipulate its retail board prices to offset expected discounting. Pricing and loyalty/discounting functions are completely separate within BPNZ. BPNZ considers that the Commission's analysis may have neglected to account for competitive reactions when measuring the relationship between price changes and discounting.

Loyalty programmes do not dampen price board competition or result in anticompetitive price discrimination[10]

7.15 BPNZ considers that fuel loyalty programmes do not dampen price board competition. BPNZ is well aware that if its displayed 91 octane fuel price is higher relative to nearby competitors, even by a small amount, it can lose substantial volume to competitors. As a result, BPNZ is strongly motivated to ensure that its pricing on the price board is competitive. That is precisely why you will see a large number of BPNZ price board changes on the day, say, Gull drops its price.

[redacted] This pricing behaviour results in prices on BPNZ's price boards changing frequently to stay competitive. The graph below shows the number of price changes BPNZ sends down to its sites[redacted]



7.17 In total, BPNZ makes around [redacted] price changes a month across 104 sites and around [redacted] Agency sites. This equates to around [redacted] price changes per site per month [redacted] to ensure price board competitiveness. As demonstrated by the chart above, the frequency of price changes is increasing rather than decreasing, despite the increasing penetration of loyalty and discounting programmes.

7.18 The strength of price board competition is the key reason for BPNZ's planned integration of the AASF price for 91 into the "MID" price board at BPNZ sites by the end of 2019 at a cost of [redacted] The AASF price panel gives BPNZ the opportunity to combine price board and loyalty competition by clarifying the best every-day offer available on its most popular grade of fuel.

7.19 Accordingly, contrary to the Commission's concerns, BPNZ is seeking to entice more and more of its customers to take advantage of its discounting and make this clearer. BPNZ's approach to pricing is not premised on a proportion of its customers not taking advantage of its discounts (which is very straightforward to do).

Differentiation of offers benefits customers

7.20 BPNZ constantly strives to bring the best possible customer experience to its outlets through a range of initiatives. This includes developments in its convenience store and coffee offering, its fuel additive technology, its payment and customer interface technology (such as through the BPMe app) and overall service levels. Many customers strongly value these offers. Equally, customers who prefer a "no frills" offering have many alternative options, particularly through the independent retailers offering unmanned and no frills sites, but who compete very strongly on

10 [redacted]
11 [redacted]

price. BPNZ considers that this is consistent with Commission's view of differentiation at 7.51.1, in that it is responsive to customer preferences and therefore makes them better off. (Ref: Draft Report at 7.51-7.55)

7.21 However, BPNZ disagrees that these efforts at product differentiation are in lieu of competition in the price board. As set out above, price board competition is strong and increasing. (Ref: Draft Report at 7.56-7.60)

Premium fuel

7.22 BPNZ considers that its premium fuels do have substantial advantages over 91 octane fuel in various scenarios. Its claims in this regard, along with any disclaimers, are clearly set out in relevant marketing material, including on its website. BPNZ considers that these claims are clear and accurate. BPNZ Premium 95 and BPNZ Ultimate 98 represent value for money for certain motorists looking to enhance their cars' performance.

7.23 In particular, many European car manufacturers specify 95 octane fuel as a minimum for ensuring optimal function of the engines in most of their models. Other manufacturers frequently specify at least 95 octane fuel for their performance vehicles.

7.24 In relation to margins, BPNZ notes that its premium fuels do cost it more to deliver to the customer. Furthermore, contrary to the Commission's analysis, 98 octane fuel costs more to deliver to customers than 95 octane fuel. Given the benefits to motorists of using premium fuels (if appropriate for their vehicles), BPNZ does not consider that the margins on premium fuel products are in any way excessive. (Ref: Draft Report at 7.61 to 7.75)

Price matching issues

7.25 BPNZ considers that the Commission's concerns around the susceptibility of the retail fuel markets to coordinated effects (paragraph 7.87) are unfounded. As set out above, competition occurs across a range of different aspects, with price being only one. Furthermore, the strong expansion in recent times by a range of retailers, with strong value propositions, would count strongly against any ability for retailers to reach or maintain any coordinated outcome. The entry of TOSL, Waitomo and Gull in the South Island is likely to make the prospects of tacit coordination even more remote. (Ref: Draft Report at 7.76 to 7.87)

Retail investment demonstrates competition in action

7.26 BPNZ agrees that there has been an expansion in the number of retail sites, including many new, low cost unmanned sites. These do result in substantial price competition. BPNZ considers that the Commission's preliminary findings from its analysis of entry events may understate the impact on price competition from Gull and independent retailers. The CRA Report sets out further issues with the Commission's analysis in this regard.

7.27 Competition from independents is a very real phenomenon and has increased markedly in recent years. BPNZ expects to see a continued impact on prices and profit margins as a result.

8. Chapter 8: Options for recommendations

Introduction

8.1 BPNZ appreciates the opportunity to comment on the Commission's preliminary options for recommendations. However, it considers that many of the recommendations are based on preliminary conclusions on competition that are not supported by the evidence. In particular, BPNZ considers that the wholesale market is supporting competition as evidenced by the expansion of independent retailers who are competing strongly on price, and the entry of TOSL, whose business case must not necessarily be premised on being able to secure distributors / resellers.

8.2 The existing supply chain is an efficient mechanism to move fuel from RNZ around New Zealand. Any attempt to have suppliers "join in" certain aspects of it rather than developing their own infrastructure may cause unintended consequences. Rather, wholesale competition will continue to develop as TOSL enters the market and builds terminals at Timaru and (likely) Mt Maunganui. TOSL and Gull [redacted] hese arrangements are beginning to manifest and do not require intervention.

Risk of unintended consequences

8.3 BPNZ sets out further below its views on the Commission's specific options for recommendation. However, common to many of these options is the risk of unintended consequences. This is particularly the case in relation to the potential knock-on impacts of interventions at one level of the supply chain on other levels of the supply chain.

8.4 For example, it is important when considering any changes to the existing models that the potential impacts on the operation of RNZ are fully accounted for. RNZ is an independent business, which provides significant benefits to New Zealand as a whole. The potential impacts on RNZ of a change to arrangements further down the supply chain are difficult to predict due to the complex interdependency of the existing models (RNZ processing arrangements, shared storage, B&L and coastal shipping).

8.5 BPNZ does not believe these complex interdependencies have been adequately taken into account in some of the findings in the Draft Report. In particular, because RNZ provides its services based on an import parity pricing model, transporting fuels from RNZ to the ports cannot be easily delinked.

Improving wholesale competition

8.6 For the reasons set out above, BPNZ does not agree that the wholesale market is uncompetitive. Opportunities for distributors and dealers to switch are not infrequent and, even during the course of contracts, distributors can and do test the market to extract more favourable terms.

8.7 However, in principle, BPNZ is not opposed to certain options in relation to wholesale agreements and pricing:

(a) BPNZ considers that its dealer and distributor agreements are balanced and appropriately reflect the specific investments made by each party. Many of the contractual provisions that the Commission has raised concerns about do not appear to be relevant to BPNZ. Nevertheless, it is willing to consider any specific concerns that the Commission has in relation to BPNZ's contracts;

(b) in relation to restrictive covenants, BPNZ strongly disagrees that these have an adverse competition effect. Furthermore, these are common across many industries; and

(c) in relation to wholesale pricing, BPNZ does not include “retail-minus” pricing terms in any of its agreements with resellers, and is ambivalent about a recommendation they be removed in contracts which do have such provisions.

8.8 In relation to access to infrastructure, BPNZ considers that the Commission has not accurately assessed the impact of the supply chain arrangements on competition. In particular:

(a) it is simply not the case that a new entrant would require access to infrastructure in each port in order to effectively compete;

(b) bilateral arrangements are most suited to filling gaps in an importer’s wholesale network and this is a feature of the market currently; and

(c) if the Commission is concerned that there is insufficient capacity in the terminals (which BPNZ does not consider is accurate, at least insofar as it concerns its own supply chain) then it is not clear how adding another participant at each terminal will address this issue. To the contrary, it is likely to aggravate the issue.

8.9 Moreover, the Commission’s analysis has not fully taken into account the interconnected nature of RNZ, COLL and terminal storage. BPNZ considers that endeavours aimed at “opening access” risk unintended consequences and would lead to inequitable outcomes. In particular:

(a) It is not at all clear how the Commission intends an access regime to operate and, in particular, how such a regime would guard against the knock-on impacts at different levels of the supply chain when making changes at the terminal level. In BPNZ’s opinion, the recommendation at the moment would risk serious adverse consequences for the operation of RNZ (as set out above);

(b) BPNZ strongly believes that being required to make tankage available to a new entrant who has not had to invest across a network, such as BPNZ has, destroys the equitable sharing of investment and risk that sits behind the shared tankage arrangements and the B&L system. BPNZ would have to look seriously at its continued involvement in these arrangements as it would be giving more commercial advantage to its competitors than it would be receiving;

(c) BPNZ does believe the existing arrangements are more efficient than standalone options for distributing fuel from RNZ, but BPNZ would be at a significant disadvantage versus other “importers” if it were required to bear a disproportionate level of the regional investment and the risk of multi terminal operations compared to other parties who have equal rights but not equal obligations;

(d) BPNZ considers it may be more difficult to develop an equitable mechanism for doing this than simply extracting itself from the current arrangements and relying on its own asset base, as it does for Avgas and 98 octane fuel already and as it does in most other countries;

(e) BPNZ notes that a significant issue that would arise in this situation would be the cabotage laws in New Zealand which require BPNZ to use a coastal vessel with a New Zealand based crew to move fuel from RNZ to its facilities. As detailed in the 2014 Hale & Twomey report to RNZ, coastal shipping operated by New Zealand crews is not competitive with using international shipping. Should BPNZ be required to meet these cabotage requirements yet also required to share its terminal network – both due to regulatory controls – it would be disincentivised to use RNZ to produce more than the fuel required to meet its Auckland demand and incentivised instead to import to its own facilities. The impact this may have on RNZ is for RNZ to comment.

8.10 BPNZ would appreciate the opportunity to engage further with the Commission in relation to the options it has suggested, but this will be more useful once the factual errors in its analysis have been corrected.

Changes to refinery allocation and information flows

8.11 As set out at 5.78 above, BPNZ considers that RNZ allocation mechanism does not inhibit competition due to the ready substitutability between refinery and import volumes for RNZ users. However, it is willing to alternatives (provided this does not adversely affect the ability to plan crude oil deliveries).

8.12 As set out above, BPNZ does not consider that there are any competition concerns associated with how the information is shared within the industry. Nevertheless, BPNZ would be happy to take this opportunity to revisit and refresh the information protocols and systems operating within COLL, RNZ and in respect of the B&L arrangements. While it is not aware of material deficiencies in this regard, it may to be practical to delegate certain functions involving commercial information to third parties to avoid the need for this information to be shared between the parties. BPNZ is happy to work within the RNZ and COLL committees to achieve this.

