
COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

Date: 1 November 2021

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
Wellington

Pursuant to section 66(1) of the Commerce Act 1986 notice is hereby given seeking clearance of a proposed business acquisition.

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Part A: Summary of Application

1. Executive summary

- 1.1 This clearance application concerns the proposed acquisition by Ampol Limited (**Ampol**) of Z Energy Limited (**Z**), (the **Proposed Transaction**).
- 1.2 As the Commerce Commission (the **Commission**) is aware, Ampol – through its wholly owned subsidiaries (ALD Group Holdings NZ Limited, Gull New Zealand Limited and Terminals New Zealand Limited, together, **Gull**) – and Z (the **Parties**) are active in fuel markets in New Zealand. In particular, the Parties are active in the importation, commercial and retail supply and distribution of refined petroleum products. Z is also (currently) active in the importation of unrefined petroleum products into New Zealand and the refining of such petroleum products.¹

Competitive overlap

- 1.3 As the Commission is aware, there is overlap in relation to the Parties' operations. In particular, in relation to: the supply of regular petrol, premium petrol, diesel and premium diesel (including fuels containing biofuels) to retail customers through service stations; terminal storage facilities; the supply of diesel to marine customers; and the supply of bulk diesel products to commercial customers.
- 1.4 Given the Commission's previous assessment of the competitive position of Gull in the New Zealand market, and in particular given the overlap between Gull and Z in certain local retail markets, Ampol accepts that the Commission would wish to examine the potential competition law implications of the overlaps set out above. However, as a result of the Proposed Divestment (as defined in para 4.1(a) below), the Proposed Transaction does not have any potential to result in a substantial lessening of competition in any market in New Zealand.

Proposed Divestment

- 1.5 Ampol seeks clearance for the Proposed Transaction subject to an undertaking to make the Proposed Divestment during the Divestment Period (as defined in paragraphs 4.1(a) and 20.3 below, respectively). In short, the Proposed Divestment consists of the divestment of the Gull business. At the election of the purchaser of Gull or upon completion of the IPO (as defined in paragraph 20.3(b) below), Ampol will enter into a product import and export agreement with Gull i.e., a fuel supply agreement, on arms' length market competitive terms, no less favourable to Gull as to pricing mechanism and key commercial terms than those that currently exist². While Gull is largely run independently of Ampol, if required by the purchaser of Gull, or by the directors of Gull in an IPO context, Ampol will enter into a transitional services agreement with Gull to continue the limited set of services that Ampol currently provides to Gull. If put in place, these agreements will transfer with the divested Gull (either by sale or IPO) as part of the divested business.
- 1.6 Gull is Ampol's only New Zealand business.³ As a result, the Proposed Transaction and associated Proposed Divestment will not result in any ongoing aggregation in any relevant

¹ Following a positive vote by Refining NZ's (as defined at paragraph 2.7 below) shareholders on 6 August 2021, the refinery at Marsden Point is set to be transitioned to become an import-only fuel terminal and will, accordingly, cease its refining operations. The transition is targeted to occur by mid-2022, but remains conditional on final agreements with customers, lender consents and a final investment decision by Refining NZ's board. Following the transition, Z will no longer be active in the refining of petroleum products in New Zealand.

² As an intragroup contract, the current agreement does not include some of the concepts or details which would typically be included in a significant contract between unrelated entities. It is expected that the new product import and export agreement will contain additional details which would be typical in arms' length contracts of this nature, e.g. warranties and indemnities. However, as noted above, the terms of this new agreement, which would operate when Gull is not an Ampol Group member, will be no less favourable to Gull as to pricing mechanism and other key commercial terms.

³ [redacted]

markets in New Zealand. Accordingly, the Proposed Divestment self-evidently remedies any potential competition issues that could otherwise have arisen from the Proposed Transaction.

- 1.7 In recognition that during the Divestment Period Ampol will own both Z and Gull, Ampol will commit to robust hold separate, business preservation and information ring-fencing obligations, including appointing an independent hold-separate manager to manage the Gull business during the Divestment Period.

Part B: The Parties

2. The Applicant: Ampol

Ampol

- 2.1 Ampol is an Australian based fuel company. Its retail operations in Australia consist of a network of ~1,900 service stations operated under the Ampol, AmpolCard, Caltex and StarCard brands (although its use of the latter two brands is currently being phased out and will cease on and from 31 December 2022). Ampol refines and imports transport fuel for its retail supply and supplies to a wide range of commercial customers in various sectors, including other retailer fuels networks, land transport, aviation, marine, defence, mining and agriculture.
- 2.2 Ampol's more than 5% shareholders are currently Australian Super Pty Ltd (11.4%) and Magellan Asset Management Ltd (6.04%), neither of which have a controlling position, either alone or in combination.
- 2.3 Certain shareholdings in Ampol are held through nominee entities. The two following nominee entities hold a more than 10% interest in Ampol on behalf of beneficial owners: HSBC Custody Nominees (Australia) Limited (33.21%) and JP Morgan Nominees Australia Pty Limited (30.05%).⁴ Other than persons set out at paragraph 2.2 above, no other persons hold more than 10% of Ampol' shares.⁵ However, these nominee entities do not exercise control over the shares on behalf of the beneficial owners and do not influence the exercise of the beneficial owners' voting rights.
- 2.4 Ampol acquired Gull in 2017. Ampol has no operations in New Zealand other than Gull.⁶
- 2.5 Further information in relation to Ampol can be found [here](#). Ampol's 2020 annual report is available at [here](#).

Gull

- 2.6 Gull is a supplier of fuel in New Zealand through its network of service stations. Gull also supplies biofuel, and makes commercial sales generally of diesel to marine and commercial customers.
- 2.7 Unlike BP, Mobil and Z, Gull does not have a processing agreement with The New Zealand Refining Company Limited (**Refining NZ**). Gull instead negotiates an annual price with Ampol's business in Singapore for refined fuel supply for import to New Zealand for supply to Gull's North Island retail fuel sites. [redacted]
- 2.8 Gull's only fuel storage facility is located at Mt Maunganui. Gull supplies almost all of its service stations from that facility, with 95% of its overall fuel requirements in the North Island currently sourced via Ampol (under the agreement described above). Gull acquires its remaining North

⁴ As at 30 March 2021 and listed in Ampol's 2020 Annual Report.

⁵ As at 30 March 2021 and listed in Ampol's 2020 Annual Report.

⁶ [redacted]

Island requirements from BP. While relatively infrequent and on a small scale, Gull has from time to time supplied other retail market participants with fuel from its terminal.

- 2.9 Gull's network is concentrated around the Auckland, Waikato and Bay of Plenty regions. However, it has an outlet as far north as Whangārei and as far south as Wellington in the North Island.
- 2.10 Further, Gull has more recently opened five South Island sites, and has one further site under construction (although the construction of this site was paused during Auckland's Level 4 COVID-19 restrictions). Gull owns no terminal infrastructure in the South Island, and acquires fuel for its South Island sites [redacted].
- 2.11 As at the beginning of October 2021, Gull has 109 branded sites comprising 107 retail service stations and two marina sites, with some further sites opening, under construction or proposed. Specifically, Gull has plans to open a further up to [redacted] retail service stations during calendar 2021, subject to construction impacts due to COVID-19 restrictions (with key contractors being Auckland domiciled) and re-evaluating site economics for one site (in Snells Beach⁷ and Awatea (Christchurch)⁸, [redacted]⁹, [redacted]¹⁰, [redacted]¹¹, [redacted]¹²). [redacted]. Finally, Gull has been rebuilding the marina facility and replacing the previous supplier at Half Moon Bay Marina in Auckland¹³.
- 2.12 [redacted]
- 2.13 [redacted]
- 2.14 [redacted]
- 2.15 Gull's retail service stations are either retail sites with convenience stores attached (operated by a third party), unmanned retail fuel outlets (which have no permanent fuel attendants and often have no other business on the same site), and independent sites, as set out in **Confidential Appendix 10**. Gull sets the price for its retail sites with convenience stores and unmanned sites, but supplies fuel to independent sites "ex terminal", with the site operator setting the price. [redacted].
- 2.16 Gull also supplies diesel through a small number of retail outlets in marinas, but does not actively participate in the supply of aviation fuels, bitumen or marine fuel (fuel oils). Gull also bulk supplies commercial customers with diesel.
- 2.17 Gull is largely a stand-alone and self-contained business within the Ampol group - it has not been subject to a detailed integration into the Ampol network and systems.¹⁴ It has a strong New Zealand-based leadership team, which is largely autonomous, subject to usual delegations of authority within a corporate group. Ampol expects that leadership team will remain with the business on Divestment. As such, Ampol considers it a relatively straight-forward company to sell. No complicated separation steps or asset identification and transfer processes are required.

⁷ This site has in fact now opened (during October 2021). It is additional to the 109 Gull sites referred to throughout this application.

⁸ This site has in fact now opened (during October 2021). It is additional to the 109 Gull sites referred to throughout this application.

⁹ [redacted]

¹⁰ [redacted]

¹¹ [redacted]

¹² [redacted]

¹³ This marina site has in fact now opened (during October 2021). It is additional to the 109 Gull sites referred to throughout this application.

¹⁴ Please refer to the list of services provided by Ampol to Gull in paragraph 23.10 below.

2.18 A structure chart of Gull's ownership is set out as **Appendix 1** to this application.

Financial position

2.19 Gull's total sales revenue and volumes for the past three financial years (1 January 2018 to 31 December 2020) are:¹⁵

Product	FY20 Volume (litres)	FY20 Revenue (\$)	FY19 Volume (litres)	FY19 Revenue (\$)	FY18 Volume (litres)	FY18 Revenue (\$)
Retail	redacted	redacted	redacted	redacted	redacted	redacted
Wholesale ¹⁶	redacted	redacted	redacted	redacted	redacted	redacted
Total	redacted	redacted	redacted	redacted	redacted	redacted

2.20 Gull's audited financial accounts are available via the following links: [FY2020](#); [FY2019](#); and [FY2018](#).

Competitors and trade or industry associations

2.21 As set out above, Ampol operates in New Zealand only through Gull.¹⁷ The names and contact details for each of Gull's main competitors in New Zealand (excluding Z), and any trade or industry associations in which Gull participates, are set out in **Appendix 2**.

Customers

2.22 The names and contact details for each of Gull's top 5 customers in New Zealand (by value), and the revenue earned from each in the last financial year, are set out in **Appendix 3**.

Contact details

2.23 Contact details for Ampol:

<i>Address</i>	Ampol Limited 29-33 Bourke Road, Alexandria, Sydney, New South Wales, 2015 Australia
<i>Contact person</i>	Michael Abbott Executive General Manager - Governance & Risk Ampol Limited
<i>Email Address</i>	[redacted]

¹⁵ The table reflects gross revenue. [redacted]

¹⁶ Ampol has defined "wholesale fuels" to include all petrol and diesel sold to wholesale / commercial customers, including supply sites/ROROS.

¹⁷ [redacted]

<i>Telephone</i>	[redacted]
<i>Websites</i>	https://www.ampol.com.au/ https://Gull.nz/

2.24 Please direct all correspondence and notices for Ampol to:

<i>Address</i>	Bell Gully Barristers and Solicitors PO Box 4199 Auckland 1140
<i>Attention</i>	Jenny Stevens / Glenn Shewan
<i>Email Address</i>	jenny.stevens@bellgully.com / glenn.shewan@bellgully.com
<i>Telephone</i>	+64 4 915 6849 / +64 9 916 8674

3. The Target: Z

3.1 Z is a fuel marketer and retailer in New Zealand, with operations spanning crude oil and refined product procurement, contracted refining, national distribution and commercial and retail marketing.

3.2 Z was formed following the purchase of Shell's New Zealand downstream business by Infracore Limited and the Guardians of the New Zealand Superannuation Fund in 2010. In 2011 the company and service stations were rebranded as "Z". Z was listed on the New Zealand and Australian stock exchanges in 2013 (NZX and ASX: ZEL).

3.3 Z has the following interests throughout the fuel supply chain in New Zealand:

(a) Z has a:

- (i) 15% shareholding in Refining NZ, which operates the oil refinery at Marsden Point. Note that there is no direct link between a shareholding in Refining NZ and access to refined product through the refinery; and separately
- (ii) a processing agreement with Refining NZ that gives it a right to a proportion of its capacity.

Ampol notes that Refining NZ currently aims to transition the refinery at Marsden Point to an import-only terminal by mid-2022. As a result of this transition, Refining NZ, and therefore Z, will cease domestic refining operations and instead store and distribute imported, refined fuels.

- (b) Z is a joint-owner with BP and Mobil of a coastal shipping operation, Coastal Oil Logistics Limited (**COLL**), that distributes fuel from the refinery to its shareholders' storage facilities at ports around New Zealand.¹⁸

¹⁸ <https://www.coll.co.nz/about.html>

- (c) Z owns fuel storage terminals, pipelines and truck loading facilities used for the distribution of fuel around New Zealand, and currently participates in arrangements with other fuel suppliers for use of certain parts of each other's infrastructure (the National Inventory Agreement (**NIA**)).
- (d) Z owns a network of truck stops and service stations located throughout New Zealand.
- 3.4 Z uses these assets to supply fuel products to commercial and retail customers throughout New Zealand. This includes the supply of petrol, diesel, aviation fuel, marine fuels and bitumen.
- 3.5 Z currently participates in wholesale supply to distributors as follows:
- (a) Southfuels Limited (**Southfuels**), which supplies bulk fuel throughout New Zealand and also operates or supplies around 15 service stations;
- (b) Farmlands Fuel, which participates in bulk fuel supply and also supplies to independent Challenge dealers, with a network of 78 service stations. Z owns the Challenge brand¹⁹;
- (c) McKeown, which participates in bulk fuel supply and operates 47 service stations under the McKeown brand; and
- (d) K&L Distributors, which participates in bulk fuel supply and operates 1 service station.
- 3.6 Z acquired Chevron NZ, which operated the Caltex brand in New Zealand, in 2016 and currently operates the Caltex network in New Zealand using the brand under licence from Chevron International.
- 3.7 Z participates in retail supply through service stations and commercial supply through truck stops as follows²⁰:
- (a) Operated under the Z brand, Z has 197²¹ stations and 66 truck stops. Z owns and operates all Z branded sites²².
- (b) There are 134 Caltex service stations and 66 truck stops. As the Commission noted in its determination to grant clearance to, Z's acquisition of Chevron New Zealand in 2016 (**Z / Chevron**)²³, only a handful of retail sites are owned and operated by Chevron (now Z), with the majority being dealer owned and operated.²⁴ Z is the wholesale fuel supplier to the independently owned and operated network of Caltex-branded service stations, with the operators setting their own retail fuel prices.
- (c) Z currently [redacted] Foodstuffs' network of retail fuel sites.
- 3.8 Z also has interests in Flick Energy Limited, Loyalty New Zealand Limited (which operates Flybuys), Dryland Carbon One Limited Partnership and Mevo Limited.

¹⁹ [redacted].

²⁰ <https://business.z.co.nz/our-network>.

²¹ Note that this includes Z New Brighton which has recently closed.

²² This includes sites where Z has a freehold or leasehold interest. The convenience retail component is operated by independent retailers.

²³ *Z Energy Limited and Chevron New Zealand* [2016] NZCC 10 (29 April 2016). Decision available [here](#).

²⁴ There are six retail sites that Z owns (freehold or leasehold) which are operated via a mixture between Z and dealer operated. The remaining 128 Caltex retail sites are dealer owned and operated. Of the 66 truck stops, 60 are owned (freehold or leasehold) by Z. The remaining six truck stops are dealer owned and operated.

Financial position

- 3.9 Z's total sales revenues and related volumes for FY19 – FY21 (1 April 2019 to 31 March 2021) for retail fuel, wholesale fuel, and diesel fuel sold to marine customers, is set out in the table below.

		Retail	Wholesale Fuels ²⁵	Diesel sold to Marine Customers (Excl Fuel Oil)	Total
FY21	FY21 Volume (million litres)	redacted	redacted	redacted	redacted
	FY21 Revenue (Net of discounts) (\$ million)	redacted	redacted	redacted	redacted
FY20	FY20 Volume (million litres)	redacted	redacted	redacted	redacted
	FY20 Revenue (Net of discounts) (\$ million)	redacted	redacted	redacted	redacted
FY19	FY19 Volume (million litres)	redacted	redacted	redacted	redacted
	FY19 Revenue (Net of discounts) (\$ million)	redacted	redacted	redacted	redacted

- 3.10 Z's annual reports for the last three financial years are available [here](#) and further information in relation to Z can be found [here](#).

Competitors and trade or industry associations

- 3.11 The names and contact details for each of Z's main competitors in New Zealand (excluding Gull) are the same as for Gull, as per **Appendix 2**. Any trade or industry associations in which Z participates, are set out in **Appendix 4**.

Customers

- 3.12 The names and contact details for each of Z's top five customers in New Zealand (by value), and the revenue earned from each in the last financial year, are set out in **Appendix 4**.

Contact details

- 3.13 Contact details for Z:

<i>Address</i>	Z Energy Limited 3 Queens Wharf PO Box 2091, Wellington 6140
<i>Contact person</i>	Debra Blackett
<i>Email Address</i>	[redacted]
<i>Telephone</i>	[redacted]

²⁵ Z has defined "wholesale fuels" to include all 95 and 91 octane fuel, diesel (including biodiesel) and diesel exhaust fluid sold to wholesale / commercial customers, including to distributors through Z's terminals, truck stops or direct delivery channels, including Mini-Tankers.

Website	https://z.co.nz/
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3.14 Please direct all correspondence and notices for Z to either of the contacts below:

<i>Address</i>	Chapman Tripp Level 17, Maritime Tower 10 Customhouse Quay PO Box 993 Wellington 6140
<i>Attention</i>	Lucy Cooper / Sophie Harker
<i>Email Address</i>	lucy.cooper@chapmantripp.com / sophie.harker@chapmantripp.com
<i>Telephone</i>	+64 4 498 2406 / +64 4 498 2413

Part C: The Proposed Transaction

4. Transaction structure

- 4.1 The Proposed Transaction involves the acquisition of 100% of the shares in Z by Ampol. Ampol seeks clearance for the Proposed Transaction subject to an undertaking to:
- (a) divest the Gull business in the manner described in Part G of this application (the **Proposed Divestment**); and
 - (b) as part of the Proposed Divestment:
 - (i) either at the option of the purchaser of Gull or the directors of Gull in an IPO (as defined and discussed at paragraph 20.3(b)) context enter into a product import and export agreement (**PIE Agreement**) with Gull, which would ensure the continued supply of fuel to Gull's Mount Maunganui terminal on arms' length market competitive terms (but on terms no less favourable than currently exist as to the pricing mechanism and key commercial terms); and
 - (ii) if required by the purchaser of Gull or by the directors of Gull in an IPO context, enter into a transitional services agreement (**TSA**) with Gull, which would provide for a transitional period during which a limited set of services currently provided by Ampol to Gull would continue to be provided, so as to enable Gull sufficient time to obtain these services elsewhere or build capability itself²⁶,

with each of these agreements continuing with Gull post-Divestment.
- 4.2 A copy of the undertaking, in draft form (**Proposed Divestment Deed**), is attached as **Confidential Appendix 6**.
- 4.3 The Proposed Transaction, if implemented, will be undertaken by way of a scheme of arrangement under Part 15 of the Companies Act 1993, pursuant to which 100% of the shares in Z will be acquired by Ampol for consideration comprising:
- (a) NZ\$3.78 per Z share, payable in cash; plus
 - (b) an increase of NZ\$0.00055 per share per calendar day for each day that the implementation date is after 31 March 2022 up to a maximum amount of NZ\$0.10 per share payable in cash,
- (the **Scheme**).
- 4.4 In addition, Z is able to declare a dividend of NZ\$0.05 per share that does not adjust the consideration.
- 4.5 The terms of the Scheme are set out in the scheme implementation agreement (**SIA**) entered into between the Parties on 10 October 2021.
- 4.6 The Proposed Transaction is conditional on Ampol receiving clearance from the Commission and consent from the Overseas Investment Office (**OIO**). Further conditions include a condition relating to the transition of the Marsden Point refinery to an import-only terminal, the Scheme consideration being within the independent adviser's valuation range, Z shareholder approval by the thresholds set out in Part 15 of the Companies Act, High Court approval, no Z "prescribed

²⁶ Note: Gull is charged an annual fee for these services now, which cover the services set out in paragraph 23.10 below.

occurrence” and no material adverse change. Completion of the Proposed Transaction is targeted to take place in the second quarter of 2022, subject to satisfaction of the above conditions.

5. Rationale

- 5.1 The Proposed Transaction furthers Ampol’s strategic objective of establishing a trans-Tasman industry leader. The Proposed Transaction will enable Ampol to deliver on two of its strategic priorities: deliver growth in international markets and further support energy transition initiatives.
- 5.2 Ampol recognises the importance of scale to support sustainable earnings creation during the energy transition. A combination of Ampol and Z will deliver scale across its regional supply chain to support the safe and reliable sourcing of fuel products for customers in Australia and New Zealand.
- 5.3 In May 2021, Ampol launched its future energy and decarbonisation strategy, which included a commitment to reach operational net zero emissions by 2040, a minimum A\$100 million spend on projects out to 2025, and the development of future energy solutions such as electricity, hydrogen, gas and biofuels/renewable fuels and carbon.
- 5.4 The Proposed Transaction will support Ampol in leading on the delivery of future energy solutions in New Zealand, given the larger customer base and regional asset footprint of Z compared to Gull. Given the ongoing work of both organisations in energy transition, a combined entity would provide a new, larger platform, supporting the development of lower emissions energy solutions for customers across Australia and New Zealand.