Informed consumers

8.13 BPNZ is fully supportive of measures aimed at increasing the level of information available for consumers. BPNZ believes that it has a very strong consumer offer and competes on its merits. Outside of the market study process, BPNZ has been assessing a range of options to improve access to information to consumers. As previously mentioned BPNZ will have AASF pricing available on the priceboards by the end of 2019 [redacted]

8.14 BPNZ would support some form of standard-form information collection if that were to benefit consumers. However, it should be done in such a way as to avoid undue burden on fuel suppliers (e.g. by avoiding the need to collate vast amounts of information in forms that are not required for internal purposes). BPNZ would be happy to work with the Commission further on this.

Annex 1 – Competitor sites

1.1 The Commission alleges in Chapter 7 that it is not clear whether the observed increase in the number of retail sites operated by resellers has had a positive competitive impact. The Commission is also of the view that many of the retail sites operated by resellers are unmanned or away from main arterial roads.

1.2 BPNZ does not share this view. There are numerous examples of resellers setting up retail sites very close to BPNZ in prime locations and often with full service offerings (or the potential to create them). Accordingly, BPNZ is of the view that the Commission has significantly understated the pro-competitive effects these retail sites have on local fuel offers.

1.3 BPNZ also sets out below some key examples of instances where resellers have set up retail sites either:

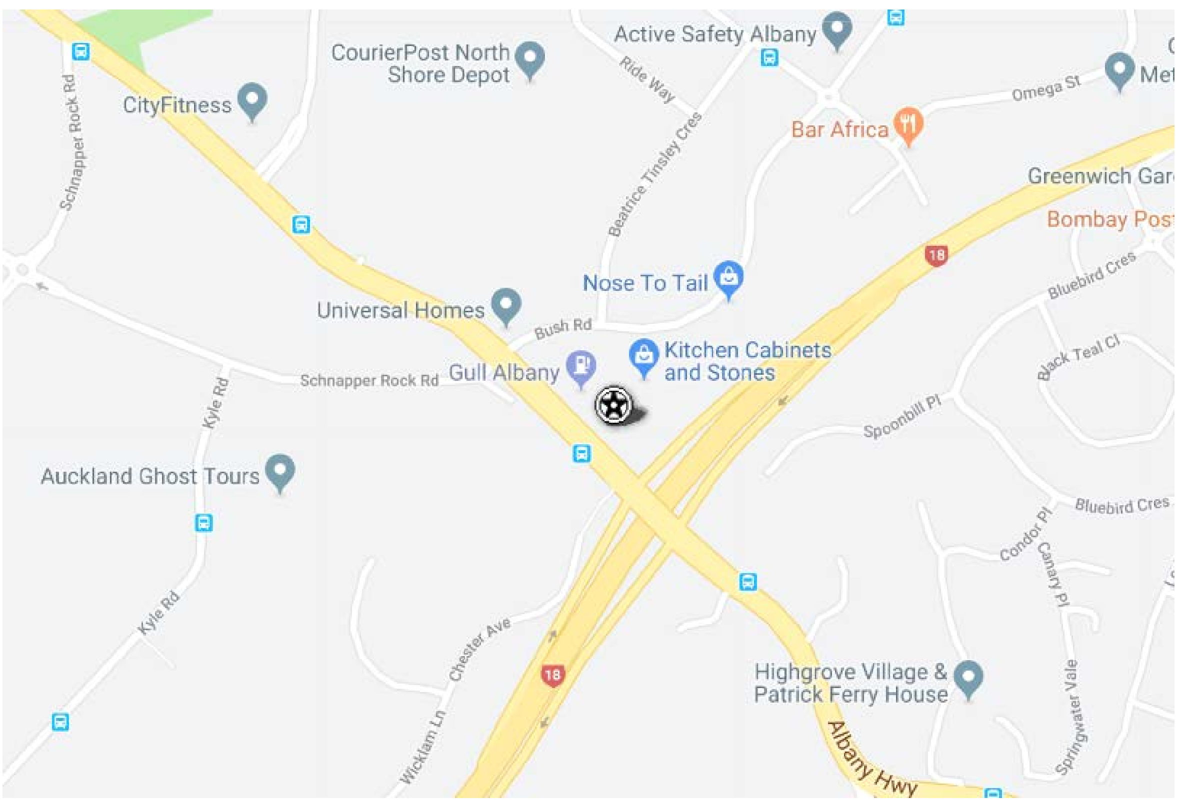
(a) with full service, staffed offerings; and / or

(b) in primary locations.

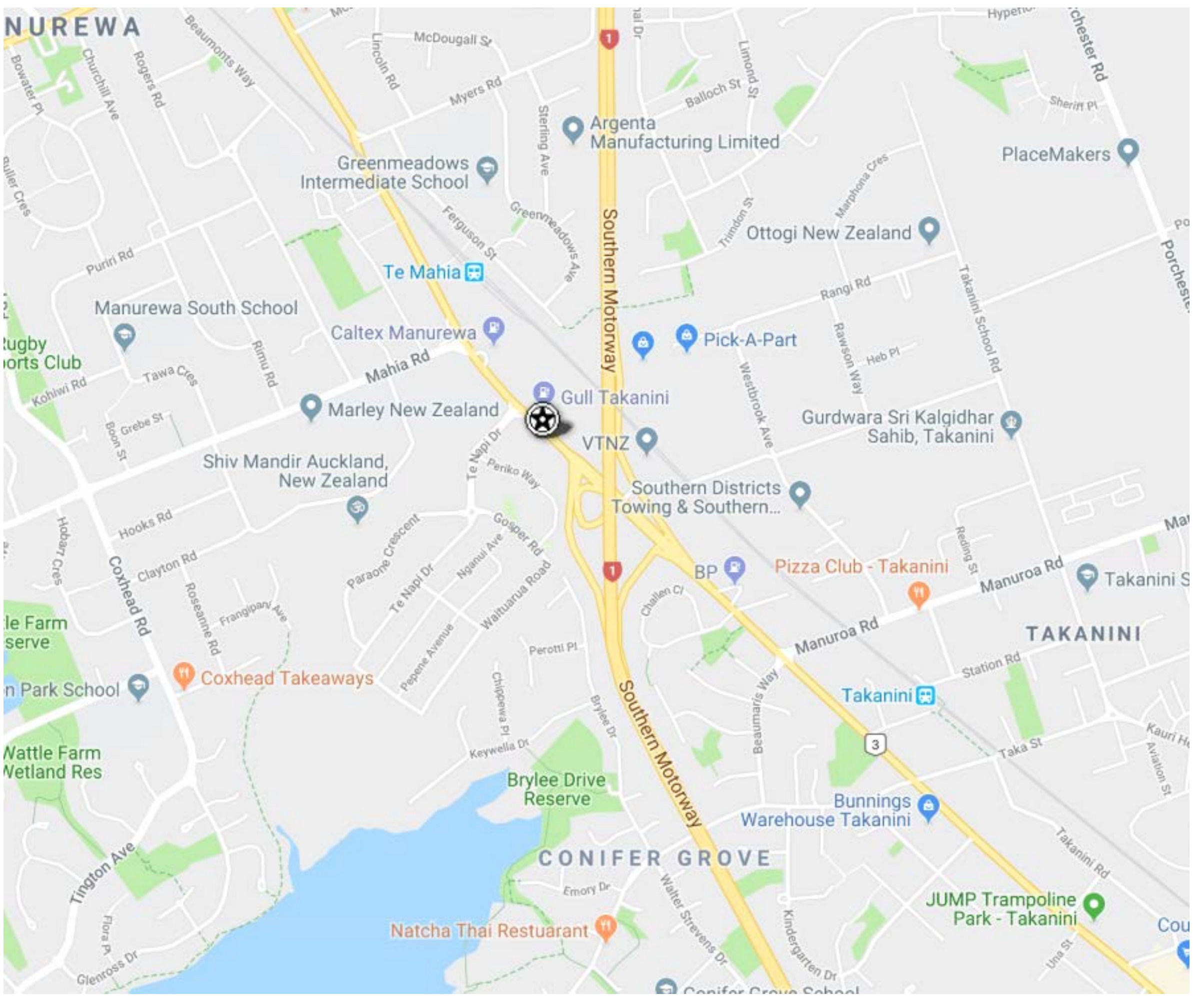
2. Examples

Auckland

2.1 Gull Albany

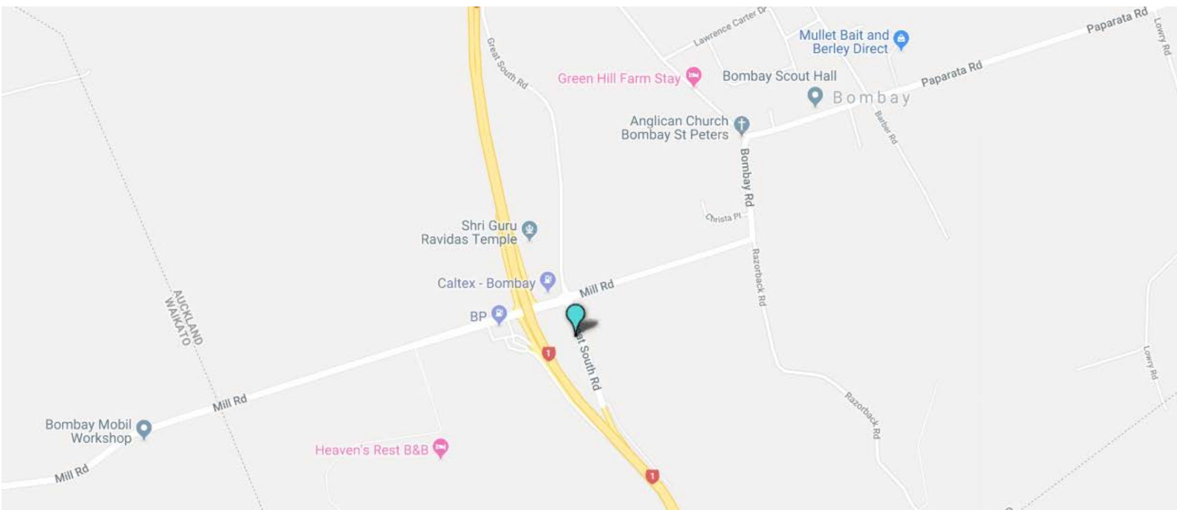


2.2 Gull Takanini



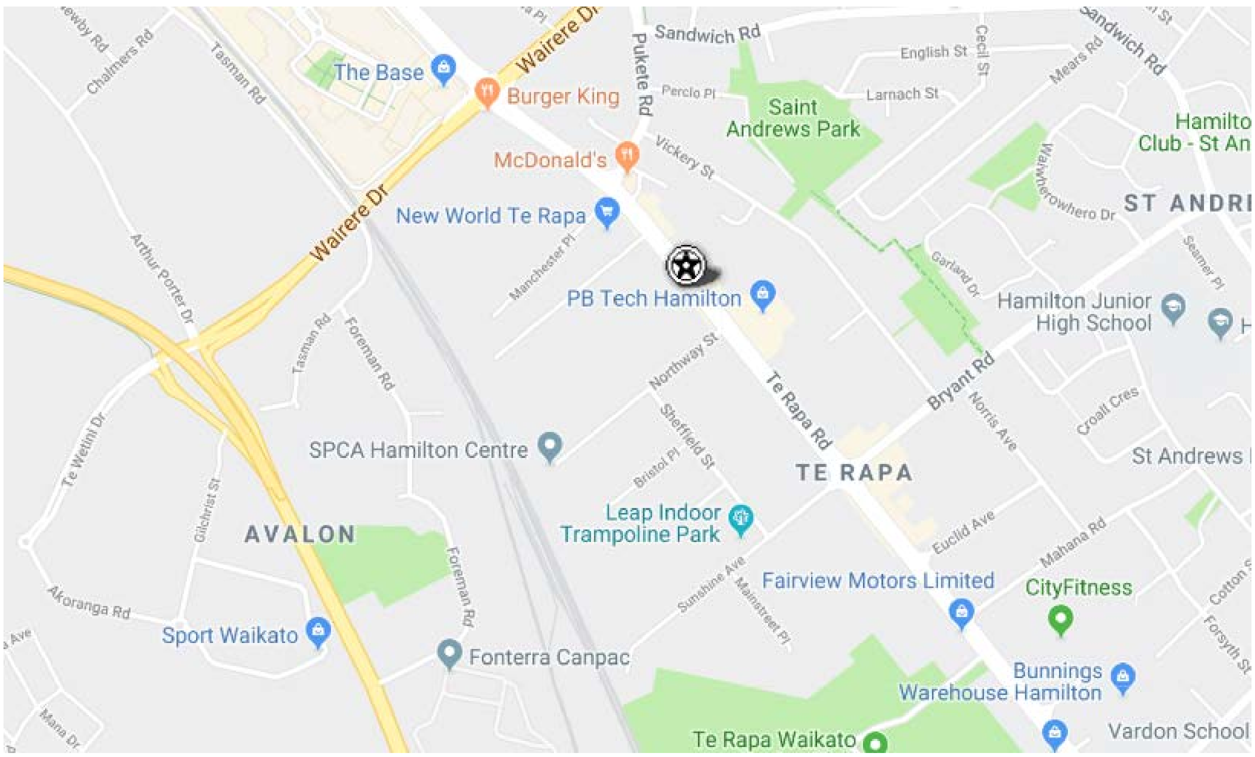
2.3 Gull Te Irirangi

2.4 Waitomo Bombay



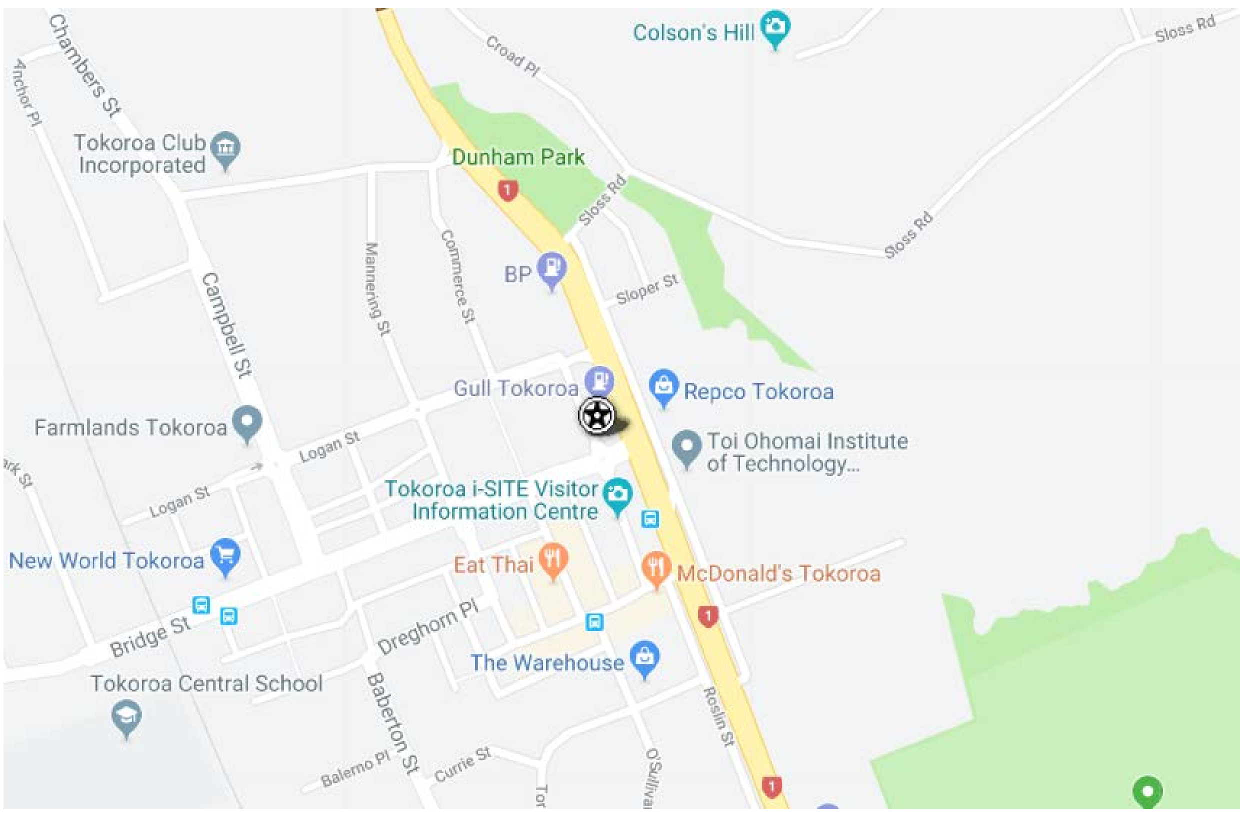
Hamilton

2.5 Gull Hamilton