6. Transaction documents

- 6.1 A copy of the SIA is attached as **Appendix 5**. As noted above, a copy of the **Proposed Divestment Deed** is attached as **Confidential Appendix 6**.
- 6.2 Copies of relevant Ampol internal documents are attached as **Confidential Appendix 7**.

7. Clearance sought

- 7.1 This application seeks clearance in New Zealand for Ampol to acquire 100% of the shares in Z and the business assets that form Z, as more particularly described in the SIA provided as **Appendix 5**, subject to the Proposed Divestment.

8. Counterfactual

- 8.1 The Parties consider that the most appropriate counterfactual is the status quo.

Ampol

- 8.2 Ampol has no specific plans to change its strategy in relation to New Zealand (being the continued competitive operation of Gull) if the Proposed Transaction does not proceed.

Z

- 8.3 Absent the Proposed Transaction, Z would continue to compete independently of Gull.

9. No filings in jurisdictions other than New Zealand

- 9.1 As Z operates only in New Zealand, the Parties consider that the Proposed Transaction does not give rise to competition law issues outside of New Zealand. Accordingly, the Proposed Transaction is not being notified to any competition law authorities in other jurisdictions.

Part D: Background to the fuel industry and relevant products

10. Background to the fuel industry

- 10.1 The Commission has an extensive and in-depth understanding of fuel markets in New Zealand, following its:
- (a) Z / *Chevron* consideration and determination; and
 - (b) market study into the factors that affect competition for the supply of retail petrol and diesel used for land transport throughout New Zealand, culminating in its retail fuel market study report published by the Commission in December 2019 (the **Market Study**).²⁷
- 10.2 As a result, the Parties have not set out in this clearance application an in depth description of the fuel industry, nor the fuel products supplied by the Parties, in New Zealand (noting that the Parties still set out in Part E below a breakdown of the relevant overlap between them). Rather, the Parties set out below an overview of the key relevant changes to the fuel industry in New Zealand since the conclusion of the Market Study in December 2019.
- 10.3 To the extent the Commission requires any further information from the Parties in relation to the fuel industry or the fuel products supplied by the Parties in New Zealand, the Parties are happy to provide it.
- 10.4 For ease of reference, Ampol has included as **Appendix 8**, a table setting out a brief overview of the relevant market participants in the New Zealand fuel industry.

11. Industry changes since the Commission's Market Study

Z

- 11.1 Since the completion of the Market Study, Z has made a number of key changes to its business, including:
- (a) ceasing to supply fuel oil to the international marine market at Auckland. [redacted];
 - (b) moving to supply imported bitumen only, following the cessation of bitumen production at the Marsden Point refinery;
 - (c) [redacted];
 - (d) [redacted]; and
 - (e) compliance with the Fuel Industry Act 2020, as is discussed below.

Fuel Industry Act

- 11.2 A key result of the Commission's Market Study was the introduction of the Fuel Industry Act 2020 (**FIA**), the purpose of which is to "promote competition in engine fuel markets for the long-term benefit of end users of engine fuel products". The FIA implements significant changes in the fuel

²⁷ Market Study into the retail fuel sector, 5 December 2019. Link to the Final Report available [here](#).

industry aimed at resolving the competition concerns the Commission identified in its Market Study.

- 11.3 In particular, the FIA introduces various measures aimed at improving competition at the wholesale level, which are expected to have significant flow on effects to the retail level of the market. Most importantly, the FIA introduces:
- (a) **a Terminal gate pricing (TGP) regime**, which requires wholesale fuel suppliers at a storage terminal to publicly post a price at which they will sell specified engine fuel to wholesale customers at that storage terminal on a spot basis. According to the Commission in its Market Study report and the cabinet paper on the response to the Commission's Market Study, the TGP regime:
 - (i) increases price transparency, and improves contractual freedom, that will make it easier for distributors and dealers to receive and compare competitive offerings from a range of suppliers;
 - (ii) better enables switching between wholesale fuel suppliers, which will in turn improve the conditions for potential entry by importers; and
 - (iii) encourages greater retail competition, which will result in lower retail prices, as a result of increased fuel distributor / dealer independence;
 - (b) **a wholesale contractual term regime**²⁸, which governs the contractual terms between wholesale suppliers and their wholesale customers, and which according to the Commission in its Market Study report and the cabinet paper on the response to the Commission's Market Study:
 - (i) increases price transparency in wholesale supply agreements between suppliers and distributors and dealers; and
 - (ii) removes long-term exclusive contracts and other terms which discourage switching between wholesale fuel suppliers,

thereby increasing distributors and dealers' ability to obtain wholesale supply on competitive terms and to switch between wholesale suppliers which will, in turn, result in greater competition in retail fuel markets;
 - (c) **an information disclosure requirement**²⁹, which according to the Commission in its Market Study report and the cabinet paper on the response to the Commission's Market Study improves transparency and enables monitoring of the competitive performance of fuel markets;
 - (d) **consumer information requirements**³⁰, which according to the Commission in its Market Study report and the cabinet paper on the response to the Commission's Market Study improves transparency in retail fuel prices by requiring retail fuel sites to display on price boards the standard retail price of regular and premium petrol and diesel, so that end users are able to make informed purchasing decisions; and
 - (e) **a dispute resolution scheme** (namely, mediation and arbitration procedures), which according to the Commission in its Market Study report and the cabinet paper on the

²⁸ Note, this is currently in force for new contracts, but not yet in force for existing contracts.

²⁹ Note, this is not yet in force.

³⁰ Note, this requirement comes into force on 11 February 2022.

response to the Commission’s Market Study addresses disputes relating to the wholesale market changes outlined above in an accessible, independent, and cost-effective manner.

- 11.4 Most of these measures came into effect via regulations made under the FIA (the **FIR**). The FIR came into force on 11 August 2021 (other than part 3, which comes into force on 11 February 2022, and the wholesale contracts regime for existing contracts, which comes into force in August 2022). As a result, many of the substantial changes to the competitive landscape of the fuel industry that the Commission and Government expect to result from the FIA are still to be seen in the market.
- 11.5 However, the Commission set out in the Market Study that the measures targeting competition at the wholesale level of the market are “likely to be an effective intervention to promote wholesale competition”.
- 11.6 [redacted]

Refining NZ

- 11.7 On 6 August 2021, the shareholders of Refining NZ voted in favour of a proposal for the refinery at Marsden Point to be transitioned to become an import-only fuel terminal. The proposed transition is targeted to occur by mid-2022, but remains conditional on final agreements with Refining NZ’s customers, lender consents and a final investment decision by Refining NZ’s board of directors. As a result of the transition, Refining NZ will cease its refining operations, which are currently the only refining operations undertaken in New Zealand.
- 11.8 With the transition to an import-only terminal, Refining NZ will change its name to *Channel Infrastructure*.
- 11.9 Post-transition, Refining NZ intends to use the Marsden Point import terminal to provide “import terminal services” to its current customers. These import terminal services would involve Refining NZ operating and maintaining terminal product tanks with a capacity of approximately 180 million litres for its current customers’ shared use, on a similar basis to the current borrow and loan arrangements, with fuel stored and delivered on a shared basis.³¹ Z has reached an in-principle agreement with Refining NZ regarding the provision of import terminal services post-transition.³²
- 11.10 Additionally, Refining NZ expects that it will provide private storage capacity (of up to a further 100 million litres) to existing and / or new customers.³³ Private storage negotiations with customers are still ongoing.³⁴ Converting the Marsden Point refinery to an import terminal could free up space for third parties to access storage, which might support another market participant to import fuel on their own account (or encourage the Refining NZ shareholders to give access to the shared arrangements to third parties). The changes may also give third party fuel companies access to the Marsden Point refinery’s Northland to Auckland pipeline (**RAP**) when it has available capacity.³⁵ For completeness, note that the Proposed Transaction itself will not impact the new arrangements.

³¹ [NOM-booklet.pdf \(refiningnz.com\)](#), accessed 21 September 2021.

³² [Z Energy agrees in-principle deal with Refining NZ \(eurolandir.com\)](#), accessed 21 September 2021.

³³ [NOM-booklet.pdf \(refiningnz.com\)](#), accessed 21 September 2021.

³⁴ [NOM-booklet.pdf \(refiningnz.com\)](#), accessed 21 September 2021.

³⁵ <https://www.stuff.co.nz/business/124266092/plan-to-quit-refining-at-marsden-point-could-happen-next-year>

TOSL

11.11 A new importer, Timaru Oil Services Ltd (**TOSL**) has recently built a storage terminal at the Port of Timaru, which became operational in Q3 2020. It is a company that has terminals around the Pacific Islands.

- (a) Ampol understands that TOSL has been supplying a small number of customers. Ampol understands these are generally small spot customers, such as marine bunkers and small scale commercial customers including the Queenstown ski fields, but that TOSL has also sold some wholesale fuel to Z and BP, as well as to FILL Ltd (which Gull supplies in the North Island).
- (b) While it was originally commissioned as a two product terminal (unleaded 91 petrol and diesel), Ampol understands it has plans to also introduce storage and delivery of unleaded 95 petrol. Gull understands that TOSL has in fact likely converted one of its tanks to premium grade fuel.
- (c) As a result, TOSL is a potential supplier to industry players such as Gull and others (and initial indications have been that such supply is likely to be cost effective).
- (d) TOSL is further seeking to expand in Tauranga. This terminal is targeted at aviation fuel (Jet A1) and diesel storage.
- (e) TOSL is thought to be seeking possible links to the retail market (either through a supply only model or direct ownership / operation of retail sites) in the South Island.

11.12 This represents a significant increase in wholesale competition. As set out in evidence supplied in TOSL's resource consent application, its business model aims to offer the New Zealand market an alternative supply of fuel at competitive prices.³⁶

11.13 Wholesale competition and access to alternative fuel supply is improving in New Zealand due, at least in part, to the entry of TOSL and / or the commencement of the FIA. Z notes the following examples in this regard.

- (a) [redacted]
- (b) [redacted]³⁷³⁸

11.14 Based on the Commission and Government's assessment of the changes being brought about by the FIA, wholesale competition is likely to further increase as the final components of the regime come into force in August 2022.

Retail expansion*Waitomo*

11.15 Ampol understands that Waitomo is expanding its retail presence. Waitomo currently has 53 retail fuel stations and 16 diesel stops throughout New Zealand.³⁹ It is also in the process of opening a new retail service station in Masterton.⁴⁰

³⁶ <https://www.tauranga.govt.nz/Portals/0/data/community/consultation/files/resourceconsents/rc27270/pdl-dubau.pdf>, at [12].

³⁷ [redacted]

³⁸ [redacted]

³⁹ [Fuel Stop Finder - Waitomo Group](#), accessed 24 August 2021.

⁴⁰ [Waitomo Fuel Stop Finder - Google My Maps](#), accessed 24 August 2021.

11.16 Ampol understands that Waitomo completed a number of new sites in 2020, and has expanded into the South Island and Wellington region. Waitomo now has five sites in the South Island (Christchurch and Dunedin) and four in Wellington (and, as set out above, an additional site opening soon in Masterton). According to its website, Waitomo is “actively looking for new sites in other regions”⁴¹ and is “in rapid expansion mode with a pipeline of new Fuel Stops planned for 2021.”⁴²

11.17 Waitomo has had a long term supply contract with Mobil, and Ampol considers that it is likely to source a second supplier once exclusivity is limited as part of the FIA, potentially encouraging further expansion activity. Waitomo is well placed to capitalise on the changes brought about by the FIA, for example, by obtaining supply at the terminal gate, switching wholesale suppliers and maintaining more than one supplier.

NPD

11.18 Ampol understands that NPD is expanding its retail presence. NPD currently has 90 retail sites (including eight truck stops) across New Zealand, having recently expanded into the North Island.

11.19 As the Commission is aware, NPD has traditionally been strong in the South Island, in particular in the north of the South Island, and is building another 6-8 sites in the South Island. NPD’s website (as at 24 August 2021) indicates that it has expanded into the North Island with retail service stations in: Wiri (Auckland); Te Rapa (Hamilton); Westown (New Plymouth); and Palmerston North.⁴³

11.20 Additionally, it has new sites opening soon in Otara (Auckland) and Pukekohe (Auckland).⁴⁴ It is also “actively seeking available land to purchase or lease in strategic locations in the North Island”.

11.21 These expansions may be accelerated, or at least assisted, by the changes brought about by the FIA and the entry of TOSL to New Zealand’s fuel import market.

Allied

11.22 Ampol also understands that Allied is active in expanding its retail presence in New Zealand. For example, Allied has recently opened:

- (a) an upgraded fuel stop in Gore, which has a full offering of diesel, 91 and 95 unleaded petrol, and diesel exhaust fluid, providing high-flow dispensers for transport operators, while light vehicles are provided for on a separate forecourt; and
- (b) a fuel stop in Maramarua, between Auckland and the Bay of Plenty.

11.23 Ampol also understands that Allied is shortly opening (or has opened) a new site in Gisborne, furthering Allied’s reach on the East Coast of the North Island.

11.24 Additionally, Ampol understands that Allied is continuing to invest in its forecourts.

Circle K

11.25 Circle K, a global convenience and fuel chain, entered the New Zealand market in 2018, and currently has four convenience stores, all in Auckland. However, it has recently announced plans

⁴¹ [Waitomo-Fuel-Stop-Finder June-2021.pdf \(waitomogroup.co.nz\)](#), accessed 6 June 2021.

⁴² [Waitomo Fuel Stop Finder - Google My Maps](#), accessed 24 August 2021.

⁴³ [NPD Launches into the North Island - NPD](#), accessed 2 June 2021.

⁴⁴ [NPD retail network - Find discounted fuel, petrol or diesel near you](#), accessed 24 August 2021.

to launch a multi-million dollar franchising drive in New Zealand. Alongside convenience stores, Circle K has announced it plans to open some of the first purpose-built electric vehicle (EV) charging and petrol stations at sites around the country in an attempt to transform the local fuel retail market.⁴⁵ It has said that it is now actively searching for service station sites and operators throughout New Zealand.

- 11.26 The American-based retailer is one of the world's largest convenience store brands with more than 14,000 locations and is present in over 26 countries.⁴⁶ Circle K is owned by Alimentation Couche-Tard which is listed on the Toronto Stock Exchange.

Increased freedom of these competitors

- 11.27 [redacted]⁴⁷

- 11.28 Overall, Ampol notes that the conduct expected from these competitors, once their increased independence as a result of the workings of the FIA have had time to 'bed in', will likely be comparable to the independent competitiveness that the Commission has observed previously for Gull. Further, Ampol expects the arrival and proposed rapid growth of Circle K to further disrupt the New Zealand retail fuel market.

12. The competitive landscape

- 12.1 The Commission's Market Study concluded that New Zealand does not have an active wholesale market, there are features of the retail market that limit the intensity of price competition, and that retail markets are vulnerable to leader-follower pricing conduct, due to low purchase sizes limiting the risk of price leading attempts.

- 12.2 However, substantial regulation has been introduced which is expected to decrease barriers to switching between wholesale fuel suppliers, and increase both wholesale and retail level competition. It is expected, in particular, that the TGP and wholesale contractual terms regimes will directly increase active wholesale market competition, which will in turn increase competition in the retail market.

- 12.3 Additionally, as set out above, there has been significant pro-competitive movement in the fuel industry in New Zealand since the Commission released its Market Study Final Report in December 2019 and that is likely to materially improve as the FIA comes into force and 'beds in':

- (a) With Refining NZ's shareholders having voted in favour of the proposed transition of the refinery at Marsden Point to an import-only terminal, there is increased potential for third party access to storage at the Marsden Point refinery (which might support another market participant importing fuel on their own account) and for third party retail fuel companies to access the RAP.⁴⁸ Refining NZ has stated that the intention is for third party access after three years following the Services Effective Date (which will occur in mid-2022), i.e. from mid-2025.⁴⁹

⁴⁵ <https://www.nzherald.co.nz/business/global-convenience-and-fuel-giant-circle-k-set-for-big-nz-push/JF5PZESJHBELZTMN7LAPPGOYQU/>, accessed 30 September 2021.

⁴⁶ <https://corpo.couche-tard.com/en/our-company/our-brands/> and <https://www.nzherald.co.nz/business/global-convenience-and-fuel-giant-circle-k-set-for-big-nz-push/JF5PZESJHBELZTMN7LAPPGOYQU/>, both accessed 30 September 2021.

⁴⁷ [redacted].

⁴⁸ https://comcom.govt.nz/_data/assets/pdf_file/0019/127306/Refining-NZ-Submission-on-preliminary-issues-paper-21-February-2019.pdf at 7.19 accessed 6 October 2021.

⁴⁹ <https://www.refiningnz.com/wp-content/uploads/2021/07/Terminal-Conversion-Proposal-Explanatory-Booklet-5-July-2021.pdf>, e.g. see p35 and p73.

Ampol considers that this would reduce the advantage the Commission identified in the Market Study in favour of BP, Z and Mobil over other current and potential rival resellers as a result of their access to infrastructure.

- (b) There is evidence of new entry into, and expansion within the import market, with the development of TOSL's storage terminal at the Port of Timaru (and potential introduction of unleaded 95 petrol at that terminal) and the attempted development of a terminal in Tauranga.
 - (c) There is evidence of entry and expansion within the retail market, with the expansion of Allied and NPD into the North Island and Waitomo into the South Island, the entry of Circle K and the potential entry of TOSL.
- 12.4 With such developments, Ampol considers that competition in the New Zealand fuel market, at both the wholesale and retail level, is becoming stronger and more robust.
- 12.5 In any case, Ampol notes that the Proposed Divestment will result in no ongoing market aggregation as a result of the Proposed Transaction, and therefore the state, and trajectory, of competition in the market will be unchanged.

Part E: Relevant Markets

13. Overlap between the Parties

13.1 The Parties broadly compete (to varying degrees) in relation to the:

- (a) supply of fuel products to retail customers;
- (b) importation and wholesale supply of fuel products; and
- (c) supply of fuel products to commercial customers.

13.2 Ampol sets out in the remainder of this Part E the market definitions used by the Commission in Z / *Chevron*, overviews of the areas of overlap between the Parties, and a summary of additional areas of operation of Ampol or Z which are not relevant to this clearance application as there is no overlap between the Parties.

14. Market definition

14.1 As Ampol is applying for clearance subject to the Proposed Divestment (and, therefore, is divesting the entire overlap between Ampol and Z), for the purposes of this clearance application, Ampol considers that it is not necessary to conclusively define the relevant markets.

14.2 For the purposes of illustrating to the Commission the relevant overlaps between the Parties, to the extent possible Ampol adopts the Commission's market definitions from Z / *Chevron*. Ampol sets out details regarding these markets below.

Z / *Chevron*

14.3 In Z / *Chevron*, the Commission defined the following markets, which are relevant to the Proposed Transaction:

- (a) **Retail fuel** – separate, service station specific, local markets for the supply of fuel products (i.e., diesel, regular petrol and premium petrol, collectively) to retail customers, using a 2km radius as a starting point to identify problem areas (among other considerations).
- (b) **Terminal storage** – separate regional markets for the storage of each refined fuel product (petrol, diesel, aviation fuel, marine fuel and bitumen), by terminal location.
- (c) **Commercial petroleum products** – separate markets for the large bulk commercial customers that purchase diesel directly from the major fuel firms and the smaller bulk customers that purchase diesel through resellers.

14.4 Ampol sets out in Section 15, the competitive overlaps between the Parties adopting, to the extent possible, the above market definitions.

15. Areas of overlap between the Parties

15.1 Ampol and Z overlap in relation to the supply of retail fuel, terminal storage facilities, supply to resellers at terminals, bulk supply of commercial petroleum products and lubricants.

Retail fuel

15.2 The Parties are both active in the supply of diesel, regular petrol and premium petrol to retail customers via service stations (Gull's retail fuel offering comprises both conventional and biofuel petrol – see further below).

15.3 As set out above:

- (a) Gull has 107 retail service stations operating throughout New Zealand.⁵⁰
- (b) Z participates in retail supply through service stations:⁵¹
 - (i) Operated under the Z brand, Z has 197 stations. Z owns and operates all Z sites.⁵²
 - (ii) There are 134 Caltex service stations.

15.4 Ampol notes that the FIA would be likely to have a significant impact on how these markets would be considered. In particular, in Z / *Chevron*, as a simplifying assumption, distributors' retail participation was aggregated with that of their suppliers. As a result of the FIA, contracts between suppliers and distributors will have a maximum duration of 5 years and will not be exclusive (amongst other requirements) meaning it would no longer be a meaningful assumption to aggregate a distributor's retail participation with that of its (current main) supplier.

15.5 Furthermore, there are constraints from:

- (a) biofuels (see further below from paragraph 16.7); and
- (b) the progressive replacement of petrol and diesel vehicles with electric vehicles, which will increasingly constrain petrol and diesel sales over time.

15.6 However, in light of the comprehensive Proposed Divestment, Ampol notes the Commission does not need to reach a definitive view on market definition. For completeness, the Parties note that Z also currently participates in wholesale supply to distributors, which have the following retail stations:

- (a) Southfuels operates around 15 service stations;
- (b) Challenge (supplied by Farmlands Fuel) has a network of 78 service stations;
- (c) McKeown operates 47 service stations; and
- (d) K&L Distributors operates 1 service station.

15.7 Z also supplies fuel [redacted] Foodstuffs' fuel sites [redacted]. For the purpose of measuring the effects of aggregation, this supply should be treated the same way as supply to a distributor [redacted] Furthermore, Foodstuffs has a history of switching suppliers (having previously been supplied by Mobil, and prior to that BP⁵³). [redacted]

⁵⁰ As well as a further two marina sites as at the beginning of October 2021.