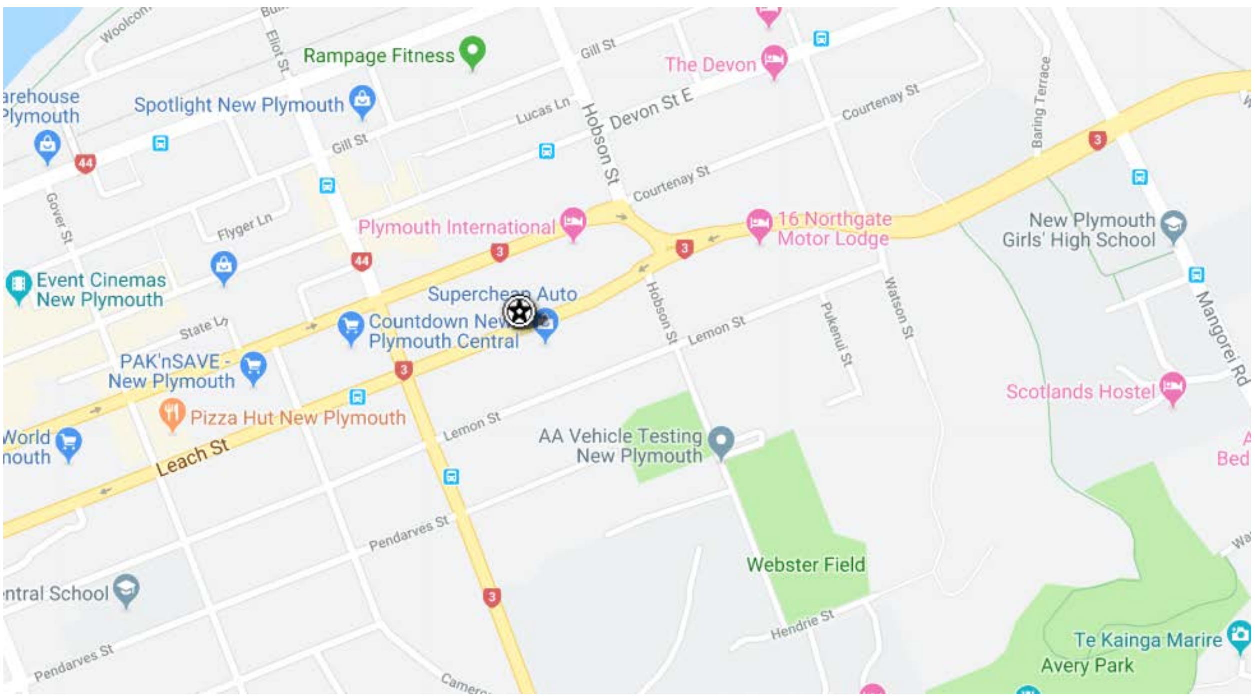
Tokoroa

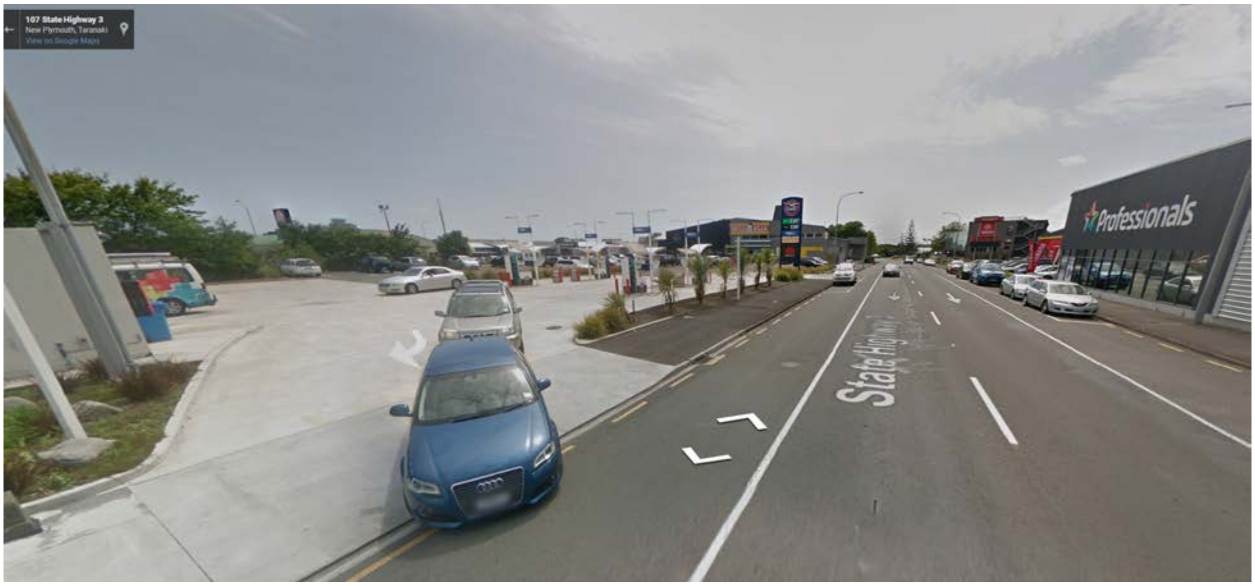
2.6 Gull Tokoroa



New Plymouth

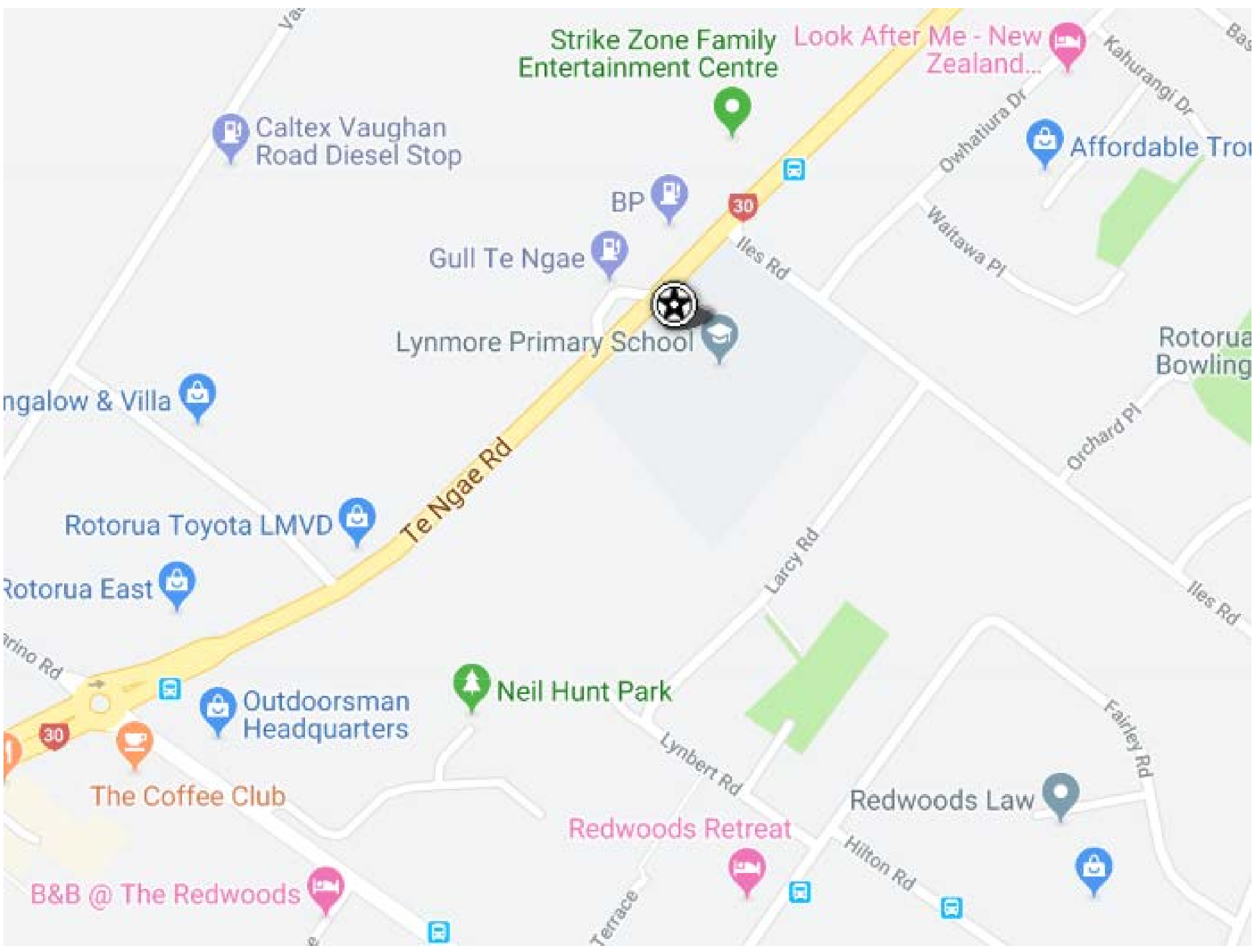
2.7 Gull New Plymouth



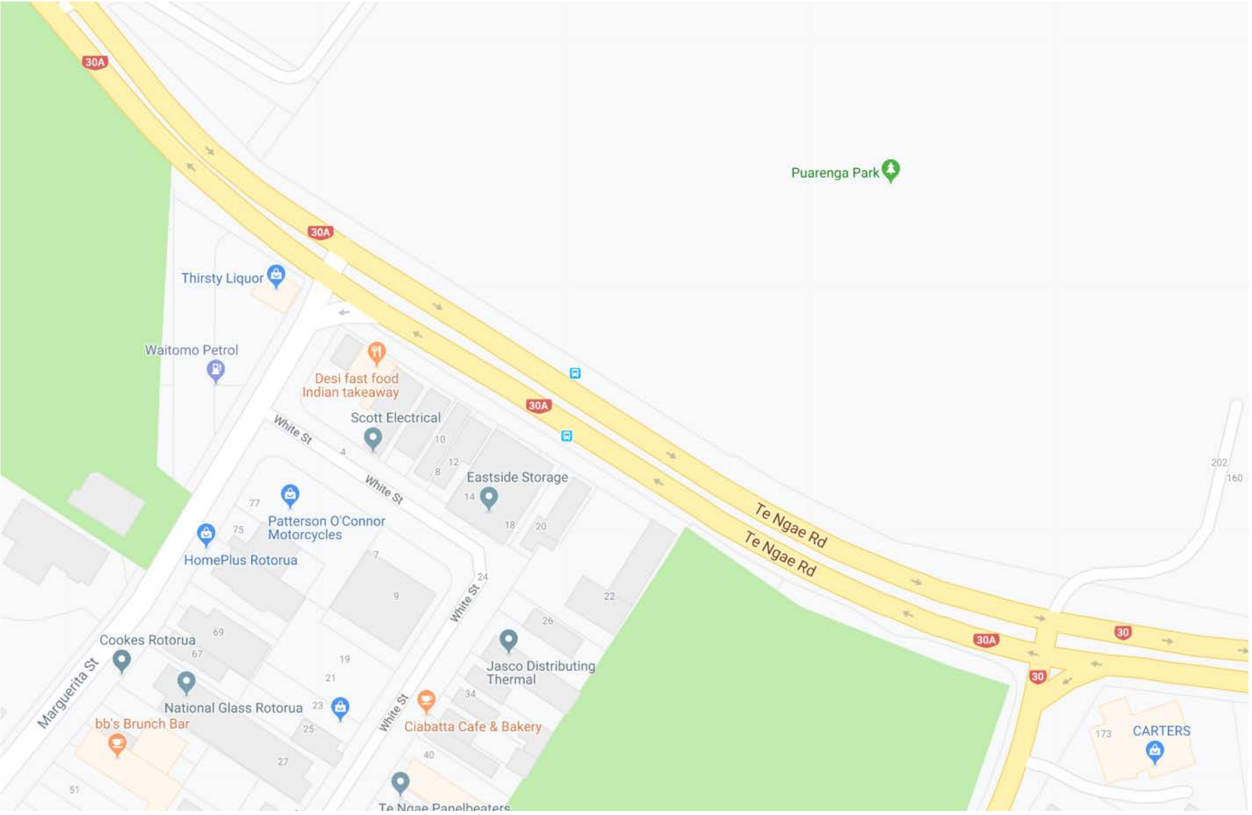


Rotorua

2.8 Gull Rotorua

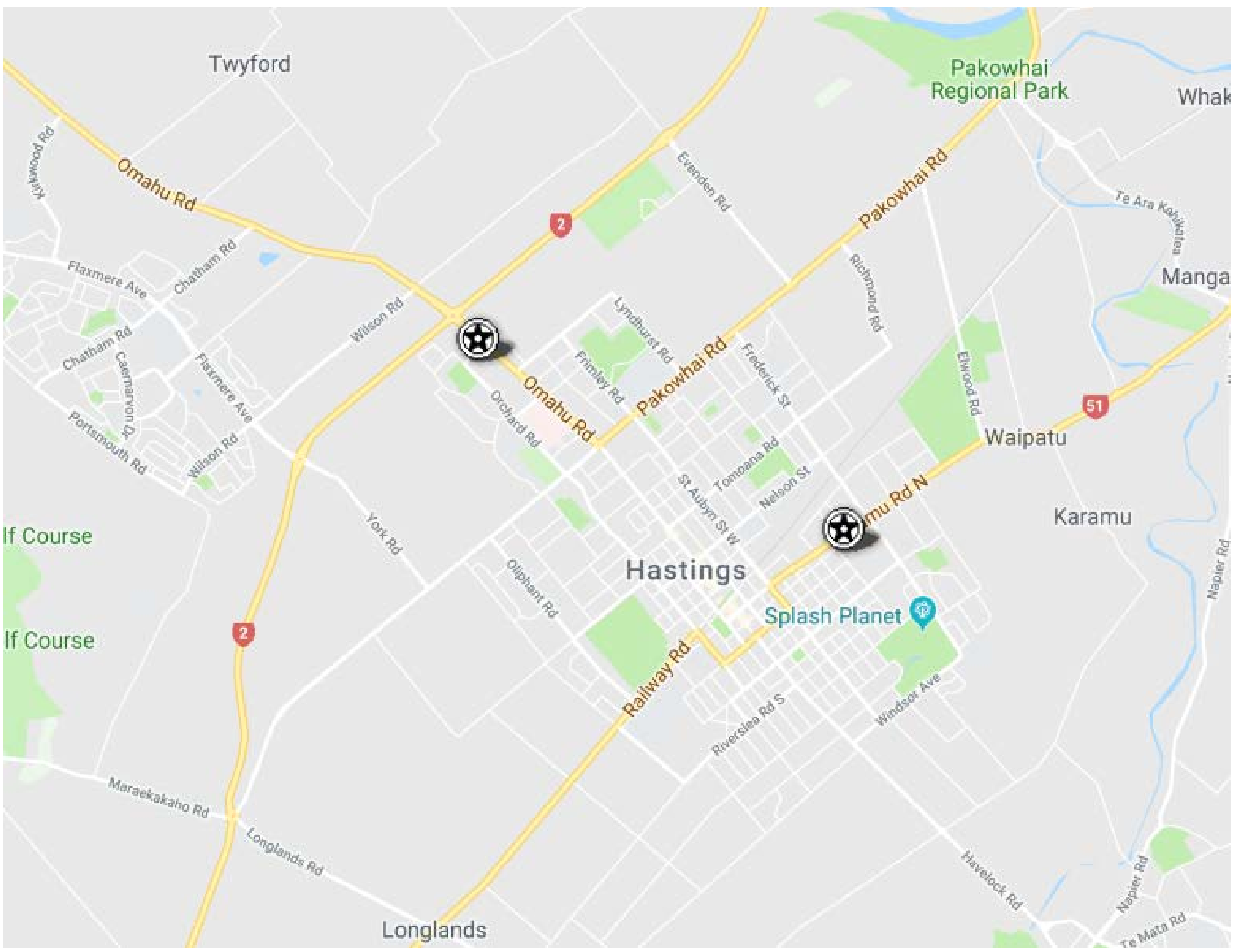