⁵¹ <https://business.z.co.nz/our-network>.

⁵² This includes sites where Z has a freehold or leasehold interest, and includes stations operating via the Z retailer model for the Z service stations.

⁵³ Z / *Chevron*, paragraph 114.3.

Overlaps

- 15.8 Ampol has undertaken a high level local markets overlaps analysis on the basis of a 2km drive distance radius, as applied by the Commission in *Z / Chevron*.⁵⁴ Ampol's methodology for this analysis is set out below:
- (a) Ampol located each Gull site in [Google Maps](#).
 - (b) Using Google Maps' "nearby" search function, Ampol then searched for "gas stations" to identify all retail service stations near each Gull service station (**Nearby Service Stations**).
 - (c) Using Google Maps' "directions" function (the **Directions Function**), Ampol then mapped the drive distances from each Gull service station to their Nearby Service Stations.
 - (d) Using the Directions Function's shortest drive distance, Ampol then identified the Nearby Service Stations that are within a 2km drive distance from each Gull service station (**Overlapping Service Stations**).
 - (e) Ampol then treated each Gull service station as the centre of a local market, with each local market being the relevant Gull service station together with each of their Overlapping Service Stations (**Local Retail Markets**).
- 15.9 Using this methodology, Ampol has identified 67 Local Retail Markets where Gull and Z (including Caltex) retail service stations overlap.
- 15.10 As set out above, the Parties consider that distributors' retail participation should not be aggregated with that of their suppliers. However, for the sake of completeness, Ampol has also considered based on the above methodology Local Retail Markets where a Gull station overlaps with the station of a distributor which is supplied wholesale fuel, directly or indirectly, by Z, i.e. stations branded Challenge (supplied by Farmlands Fuel), Southfuels, McKeown, Foodstuffs (New World and Pak'n'Save) and K&L Distributors. Using this methodology, Ampol has identified a further 1 Local Retail Market (in addition to the 67 Local Retail Markets already identified).

Terminal storage facilities

- 15.11 In *Z / Chevron*, the Commission defined separate markets for the storage of each refined product and for each geographic location (as well as considering the dynamics of the "borrow and loan" arrangements as a whole).
- 15.12 Adopting the market definition used in *Z / Chevron*, the Proposed Transaction would, absent the Proposed Divestment, aggregate Z and Gull's terminal storage facilities in Mount Maunganui.

Gull

- 15.13 Gull has one terminal storage facility at Mount Maunganui which has capacity to store imported 91 octane petrol, 95 octane petrol, 98 octane petrol and diesel (Gull's terminal has no refining capacity). Gull's terminal is large in comparison to other terminal storage facilities at Mount Maunganui, and is able to store fuel equivalent to what can be delivered from a full tanker ship. Gull's Mount Maunganui terminal is the largest facility of its type in New Zealand with total storage of approximately 90 million litres.⁵⁵

⁵⁴ As at the beginning of October 2021.

⁵⁵ [01815607.pdf \(weblink.com.au\)](#), accessed 30 August 2021.

15.14 The majority of refined fuel imported to and stored at Gull's terminal is used to supply Gull's retail service and truck stops in the North Island. Refined fuel is transported from its terminal storage facility to these locations by road. Gull does not participate in the "borrow and loan" arrangements.

15.15 Gull has in the past sold some storage capacity volume to Z. [redacted.]

Z

15.16 Z also has two terminals at Mount Maunganui, with capacity to store 91 Octane petrol, 95 octane petrol and diesel. [redacted]

15.17 [redacted]

Supply to resellers/distributors

15.18 While supply to resellers / distributors was not separately considered in Z / *Chevron*, (distributors being effectively treated as being aggregated with their supplier), given the significant changes in the wholesale markets described above (in particular brought about by the FIA), these volumes are now contestable and Ampol considers it would be appropriate to consider such supply as a separate market.

Gull

15.19 Gull supplies some of its competitors with wholesale fuel from its Mount Maunganui terminal. [redacted] Gull will look to participate in tenders when opportunities arise.

Z

15.20 Z supplies resellers on fixed term contracts nationwide and at multiple terminals, and also offers supply from its Mt Maunganui terminal, including subject to the FIA.

15.21 [redacted]

15.22 [redacted]

15.23 As such, the Parties overlap in the supply of 91 octane and 95 octane petrol, and diesel, from their respective terminals at Mt Maunganui.

15.24 Given Gull's very small participation in this type of supply [redacted] and the comprehensive nature of the Proposed Divestment, it is not necessary to conclude on market definition.

Commercial petroleum products

15.25 The Parties overlap in the bulk supply of diesel to commercial (industry) customers.

15.26 As the Commission is aware, diesel is supplied to commercial customers through multiple product offerings, which relevantly for present purposes includes bulk fuel supplies, where fuel companies supply fuel to both on and off-road customers. There are different ways in which bulk fuel supplies may occur, including direct machinery refuelling and delivery for onsite storage.

15.27 In Z / *Chevron*, the Commission defined separate markets for large bulk commercial customers that purchase diesel directly from the major fuel firms, and the smaller bulk customers that purchase diesel through resellers. That is not possible here, given:

- (a) Gull is neither a reseller nor a "major fuel firm", so the market definition does not accommodate its participation in this type of supply; and

- (b) the changes brought about by the FIA. As a result of the FIA, the market definition in *Z / Chevron* is likely no longer to be accurate. That is because contracts between suppliers and third party distributors will be subject to the FIA and the distributors will have a necessary degree of independence from their suppliers. It is no longer possible to treat them as a channel to market for a single major supplier as was done in *Z / Chevron*.

15.28 As such, Ampol treats the Parties' direct participation in the bulk supply of diesel to commercial customers as potential overlaps.

15.29 Nevertheless, it is not necessary to reach a firm conclusion on any new market definition given Gull's very limited presence in bulk supply to commercial customers as well as the comprehensive Proposed Divestment.

Gull

15.30 Gull has only minor operations in the bulk supply of fuel to commercial customers - it only delivers for onsite storage (it is increasing its focus but its presence remains limited to the area of Gull's existing North Island retail footprint), and has two fuelling locations at servicing marinas: one at Tairua Marina in the Coromandel (selling 95 Premium as well as diesel) and Orakei Marina in Auckland (selling Diesel only)⁵⁶. Gull estimates that it accounts for only ~1-2% of the bulk supply of fuel to commercial customers nationally. Gull has recently opened another unmanned retail marina at Half Moon Bay.

15.31 In addition to supplying for onsite storage, Gull may supply commercial customers at a terminal gate price from its Mt Maunganui terminal. [redacted]

Z

15.32 BP, Mobil and Z are all active in the bulk supply of fuel to commercial customers.

15.33 Z has significant bulk fuel operations, supplying some of New Zealand's largest companies. Z has three different distribution options which it utilises to bulk supply fuel to a range of commercial customers:

- (a) fuel is delivered for Z by a bulk haulier to a tank at a customer site (owned by the customer or Z). Z operates 25 private commercial truck stops as part of its bulk commercial supply operations, for particular customers (e.g. Fonterra, Higgins) under the Z brand;
- (b) for a small number of commercial customers, picked up at a terminal; and
- (c) Z operates 'Mini-Tankers', an on-site diesel refuelling and lubricant supplier. Mini-Tankers supplies diesel to a range of customers including trucking and earth moving companies, transport firms, construction sites, power generators, loggers, mining operations, farmers and homeowners. It engages in both refuelling of bulk diesel tanks and direct machinery refuelling.

15.34 Z also provides diesel via mini tankers (a mobile asset) at a number of marine locations. However, there is very little overlap, if any, with the marina fuel facilities that Gull provides. For example, Z currently supplies marine fuel via Minis / Move Logistics to contracted customers at Wynyard Wharf and Onehunga Port. This is limited to contracted customers, and the fuel loads are much greater than what a Gull customer would tend to pump from a marina asset.

15.35 As such, there is very limited overlap between Z and Gull in relation to bulk supply to commercial customers. In any event, the Proposed Divestment would eliminate the overlap.

⁵⁶ In addition to the newly opened site at Half Moon Bay.

Lubricant oil

15.36 There is a variety of different products in the lubricant oils market ranging from engine oils and brake fluids for passenger cars to motorcycle and lawn mower oils, heavy duty lubricants for trucks, earthmovers and diggers, and product for marine and other industrial applications.

Gull

15.37 Gull makes [redacted] of lubricant oil products in New Zealand.

Z

15.38 In New Zealand, Z supplies a range of lubricant oils, including:

- (a) a range of gasoline engine oils branded 'Havoline';
- (b) a range of diesel engine oil branded 'Delo'; and
- (c) brake fluid, clutch fluid, anti-freeze / coolant concentrate, gear lubricants and grease.

15.39 Havoline and Delo products are manufactured by Chevron overseas and distributed in New Zealand under licence by Z.

15.40 Due to the comprehensive nature of the Proposed Divestment and the very limited overlap between the Parties in relation to lubricant oils ([redacted]), Ampol does not discuss lubricant oils further in this application.

16. Additional areas of operation of the Parties***Commercial diesel at truck stops****Truck stops*

16.1 Aside from bulk fuel supplies, diesel is also supplied to commercial customers through truck stop networks, which are dedicated facilities that are strategically located throughout New Zealand to provide coverage for major and regional trucking routes. These facilities primarily sell diesel to large commercial trucks.

16.2 Z operates 66 truck stops under the Z brand, and 66 truck stops under the Caltex brand.

16.3 Gull, however, does not have any truck stops in New Zealand. Accordingly, the Parties do not overlap in relation to the supply of fuel through truck stops.

Commercial cards

16.4 A significant proportion (approximately 25%) of the fuel sold at retail service stations in New Zealand is sold on a fuel card to commercial customers. At times this fuel is sold at a significantly lower price than advertised at the pump.

16.5 Ampol understands that major corporate companies will often give their drivers cards from multiple suppliers to use and maximise coverage for refuelling corporate vehicles.

16.6 Gull is a very minor player in this area, with only [redacted].⁵⁷ Accordingly, such cards are not considered further in this application.

Biofuel

16.7 Biofuels were not considered by the Commission in *Z / Chevron*.

16.8 Biofuels are a lower carbon alternative to fossil fuels. Within certain blend limits, they are compatible with internal combustion engines, which makes biofuels a practical and immediate solution to lowering transport emissions. It also means they are substitutable for conventional fuels, with “the most common biofuels being ethanol, which is a petrol substitute and biodiesel, which is a diesel substitute”.⁵⁸ Liquid biofuels currently make up less than 0.1 percent of New Zealand’s total liquid fuel sales, mostly due to the higher cost of the product impacting demand.⁵⁹

16.9 Ethanol and conventional biodiesel are the most common – and potentially only – biofuels currently sold by any fuel company in New Zealand. Biofuels can be sold through a range of sales channels including retail service stations, truck stops and through bulk fuel supply. Given their substitutability with their conventional fuel alternatives, they can be treated as part of the retail and commercial supply product markets discussed above. Other than an overlap that arises to the extent of this substitutability, there is no overlap between the parties in relation to biofuels, as explained below.

Gull

16.10 Gull is New Zealand’s original biofuel retailer having introduced its first biofuel product in 2007, ‘Gull Force 10’. Gull still supplies Gull Force 10, a premium (98 octane) petrol blended with 10% ethanol, for petrol vehicles at all North Island service stations. These products are sold through Gull’s retail service stations only. Gull previously supplied at selected retail service stations:

- (a) ‘Gull Force Pro’, a premium petrol blended with 70-85% ethanol; and
- (b) ‘Diesel Max’, a biodiesel blended with mineral diesel.

16.11 Both were only available at five Gull outlets. However, due to supply challenges, Gull Force Pro and Diesel Max are no longer sold by Gull.

Z

16.12 Z currently supplies ‘Z Bio D’, a biodiesel made primarily from inedible tallow. Z Bio D is currently available at only one truck stop – Z Highbrook in Auckland. Z also supplies Z Bio D to a few commercial customers with bulk tanks in the Auckland region.

16.13 In short, Z supplies a biofuel diesel product through a commercial supply channel in which Gull does not participate, so there is no overlap. Gull supplies biofuel petrol products through its retail channel, and so potentially overlaps with Z’s retail supply of conventional fuel products (addressed above).

16.14 In any event, due to the comprehensive nature of the Proposed Divestment and the very limited overlap between the Parties, Ampol does not consider it necessary to reach a conclusion on market definition for the purposes of this clearance application, and biofuels are not considered further.

⁵⁷ For completeness, Ampol notes that Gull [redacted]

⁵⁸ [Increasing the use of biofuels in transport: consultation paper on the Sustainable Biofuels Mandate \(mbie.govt.nz\)](#), page 8, under heading ‘Part 2: Biofuels have a key role to play in decarbonising transport’.

⁵⁹ [Biofuels summary report.pdf \(scionresearch.com\)](#), accessed 27 September 2021.

Marine fuel bunkering

- 16.15 Bunkering is the process of fuelling ships with marine (*bunker*) fuels. Customer segments range from large commercial vessels to smaller yachts. Ampol understands that for large vessels, New Zealand prices are constrained by international prices as large ships can make it to and from New Zealand without necessarily refuelling.
- 16.16 In *Z / Chevron* the Commission defined separate, port-specific markets for the supply of marine fuel (being heavy fuel oil (**HFO**) and light fuel oil (**LFO**), with one grade sold at each port in New Zealand). The Parties understand that the supply of marine fuels has changed since the Commission's *Z / Chevron* decision, with New Zealand currently in the process of phasing out LFO, as LFO will become non-compliant under the changes to the international air pollution regulations set out in MARPOL ANNEX VI that the government (Maritime NZ) is proposing take effect in Quarter 1 of 2022).
- 16.17 As a result, in this section Ampol considers the supply of diesel to marine customers, as well as residual supply of fuel oils.

Gull

- 16.18 Gull does not supply LFO or HFO. Rather Gull supplies diesel by truck on a wharf predominantly to smaller ships, primarily at Mount Maunganui but also in Auckland and other ports.

Z

- 16.19 Z supplies LFO and Diesel from terminal tanks via pipelines to ships at Nelson, Lyttelton, Timaru and Dunedin. Z also supplies diesel and HFO via pipeline at the Marsden Point Refinery.
- 16.20 [redacted] HFO (and LFO) will no longer be produced in New Zealand following the refinery's transition to an import terminal, and [redacted]
- 16.21 In light of the changes since *Z / Chevron*, the Commission's previous market definition may no longer be appropriate. However, given there is no material overlap between the Parties (with very different customer focus and capabilities), the Parties do not consider it necessary to reach a conclusion on market definition for the purposes of this clearance application. In any case, the Proposed Divestment will prevent any aggregation in this area.

Bitumen and aviation fuel

- 16.22 Gull is not active in the supply of aviation fuels or bitumen and, as a result, there is no overlap between the Parties. [redacted] Accordingly, [redacted] and Ampol does not discuss aviation fuel or bitumen markets further in this clearance application.

17. Conclusion on market definition

- 17.1 As set out above, because Ampol is applying for clearance on the basis that it will make the Proposed Divestment, for the purposes of this clearance application, Ampol:
- (a) considers that it is not necessary to conclusively define the relevant markets; and
 - (b) adopts the markets the Commission defined in *Z / Chevron*, where possible, for the purposes of the Commission assessing the relevant overlaps between the Parties.
- 17.2 Accordingly, Ampol sets out below the markets relevant to the overlaps arising from the Proposed Transaction.

- (a) **Retail fuel** – separate, service station specific, local markets for the supply of fuel products (i.e., diesel, regular petrol, premium petrol and biofuels, collectively) to retail customers, using a 2km radius as a starting point (among other considerations).
- (b) **Terminal storage** – the market for the storage of each refined fuel product (petrol and diesel) in Mount Maunganui.
- (c) **Commercial supply to distributors** – the supply of fuel products to distributors at Mt Maunganui.
- (d) **Commercial petroleum products** – bulk supply of diesel to commercial customers.

Part F: Competitive Assessment

18. Gull in the New Zealand market

- 18.1 Ampol recognises that the Commission has previously identified Gull to be a “significant competitive force” in the markets in which it operates. The Commission highlighted in its decision in *Z / Chevron* that Gull “is seen as a challenger brand” that is “aggressive on price, which sees prices being significantly lower in markets where Gull is present”.
- 18.2 The Commission reiterated this sentiment three years later in its Market Study, concluding that Gull tended to have a positive impact in reducing prices for consumers in the areas in which it operates.
- 18.3 As outlined above, there have been a number of pro-competitive developments in the market since the Market Study was concluded, including the continued expansion, and materially increased independence, of other players outside of BP, Mobil and Z. However, in light of the Commission’s earlier comments about Gull, and in light of the overlaps between Gull and Z in certain local retail markets, Ampol acknowledges that the Commission would wish to work through the likely competition implications of the Proposed Transaction pursuant to section 47, and that this may take some time.

19. Competition considerations absent the Proposed Divestment

- 19.1 As set out above, the Parties overlap in a number of areas (to varying degrees) in relation to retail service stations, terminal storage, supply to resellers and commercial bulk fuel. Ampol acknowledges that, absent the Proposed Divestment, the Commission would wish to work through the competition effects in relation to some of these markets (including the potential for both unilateral and coordinated effects in retail markets).
- 19.2 For example, as set out at paragraphs 15.3 to 15.9 above, using the conservative methodology set out at paragraph 15.8 above, Ampol has identified 67 Local Retail Markets where Gull and Z (including Caltex) retail service stations overlap⁶⁰. Using this same methodology, Ampol recorded the total number of independent competitors within each Local Retail Market based on the Overlapping Service Stations present. While, as set out above, the Parties consider that the participation by distributors in retail should not be aggregated with that of their suppliers; for clarity, Ampol did not consider a retail site operated by a distributor which is supplied fuel on a wholesale basis by Z to be an independent competitor in undertaking this analysis. The results of the analysis done on this basis is that there are 9 Local Retail Markets where the number of independent competitors present would reduce from two down to one.
- 19.3 When considering the number of independent competitors in the additional 1 Local Retail Market where Gull and a retail station of a distributor which is supplied wholesale fuel by Z overlap, there are no further Local Retail Markets where the number of independent competitors present would reduce from two down to one.
- 19.4 Set out below in **Appendix 9** is a table containing an overview of the local overlaps between the Parties on the basis of the methodology set out at paragraph 15.8 and 19.2 above.
- 19.5 Ampol understands that in the normal course, the Commission would likely want to consider further at least the Local Retail Markets in which the number of independent competitors present will reduce from two down to one as a result of the Proposed Transaction. However, to avoid the need for a full analysis of the identified 9 Local Retail Markets, Ampol is offering the Proposed Divestment. As set out in detail below, the divestment will be of the entirety of Gull, together with a

⁶⁰ As at the beginning of October 2021.

PIE Agreement with Ampol at the election of the purchaser (or directors of Gull in the case of an IPO) and, if required by Gull's purchaser or directors in the case of an IPO, a TSA with Ampol.

- 19.6 As Ampol is divesting the entirety of Gull and otherwise has no operations in New Zealand⁶¹, the Proposed Transaction will not result in any aggregation of the Parties' operations. Accordingly, the Proposed Divestment necessarily remedies all potential competition issues in relation to the identified Local Retail Markets, as well as any potential competition issues in any other markets, including any coordinated effects issues that the Commission may otherwise have wished to examine as a result of the Proposed Transaction absent the Proposed Divestment. Ampol is offering the divestment of the entirety of Gull regardless of whether that is the specific remedy that would be required by the Commission following a full competition assessment, in order to secure clearance in a timely manner.
- 19.7 As discussed with the Commission, Ampol therefore focuses the remainder of this clearance application on demonstrating why the Commission can be confident that the Proposed Divestment will not be rendered ineffective as a result of composition risks, asset risks and purchaser risks.

⁶¹ With the exception of as mentioned in paragraph 2.4.

Part G: Divestment proposal

20. Overview of Proposed Divestment

- 20.1 As set out above, in order to achieve clearance in a timely manner, Ampol proposes to undertake the Proposed Divestment, being the divestment of the Gull business.
- 20.2 Ampol expects there to be a range of interested buyers for Gull, including trade buyers and financial investors. However, Ampol is also proposing an alternative means to effect the Proposed Divestment and Ampol considers having the two potential divestment alternatives will give greater confidence to the Commission in the divestment remedy, as well as maximising the value received by Ampol's shareholders for Gull.
- 20.3 Ampol will undertake the Proposed Divestment by way of either:
- (a) a trade sale to an 'approved purchaser' (**Trade Sale**); or
 - (b) the sale of not less than [redacted]% of Gull Holdco's shares by way of initial public offering to retail investors in New Zealand (and possibly Australia) and to institutional investors in New Zealand, Australia and certain other selected offshore jurisdictions, which would result in the listing of Gull HoldCo⁶² on the NZX and quotation of its shares on the NZX Main Board market⁶³ (the **IPO**),

within [redacted] of completion of the Proposed Transaction (the **Divestment Period**). Ampol proposes to progress both of these options to ensure that Gull will be divested into ownership acceptable to the Commission during the Divestment Period, [redacted]. The rationale for requiring a Divestment Period of [redacted] is set out in section 21 below.