2.9 Waitomo Rotorua



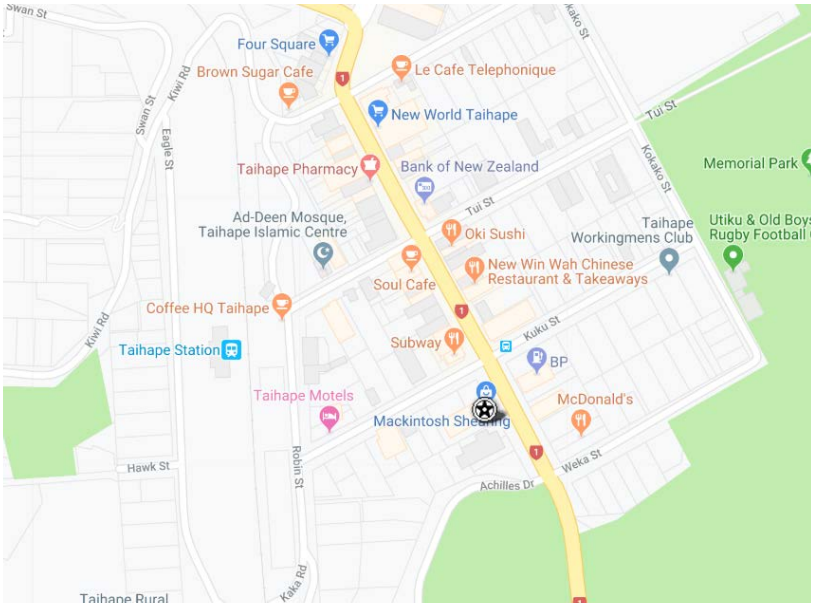
Hastings

2.10 Gull Hastings

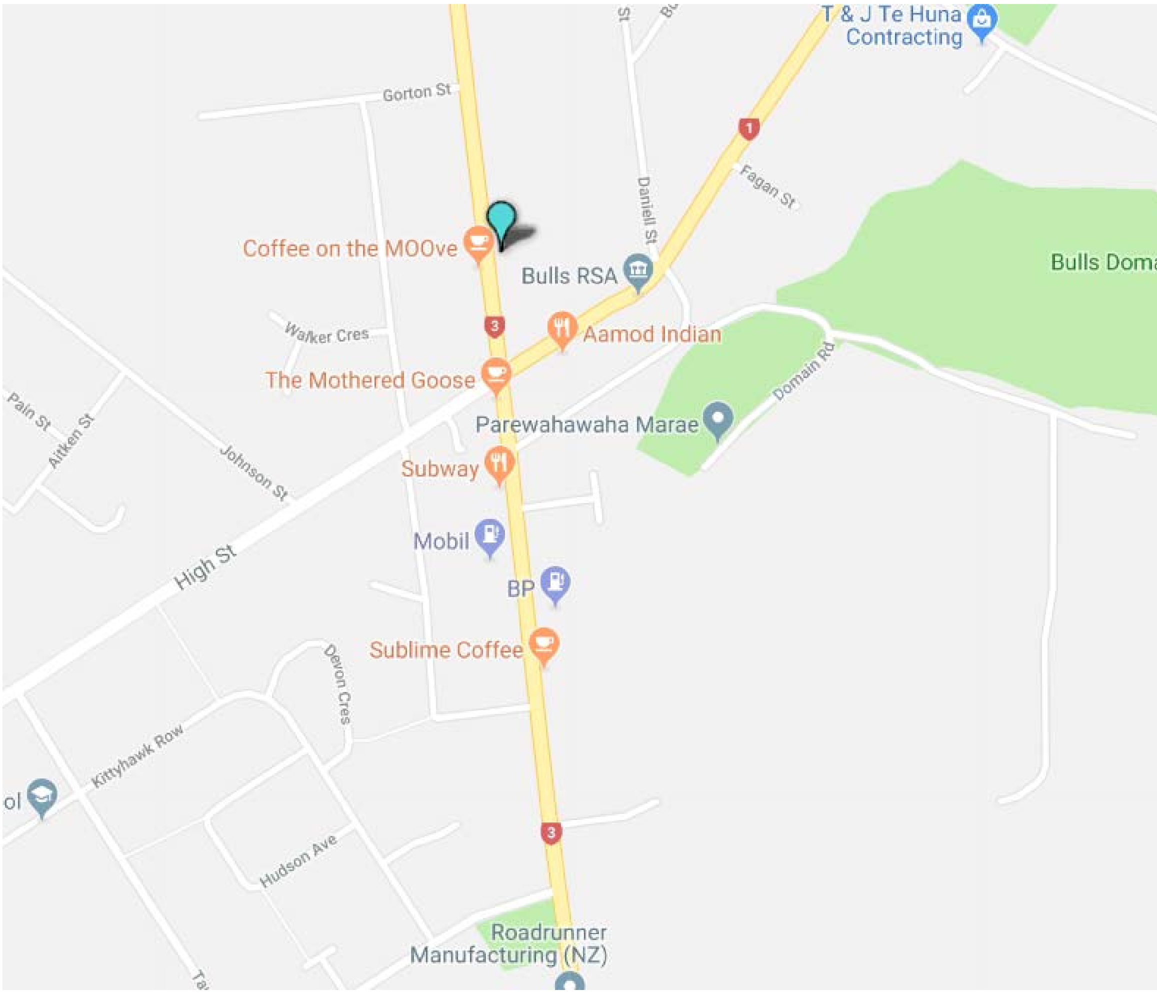


2.11 Gull Mayfair

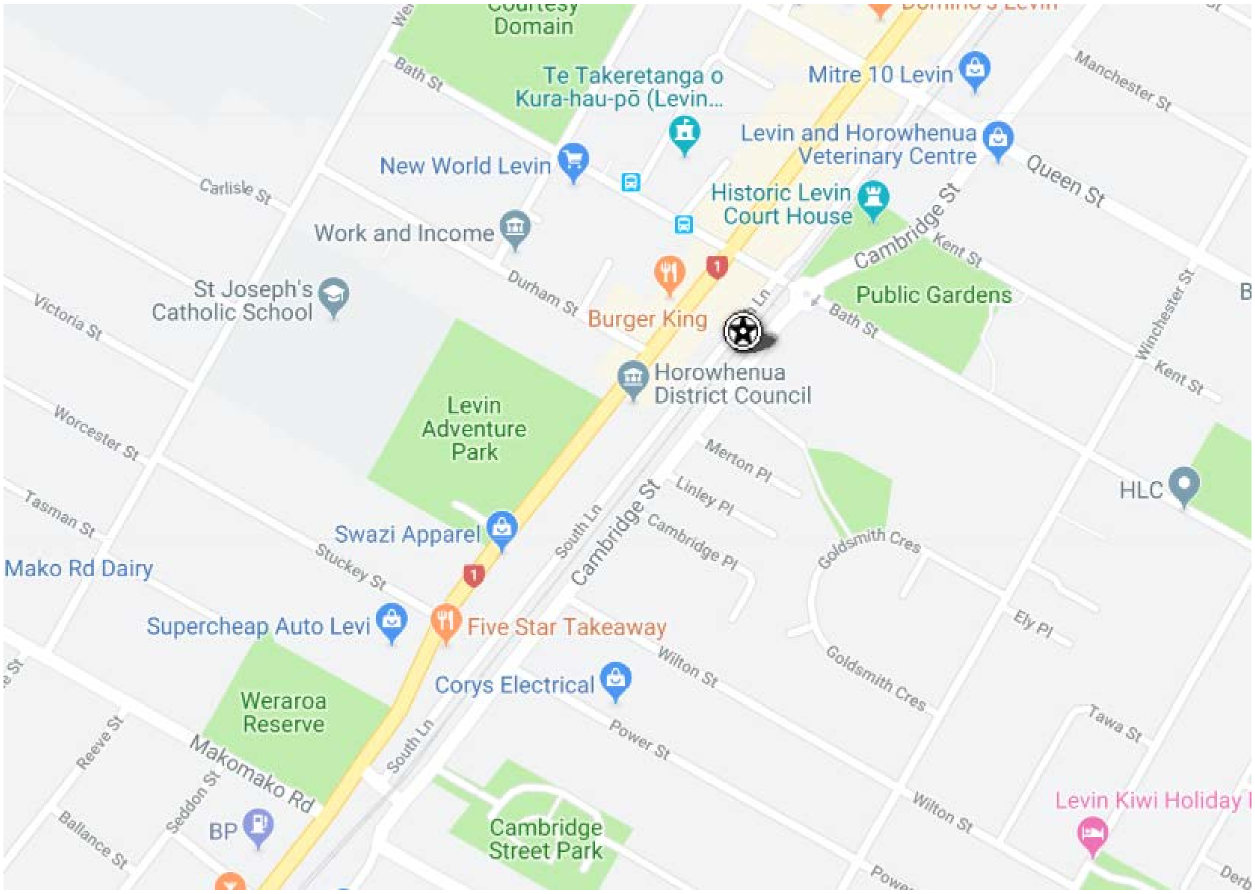
2.12 Gull Taihape



2.13 Waitomo Bulls

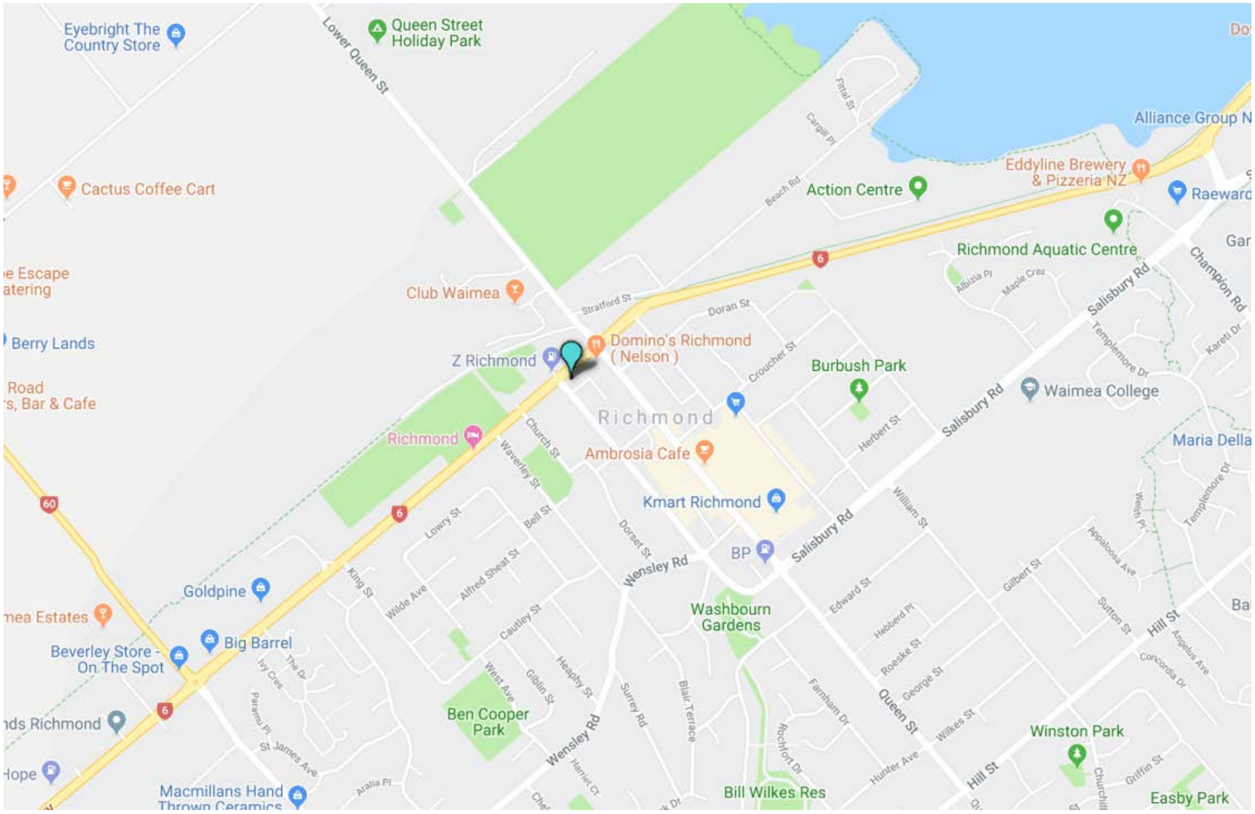