- 20.4 Importantly, Ampol notes that its proposal to undertake the Proposed Divestment through either a Trade Sale or by way of an IPO provides a high degree of certainty that the Proposed Divestment will be able to be made during the Divestment Period. [redacted] Ampol believes that the Proposed Divestment is achievable within the Divestment Period, particularly given the two alternative divestment routes and Ampol's ability to switch between those alternatives as the Trade Sale and IPO processes are both progressed.
- 20.5 Further details regarding the timing of the Proposed Divestment, and the proposed interaction of the Trade Sale and IPO options are set out below and in the Proposed Divestment Deed at **Confidential Appendix 6**.
- 20.6 As part of the Proposed Divestment, Ampol will also:
- (a) either at the option of the purchaser of Gull or the directors of Gull in an IPO context, enter into the PIE Agreement with Gull, which would ensure the continued supply of fuel to Gull's Mount Maunganui terminal on arm's length market competitive terms (but no less favourable as to pricing mechanism and key commercial terms than those that currently exist); and
 - (b) if required by the purchaser of Gull or by the directors of Gull in an IPO context, enter into the TSA with Gull, for an appropriate transitional period to be determined in negotiations with directors in the IPO or the Purchaser in the Trade Sale, but expected to be up to [redacted] if needed, under which a limited set of services currently provided by Ampol to Gull would continue to be provided so as to enable Gull sufficient time to obtain these

⁶² Note: the IPO may be structured as an IPO of shares in a newly incorporated holding company which owns all of the shares in Gull Holdco. See paragraph 21.11 for further information.

⁶³ Note: a secondary listing may also be sought on ASX.

services elsewhere or build capability itself (with some easily substitutable services possibly only needing to be available for a short time)⁶⁴,

(together, the **Divestment Related Agreements**).

- 20.7 Ampol will (if required by a purchaser of Gull or the directors of Gull in an IPO context) enter into these Divestment Related Agreements with Gull before carrying out the Proposed Divestment (noting that, as below, the Commission will receive template versions before clearance is granted). Accordingly, the Divestment Related Agreements will transfer with Gull to the relevant purchaser or upon completion of the IPO as ancillary agreements which form part of the Proposed Divestment, i.e., they will form part of the assets divested as part of the structural divestment of Gull, assisting to facilitate the Divestment. Therefore, the rights and obligations set out in the Divestment Related Agreements will form part of the bundle of rights the purchaser of Gull will acquire in a trade sale, or will form part of the assets available to an independent Gull in an IPO context. Ampol will be contractually obliged to perform the obligations committed to as part of the Divestment Related Agreements, and the purchaser of Gull, or the new directors of a listed Gull, will be able to enforce performance via the courts if required. Accordingly, it is not the case that the Divestment Related Agreements should be characterised as behavioural undertakings. Rather, they are enforceable by the relevant parties and will form part of the assets which will transfer with the divested Gull, and it is the transfer of Gull into independent ownership that solves any potential competition issues that could otherwise have arisen from the Proposed Transaction.
- 20.8 The availability of the Divestment Related Agreements will be notified to prospective purchasers of Gull in the case of a Trade Sale and to the Gull directors in the case of an IPO (and in both cases during the clearance process). Ampol will provide the Commission with evidence that confirms that prospective purchasers and the Gull directors have been made aware of the ability to elect to enter into the Divestment Related Agreements. Therefore, the availability of these agreements will form part of the factual matrix to be considered by the Commission in reaching its decision (rather than reflecting an undertaking to the Commission that at some future point a firm will behave in a particular way, such as not to discriminate).
- 20.9 To address overlap during the Divestment Period, Ampol will commit to robust hold-separate, business preservation and information ring-fencing obligations. In summary, these commitments include (among others set out in the Proposed Divestment Deed):
- (a) Ampol will appoint an independent hold-separate manager to manage the Gull business during this period as a going concern separate from the business operated by Ampol (with the terms of appointment of the hold-separate manager approved by the Commission);
 - (b) Ampol will use all reasonable endeavours during the Divestment Period to preserve the reputation, goodwill, economic viability, marketability and competitiveness of Gull, [redacted]⁶⁵; and
 - (c) Ampol will implement all necessary measures to ring-fence commercially sensitive information relating to Gull within the Gull business. To the extent that any individuals need access to Gull commercially sensitive information pursuant to an exemption specified in the Proposed Divestment Deed, Ampol will ensure such individuals have signed a confidentiality undertaking.
- 20.10 While divestment by way of an IPO is a novel proposal for the Commission, Ampol notes that it understands the Australian Competition and Consumer Commission has considered divestment

⁶⁴ Note: Ampol charges Gull an annual fee for these services now, which covers the services set out in paragraph 23.10 below.

⁶⁵ Please refer to paragraph 23.6 below for further detail on the identity of the employees.

by way of an IPO on previous occasions.⁶⁶ For example, Ampol believes an IPO was contemplated in two cases in Alinta in 2006⁶⁷ and 2007⁶⁸.

21. IPO and Trade Sale process and timing

Divestment timeline

21.1 While the timeframe sought for the Proposed Divestment will be [redacted] after Ampol acquires Z, as set out in the Proposed Divestment Deed, Ampol is already underway with preparations for the sale process for Gull⁶⁹, and therefore the Proposed Divestment could take less time. However, the [redacted] Divestment Period provides the greatest opportunity for the Proposed Divestment to be successfully completed. In particular, it would allow for delays, such as for a purchaser to receive OIO approval in a Trade Sale, and to work through the steps of an IPO if Ampol considers that would better ensure the successful completion of the Proposed Divestment, as well as maximising the value received by Ampol's shareholders for Gull. The following timing considerations exist for the IPO option:

- (a) An IPO would be subject to market conditions at the time the IPO is launched.
- (b) An IPO also needs to be timed for the offer to fall within an "IPO window", which is based on a number of factors including availability of audited financial information of the issuer, reporting seasons for existing listed issuers and general market conditions. A [redacted] period to complete an IPO allows for [redacted] different "IPO windows". The 2022 IPO windows are broadly [redacted], as shown on the Indicative Divestment Timeline set out in paragraph 21.14 below. The IPO process would be carried out with the primary objective of launching the IPO in Window 1 following the granting of clearance (i.e., by [redacted] under the current proposed timeline). A [redacted] divestment period provides the benefit of [redacted] to launch the IPO [redacted] (if required, for example because the Commission clearance or OIO approval is not granted with sufficient time to launch the IPO in Window 1). This creates flexibility to delay the completion of the IPO if necessary due to market conditions during Window 1. In addition, Ampol has the flexibility to choose to switch to a divestment by way of a Trade Sale if it decides that route is preferable.
- (c) The preparatory work for an IPO will take several months as due diligence is undertaken, market soundings are completed and offer documentation is prepared and reviewed by the Financial Markets Authority (**FMA**) and NZX.

21.2 Importantly, in addition to OIO approval, the Divestment Period proposed by Ampol will also allow for Trade Sale buyers to undertake detailed due diligence to acquire Gull, secure acquisition financing and negotiate transaction documentation during the Divestment Period. Gull is unusually large for a New Zealand-only divestment business. New Zealand divestments required as part of previous clearance processes have often involved the sale of particular product lines or assets which require much less by way of resources and costs for a purchaser to interrogate. [redacted]

21.3 Ampol considers that running an IPO process alongside the Trade Sale would not reduce potential purchasers' interest in acquiring Gull under the Trade Sale. It is not uncommon for sale processes to be structured in this manner.⁷⁰ The IPO process will be seen by bidders in the Trade

⁶⁶ Ampol would provide any required waivers to the Commission to facilitate a discussion between the Commission and the ACCC about this (if such a waiver is necessary).

⁶⁷ [Alinta Ltd - acquisition of Australian Pipeline Trust | ACCC](#).

⁶⁸ <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews/alinta-ltd-proposed-acquisition-of-aql>.

⁶⁹ Ampol intends to provide the Commission with a separate update, or updates, on the status of the sale process in due course.

⁷⁰ By way of recent public examples, Ampol's understanding from media reports, is that (i) the sell-down of My Food Bag was run as a dual track process, ultimately resulting in an IPO earlier this year, and (ii) the sales of Vocus and 2degrees are also considering both sales processes. Further, Ampol understands that the sale of Oceania Healthcare in 2018 was run as a dual-track process, culminating in an IPO. Information on this data is limited as the fact that a dual track process is being run is generally non-public information.

Sale as equivalent to another bidder. Bidders will be more concerned to know that the asset is genuinely for sale, hence Ampol's request for a Divestment Period following its acquisition of Z.

21.4 Ampol considers that, given the uniquely uncertain business environment that has been created by COVID-19 (which for example may impact the ability of potential buyers to enter New Zealand or the relevant parts of New Zealand to inspect Gull's assets and meet in person with senior management), the strictures of the statutory framework for applying for variations means that it requires a buffer to allow for any delays. If any such issues were to eventuate, Ampol may not have sufficient time to go through the legal process of seeking a variation to the Divestment Deed from the Commission. This is a further reason why the [redacted] Divestment Period has been sought by Ampol.

21.5 The following paragraphs set out an overview of the process involved with the Trade Sale and the IPO, and the interaction between the two methods of divestment.

Trade Sale process

21.6 Ampol envisages the Trade Sale process would be as follows:

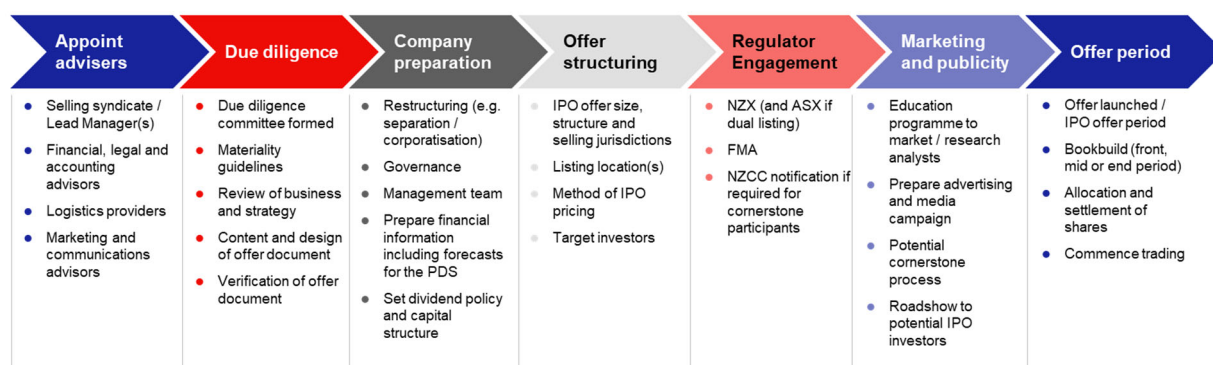
- (a) **Stage 1:** Bidders will be provided with an information memorandum, selected financial information and a financial model during stage 1 of the process and asked to submit non-binding and indicative offers.
- (b) **Stage 2:** An agreed short-list of bidders will be progressed to stage 2 of the process based upon [redacted]. Bidders progressed to stage 2 will receive full access to confirmatory due diligence information, Q&A and access to Gull management.

21.7 Ampol will include a template PIE Agreement and TSA with the draft sale and purchase agreement to bidders during Stage 2, which will form a base-line for the commercial terms offered, but will be able to be marked up and negotiated by potential bidders, should they need them. Ampol will provide copies of the proposed sale and purchase agreement, including the PIE Agreement and TSA templates to the Commission during the clearance process (once they have been prepared). Ampol will also interrogate bidders in relation to their New Zealand regulatory approval strategy to ensure it is highly credible.

IPO process

21.8 Ampol envisages the IPO process would broadly follow the steps set out in the following diagram.

High-level overview of a typical IPO process:



21.9 Ampol proposes to keep the Commission fully informed of the progress of the IPO during the preparatory phases outlined above, including through:

- (a) providing the Commission with copies of any external presentations produced by Gull prior to lodgement of the product disclosure statement (**PDS**) in respect of the IPO, within two business days of any such documents being provided to potential investors, including the non-deal roadshow presentation which is expected to occur prior to any clearance decision being made;
- (b) within two business days of the draft PDS first being submitted to the FMA and NZX as part of such regulators' pre-lodgement review of the draft PDS (which typically occurs around 30 business days prior to lodgement of the final PDS), providing a copy of that draft PDS to the Commission. This (as well as the further updates to the Commission described below) is likely to occur after the Commission has made its clearance decision;
- (c) upon becoming aware of the identity of any person who proposes to acquire more than [redacted]% of the shares in Gull under the IPO (**Significant Holder**), and in any event prior to the date of lodgement of the final PDS, notifying the Commission in writing of such person(s). Ampol expects any such person(s) to have been identified prior to launch of the IPO, following the cornerstone shareholder process and believes that it highly unlikely that such a large potential shareholder would only be identified following the public launch of the IPO. Ampol undertakes in the Proposed Divestment Deed not to transfer more than [redacted]% of the shares in Gull under the IPO to a Significant Holder, unless it had provided the Commission with the name of such person(s) prior to the date of lodgement of the final PDS;
- (d) at least 20 business days in advance of the launch of the IPO, notifying the Commission of:
 - (i) the proposed IPO launch date; and
 - (ii) the proposed directors and senior managers of the entity seeking listing on NZX;
- (e) within two business days of the IPO launch date, providing the Commission with a copy of the final PDS; and
- (f) at any time prior to completion of the IPO, providing the Commission with any other information concerning the IPO reasonably requested by the Commission, with such information to be provided within the time period set by the Commission (acting reasonably).

21.10 The Proposed Divestment Deed includes undertakings from Ampol to provide the information referred to above to the Commission.

21.11 Ampol notes that a common IPO structure is for a new company to be established as the holding company of the IPO group. That new holding company would prepare and lodge the PDS, issue the shares under the IPO and become the listed entity. Under such a structure, Ampol would sell 100% of its shares in Gull Holdco to that new holding company in consideration for cash and new shares in the listed entity⁷¹ (as set out further in the paragraphs below). Accordingly, Ampol would not offer any of its shares in Gull Holdco as part of the IPO, and the only shares being offered in the IPO would be new shares in the new holding company. Ampol will notify the Commission if it decides to use this structure, and this notification would be given at least 30 business days prior to lodgement of the PDS. The sole difference in structure is that an additional holding company is interposed above Gull HoldCo, and Ampol's retained holding in Gull would be in the new holding company that would be listed, rather than in Gull HoldCo. The listed entity would be the indirect owner of Gull.

⁷¹ The new shares issued to Ampol in the new listed holding company under this offer structure would be the Residual Shareholding for the purposes of paragraph 25.17.

21.12 Ampol envisages that the IPO process will begin during the clearance process, and Ampol will provide copies of any relevant IPO documents to the Commission as described above. As with the Trade Sale, this will include the TSA and PIE Agreement templates that will be offered to Gull.

Interaction of the two processes

21.13 It is envisaged that the preparation for the Trade Sale and the IPO would run concurrently to help ensure that Gull will be divested during the Divestment Period as well as maximising the value received by Ampol's shareholders for Gull. Ultimately, Ampol will decide which Proposed Divestment option to implement. Ampol's application seeks clearance subject to both Proposed Divestment options.

21.14 The timeline for the Trade Sale and the IPO has been designed to run in parallel, [redacted], so that Ampol can make an informed decision as to whether it will proceed with the Proposed Divestment by way of the Trade Sale or the IPO. By the time that the Commission makes its clearance decision, both processes will be advanced. Ampol will have a high degree of confidence at the time it makes a decision which option to choose that it will be able to execute the Proposed Divestment. Prior to the clearance decision being made, the Commission will have a high level of visibility of how the dual track Trade Sale and IPO are progressing as a result of the information to be provided to the Commission as described above.

21.15 Ampol's decision that it intends to effect the Proposed Divestment by way of an IPO as opposed to a Trade Sale (or vice-versa) will be made after the Commission has made its clearance decision. Ampol will notify the Commission within two business days following the decision being taken. However, if for whatever reason, having made a decision to proceed with one divestment option it is necessary to switch to the other divestment option in order to effect the Proposed Divestment within the Divestment Period, Ampol will update the Commission on that development.

Indicative divestment timeline

[redacted]

Timely divestment of Gull is achievable

Trade Sale scenario

21.16 A Trade Sale of Gull to an approved purchaser within the Divestment Period is achievable. Ampol has already commenced preparatory work for this process, which started prior to signing of the SIA. Ampol as a business has extensive experience in undertaking business sales and structural separations. For example, some of Ampol's experience includes:

- (a) Ampol recently established an unlisted property trust and transferred ownership of 203 core freehold convenience retail sites to that trust, sold a 49% stake in that trust to a consortium of Charter Hall and GIC for AUD\$682m, with all sites leased back to Ampol under long term triple net lease arrangements;
- (b) the asset sale of its fuel oil business in 2017 (~\$30m value);
- (c) the successful completion of a \$270m project for the closure of the historic Kurnell refinery and conversion of this asset to Australia's largest fuel import terminal;
- (d) the vend in of Caltex South East distributorship to Bonney Energy, in exchange for a 50% stake at ~\$15m value; and
- (e) the acquisition of Gull in 2017 for NZ\$340m.

21.17 Ampol also has extensive experience in negotiating and executing substantial transactions, such as what amounts to effectively a commercial partnership with Woolworths Australia (covering convenience and loyalty). Ampol's commercial experience and deep industry experience in fuel markets will assist Ampol in achieving a timely divestment of Gull within the Divestment Period.

21.18 Additionally, having been sold to Ampol in 2017, the Gull business (including its strong executive / management team) has experience in transferring and working with new owners, while continuing to operate effectively and competitively in the market.

IPO scenario

21.19 An IPO of the shares in Gull to new investors within the Divestment Period is also achievable. Ampol's indicative timeline for divestment is provided above. This timeline is dependent on timing for completion of the Proposed Transaction (which itself is dependent on timing for the satisfaction of the conditions). [redacted]. However, the IPO can only be launched post-completion of the Proposed Transaction (an IPO cannot practically be launched on a conditional basis).

Timing

21.20 While Ampol will move expeditiously, and will target a sale [redacted], timing and sequencing of a sale has to be managed alongside the clearance application process, the need to target certain IPO windows (which as set out above are based on the release of Gull's financial statements, avoiding the Christmas / New Year shut down period and listed company reporting seasons), and to allow for delays to completion caused by matters such as regulatory approvals required by a purchaser, e.g. delays in receiving approval from the Overseas Investment Office.

22. **Divestment resolves all competition concerns that could potentially have arisen**

22.1 As the Proposed Divestment involves the divestment of the entire overlap between the Parties, it will, necessarily, remedy any potential lessening of competition that could result from the Proposed Transaction.

22.2 The structure of the Proposed Divestment addresses in full the three risk areas associated with the effectiveness of divestment undertakings.

- (a) *Composition risk* – the risk that the scope of a Proposed Divestment may be too constrained, or not appropriately configured, to attract a suitable purchaser.
- (b) *Asset risk* – the risk that the competitive effectiveness of a Proposed Divestment will deteriorate prior to completion of the Proposed Divestment.
- (c) *Purchaser risk* – the risk that there may not be a purchaser acceptable to the Commission available and / or the risk that the Ampol has an incentive to sell to a weak competitor.

22.3 Ampol sets out below further details of the Proposed Divestment and why purchaser, asset and composition risks arising are minimal and could not reduce the effectiveness of the Proposed Divestment.

23. **Composition risk**

Gull's long-standing history of market competitiveness will continue

23.1 As set out above, the Proposed Divestment will be of the Gull business in its entirety.

- 23.2 Gull is a standalone business which operated competitively, independently of Ampol, prior to being acquired by Ampol in July 2017. Gull has a proven long-established low-cost market strategy.⁷²
- 23.3 This strategy arises in part due to its structure. Gull has an import terminal in Mount Maunganui, with a network that is optimised around a single driver's shift from this terminal, focused on the areas of most dense population. Further, Gull's stations are mostly unmanned (nearly 70%), and where they include convenience outlets, these are operated by a third party. Gull's operating model utilises its convenience partners and other contractors for routine maintenance of its sites, allowing Gull to have low overheads and c. 30 full time equivalent employees. As the Commission recognised in the Market Study, Gull's sites are "low cost retail sites".⁷³
- 23.4 As the Commission has identified, this structure has allowed Gull to grow market share.⁷⁴ Its low cost operations allow Gull to offer prices which sit below those of the market participants who have to maintain higher cost operations associated with national distribution (including extensive terminal infrastructure) and may have more premium offerings (such as convenience offerings, loyalty programs etc.).⁷⁵ Ampol notes the Commission identified in *Z / Chevron* that in 2016 Gull is "seen as a challenger brand" that is "aggressive on price, which sees prices being significantly lower in markets where Gull is present", commonly termed the "Gull effect".⁷⁶ This "Gull effect" is well understood by New Zealand consumers.
- 23.5 Gull has a long standing and successful brand based on that strategy, and no current plans to incur the cost of switching to a more premium strategy (e.g. by converting unmanned terminals, and implementing loyalty programs to compete with the higher priced larger players). This suggests that, in the current competitive environment, it would not be commercially rational for any purchaser, or new board of Gull in the case of an IPO, to change Gull's market strategy. Gull's structural advantages mean that its low cost strategy continues to be a rational one for any owner of Gull, as was the case under the private ownership of the Rae family (who owned Gull prior to Ampol), and continued under ownership of Ampol (despite Ampol being a publicly listed company and offering a very different and more premium model in Australia). Ampol expects any purchaser of Gull, or the directors of Gull in the case of an IPO, to maintain a rational strategy post-Divestment.
- 23.6 Further, Gull has a strong executive / management team which has effectively operated Gull's business for a number of years, having been with Gull since before, and retained after, Ampol's acquisition of Gull. While Ampol has oversight of the business, Gull has continued to be run largely independently of the wider Ampol Group with Ampol providing support or assistance only as or when requested by Gull. [redacted] As part of the Proposed Divestment Deed, Ampol will commit to not solicit any Gull key management during the Divestment Period [redacted].⁷⁷
- 23.7 Ampol also notes that although it considers Gull will continue to compete effectively under any ownership, Gull no longer has the singular significance for competition in New Zealand fuel markets that the Commission considered to be the case previously. Following the introduction of the FIA and FIR, with competitive terms now available at terminals and in fixed wholesale contracts, New Zealand becoming an import-only market, and the resulting increase in competitive freedom that all distributors will experience, it can be expected that distributors will be

⁷² As set out in Ampol's ASX announcement regarding the acquisition on 22 December 2016, Gull had, at that time, "been successfully operating in the New Zealand fuel market since 1998 and is operationally positioned as a challenger brand."

⁷³ E.g. page 22 of the Market Study Final Report.

⁷⁴ In the Market Study Final Report (page 216), the Commission said: "*We are aware that Gull supplies the Auckland and Waikato regions by importing refined fuel into Mount Maunganui and trucking it to sites in those regions. It appears to have had success in growing market share in Auckland this way.*"

⁷⁵ [redacted]

⁷⁶ *Z / Chevron* page 55 at footnote 146.

⁷⁷ [redacted]

much freer to lay out their network, and adopt any particular competitive strategy that they choose.

- 23.8 As set out above, the current commercial strategy of Gull is rational based on its low-cost structure, and will therefore likely continue, to the extent it remains rational in the context of the market dynamics, regardless of whether Gull remains in private ownership (Ampol or a new owner) or is publicly listed. Any adaptations that are rational to respond to normal market dynamics would be equally applicable for Gull whether it is privately held (by Ampol or a new owner) or publicly listed – in other words, they would be neutral as between the factual and counterfactual, not linked to the Proposed Transaction. However, Ampol notes that in an IPO context, there will be public disclosure regarding the intended forward looking strategy of a listed Gull in comparison to a Trade Sale through disclosure in the PDS and other documentation provided to the market in connection with the IPO. While not impossible, it would be a significant event from an investor’s perspective for a newly listed company to fundamentally change its strategy disclosed in the company’s IPO.
- 23.9 In terms of the process for preparation of the PDS and other offer materials (including the description of the business and its strategy and plans), there is a significant “due diligence” process carried out to ensure the accuracy and completeness of statements made in these documents.⁷⁸ Once listed, Gull will be required to report against the prospective financial information disclosed to investors⁷⁹, meaning that the strategy and plans upon which those forecasts are based will need to be highly developed and considered so that they can be executed in line with the financial forecasts. The Commission will be provided with a draft of the PDS setting out this information well in advance of the lodgement of the PDS with the Registrar of Financial Service Providers upon launch of the IPO (as set out in paragraph 21.9(b) above).

All overlapping assets are included in the Proposed Divestment, and constitute a going concern

- 23.10 Some administrative aspects of Gull’s business are supported by Ampol.⁸⁰ There is a Corporate Services Agreement in place between Ampol and Gull, pursuant to which Gull can access various support services from Ampol on an ‘as needed’ basis, including:
- (a) commercial and negotiation support, including in relation to sales marketing and retail;
 - (b) information technology advice and support;
 - (c) treasury, tax, insurance and human resources advice and support; and
 - (d) legal, secretariat, public affairs, credit risk and accounting support.
- 23.11 Gull is charged an annual fee depending on the extent of the services actually utilised, [redacted].⁸¹ This is a relatively limited fee reflecting the relatively limited access Gull has required to such services to date.
- 23.12 If the purchaser of Gull, or the directors of Gull in an IPO context, require any ongoing services be provided by Ampol to support Gull on a transitional basis, Ampol will enter into a TSA with Gull prior to Divestment.
- 23.13 Additionally, Ampol will offer to enter into a PIE Agreement with Gull, which will transfer with Gull in the Proposed Divestment at the option of the purchaser or the directors of Gull in an IPO context, on arms’ length market competitive terms (but no less favourable pricing mechanism and

⁷⁸ Gull and its directors, together with management and others involved in the IPO, have potential civil and criminal liability for those statements if they are false or misleading (including by omission).

⁷⁹ This requirement arises under the Financial Markets Conduct Regulations 2014 and relevant accounting standards.

⁸⁰ [redacted]

⁸¹ [redacted]

key commercial terms than currently exist. [redacted] As noted above, Ampol will provide the Commission with an opportunity to view the draft sale and purchase agreement offered to bidders and any drafts of the IPO documents which are available before clearance is granted, which will include template terms for the PIE Agreement and any TSA that will be offered to bidders / the directors of Gull in the case of a Trade Sale and IPO respectively.

23.14 Ampol will also assist Gull or the purchaser (as relevant) to obtain any consents of third parties required pursuant to Gull's material contracts or leases / licences to the change of control occurring as a result of the Proposed Divestment. Ampol has commenced an analysis of change of control provisions in Gull's existing material contracts for purposes of the Sale Process. In addition, [redacted].⁸²

23.15 Accordingly, the Commission can be confident that Gull will have everything it needs to operate as it currently does post-Divestment, and therefore that Gull's competitive position will remain strong post-Divestment, regardless of the identity of the purchaser, or in an IPO scenario.

Gull will be able to operate effectively as a listed entity in the case of an IPO

23.16 Ampol notes that the Commission's consideration of composition risk associated with the Proposed Divestment should be unaffected by whether the method of sale is ultimately by Trade Sale or IPO. As Gull is run largely independently of Ampol, and given in either case Ampol will support Gull with a TSA and PIE Agreement as required, the Commission can be sure that Gull will be able to continue to compete in the market post-Divestment as it does currently.

23.17 An IPO would result in the creation of an independently run company, directed by a listed company board (made up of professional independent directors with no Ampol representatives), and subject to the scrutiny of being a public company subject to ongoing market disclosure obligations. It would be required to comply with the NZX Listing Rules (and comply or explain its non-compliance with the NZX Corporate Governance Code) and would be subject to oversight of the NZX and the FMA. The New Zealand Shareholders Association also performs an important role scrutinising listed companies to protect the interests of shareholders.

23.18 Ampol would propose for [redacted]⁸³ and for an experienced CFO to be hired in preparation for the IPO to enhance the management capability of Gull for the listed company environment.

23.19 Ampol will provide the Commission with details of the proposed directors and the CFO (and other senior managers) once such persons have been identified during the Divestment Period. Ampol will put in place a strong independent board made-up of experienced directors with a balance of skills, experience and backgrounds. Prospective investors will be deeply interested in the identity of the directors and make-up of the board.

23.20 While becoming a publicly listed company will add some ongoing costs (e.g. an independent board, an additional senior management role (CFO) and some additional compliance and administrative costs) to Gull's current business costs, these are not material in the context of Gull's business. The additional costs are expected to be approximately [redacted]. There are much smaller listed entities that compete effectively in their relevant markets. These costs are expected to have minimal impact on Gull's strategy or market behaviour – its strategy as a low cost operator is currently seen as profit maximising and this immaterial increase in its cost base will not have an impact on that. In a number of ways, Gull's ability to operate independently will be enhanced by becoming a listed public company. It will have access to new sources of capital via the listed debt and equity markets, will have a more capable management team with the addition of a CFO, and will have an independent board and be subject to governance and other obligations of the NZX Listing Rules (among other things, disclosure of material information, annual and half-

⁸² Importantly, we also note that, under the NZ Property Law Act, a landlord cannot unreasonably withhold its consent to a change of control / deemed assignment of a lease. It would be very difficult for a landlord to terminate a lease for a change of control where the new controlling party has demonstrated it has no lesser financial resources and otherwise meets the requirements of the assignment clause in the lease.

⁸³ As set out above, [redacted]

yearly reporting, transactions with related parties, board composition, equity issuances and major transaction approval).

Separation of the assets is easily achievable

- 23.21 As set out above, Gull is currently largely run independently of Ampol, with some limited corporate services provided on an as needed basis⁸⁴. This means that separation of Gull and Ampol will be easily achievable within a short period.
- 23.22 No assets are needed to be transferred by Ampol to Gull prior to Divestment, with all necessary assets already located within the Gull business.

24. Asset risks

- 24.1 The Commission can be comfortable that Gull as a business will not deteriorate during the [redacted] Divestment Period. As set out above, Gull is currently run largely independently of Ampol. In any event, Gull will be separately managed by a hold separate manager and with information ring fencing in place during the Divestment Period. Ampol will continue to support Gull with corporate services where required as currently provided and fuel on the basis of the existing fuel supply agreement during this period. Further, Ampol will commit in the Proposed Divestment Deed to preserve the goodwill and competitiveness of Gull, to not solicit key employees, and to put in place [redacted]. Further details are set out below.

Formal hold separate and information ring fencing

- 24.2 Ampol has included in its Proposed Divestment Deed formal hold separate and information ring fencing obligations to help ensure that the competitive effectiveness of Gull will not deteriorate prior to completion of the Proposed Divestment. These should have no adverse impact on Gull's competitiveness, since Gull is run largely independently already.
- 24.3 Under these hold separate and information ring fencing obligations, Ampol has proposed to:
- (a) appoint an independent person (subject to the Commission's approval of the person and terms of engagement) to manage Gull separately from the rest of Ampol's business (the **Hold Separate Manager**), who will be responsible for the day-to-day management of Gull's business during the Divestment Period and will be required to:
 - (i) manage Gull in such a way that preserves its economic viability, marketability, competitiveness and goodwill, as a separate going concern;
 - (ii) use all reasonable endeavours to maximise the value and viability of Gull as a separate going concern;
 - (iii) report to the Commission, as well as to a nominated Ampol individual, on certain limited matters;
 - (b) implement all measures necessary to ensure, to the extent possible, that no (non-Gull) Ampol employees, contractors, agents or advisers, obtain any commercially sensitive information relating to Gull, other than what is strictly necessary to progress the Proposed Divestment, report to the Commission, comply with other legal obligations, or respond to a material issue;
 - (c) ensure that that any commercially sensitive information relating to Gull is accessible only by Ampol employees that have signed a confidentiality undertaking; and

⁸⁴ [redacted]

- (d) ensure that any Ampol employees, contractors, agents or advisers that receive commercially sensitive information in relation to Gull will be subject to a confidentiality undertaking.

Preservation obligations

24.4 In order to ensure the reputation and goodwill in Gull is unaffected in the period leading up to completion of the Proposed Divestment, Ampol will undertake to use all reasonable endeavours, during the Divestment Period as reflected in the Proposed Divestment Deed:

- (a) to preserve the reputation, goodwill, economic viability, marketability and competitiveness of Gull;
- (b) not to carry out any act that could have a significant adverse impact on the competitiveness of Gull; and
- (c) to maintain a level of employees at Gull that is materially similar to the current level of employees, [redacted].

24.5 Further, during the Divestment Period, Ampol will not:

- (a) carry out any act on its own authority that might reasonably be expected to have a significant adverse impact on the value or competitiveness of Gull, or that might reasonably be expected to significantly adversely alter the nature and scope of activity, or the industrial or commercial strategy in relation to Gull; or
- (b) solicit any Gull Key Employee, other than where that person responds to a bona fide public advertisement for a vacant position (provided that the advertisement is not targeted specifically at the person concerned).

Maintaining access to goods and services

24.6 To ensure that Gull can continue to operate during the Divestment Period as it has prior to the Proposed Transaction, Ampol will commit, as reflected in the Proposed Divestment Deed, to maintain any goods and services that are provided by Ampol to Gull. Further, Ampol will not amend the terms of supply to the effect that those terms are less favourable, taken as a whole, to Gull (other than where this is impacted by an upstream supplier).

24.7 This means Gull will continue to obtain corporate services (as required), and the supply of fuel from Ampol during the Divestment Period on the same terms (or at least as favourable terms) as currently are in place.

25. Purchaser risk

25.1 As set out above, Gull is a standalone business. It operated competitively as an independent entity prior to being acquired by Ampol in 2017. Since that time it has had limited integration with Ampol, has a proven long standing market strategy which aligns well with the infrastructure and set up of the business, and continues to have a strong executive / management team [redacted]. Accordingly, regardless of the nature and expertise of the purchaser (and divestment track) Gull will remain an effective independent competitor. Gull will be able to continue to operate competitively as it has always done, regardless of the expertise of the person that acquires it (or as a listed entity in the case of an IPO). Accordingly, as the starting point, purchaser risk is low in relation to the Proposed Divestment.

Trade Sale scenario

- 25.2 In any event, consistent with previous divestment undertakings accepted by the Commission in relation to other transactions, Ampol has committed in the Proposed Divestment Deed to satisfy the Commission that any proposed purchaser of Gull in a Trade Sale divestment:
- (a) is not associated with, or an interconnected body corporate of, Ampol or any of its related companies (including, for the avoidance of doubt, any Z subsidiary which transfers to Ampol as part of the Proposed Transaction);
 - (b) has the financial resources, proven expertise and incentive to viably operate and develop Gull in competition with Ampol in the relevant market(s) – although, for the reasons set out in detail from paragraph 23.2 to 23.7, such expertise is not necessary in the context of the Proposed Divestment;
 - (c) is not likely to create competition concerns that would result in a contravention of section 47(1) of the Commerce Act 1986; and
 - (d) is not likely to give rise to a risk that the implementation of the Proposed Divestment will be unduly delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant authorities for the acquisition of Gull.
- 25.3 Ampol expects the following categories of possible bidders for Gull in a Trade Sale:
- (a) strategic integrated fuel bidders, either currently active overseas who would welcome the opportunity to make a material entry into New Zealand, or local players who could use the acquisition to rapidly expand their operations;
 - (b) oil majors, traders and refiners, including local and overseas, in particular Asian and Australian as well as international, energy and fuel companies. Such companies are likely to value the opportunity to capture a material downstream short position for fuel, and be attracted to the minimal convenience offering and the Mount Maunganui fuel import terminal infrastructure position; and
 - (c) financial bidders, such as private equity funds. Such bidders are likely to be attracted to Gull's strong near-term cash flow profile, and Gull's low complexity operating model is suited to low return private equity or infra-like investors. There are significant pools of capital amongst such bidders focused on assets in sunset industries with attractive cash flow profiles, as is the case for Gull.
- 25.4 As set out above, Gull's well-established and long standing market strategy is driven by its low cost structure. Ampol considers any of the above purchaser groups would be able to continue to operate Gull as a cost competitive competitor post-Divestment (regardless of the retention of the current management of Gull).
- 25.5 Where proposed purchasers are active in the New Zealand retail fuel market already, Ampol would [redacted].

IPO scenario

- 25.6 The IPO is a critical part of the divestment strategy as it provides a genuine alternative to the Trade Sale route by which Ampol can deliver the Divestment. An IPO is not reliant on identifying one buyer to purchase the entirety of Gull (which is a significant business, including in the context of the Commission's previous divestment packages). Instead, a large number of investors are involved in an IPO, including, potentially, buyers which were part of the Trade Sale process, but which may not have access to sufficient capital to purchase Gull outright on their own. Where no one 100% investor is available, an IPO provides a legitimate alternative divestment path to the Trade Sale. The Trade Sale process may reveal cornerstone shareholders who will be interested

in acquiring large shareholdings in Gull as part of the IPO. (Ampol notes that it would not sell part of Gull to a trade sale buyer and then seek to IPO the remainder in case the IPO did not proceed, and Ampol were left with only part of Gull to sell to other Trade Sale buyers). Running a dual track Trade Sale and IPO process is how Ampol would seek to sell Gull were it considering such a sale independent of the Commission's processes.

- 25.7 Ampol believes that there should be sufficient investor interest in an IPO of Gull because of the established nature of the business, its reputation in the New Zealand market and attractive economic returns. Further, pricing for the IPO will be within Ampol's control, and this can be set at a level to encourage sufficient investor interest.
- 25.8 As set out in detail at paragraphs 23.2 to 23.9 above, Gull is a standalone business that:
- (a) is largely operated independently of Ampol, and has a long track record of competitive operations prior to its acquisition by Ampol;
 - (b) a proven low-cost market strategy that, even early on, allowed it to successfully take a sizeable share of the New Zealand retail market from larger market participants;
 - (c) has a strong executive / management team; and
 - (d) will have all necessary governance, internal resources and functions to operate effectively as a listed entity.
- 25.9 Ampol therefore considers that Gull will continue to be able to operate competitively as a New Zealand listed entity post-IPO.
- 25.10 There are a number of preparatory phases leading up to the launch of an IPO which will give Ampol comfort that the IPO will be well received and the requisite sell-down of at least [redacted]% will be achievable. These steps include a non-deal roadshow, analyst presentations, a cornerstone shareholder process and discussions with key institutional investors and broking firms. Feedback from those processes allows an issuer to fine-tune the IPO proposal before going live with a PDS, including around valuation and pricing. If the feedback, or market conditions, requires a re-set of the proposition to investors, it would be typical for the IPO to be deferred until the next IPO window.
- 25.11 [redacted] Investor feedback will be sought prior to launch to provide comfort that there is sufficient demand for the shares offered under the IPO once publicly launched – and if there is not sufficient demand prior to launch, Ampol would re-set and look to launch in the next IPO window.
- 25.12 As set out in the Proposed Divestment Deed, and further below, the Commission will have transparency over the IPO process (including the opportunity to review key documents as soon as reasonably practical) and information before the IPO is launched regarding the identity of any Significant Holders who may wish to acquire [redacted]% or more of Gull under the IPO.
- 25.13 The remaining key elements of 'purchaser risk', namely that the purchaser:
- (a) is associated with Ampol or any of its affiliates;
 - (b) is likely to create competition concerns; or
 - (c) is likely to give rise to a risk that the implementation of the Proposed Divestment will be unduly delayed,

will not arise under an IPO method of divestment, for the reasons set out below.

Association with Ampol

- 25.14 Ampol will not knowingly allocate any shares in the IPO to IPO investors who are associated or interconnected bodies corporate with Ampol or any of its related companies (for the avoidance of doubt, including any Z subsidiary which transfers to Ampol as part of the Proposed Transaction but excluding any unassociated shareholders of Ampol), for the purposes of the Commerce Act.⁸⁵ This undertaking is limited to matters known to Ampol because investors may apply for shares through intermediaries.
- 25.15 However, the typical vendor sell-down in an IPO internationally and in New Zealand is generally < [redacted]% in order to align the vendor's interests (via a residual shareholding) with incoming investors (i.e. to demonstrate that the vendor has confidence in the business moving forward). Indeed, in the last 10 years of IPOs in New Zealand, none of the IPOs have involved an offering of more than [redacted]% of the shares, as set out in the table below.
- [Table redacted]
- 25.16 In line with market practice in an IPO context, it is expected that investors will require Ampol to retain a meaningful residual shareholding once the IPO has been completed (and that this will be necessary in order to support a successful IPO). [redacted]. Ampol has engaged an investment bank to assist with the assessment and planning for the IPO and Ampol is confident, that an IPO of Gull could be positioned (including pricing) and structured in a way that the New Zealand and offshore investor base could absorb at least [redacted]% of Gull shares.
- 25.17 Ampol therefore proposes, to the extent necessary to effect a successful IPO, to retain up to [redacted]% of Gull in the IPO. However, if Ampol determines that it needs to retain an even larger shareholding in Gull to effect a successful IPO, it may also retain a further holding of up to [redacted]% with no ability to exercise voting rights in respect of those shares (**Additional Shares, together Residual Shareholding**). For clarity, a Residual Shareholding is contemplated because it is expected to be necessary to effect a successful IPO. Ampol considers that the Residual Shareholding does not raise any competition concerns for the reasons outlined below.
- 25.18 Ampol would undertake not to dispose of any of the Residual Shareholding in line with market requirements for IPOs and to ensure a stable period of trading post listing of Gull. This period will continue until at least after the announcement of Gull's 2023 annual financial results, expected to be made in February 2024. This is known as a "lock up" period and it will be recorded in a deed which can be enforced by Gull through court action if necessary. These lock-up arrangements will be disclosed in the PDS.
- 25.19 If Ampol has a Residual Shareholding greater than [redacted]% following the IPO, Ampol would only have voting rights in relation to the first [redacted]% of the Residual Shareholding (i.e. the Additional Shares of up to [redacted]% would not give Ampol voting rights). This [redacted]% holding would equate to approximately [redacted]% of the voting rights that could be exercised at a Gull shareholder meeting. Ampol would give a binding undertaking to Gull (in the same way as the "lock up" described above) that it will not exercise voting rights over any Additional Shares.
- 25.20 In any event, as Ampol would only retain the Additional Shares to the extent necessary to ensure that the IPO successfully completes, Ampol notes that it would be its intention to dispose of the Additional Shares over a [redacted] period following the expiry of the lock up period. The expiry of

⁸⁵ The IPO bid documentation would include a representation from each potential investor that it is not associated with or an interconnected body corporate of Ampol or any of its related companies, and is not bidding on behalf of such person. A copy of this documentation could be provided to the Commission on request. Ampol will also undertake some desktop due diligence on significant (1% or more of shares) bidders to ensure there are no bidders who are related to Ampol in a material way.

the lock-up period will not change according to when the IPO is launched [redacted]. This intention would be disclosed to investors in the PDS.⁸⁶

25.21 Ampol's obligations under the Proposed Divestment Deed will be discharged once an IPO has been completed that results in a sell-down of at least [redacted]% of Ampol's holding in Gull. The ongoing requirements to which Ampol would be subject, once it has performed its obligations under the Proposed Divestment Deed following the expiry of the Divestment Period, in respect of its shareholding in Gull (and the Divestment Related Agreements) are:

	Ongoing obligation	Party that can enforce compliance by Ampol
1.	Ampol will be obliged to perform its obligations under the Divestment Related Agreements (if those agreements are required by a purchaser of Gull or the new board of directors of Gull in an IPO context).	Gull
2.	Ampol would be restricted under the terms of a binding "lock-up" agreement with Gull from disposing of any of its Residual Shareholding until at least after the announcement of Gull's 2023 annual financial results, expected to be made in February 2024. The NZX would be given rights under the Contract and Commercial Law Act 2017 to enforce this restriction.	Gull and NZX.
	Ampol will provide Gull with a written letter prior to the launch of the IPO stating its intention that it would dispose of any Additional Shares over a [redacted] period following the expiry of the lock up period referred to in item 2 above. That statement of intention would be recorded in the PDS.	Whilst Ampol would not be bound by that stated intention as at the date of the PDS, it would provide a level of insight regarding Ampol's planned actions in respect of any retained shares that it is unable to vote.
3.	Ampol would be restricted from exercising the voting rights attaching to any Additional Shares under the terms of a binding deed poll entered into in favour of Gull and its shareholders. This will be stated in the PDS.	Gull and its shareholders.
4.	Ampol will not have the right to appoint a member of the Gull board, or any other rights to appoint or dismiss senior management of Gull. This will be stated in the PDS.	No such rights exist at law given the maximum size of Ampol's post-IPO shareholding, and no rights will be put in place (including under the constitution of Gull) to provide Ampol with these rights.