2.14 Gull Levin

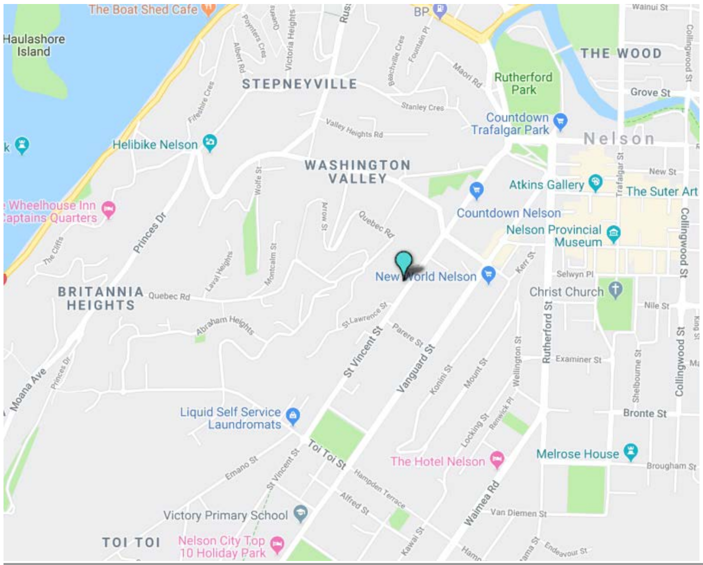


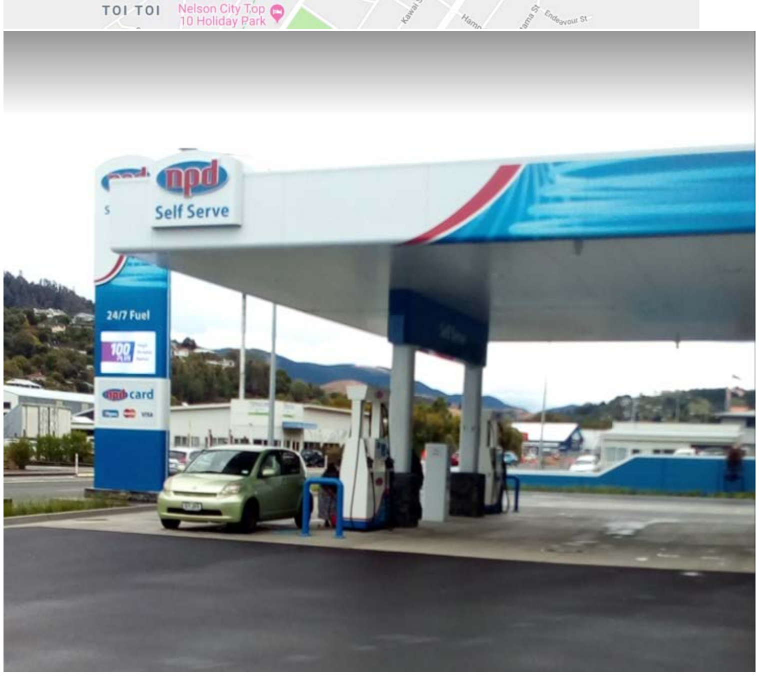
Nelson

2.15 NPD Richmond



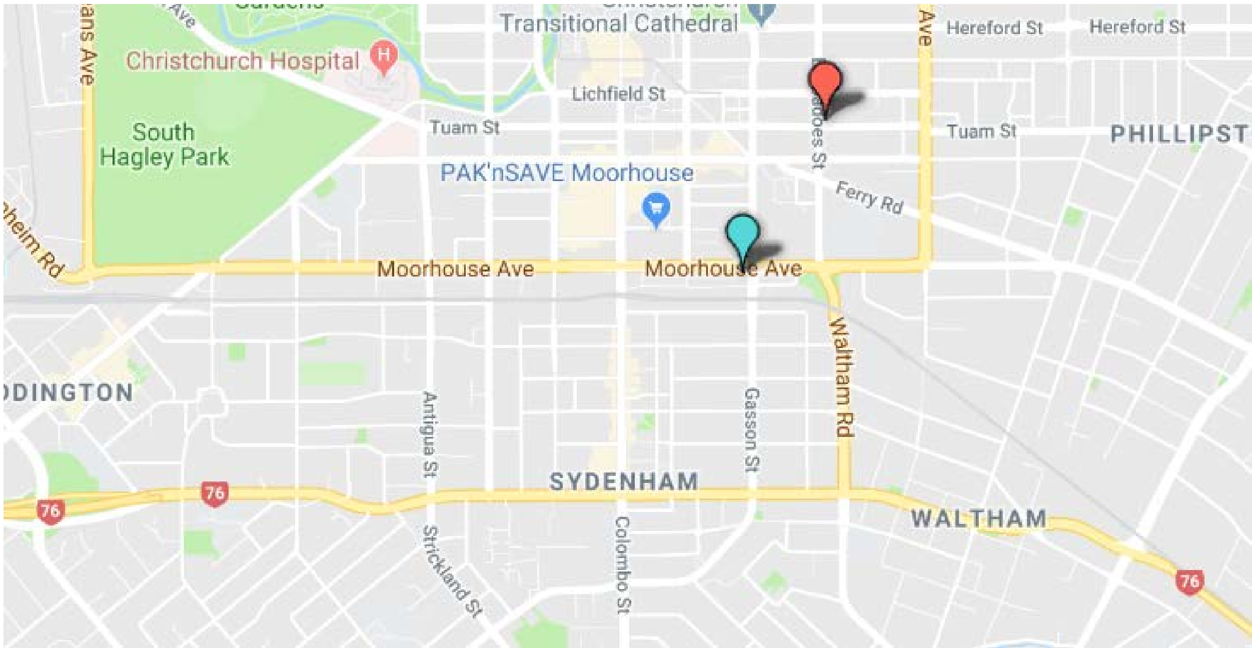
2.16 NPD St Vincent St



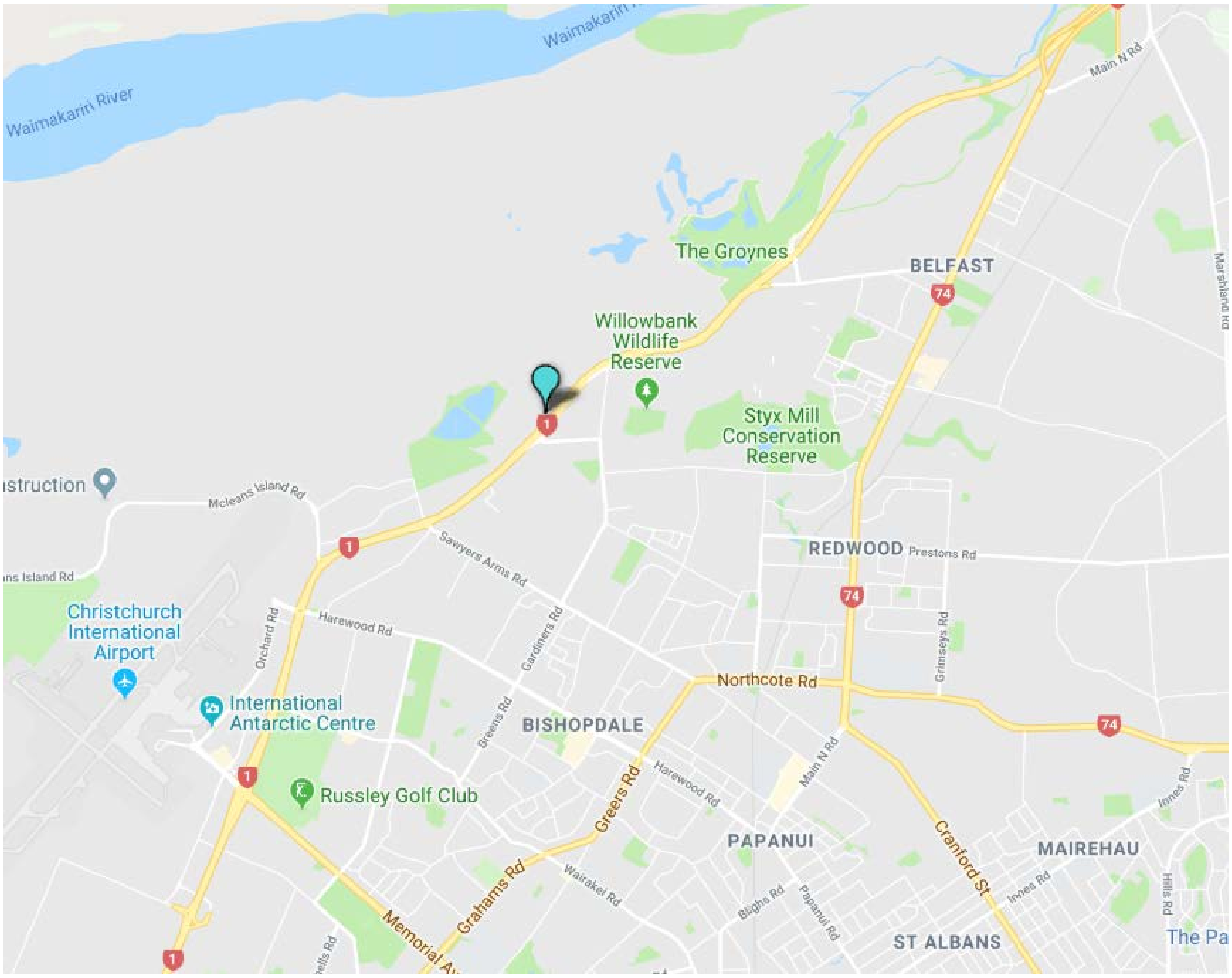


Canterbury

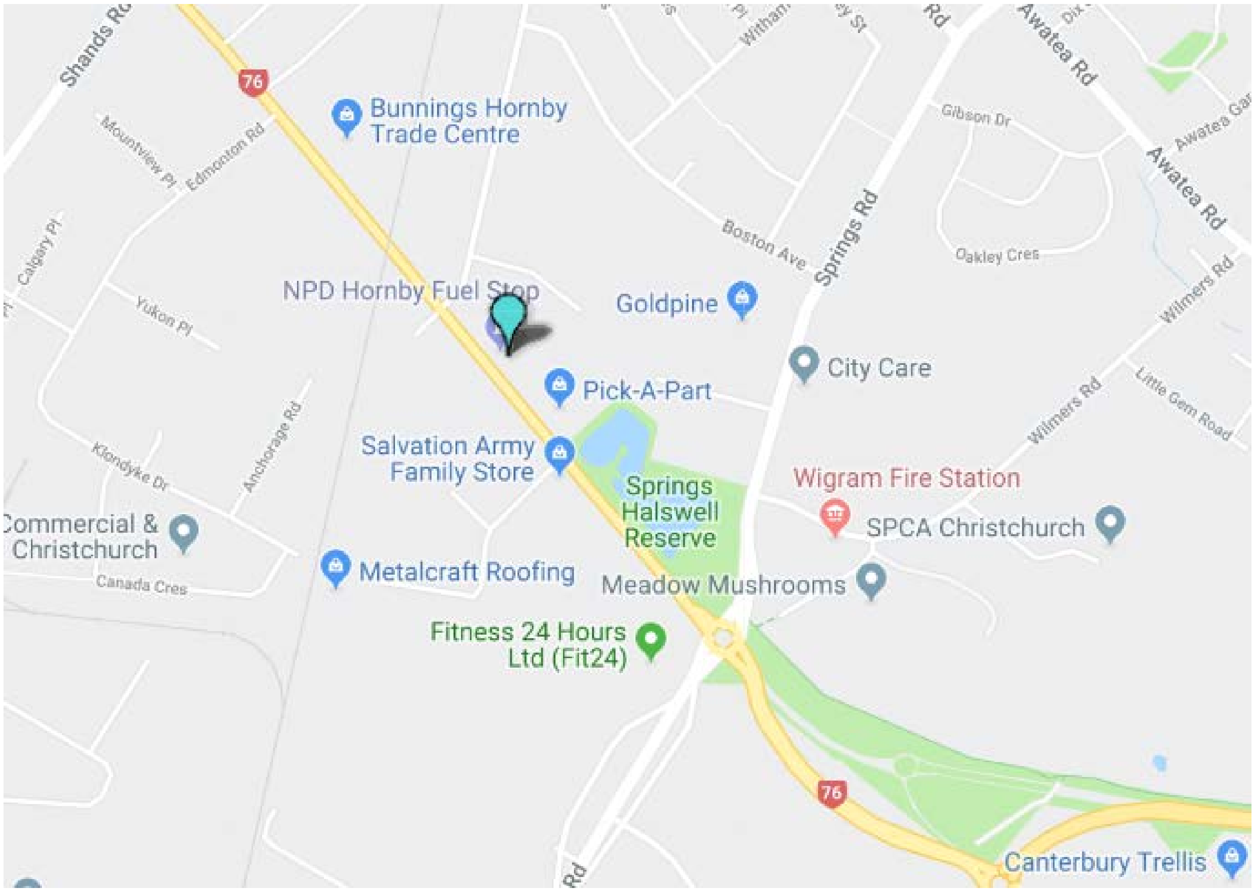