⁸⁶ Gull will require a written confirmation from Ampol of that intention, in order for it to include such a statement in the PDS. It is not, however, practicable for Ampol to unconditionally commit to a sale of its holding because that decision would be made on a range of factors, including market conditions at that time.

The Commission is not responsible for enforcing any such ongoing obligations. Enforcement rights are properly given to the parties in the right hand column of the table above.

25.22 At any level of Residual Shareholding post-IPO, Ampol will not have its directors / appointments on the Board or any power over appointment or dismissal of senior management.

25.23 This Residual Shareholding will not give Ampol any control over Gull even if it includes the maximum proportion of Additional Shares – Ampol will not be able to exercise any degree of influence over decision making by Gull senior management or its board. The only control that would be conferred by Ampol's Residual Shareholding is its ability to call a shareholder meeting, which would be an unusual event for a listed company (and does not necessarily mean that shareholders would take any action at the meeting). Accordingly, and as further explained below, Gull's independence from Ampol will be maintained if the Proposed Divestment is implemented through an IPO.

25.24 Depending on voter turnout, Ampol would be unlikely to be able to:

- (a) defeat a takeover bid structured as a scheme of arrangement by voting against the scheme;
- (b) pass or materially influence an ordinary resolution of shareholders (including appointing and removing directors); or
- (c) pass, defeat, or materially influence a special resolution (e.g., approving a 'major transaction' or adopting a new constitution) needing to be passed by 75% of votes.

25.25 Ampol notes that typical voter turnout at the annual general meeting (**AGM**) of Z since 2017 has been >60% (and therefore Ampol at [redacted]% would still be unable to carry out any of the actions listed above at paragraph 25.24). Ampol understands when one looks at average shareholder turnouts for various NZX listed companies over recent years, its [redacted]% voting rights as part of the Residual Shareholding would result in an approximate "effective vote" for Ampol of [redacted]% at the AGM. For a vote of real significance, Ampol would expect turnout to be at the higher end. Therefore, Ampol will not maintain any ability to materially influence a shareholder vote of a listed Gull post IPO.

25.26 Nor will the Residual Shareholding affect Ampol's incentives to compete via Z with Gull in the market. For the reasons set out above, Ampol will not be able to affect the competitive strategy of Gull in the market. While Ampol will determine Z's strategy post completion of the Proposed Transaction, Ampol will continue to have the incentive to ensure Z competes hard with Gull in the market, just as with any other competitor. Z is a much larger business than Gull, meaning Ampol's incentives will be to maximise profit within Z, rather than harm Z's competitiveness for a possible increase in profits via its Residual Shareholding in Gull. A [redacted]% interest in Gull represents c. \$[redacted] of EBITDA per annum, compared to \$238 million FY21 replacement cost EBITDAF for Z. Further, if Ampol is required to have a Residual Shareholding in order to effect a successful IPO, the PDS will include a statement regarding Ampol's inability to vote the Additional Shares and its intention to sell-down those Additional Shares following the lock-up period. Ampol considers that the market would understand that the purpose of the Residual Shareholding would be to support a successful IPO, rather than influence competitive strategy of Gull and it anticipates including wording to this effect in the PDS for the avoidance of doubt.

25.27 Further, Ampol will not receive any preferential access to sensitive information relating to Gull by way of its Residual Shareholding, other than required under and pursuant to the terms of the TSA or PIE agreements. Ampol will generally receive the same information that Gull releases publicly to the market, for the benefit of all of its shareholders. While Ampol may need to request some additional information to allow Ampol to comply with its legal and regulatory obligations e.g. financial reporting, such information would not be able to include information which is price sensitive or relevant to an investment decision because of the restrictions imposed on a listed

issuer under the NZX Listing Rules. It is not the case that Ampol will receive commercially sensitive information relating to Gull by virtue of its Residual Shareholding post IPO.

No increase in risk of coordination

25.28 Ampol does not consider that the Residual Shareholding in Gull (in the order of [redacted]%) would increase the risk of coordination between Gull and Z in the market.

- (a) The Gull business model (i.e. of low cost predominantly unmanned petrol stations, offering a discounted price) is materially different to the Z business model (e.g. a strong convenience retail business from predominantly manned petrol stations), such that the potential for any coordinated conduct is diminished due to the different offerings and cost bases of the two businesses. In particular, Gull would have no incentive to coordinate with Z.
- (b) There are also structural constraints and economic incentives for Ampol in the context of this transaction which reduce potential for coordination given that:
 - (i) Ampol will not be in a position to materially influence Gull as set out above, and, in particular, will not have any influence on strategy, growth, pricing, etc., or access to sensitive information; and
 - (ii) Ampol will have a significantly greater financial interest in Z (with a total enterprise value of NZ\$2.8 billion), compared to the financial interest which Ampol will have in Gull (equivalent to ~NZ\$[redacted]), such that Ampol has a strong economic bias to Z. This contrasts to a situation where Ampol might otherwise have a relatively even level of economic exposure to both players, in which case there could be a stronger economic incentive for coordinated behaviour to benefit both parties.
- (c) In relation to a potential TSA and PIE Agreement:
 - (i) An IPO of Gull would effectively put the company in a fully independent position with corporate functions from Day 1 (with little, if any need for a TSA with Ampol). This is supported by the fact that the business already has a significant level of stand-alone operatorship.
 - (ii) If a PIE Agreement were to be put in place, protections are likely to include:
 - (A) a requirement for arm's length commercial terms approved by the independent board of Gull;
 - (B) some key details of the agreement would be disclosed in the PDS; and
 - (C) the agreement would likely need to be for a relatively limited timeframe, with Gull retaining the ability to choose an alternate supplier.
 - (iii) As such, it is difficult to see how this could increase the risk of coordination (unless the independent Board of Gull deliberately chose to weaken Gull with a sub-commercial PIE Agreement with Ampol, which would be contrary to their duties and commercial incentives).
 - (iv) There would be further protection for Gull given restrictions on related-party dealings under the NZX listing rules above a certain threshold unless otherwise approved by Gull shareholders.

No competition concerns will arise

- 25.29 A divestment of Gull by way of an IPO will not give rise to any competition concerns.
- 25.30 As set out in the Proposed Divestment Deed, Ampol will notify the Commission of any Significant Holders who indicate that they may wish to acquire [redacted]% or more of the shares of Gull, prior to the issuance of shares under the IPO. If there are any investors in this position in an IPO this is likely to be established prior to lodgement of the PDS (as explained above). Ampol considers it highly unlikely that any single investor will unexpectedly apply for [redacted]% or more of the shares in Gull as part of the IPO. If the acquisition of more than [redacted]⁸⁷ of the shares in Gull by any investor was likely to cause a competition issue based on any relevant interests they may have in the New Zealand market, Ampol notes such acquisition would be subject to section 47 of the Commerce Act and the review of the Commission, as with any transaction. As the Commission retains the right to intervene on any investor's acquisition under s 47, Ampol does not consider that the Commission will need to formally approve such shareholders, given that Gull's competitiveness as a standalone entity will not rely on such investors' expertise and financial resources.
- 25.31 Any shareholdings below [redacted]% will not result in any persons being able to exercise a degree of influence over Gull, for the reasons set out above in relation to Ampol's Residual Shareholding.
- 25.32 Accordingly, the Commission can be confident that no competition concerns will arise as a result of the IPO investors' ownership of Gull post-Divestment.

Unlikely to delay the Proposed Divestment

- 25.33 The identity of the IPO investors will not have an effect on IPO timing. If any investors require clearance from the Commission before investing they will have to go through that process prior to the launch of the IPO. [redacted] As noted at paragraph 21.9(c), Ampol expects any potential cornerstone investors to be identified and notified to the Commission well in advance of the launch of the IPO, following the cornerstone process that is conducted prior to lodgement of the PDS. Ampol and Gull will make the decisions regarding how shares are allocated in the IPO, and will undertake in the Proposed Divestment Deed not to transfer any shares under the IPO to a Significant Holder who had not been notified to the Commission prior to launch of the IPO.
- 25.34 Ampol's Indicative IPO Timeline (even in the [redacted]) would allow it to have completed the IPO within the Divestment Period. As an IPO cannot be successfully launched if it is conditional on a regulatory approval (such as OIO consent), there is no prospect of delay to allow for an investor to seek other approvals. No shares will therefore be allocated in the IPO to an investor that requires OIO consent.⁸⁸ A shareholding of 25% or more in Gull that would give rise to a requirement for OIO consent would be identified prior to the IPO being launched as part of the cornerstone investor process. That cornerstone investor would need to obtain OIO consent prior to launch of the IPO, with the identity of the cornerstone shareholder and the OIO consent being identified in the PDS. In the unlikely event that a cornerstone shareholder did emerge just prior to the IPO launch (which would be a very positive development for the IPO) that launch would be deferred while the cornerstone obtained any necessary regulatory approvals. This, again, is a reason for [redacted] to be available. OIO consent will not be required if there is no investor with a shareholding of 25% or more in Gull (and an investor seeking such a large stake is not expected once the IPO has commenced and through the bookbuild process (where a shareholder bidding for greater than 10% is relatively rare).

⁸⁷ Noting the Commission's comments in its Mergers Guidance that depending on the circumstances shareholdings of 10% may give rise to a substantial degree of influence.

⁸⁸ It is noted that it is common for the bookbuild documentation to include a representation from potential investors that, if the person is an "overseas person" it (together with associates) is not bidding for shares in the IPO equivalent to more than 25% of the shares on issue upon listing. This representation is included to ensure that no consent from the Overseas Investment Office is required from the potential investor in respect of the shares it is applying for under the IPO.

25.35 On this basis, it is expected that the IPO will complete within the Divestment Period and Gull will continue to operate competitively, regardless of the IPO investors that acquire Gull shares.

25.36 Accordingly, purchaser risk is low in relation to the Proposed Divestment under both an IPO or a Trade Sale scenario.

Part H: Confidentiality

26. Reasons for seeking confidentiality

- 26.1 Confidentiality is sought in respect of the information in this application that is highlighted, in bold and contained within square brackets (the **Confidential Information**). Confidentiality is sought for the Confidential Information for the purposes of section 9(2)(b) of the Official Information Act 1982 on the following grounds.
- (d) The Confidential Information is commercially sensitive and valuable information which is confidential to either, or both, Parties.
 - (e) Disclosure of the Confidential Information would be likely to unreasonably prejudice the commercial position of the Parties.
- 26.2 The Parties request that they are notified if the Commission receives any request under the Official Information Act 1982 for the release of any part of the Confidential Information. They also request that the Commission seek and consider their views as to whether the Confidential Information remains confidential and commercially sensitive before it responds to such requests.

Part I: Declaration

I, _____, have prepared, or supervised the preparation, of this notice seeking clearance.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to me that is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in the circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am a director/officer of the company and am duly authorised to submit this notice.

Name and title of person authorised to sign:

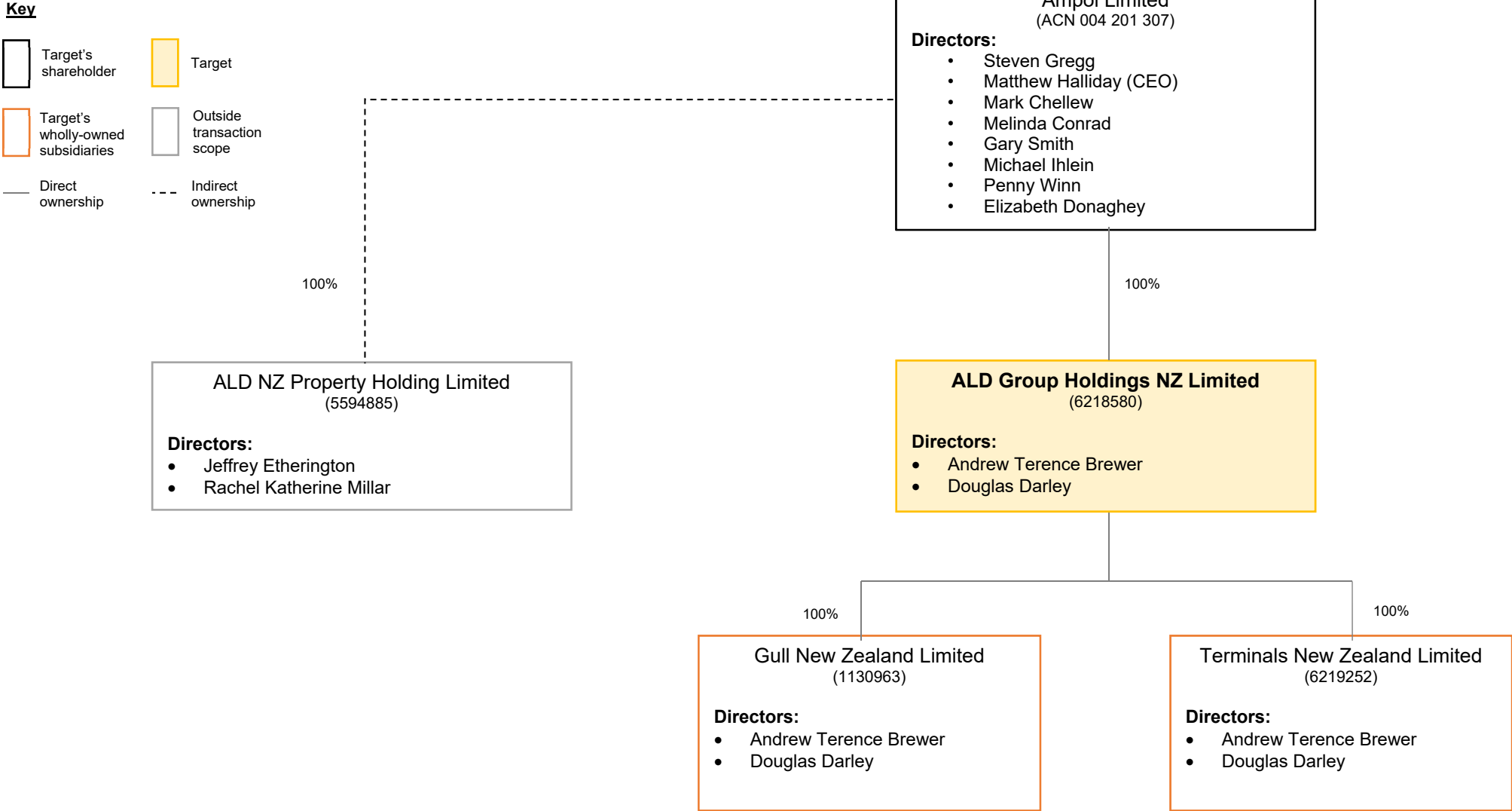
Sign: _____

Date: _____

Part J: Appendices

Appendix 1	Gull structure chart
Appendix 2	Contact details for Ampol's (and Z's) main competitors and Ampol trade and industry associations
Appendix 3	Contact details and revenue for Ampol's top five customers
Appendix 4	Contact details for Z's main customers and trade and industry associations
Appendix 5	SIA
Confidential Appendix 6	Proposed Divestment Deed [redacted]
Confidential Appendix 7	Relevant Ampol internal documents [redacted]
Appendix 8	New Zealand fuel industry participants
Appendix 9	Competitive overlaps in each Local Retail Market
Confidential Appendix 10	Gull site list [redacted]

Appendix 1: Gull Structure Chart



Appendix 2: Contact details for Gull's (and Z's) main competitors and Gull's trade and industry associations in New Zealand

Gull's main competitors				
Number	Name of entity	Revenue <i>(for the year ended 31 December 2020)</i>	Contact Person	Contact details
1	Mobil Oil New Zealand	NZ\$2.1b (as published on NZ Companies Office website)	Andrew McNaught Mobil Oil New Zealand Lead Country Manager	T: 09 302 4700 (Head Office)
2	BP Oil New Zealand Limited	NZ\$2.8b (as published on NZ Companies Office website)	Stefanie Wilkinson Group Company Secretary	T: +61 3 9609 2153
3	Waitomo Group	Ampol is unable to publicly locate revenue figures.	Jimmy Ormsby Managing Director	E: jimmy@waitomogroup.co.nz
4	Nelson Petroleum Distributors Ltd (NPD)	Ampol is unable to publicly locate revenue figures.	Louise Mitchell Senior Category Manager	T: 03 544 6162 (Head Office)
5	Allied Petroleum	Ampol is unable to publicly locate revenue figures.	Alastair Tennant General Manager	T64 3 217 1600 (Head Office, H.W. Richardson)
Gull's trade and industry associations				
Number	Name of trade / industry association		Contact Person	Contact details
1	Motor Trade Association Inc (MTA)		Craig Pomare	E: craig.pomare@mta.org.nz

		Chief Executive Office	
2	Employers & Manufacturers Association (EMA)	Alan McDonald Head of Advocacy & Strategy	T: 027 809 4398 E: alan.mcdonald@ema.co.nz
3	New Zealand Association of Convenience Stores (NZACS)	Louise Mitchell Management Committee member (also NPD manager)	T: +64 (0) 27 471 9366 (NZACS Head Office)

Appendix 3: Contact details and revenue for Gull top five customers

Gull's top five customers				
Number	Name of entity	Litres sold in the year to July 2021	Contact Person	Contact details
1	redacted	redacted	redacted	redacted
2	redacted	redacted	redacted	redacted
3	redacted	redacted	redacted	redacted
4	redacted	redacted	redacted	redacted
5	redacted	redacted	redacted	redacted

Appendix 4: Contact details for Z's main customers and trade and industry associations

Z's top five customers				
Number	Name of entity		Contact Person	Contact details
1	redacted	redacted	redacted	redacted
2	redacted	redacted	redacted	redacted
3	redacted	redacted	redacted	redacted
4	redacted	redacted	redacted	redacted
5	redacted	redacted	redacted	redacted
Z's trade and industry associations				
Number	Name of trade / industry association		Contact Person	Contact details
1	National Road Carriers Incorporated		redacted	redacted
2	N3 Ltd		redacted	redacted
3	New Zealand Chambers of Commerce Incorporated		redacted	redacted
4	Road Transport Association New Zealand Incorporated		redacted	redacted
5	Log Haulage Contractors Association Tokoroa Inc		redacted	redacted

Appendix 5: SIA

Scheme Implementation Agreement

in relation to Z Energy Limited

Ampol Limited (Ampol)

Z Energy Limited (Z Energy)



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SCHEME IMPLEMENTATION AGREEMENT

Date: 10 October 2021

PARTIES

Ampol Limited (ACN 004 201 307) a duly incorporated company having its registered office at 29-33 Bourke Road Alexandria NSW 2015, Australia (*Ampol*)

Z Energy Limited (Company No. 12046) a duly incorporated company having its registered office at 3 Queens Wharf, Wellington Central, Wellington 6011, New Zealand (*Z Energy*)

BACKGROUND

- A Ampol and Z Energy have agreed that Ampol will acquire all of the Scheme Shares by means of the Scheme.
- B This agreement is entered into to record and give effect to the terms and conditions on which Ampol and Z Energy propose to implement the Scheme.

THE PARTIES AGREE as follows:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this agreement, unless the context requires otherwise:

Adjusting Permitted Dividend means a fully imputed cash dividend or dividends for the financial year to 31 March 2022 of an aggregate amount of up to NZ\$0.18 per Share declared by Z Energy in connection with the announcement of Z Energy's half-year results or full-year results which is consistent with Z Energy's dividend policy and past practice (but which will not, for clarity, include the amount of the Non-Adjusting Permitted Dividend);

Anticipated Transition Impact means the amount of one-off reduction in EBITDAF of the Z Energy Group attributable to the Marsden Point Transition that Z Energy reasonably expects to occur, as disclosed to Ampol prior to the date of this agreement;

Ampol Group means Ampol and its Related Entities (but excluding members of the Z Energy Group);

Ampol Indemnified Person means each member of the Ampol Group and each of their respective directors, officers and employees;

Ampol Information means:

- (a) all information given by Ampol to Z Energy in writing for inclusion in the Scheme Booklet concerning Ampol, Ampol Nominee (if applicable), their Related Entities, business and interests and dealings in Shares; and



- (b) any other information which the parties agree (acting reasonably) is Ampol Information and that is identified in the Scheme Booklet as such;

Ampol Nominee has the meaning given to that term in clause 2.7(a);

Ampol Regulatory Approval Break Fee means NZ\$20,000,000 plus GST, if any;

Ampol Undertakings means the undertakings set out in Part 2 of Schedule 3;

Ampol Warranties means the warranties set out in Part 1 of Schedule 3;

Associates has the meaning given to it in the Takeovers Code;

ASX means ASX Limited or the Australian Securities Exchange, as the context requires;

ASX Listing Rules means the official listing rules of the ASX;

Authorisation means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency;

Average Net Assets means a simple average of the Net Assets as at each month end for the 12 month period preceding the Specified Event or Specified Events;

Board means the board of directors of Z Energy;

BP means BP Oil New Zealand Limited;

Break Fee means NZ\$20,000,000 plus GST, if any;

Business Day means any day other than a Saturday, Sunday, a statutory public holiday in Auckland or Wellington, New Zealand or Sydney, Australia, and excluding any day between 25 December 2021 and 4 January 2022 (both dates inclusive);

COLL means Coastal Oil Logistics Limited, jointly owned by Z Energy, Mobil and BP;

Companies Act means the Companies Act 1993;

Competing Proposal means any proposed:

- (a) takeover bid (whether full or partial under the Takeovers Code) for Z Energy;
- (b) scheme of arrangement in respect of Z Energy;
- (c) sale of material assets by Z Energy;
- (d) reverse takeover, sale of securities, strategic alliance, joint venture, partnership, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party:
 - (i) directly or indirectly acquiring or being entitled to acquire a Relevant Interest or any other direct or indirect legal, beneficial or economic



interest in, or control over, more than 20% of the shares of Z Energy or more than 20% of the shares in any other member or members of the Z Energy Group that, individually or collectively, contribute 20% or more of the consolidated EBITDAF of the Z Energy Group or whose assets represent 20% or more of the total consolidated assets of the Z Energy Group; or

- (ii) directly or indirectly acquiring or being entitled to acquire the whole or substantially all of the business or assets of the Z Energy Group or any part of the business or assets of the Z Energy Group that, individually or collectively, contributes 20% or more of the consolidated EBITDAF of the Z Energy Group or that represents 20% or more of the total consolidated assets of the Z Energy Group; or
- (iii) acquiring Control of Z Energy or merging or amalgamating with Z Energy or with any other member or members of the Z Energy Group that, individually or collectively, contribute 20% or more of the consolidated EBITDAF of the Z Energy Group or whose assets represent 20% or more of the total consolidated assets of the Z Energy Group,

or which would otherwise require Z Energy to abandon, or otherwise fail to proceed with, the implementation of the Scheme. For the purposes of this definition of Competing Proposal:

- (e) any such proposal may be an expression of interest, indicative, conditional or otherwise non-binding;
- (f) paragraphs (a) to (d) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which if conducted as a single transaction would constitute a Competing Proposal within the meaning of any of paragraphs (a) to (d) above;
- (g) each successive material modification to or variation of a Competing Proposal will constitute a new Competing Proposal; and
- (h) references to a Third Party include all Associates of the Third Party;

Conditions mean the conditions precedent set out in the first column of the table in clause 3.1;

Confidentiality Agreement means the confidentiality agreement between Ampol and Z Energy, dated 5 August 2021 and amended on 20 August 2021;

Consideration means, in respect of each Scheme Share held by a Scheme Shareholder, NZ\$3.78 per Scheme Share:

- (a) plus an amount of NZ\$0.00055 per Scheme Share, per calendar day, for each day that the Implementation Date is after 31 March 2022 up to a maximum amount of NZ\$0.10 per Scheme Share, payable in cash; and
- (b) less the aggregate per Share amount of all Adjusting Permitted Dividends the record date for payment of which is prior to the Record Date;



Constitution means the constitution of Z Energy;

Control means, in relation to a person (the “*relevant person*”) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the relevant person; or
- (b) controls or has the power to control the affairs or policies of the relevant person; or
- (c) is in a position to derive more than 50% of the economic benefit of the existence or activities of the relevant person;

Core ITS Services has the meaning given to it in Refining NZ’s “Marsden Point Conversion Proposal” explanatory memorandum and independent appraisal report dated 5 July 2021;

Counter Proposal has the meaning given in clause 12.8(b);

Court means the High Court of New Zealand, Wellington Registry;

D&O Run-off Policy has the meaning given in clause 11.3;

Data Room Index means the index of the Due Diligence Material contained in the electronic data room hosted by ansarada, in a form agreed between the parties in writing on or prior to the date of this agreement;

Deed Poll means the deed poll to be entered into by Ampol and the Ampol Nominee (if applicable) in favour of the Scheme Shareholders in the form attached as Annexure 2 or in such other form as the parties agree in writing;

Designated Persons means Mike Bennetts, Lindis Jones, Debra Blackett, Mandy Simpson, Andy Baird, Nicolas Williams, David Binnie, Nicola Law and Patricia Green;

Due Diligence Material means:

- (a) the written information and documents made available to Ampol or its Representatives (including the written answers or written confirmations together with any documents attached to those written answers or confirmations provided to Ampol or its Representatives) on or before 5.00pm on 9 October 2021, in the electronic data room hosted by ansarada and assembled by Z Energy, listed in the Data Room Index;
- (b) Z Energy’s NZX announcements made through the NZX market announcements platform on or after 31 March 2021 and at least two Business Days’ prior to the date of this agreement; and
- (c) the Z Energy Disclosure Letter;



Duty means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge;

EBITDAF means the consolidated earnings, including (for the avoidance of doubt) those from associated companies, before interest, tax, depreciation (including gains and (losses) on sale of fixed assets), amortisation, impairment, fair value movements in interest-rate derivatives and movements in decommissioning and restoration provision of the Z Energy Group for the relevant period, as would be disclosed in the consolidated financial statements of the Z Energy Group if they were prepared in accordance with Z Energy's reporting of its replacement costs EBITDAF calculated by applying the accounting policies and methodologies applicable to the Z Energy Group at the date of this agreement as disclosed in the Z Energy Group's consolidated audited financial statements for the financial year ended 31 March 2021;

Effective means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the conditions to the implementation of the Scheme having been satisfied or waived (where capable of waiver) in accordance with this agreement and the Scheme;

Encumbrance means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

End Date means the date that is 12 months from the date of this agreement, or such later date as may be set in accordance with clause 7.4(b)(iii), or any other date agreed in writing by the parties;

Excluded Shares means any Shares nominated in writing by Ampol to Z Energy not less than two Business Days prior to the Record Date which are held or controlled by Ampol or any of its Associates at 7.00pm on the Record Date;

Exclusivity Period means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement;
- (b) the Implementation Date; and
- (c) the End Date;

Expert means, upon the application by either party, an expert appointed by the President, or their nominee, of the New Zealand Law Society, who must be:

- (a) a Queens Counsel with appropriate experience in New Zealand commercial disputes; and



(b) genuinely independent from any party (for example, has not advised any party in the three years prior to appointment);

Existing Remuneration Policies means Z Energy's Short Term Incentive Scheme Policy (being Data Room document 09.04.03.06);

Final Orders means orders made, on application of Z Energy, that the Scheme is binding on Z Energy, Ampol, the Ampol Nominee (if applicable), Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Final Orders Date means the day on which the Final Orders are granted by the Court;

First Court Date means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act;

FMCA means the Financial Markets Conduct Act 2013;

Fundamental Warranties means the Z Energy Warranties set out in paragraphs 1, 2, 3, 4, 5, 6, 13 and 14;

FY22 Annual Forecast means the financial data book and capex schedule at Data Room Index numbers 03.01.02 and 03.01.06;

Government Agency means any government, department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity and includes the Overseas Investment Office, the New Zealand Commerce Commission, the Takeovers Panel and the Financial Markets Authority;

Growth Capital Expenditure means capital expenditure in relation to mergers, acquisitions and investments as well as specific new outlays that are expected to increase the revenue, profitability or cashflow, or otherwise further the strategy of the Z Energy Group;

GST means tax charged or levied under the GST Act;

GST Act means the Goods and Services Tax Act 1985 or any other applicable legislation or law imposing a goods and services tax, value added tax or equivalent tax;

GST Exclusive Consideration has the meaning given in clause 17.2;

Hutt City Terminal means the terminal at Hutt City operated by New Zealand Oil Services Limited and jointly owned by Z Energy and BP;

Implementation Date means the day on which the Scheme is to be implemented, being five Business Days after the Record Date, or such other date agreed between the parties in writing;



Independent Adviser means the person appointed by Z Energy, and approved by the Takeovers Panel, as independent adviser to prepare the Independent Adviser's Report;

Independent Adviser's Report means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme in relation to its opinion on the value of the Shares, as amended or updated from time to time and including any supplementary or replacement report;

Information Sharing Protocols means the information sharing protocols between Z Energy and Ampol dated 20 August 2021;

Initial Orders means orders, on application by Z Energy, made by the Court for the purposes of section 236(2) of the Companies Act;

Insolvency Event means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed or proposed, for the person's dissolution;
- (c) the person is or becomes unable to pay its debts when due (as defined in the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee, statutory manager or other similar officer appointed in respect of all or any of its property;
- (e) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (f) any resolution is passed, or any proceeding is commenced, for the dissolution of that person;
- (g) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (h) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law;

Integrity Capital Expenditure means all capital expenditure other than Growth Capital Expenditure including for the purpose of maintaining, updating or extending the life of existing fixed assets or intangibles for the continued use by the Z Energy Group, as well as to comply with changing laws, regulation or government policy;



JIFS means the joint inter-plane fuelling service for planes at Auckland Airport, jointly owned by Z Energy and BP;

Joint Ventures means the JUHI, WAP, JOSF, JIFS, Hutt City Terminal, WOSL and COLL;

JOSF means the joint operating storage facility at Christchurch Airport, jointly owned by Z Energy and BP;

JUHI means the joint user hydrant installation at Auckland Airport, jointly owned by Z Energy, BP and Mobil;

Loss means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including consequential loss or damage;

LTI Trustee means Z Energy LTI Trustee Limited;

Marsden Point Operations Commencement means the commencement of provision by Refining NZ or any Refining NZ group member of the Core ITS Services to customers substantially in accordance with the agreements in place with such customers at that time;

Marsden Point Transition means the transition by the Z Energy Group to an import-only supply chain as a result of the conversion of the Marsden Point Oil Refinery to an import only terminal;

Material Adverse Change means any matter, event, condition or change in circumstances or thing which occurs or is announced or is discovered (each a *Specified Event*) and which individually, or when aggregated with all other Specified Events, reduces or is reasonably likely to reduce:

- (a) the Net Assets of the Z Energy Group by \$100 million or more against the Average Net Assets; or
- (b) the EBITDAF of the Z Energy Group in any 12 month period following the Specified Event or Specified Events by \$40 million or more against what it would reasonably have been expected to have been for that period but for the Specified Event or Specified Events,

provided that such event, condition, matter, or change in circumstance or thing is not the result of:

- (c) any event or change in circumstances resulting in a delay in the Marsden Point Operations Commencement or the prevention of the Marsden Point Operations Commencement, each as contemplated by the Condition in clause 3.1(d);
- (d) any change in exchange rates or interest rates, general economic or financial conditions or legal or regulatory requirements generally affecting businesses in the industry in which the Z Energy Group operates or the markets in which the Z Energy Group operates or trades (not including the COVID-19 pandemic



and related government measures including the impact of any government-mandated alert levels and corresponding public health restrictions);

- (e) any change in the price of New Zealand Units under the New Zealand Emissions Trading Scheme;
- (f) any event, change, matter, change in circumstance or thing fairly disclosed in the Due Diligence Material or by the Company through the NZX market announcements platform no later than two Business Days before the date of this agreement;
- (g) any change in accounting policy of the Z Energy Group required by law;
- (h) any event, change, matter, change in circumstance or thing required by or arising as a consequence of this agreement (other than Z Energy's compliance with its obligations under clause 9.2 or actions taken by Z Energy under clause 9.3);
- (i) any of the following:
 - (i) an act of the Queen's enemies, terrorism, sabotage (excluding any form of cyber attack), act of war, blockade, insurrection, riot, civil disturbance or similar event; or
 - (ii) an act of God, earthquake, lightning, storm, flood, fire, explosion, cyclone, tidal wave, volcanic eruption, landslide or other similar natural events or circumstances (not including the COVID-19 pandemic and related government measures including the impact of any government-mandated alert levels and corresponding public health restrictions); or
- (j) in respect of paragraph (b) above only, the COVID-19 pandemic and related government measures including the impact of any government-mandated alert levels and corresponding public health restrictions;
- (k) in respect of paragraph (a) above only:
 - (i) the market price of crude oil or fuel products; and
 - (ii) the effect of the payment of any Permitted Dividends; or
- (l) an event, change, matter, change in circumstance or thing for which Ampol has given Z Energy its prior written approval for this purpose,

provided that:

- (m) in relation to the exclusions in paragraphs (d), (e), (i) and (k)(i) above, the effects of such matter, event, condition or change in circumstances or thing are not materially disproportionately adverse to the Z Energy Group as compared to the effects of such matter, event, condition or change in circumstances or thing on other entities in the industry in which the Z Energy Group operates; and



- (n) where the reduction or reasonably likely reduction in EBITDAF of the Z Energy Group caused by the Specified Event or Specified Events includes a one-off reduction (or reasonably likely reduction) in EBITDAF attributable to the Marsden Point Transition (the *Transition EBITDAF Impact*), then, in determining the amount of the reduction or reasonably likely reduction in the EBITDAF of the Z Energy Group for the purposes of paragraph (b) above:
- (i) the Transition EBITDAF Impact will only be taken into account if it is in excess of the Anticipated Transition Impact, and then only to the extent of that excess; and
 - (ii) for clarity, the reduction in the EBITDAF of the Z Energy Group attributable to the Marsden Point Transition that does not form part of the Transition EBITDAF Impact will not be limited by sub-paragraph (i) above;

Mobil means Mobil Oil New Zealand Limited;

Net Assets means the consolidated net assets of the Z Energy Group, calculated in accordance with NZ GAAP;

Non-Adjusting Permitted Dividend means a fully imputed cash dividend for the six month period to 30 September 2021 of an amount of up to NZ\$0.05 per Share declared by Z Energy in connection with the announcement of Z Energy's half-year results which is consistent with Z Energy's dividend policy and past practice;

NZCC Condition means the Condition set out in clause 3.1(b);

NZ GAAP means "generally accepted accounting practice" as defined in section 8 of the Financial Reporting Act 2013;

NZX means NZX Limited and, where the context requires, the main board financial market that it operates;

NZX Listing Rules means the NZX Listing Rules for the NZX Main Board;

OIO Condition means the Condition set out in clause 3.1(a);

Other Regulatory Approvals Condition means the Condition set out in clause 3.1(c);

Permitted Dividend means the Non Adjusting Permitted Dividend and any Adjusting Permitted Dividend;;

Performance Rights means all rights to acquire Shares held by employees or officers of Z Energy Group in accordance with the PRLTIP Rules;

Permitted Encumbrances means in respect of the Z Energy Group's assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into in respect of supplies to a member of the Z Energy Group in the ordinary course of business;



- (b) a right or set-off or combination thereof arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;
- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings; and
- (d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation,

in each case existing on the date of this agreement or is granted by the Z Energy Group in the period between the date of this agreement and the Implementation Date without breaching clause 9.2;

PPSR means the Personal Property Securities Register established under section 139 of the Personal Property Securities Act 1999;

Prescribed Occurrence means the occurrence of any of the events listed in Schedule 1 other than an event for which Ampol has given its prior approval in writing;

PRLTIP means the Z Energy Limited – Performance Rights Long Term Incentive Plan;

PRLTIP Rules means the rules of the PRLTIP as fairly disclosed in the Due Diligence Material;

Record Date means 7.00 pm on the date which is five Business Days after the later of:

- (a) the Final Orders Date; and
- (b) the date on which the last of the NZCC Condition, OIO Condition and Other Regulatory Approvals Condition is satisfied,

or such other date agreed between the parties in writing;

Reference Rate means in relation to interest payable on any payment due under this agreement, the mid or "FRA" rate for 90 day bank accepted bills (expressed as a percentage) as quoted on Reuters page BKBM (or any successor page) at or about 10.45 am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period;

Refining NZ means The New Zealand Refining Company Limited;

Register means the register of Shares maintained by LINK Market Services Limited on behalf of Z Energy;

Registrar has the meaning given in the Companies Act;



Regulatory Conditions means the OIO Condition, the NZCC Condition, the Other Regulatory Approvals Condition and the Condition set out in clause 3.1(h) (No restraint);

Related Entity means:

- (a) in respect of Ampol, an entity that is under the Control of Ampol; and
- (b) in respect of Z Energy, each entity that is under the Control of Z Energy;

Related Party has the meaning given in the NZX Listing Rules;

Relevant Interest has the meaning given in section 235(1) of the FMCA;

Representative means in relation to a person:

- (a) any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and
- (b) when used in clauses 2.4, 12.2, 12.3, 12.4, 12.5, 12.7, 12.8 and 15.2 only, also includes any Related Entity and any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any Related Entity;

Restricted Shares means Shares that are currently held by the LTI Trustee as forfeited Shares under a Z Energy historic employee share scheme;

Reverse Break Fee means NZ\$20,000,000 plus GST, if any;

Scheme means a scheme of arrangement under Part 15 of the Companies Act under which all of the Shares held by Scheme Shareholders will be transferred to Ampol or the Ampol Nominee (if applicable) and the Scheme Shareholders will be entitled to receive the Consideration, in the form attached as Annex 1 or in such other form as Z Energy and Ampol agree in writing and the Court approves under section 236(1) of the Companies Act;

Scheme Booklet means the explanatory memorandum (including the notice of meeting and proxy form) to be prepared in accordance with this agreement in connection with the Scheme, the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting;

Scheme Meeting means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

Scheme Resolution means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme;

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;



Scheme Shares means all of the Shares on issue at 7.00pm on the Record Date other than Excluded Shares;

Second Court Date means the later of:

- (a) if there is no Court hearing in respect of the Final Orders, the last date Z Energy files affidavit(s) verifying the results of the Scheme Meeting and such other information as prescribed in the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a Court hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard;

Share means a fully paid ordinary share in the capital of Z Energy;

Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time;

Superior Proposal means a written bona fide Competing Proposal received by Z Energy after the date of this agreement that:

- (a) does not result from a breach by Z Energy of any of its obligations under clause 12, or from any act by a member of the Z Energy Group or its Representatives which, if done by Z Energy, would constitute a breach of clause 12 by Z Energy; and
- (b) the Board determines, acting in good faith and after having taken advice from its external financial and legal advisers:
 - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent, timing considerations, the identity and financial condition and capacity of the proponent and any other matters affecting the implementation (including any matters affecting probability of implementation occurring) of the Competing Proposal (together, the *relevant aspects*);
 - (ii) assuming it is completed substantially in accordance with its terms, is more favourable to Shareholders as a whole than the Scheme (if applicable, as amended or varied under any Counter Proposal provided under clause 12.8), taking into account all the terms and conditions and the other relevant aspects of the Competing Proposal and the Scheme; and
 - (iii) failing to attempt to advance such Competing Proposal would constitute a breach of the fiduciary duties or statutory obligations by or of a director of Z Energy;

Surviving Clauses means clause 1 (interpretation), clause 11.1 (release of Z Energy Indemnified Persons), clause 11.2 (release of Ampol Indemnified Persons), clause 13 (break fee), clause 14.9 (effect of termination), clause 15 (announcements), clause 16 (payments), clause 17 (GST), clause 18 (notices),



clause 19 (general) (other than clause 19.7 (further assurance)) and clause 20 (governing law and jurisdiction);

Takeovers Code means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993;

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993;

Tax means a tax, levy, charge, impost, fee, deduction, withholding or Duty of any nature, including stamp and transaction Duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts;

Third Party means a person other than a member of the Ampol Group;

Timetable means the summary timetable set out in Schedule 6 together with the detailed timetable that Z Energy and Ampol agree in writing from time to time;

Transaction means the acquisition by Ampol or the Ampol Nominee (if applicable) of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this agreement;

Trigger Dispute means any dispute between the parties in relation to the obligations of the parties under clause 13;

WAP means the Wiri to Auckland Airport Pipeline, jointly owned by Z Energy, BP and Mobil;

WOSL means Wiri Oil Services Limited and the terminal at Wiri and Marsden Point operated by Wiri Oil Services Limited and jointly owned by Z Energy, Mobil, BP and Europa Oil (NZ) Limited;

Z Energy Director means each director of Z Energy from time to time;

Z Energy Disclosure Letter means the written side letter given by or on behalf of Z Energy to Ampol, and countersigned by Ampol, before execution of this agreement;

Z Energy Executive Team means Mike Bennetts, Lindis Jones, Figen Ulgen, Andy Baird, Dave Binnie, Debra Blackett, Mandy Simpson, Julian Hughes, Nicola Law, Nicolas Williams and Helen Sedcole;

Z Energy Group means Z Energy and its Related Entities;

Z Energy Indemnified Person means each member of the Z Energy Group and each of their respective directors, officers and employees;

Z Energy Information means all information included in the Scheme Booklet other than the Ampol Information and the Independent Adviser's Report;

Z Energy Undertakings means the undertakings set out in Part 2 of Schedule 2; and



Z Energy Warranties means the warranties set out in Part 1 of Schedule 2.

1.2 Z Energy awareness

Where any Z Energy Warranty is qualified by the expression so far as Z Energy is aware or any similar expression, Z Energy will be deemed to know or be aware of all matters or circumstances of which any Designated Person is actually aware as at the date the statement is made or given. For the avoidance of doubt, and without limiting clause 11.1, none of the individuals referred to in this clause 1.2 has any personal liability in respect of the Z Energy Warranties.