2.17 NPD Moorhouse



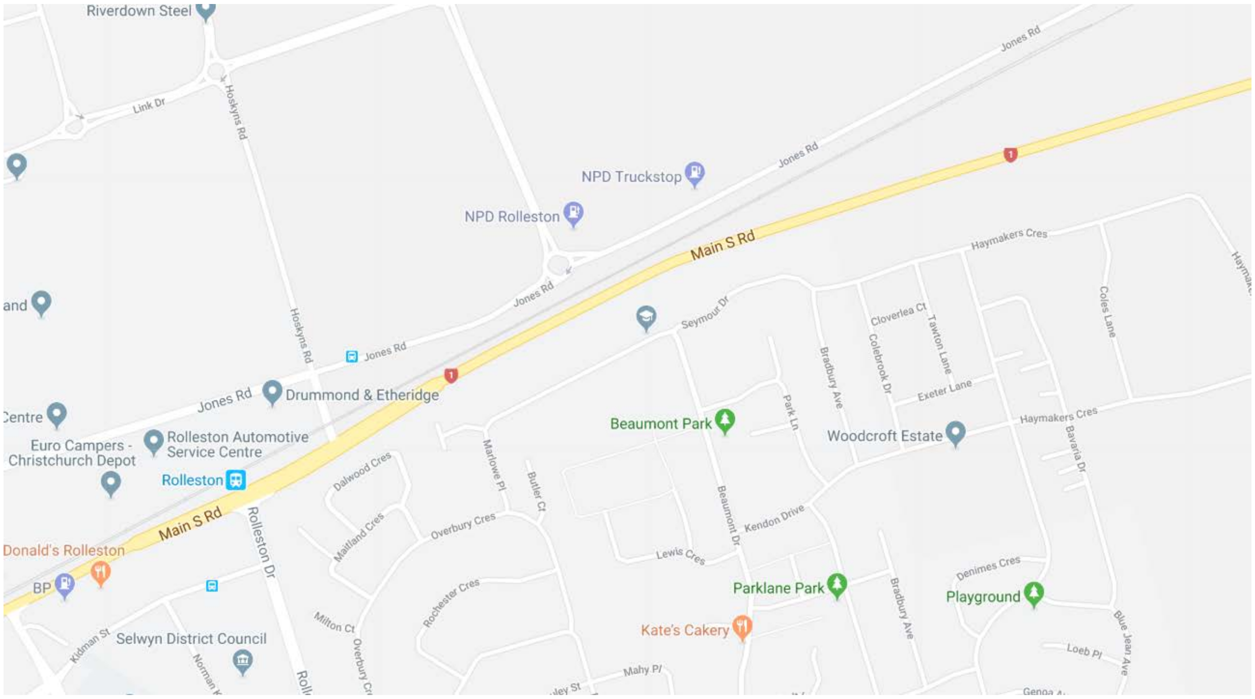
2.18 NPD Harewood



2.19 NPD Hornby



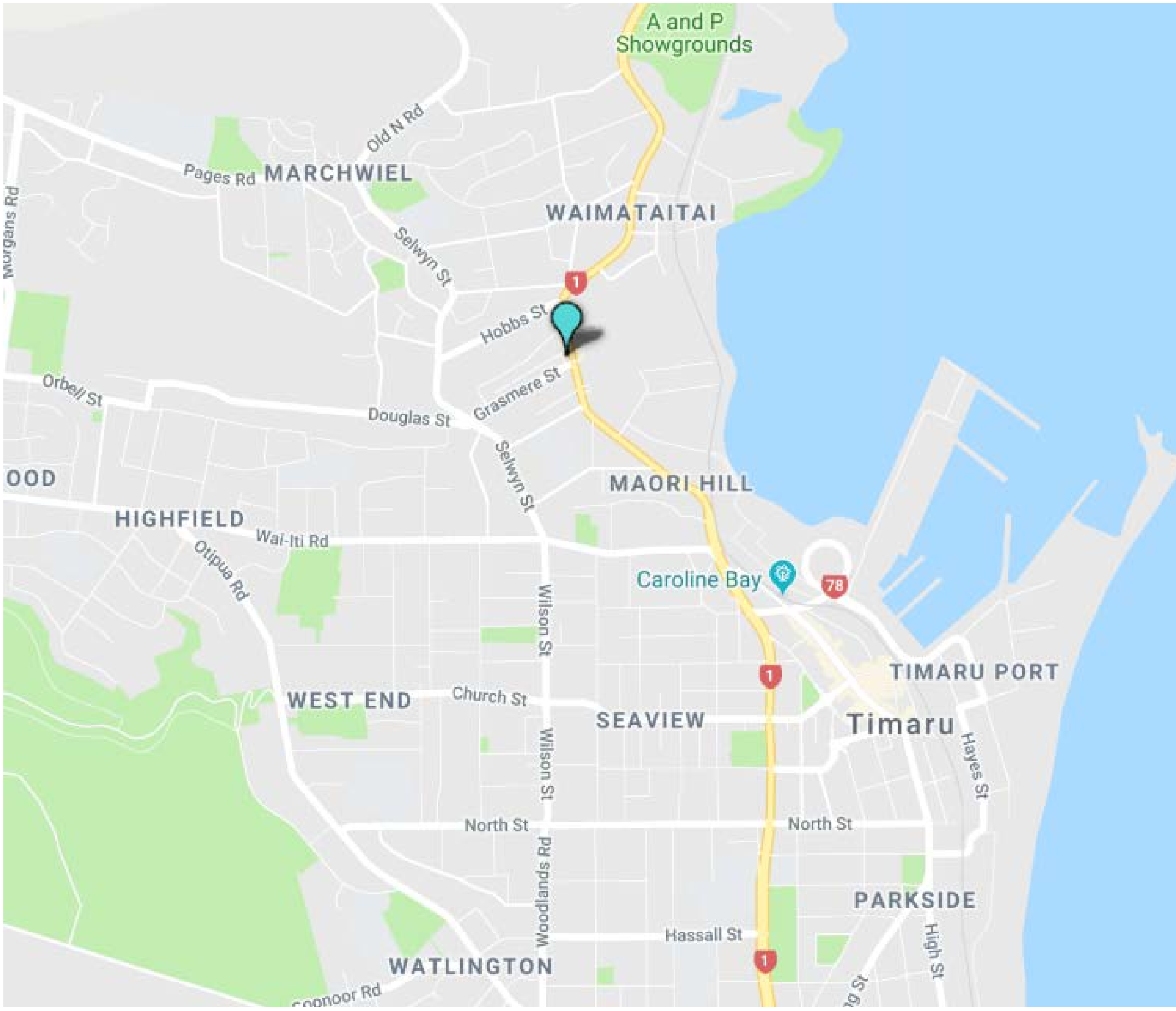
2.20 NPD Rolleston



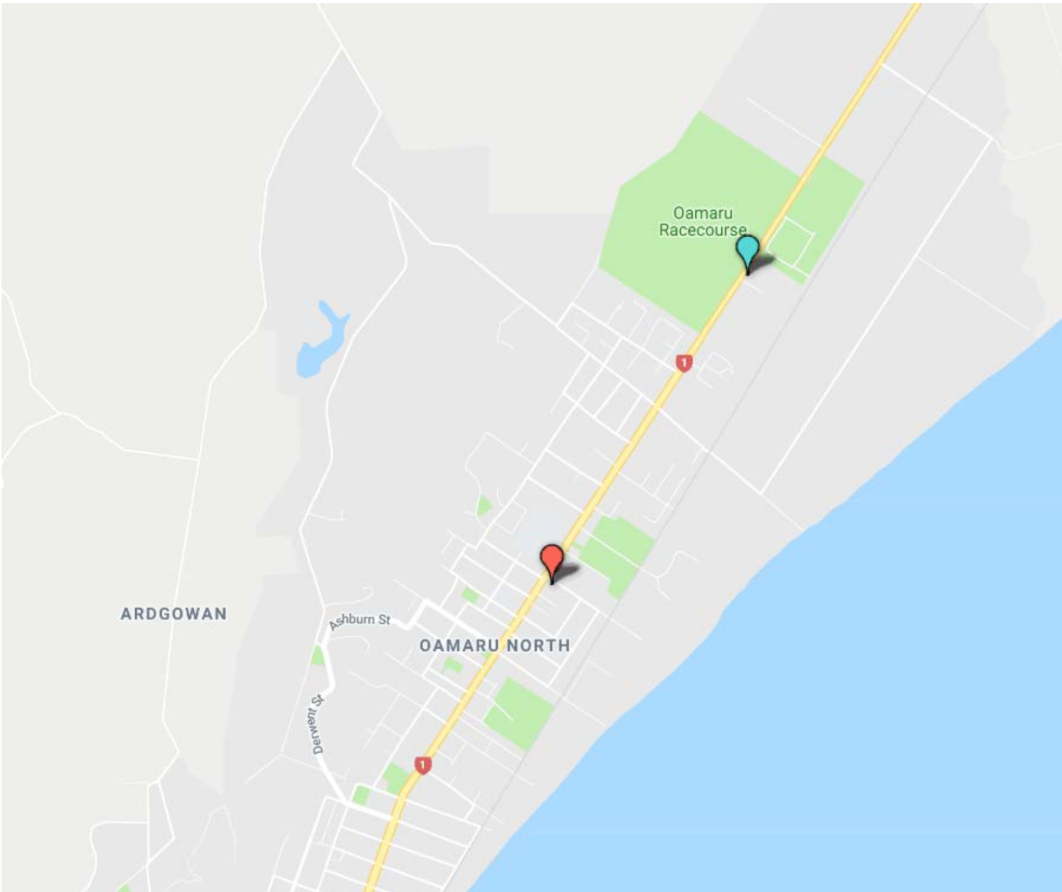

thirst
bread
ice
cream
dream
$4.00 each
$3.50 each

Timaru

2.21 NPD Timaru



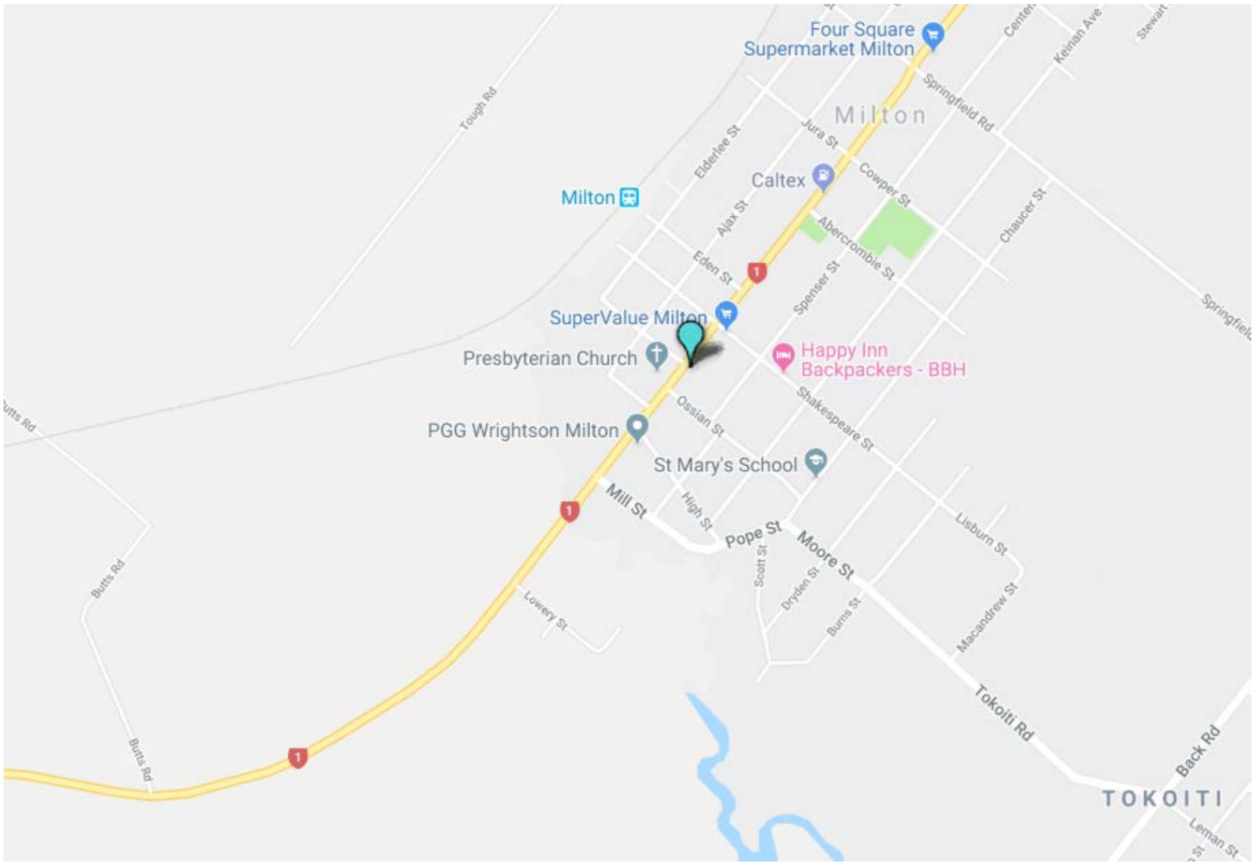
Oamaru



2.22 Mckewon Oamaru

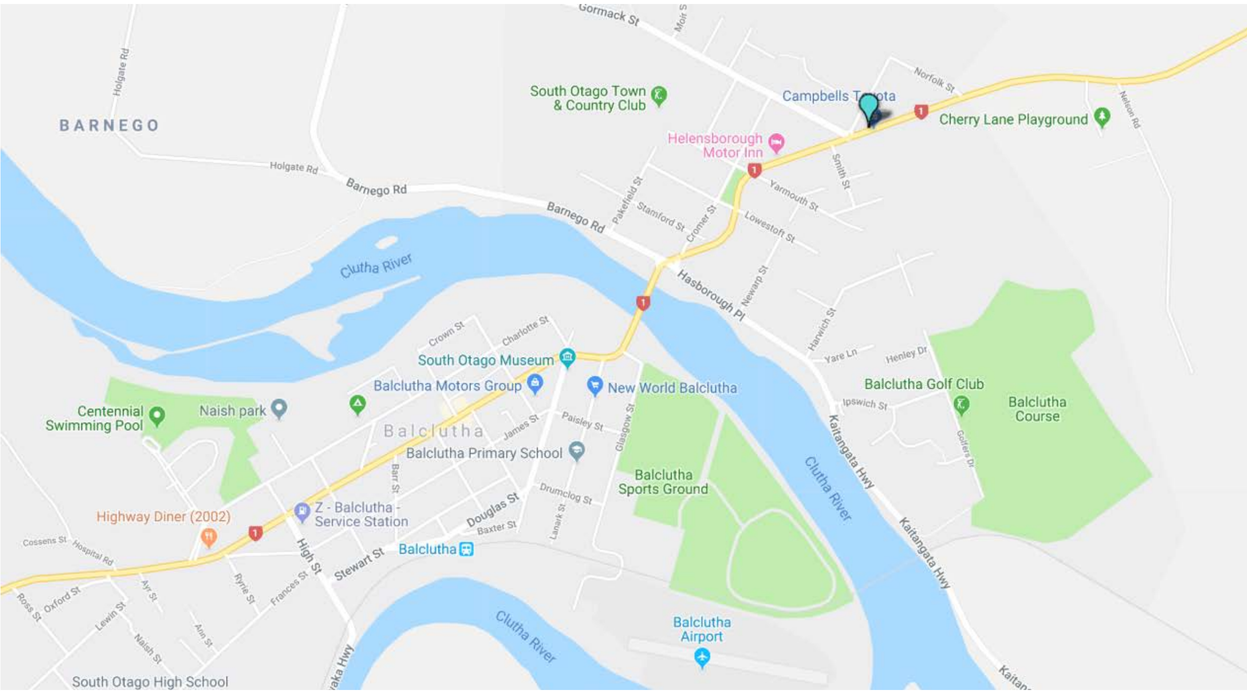
Milton

2.23 NPD Milton (converted from Z)



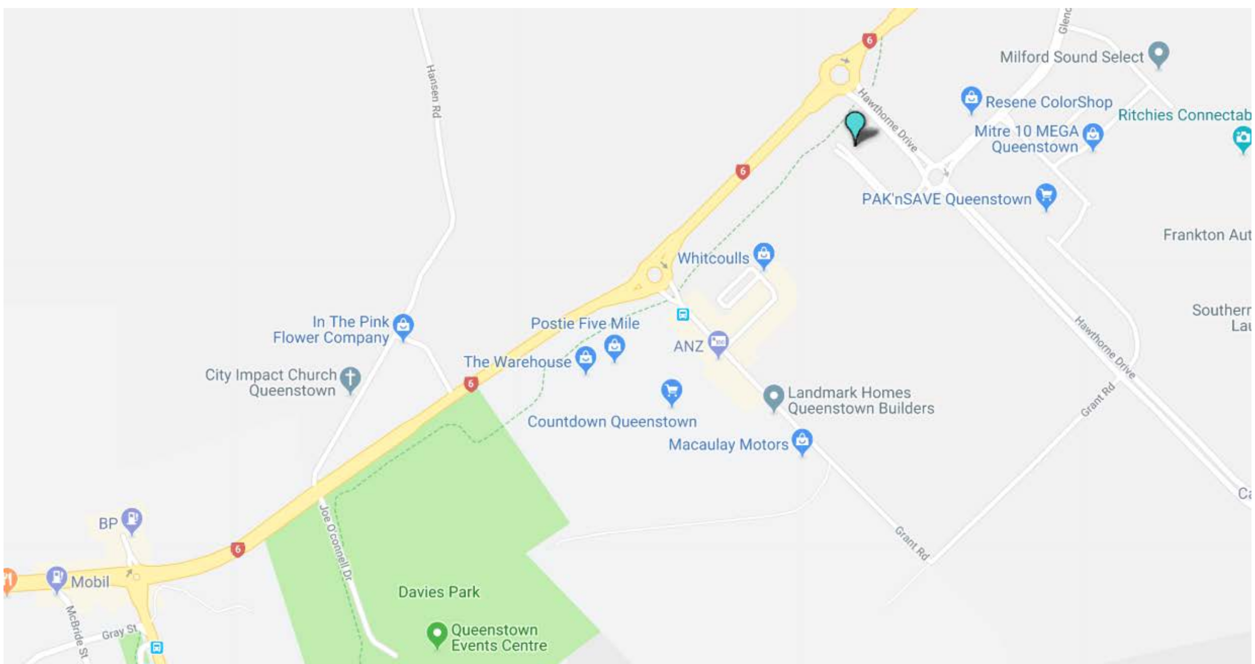
Balclutha

2.24 Allied Campbell Toyota (Balclutha)



Queenstown

NPD Queenstown



2.25 Mckeown Clinton