1.3 Things required to be done other than on a Business Day

Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.4 Other rules of interpretation

In this agreement, unless the context requires otherwise:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.4(a)(i), or under any legislation which it re-enacts as described in clause 1.4(a)(ii);
- (b) a reference to the NZX Listing Rules or ASX Listing Rules includes any variation, consolidation or replacement of those rules after the date of this agreement and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his or her estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this agreement (and the schedules and annexes form part of this agreement);
- (f) subject to clause 19.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;



- (g) a reference to any instrument or document includes any variation or replacement of it which has been, where relevant, fairly disclosed in the Due Diligence Material;
- (h) unless otherwise indicated, a reference to any time is a reference to that time in New Zealand;
- (i) a reference to \$, NZ\$ or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (o) the headings do not affect interpretation; and
- (p) a reference to 'fairly disclosed' means disclosed in writing such that the matter, information or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable bidder or any of its representatives in the ordinary course of carrying out a due diligence exercise in respect of the Z Energy Group and its business, in sufficient detail such that the bidder can reasonably be expected to understand the nature, relevance and materiality of such matter, information or circumstance.

1.5 **Consents and approvals**

If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless this agreement specifies otherwise).

2 **PROPOSAL AND IMPLEMENTATION OF SCHEME**

2.1 **Z Energy to propose Scheme**

Z Energy must, as soon as reasonably practicable, propose and, subject to the Scheme becoming Effective, implement the Scheme on and subject to the terms of this agreement.

2.2 **Consideration**

Each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this agreement and the Scheme.



2.3 **Ampol to pay Consideration**

Ampol undertakes in favour of Z Energy (in its own right and on behalf of the Scheme Shareholders) to, in consideration for and simultaneously with the transfer to Ampol (or, if nominated under clause 2.7, the Ampol Nominee) of each Scheme Share from each Scheme Shareholder under the terms of the Scheme, pay (or procure the payment of) the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

2.4 **General implementation obligations**

Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with, in the case of Ampol, Z Energy and its Representatives and, in the case of Z Energy, Ampol and its Representatives, to implement the Scheme in accordance with this agreement and all applicable laws and regulations applicable to the Scheme.

2.5 **Timetable**

Each party must use all reasonable endeavours to ensure that the Scheme is implemented in accordance with the Timetable or otherwise as soon as reasonably practicable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause 2.5 to the extent that such failure is due to circumstances or matters outside the party's control provided that such party has used reasonable endeavours to meet the Timetable. Each party will keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable. If any date in the Timetable is not able to be achieved due to circumstances or matters outside of a party's control, the parties must consult in good faith with a view to amending the Timetable to the extent required to permit the Scheme to be implemented before the End Date.

2.6 **No amendment to Scheme without Ampol's consent**

Z Energy must not promote or consent to any modification of, or any amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without:

- (a) Ampol's counsel's consent, where a modification or amendment is made, imposed or requested at a Court hearing (and Ampol must procure that such consent is not unreasonably withheld or delayed); or
- (b) Ampol's prior written consent, in the case of any other modification or amendment (such consent not to be unreasonably withheld or delayed).

2.7 **Ampol may elect a subsidiary to complete acquisition**

- (a) Ampol may elect to have a directly or indirectly wholly-owned subsidiary of Ampol (*Ampol Nominee*) acquire all of the Scheme Shares under the Scheme by giving written notice to Z Energy of the relevant subsidiary at least five Business Days before the First Court Date.
- (b) If Ampol nominates an Ampol Nominee to acquire all of the Scheme Shares pursuant to clause 2.7(a):
 - (i) Ampol and the Ampol Nominee will both enter into the Deed Poll;
 - (ii) Ampol will continue to be bound by this agreement; and



- (iii) Ampol will ensure that the Ampol Nominee completes the acquisition of the Scheme Shares in accordance with the terms of this agreement and the Deed Poll.

3 CONDITIONS PRECEDENT

3.1 Conditions

The Scheme will not become Effective and the obligations of Ampol under clause 2.3 do not become binding unless and until each of the conditions set out in the first column of the following table have been satisfied or waived in accordance with this clause 3.1 and clause 3.5:

Condition	Responsibility	Waiver
<p>(a) (OIO approval) before 8.00am on the End Date, Ampol has obtained all consents required under the Overseas Investment Act 2005 to the implementation of the Scheme on terms or conditions acceptable to Ampol acting reasonably, provided that Ampol may not withhold its approval to terms or conditions of any consent if the terms or conditions imposed:</p> <ul style="list-style-type: none"> (i) are the standard terms or conditions set out in Schedule 5 or are consistent in all material respects with such terms or conditions; or (ii) are consistent with the positive undertakings, plans or intentions specified in writing in Ampol's application for the consents required under the Overseas Investment Act 2005; 	Ampol	None
<p>(b) (Commerce Act) before 8.00am on the End Date, clearance has been given, or an authorisation granted, to Ampol under the Commerce Act 1986 for implementation of the Scheme on terms or conditions acceptable to Ampol acting reasonably, provided that Ampol may not withhold its approval to terms or conditions of any consent if the terms or conditions imposed are consistent with undertakings given to the New Zealand Commerce Commission, specified in, or specified in writing by Ampol in connection with, Ampol's application for clearance or authorisation under the Commerce Act 1986;</p>	Ampol	None



Condition	Responsibility	Waiver
(c) (Other regulatory approvals) before 8.00am on the End Date, Ampol and Z Energy have received all approvals or consents from the Takeovers Panel, NZX and ASX as are required to implement the Transaction;	Z Energy and Ampol	None
(d) (Marsden Point Operations Commencement) : before 8.00am on the Implementation Date, no event or change in circumstances (including any action, decision or change of decision, taken or omitted to be taken, by Refining NZ, any Government Agency or any other party, including through law or regulation) occurs which either: <ul style="list-style-type: none"> (i) results in, or is reasonably likely to result in, the Marsden Point Operations Commencement being delayed until 30 June 2023 or later; or (ii) prevents, or is reasonably likely to prevent, the Marsden Point Operations Commencement from occurring at all; 	None	Ampol
(e) (Court approval) subject to clause 3.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;	Z Energy	None
(f) (Shareholder approval) Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	Z Energy	None
(g) (Independent adviser's report) the Independent Adviser concludes prior to the Scheme Meeting that the Consideration is above or within the Independent Adviser's valuation range for the Shares;	Z Energy	None
(h) (No restraint) no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Ampol and Z Energy	Ampol and Z Energy



Condition	Responsibility	Waiver
(i) (No Material Adverse Change) no Material Adverse Change occurs between the date of this agreement and 8.00am on the Implementation Date; and	Z Energy	Ampol
(j) (No Prescribed Occurrence) no Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Implementation Date.	Z Energy	Ampol

3.2 **Court approval**

If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme in the form attached as Annexure 1, then each such term or condition must be approved in writing by Z Energy and Ampol (both acting reasonably) prior to the Court granting the Final Orders.

3.3 **Satisfaction of Conditions**

In respect of each Condition:

- (a) each party specified in the second column of the table in clause 3.1 corresponding to that Condition must use all reasonable endeavours to procure that the Condition is satisfied:
 - (i) in the case of the Conditions in clauses 3.1(a) to 3.1(c), and clause 3.1(e) to 3.1(g), as soon as practicable and in any event before the End Date; and
 - (ii) in the case of the Conditions in clauses 3.1(d) and 3.1(h) to 3.1(j), at all times before 8.00am on the Implementation Date;
- (b) the other party must promptly provide all information and all other assistance reasonably required by the party referred to in clause 3.3(a) for the purposes of procuring the satisfaction of the Condition; and
- (c) each party must not take any action that will or is likely to hinder or prevent the satisfaction of the Condition,

provided that nothing in this clause 3.3 will require either party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.1(a), clause 3.1(b) or clause 3.4(e)).

3.4 **Regulatory applications**

Without limiting clause 3.3 and subject to clause 9.1:

- (a) each party must make all applications necessary to satisfy the Regulatory Conditions in a form agreed with the other party in writing (acting reasonably) and by the dates specified in the Timetable (and, in the case of the OIO Condition, Z Energy will file its Vendor Information Form in a form agreed by Ampol (acting reasonably) by the date specified in the Timetable);



- (b) neither party may take any action that would, or would be reasonably likely to, prevent or hinder the satisfaction of a Regulatory Condition (provided that nothing in this paragraph will require either party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.1(a), clause 3.1(b) or clause 3.4(e));
- (c) each party must consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to a Regulatory Condition and, subject at all times to the parties observing the Information Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:
 - (i) provide the other party with drafts of any material written communications to be sent to a Government Agency (including any applications necessary to satisfy the Regulatory Conditions), take any reasonable comments made by the other party into account in good faith when making any amendments and, where practicable and to the extent reasonable to do so, obtain the other party's prior written consent (not to be unreasonably withheld or delayed) before submitting any such communications (provided that the failure to obtain such consent will not prevent the party from providing that communication to the Government Agency) if it (acting reasonably) considers doing so is reasonably likely to progress satisfaction of the Regulatory Conditions;
 - (ii) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be);
 - (iii) in the case of a material meeting or phone call with a Government Agency relating to any approval or consent required to satisfy a Regulatory Condition, provide the other party with the opportunity to participate in the meeting or phone call (except: (A) where a Government Agency requests a separate meeting, and only after the parties have consulted together in good faith about that requirement and provided that, where a separate meeting is requested, the other party is kept reasonably apprised of material developments arising out of the separate meeting; or (B) in the case of an unscheduled in-bound call received by a party from a Government Agency);
- (d) each party must promptly notify the other party on becoming aware that a Regulatory Condition is or is likely to be satisfied or has become incapable of being satisfied, or of any fact or circumstances which will or is reasonably likely to prevent a Regulatory Condition from being satisfied;
- (e) each party must promptly and diligently progress the applications for satisfaction of the Regulatory Conditions (including by responding to queries in a fulsome and timely manner and in compliance with relevant timeframes) so as to expedite satisfaction of the Regulatory Conditions; and



- (f) subject to the terms of the applicable Regulatory Condition, Ampol must promptly offer to the relevant Government Agency to provide all undertakings, commitments or conditions that are requested or indicated by the Government Agency as being necessary in order to obtain or expedite the obtaining of the approval or consent required to satisfy a Regulatory Condition, provided such undertakings, commitments or conditions are: (A) customary for a consent or clearance of the nature sought by Ampol; and (B) will not impose a direct or indirect material commitment, liability, expense or cost on Ampol relative to those customary undertakings, commitments or conditions.

3.5 **Waiver of Conditions**

Where the third column of the table in clause 3.1 corresponding to a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the third column of the table in clause 3.1 corresponding to that Condition, that party; or
- (b) if both Z Energy and Ampol are specified in the third column of the table in clause 3.1 corresponding to that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

3.6 **Method of waiver**

Where a Condition may be waived by one party, that party may only waive the Condition by giving notice in writing to the other party. Where a Condition may only be waived by both Z Energy and Ampol jointly, those parties may only waive the Condition by agreeing in writing to do so.

3.7 **Effect of waiver**

If a party waives or joins in the waiver of a Condition in accordance with this clause 3, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this agreement; or
- (b) constitute a waiver of any other Condition.

3.8 **Termination**

Notwithstanding anything in this clause 3 or any rights of termination implied by law, this agreement may only be terminated in accordance with clause 14.

4 **SCHEME BOOKLET**

4.1 **Z Energy's obligations**

Without limiting clause 2, Z Energy must:

- (a) prepare the Scheme Booklet so that it contains:
 - (i) all information required by the Companies Act, the NZX Listing Rules, the ASX Listing Rules and any other applicable laws or regulations;



- (ii) any information required by the Takeovers Panel in order for Z Energy to obtain from the Takeovers Panel a letter of intention and a statement under section 236A(2)(b)(ii) of the Companies Act;
 - (iii) the responsibility statements referred to in clause 4.4; and
 - (iv) a statement by the Z Energy Directors reflecting the recommendation and undertaking referred to in clause 8.1 (modified appropriately if the Consideration is not within or above the Independent Adviser's valuation range for the Shares);
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) provide Ampol with successive drafts of the Scheme Booklet (excluding the Independent Adviser's Report) and successive drafts of any extracts of the Independent Adviser's Report that contain any factual matters about Ampol, in each case in a timely manner, and so that Ampol has a reasonable opportunity to review and comment on those drafts;
- (d) consider in good faith the reasonable comments of Ampol and its Representatives when preparing revised drafts of the Scheme Booklet or providing feedback on the Independent Adviser's Report;
- (e) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, provide that draft to Ampol with a request for Ampol's consent to provide it to the Takeovers Panel under clause 4.2(e);
- (f) as soon as practicable after receipt of the consent from Ampol referred to in clause 4.2(e), provide the Takeovers Panel the draft Scheme Booklet;
- (g) keep Ampol reasonably informed of any issues raised by any of the Takeovers Panel, NZX or ASX in relation to the Scheme Booklet and use reasonable endeavours to, in consultation with Ampol, resolve any such issues expeditiously;
- (h) in accordance with the Timetable, lodge the Scheme Booklet with the Court seeking the Initial Orders to dispatch the Scheme Booklet to Shareholders following receipt of the approval of the Scheme Booklet by the Takeovers Panel and the Takeovers Panel has indicated in writing that it intends to issue a 'no objection' statement before the Second Court Date; and
- (i) advise Ampol promptly if Z Energy becomes so aware either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under applicable law; or
 - (ii) that any part of the Z Energy Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission,



and in either case, if Z Energy becomes aware at any time, or receives advice from Ampol under clause 4.2(f):

- (iii) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, then, if considered by Z Energy that supplementary disclosure is required, provide supplementary disclosure to Shareholders in a timely manner in accordance with applicable law and after consulting with Ampol as to the content and presentation of that supplementary disclosure and will, if it considers it to be necessary or appropriate, seek the Court's guidance in respect of the supplementary disclosure and adjourn the Scheme Meeting to the earliest date reasonably practicable; and
- (iv) between the date of the Scheme Meeting and the Second Court Date, then, if considered by Z Energy that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with Ampol in good faith and taking into account Ampol's reasonable comments.

4.2 **Ampol's obligations**

Without limiting clause 2, Ampol must:

- (a) prepare and provide to Z Energy for inclusion in the Scheme Booklet:
 - (i) information about the Ampol Group;
 - (ii) confirmation (in a form satisfactory to Z Energy, acting reasonably, but without disclosing any commercially sensitive terms) that Ampol will have access to sufficient funds to fund the Consideration; and
 - (iii) information equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

as required to be included in the Scheme Booklet by the Companies Act, the Takeovers Panel, the NZX Listing Rules, the ASX Listing Rules and any other applicable laws or regulations;
- (b) provide Z Energy with drafts of the information referred to in clause 4.2(a) in a timely manner, to provide Z Energy a reasonable opportunity to review those drafts and consider in good faith the reasonable comments of Z Energy and its Representatives when preparing revised drafts of that information;
- (c) provide all assistance and information reasonably requested by the Independent Adviser about Ampol to enable the Independent Adviser to prepare the Independent Adviser's Report;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from Z Energy, review and provide comments on that draft;
- (e) subject to clause 4.3, before Z Energy provides the Scheme Booklet to the Takeovers Panel in accordance with clause 4.1(f) deliver to Z Energy written



consent from Ampol (which consent may not be unreasonably withheld or delayed) to that provision, including the inclusion of the Ampol Information in the Scheme Booklet in the form and context it appears;

- (f) advise Z Energy promptly if Ampol becomes aware at any time either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Ampol Information under any applicable law; or
 - (ii) that any part of the Ampol Information is misleading or deceptive in a material respect, including by omission,and, if Ampol provides such advice, Z Energy will comply with clause 4.1(h);
- (g) at its option or if reasonably requested by Z Energy, procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders at which, through its counsel, Ampol will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme. For the avoidance of doubt, Z Energy will prepare the Court documentation for the Initial Orders and Final Orders and Ampol's counsel will only prepare Ampol's affidavits and, if required, Ampol's submissions to the Court in support of Z Energy's application for the implementation of the Scheme; and
- (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel and NZX, and again before the Scheme Booklet is despatched to Shareholders, deliver to Z Energy written consent from Ampol (which consent may not be unreasonably withheld or delayed) to that lodgement or despatch and confirm to Z Energy the accuracy and completeness of the Ampol Information in the Scheme Booklet, including that the Ampol Information does not contain any material statement that is false or misleading in a material respect including because of any omission.

4.3 **Ampol confirmations and approvals**

If Ampol requires any change to be made to the form or content of the Ampol Information as a condition of giving its consent as referred to in clause 4.2(e) or clause 4.2(h) then:

- (a) if Z Energy disagrees with the change the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, Z Energy must make such changes to the Ampol Information as Ampol reasonably requires.

4.4 **Responsibility statements**

The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties (acting reasonably), to the effect that:

- (a) Z Energy has provided, and is responsible for, the Z Energy Information in the Scheme Booklet, and that none of Ampol, the Ampol Nominee (if nominated



under clause 2.7) or their respective Representatives assumes any responsibility for the accuracy or completeness of the Z Energy Information;

- (b) Ampol has provided, and is responsible for, the Ampol Information, and that none of Z Energy or its Representatives assumes any responsibility for the accuracy or completeness of the Ampol Information; and
- (c) the Independent Adviser has provided the Independent Adviser's Report and is responsible for it and none of Ampol, Z Energy or their respective officers or employees assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

5 SCHEME IMPLEMENTATION STEPS

5.1 Z Energy's obligations

Without limiting clause 2, Z Energy must, in accordance with the Timetable:

- (a) before the First Court Date, apply to the Takeovers Panel for a letter of intention (for the purposes of section 236A(2)(b)(ii) of the Companies Act) indicating that the Takeovers Panel intends to issue a no objection statement and that it does not intend to appear at the Court in respect of the Initial Orders;
- (b) apply to the Court for Initial Orders convening the Scheme Meeting, and if the Court makes and seals those orders:
 - (i) dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders; and
 - (ii) promptly deliver to the Registrar for registration a copy of the Initial Orders in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Initial Orders are granted;
- (c) upon sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX and ASX in accordance with NZX Listing Rule 3.23.1 and the ASX Listing Rules;
- (d) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act and subject to the satisfaction of the OIO Condition and the NZCC Condition before the End Date, promptly apply to:
 - (i) the Takeovers Panel for the production of a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting Final Orders; and
 - (ii) the Court for its approval of Final Orders; and



- (e) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court):
 - (i) promptly deliver to the Registrar for registration a copy of the Final Order in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Final Orders are granted;
 - (ii) use its best endeavours to procure that NZX and ASX suspend trading in the Shares from the close of trading on the later of two Business Days after:
 - (A) the Final Orders Date; and
 - (B) the date on which the last of the OIO Condition, the NZCC Condition and the Other Regulatory Approvals Condition are satisfied or, if capable of waiver, waived in accordance with clauses 3.5 and 3.6,or such other date as is agreed between the parties in writing;
 - (iii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration;
 - (iv) subject to Ampol satisfying its obligations under clause 5.2(b) and if the Scheme becomes Effective, effect the transfer of the Scheme Shares to Ampol in accordance with the Scheme on the Implementation Date; and
 - (v) do all other things contemplated of it under the Scheme and all other things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this agreement or necessary for Z Energy to lawfully give effect to the Scheme and the orders of the Court.

5.2 **Ampol's obligations**

Without limiting clause 2, Ampol must:

- (a) at least five Business Days before the First Court Date, deliver to Z Energy a copy of the Deed Poll executed by Ampol; and
- (b) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court), do all things (if any) within its power as may be reasonably necessary for the implementation of the Transaction on a basis consistent with this agreement, and procure that, if the Scheme becomes Effective, Ampol (or, if nominated under clause 2.7, the Ampol Nominee) accepts a transfer of the Scheme Shares and Ampol provides the Consideration in accordance with clause 2.3 and the Deed Poll on or before the Implementation Date.

5.3 **Conditions certificate**

- (a) Subject to clause 5.3(b), on both:



- (i) the Business Day following the Final Orders Date (or such other date that is on or about this date as may be notified by Ampol to Z Energy at least three Business Days before such certificate is to be delivered); and
- (ii) 8.00am on the Implementation Date,

Z Energy must give Ampol a certificate from Z Energy signed by the Z Energy Group CEO and CFO stating that so far as Z Energy is aware:

- (iii) except to the extent previously waived, the Conditions in clauses 3.1(d) (*Marsden Point Operations Commencement*), 3.1(h) (*No restraint*), 3.1(i) (*No Material Adverse Change*) and 3.1(j) (*No Prescribed Occurrence*):
 - (A) in relation to the certificate provided under clause 5.3(a)(i), would have been satisfied if 8.00am on the Implementation Date was read as the time the certificate is given to Ampol and Z Energy is not aware of anything that would prevent those Conditions being satisfied; or
 - (B) in relation to the certificate provided under clause 5.3(a)(ii), are satisfied as at 8.00am on the Implementation Date;
- (iv) it is not in breach of clauses 9.2 (*Conduct of business*) or 10.1 (*Z Energy representations, warranties and undertakings*); and
- (v) there has not been any breach of any other provision of this agreement which might entitle Ampol to terminate under clause 14.1(a) or clause 14.1(b),

(*Z Energy Certificate*).

- (b) If the statements referred to in clause 5.3(a) would be inaccurate, Z Energy must provide a qualified Z Energy Certificate setting out full details of the matters which cause or are likely to cause that certificate not to be accurate.
- (c) For the avoidance of doubt:
 - (i) a Z Energy Certificate is signed by the Z Energy Group CEO and CFO in his or her capacity as an officer of Z Energy, and in no other capacity;
 - (ii) no personal liability will be assumed by the Z Energy Group CEO or CFO as a result of the statements in the Z Energy Certificate; and
 - (iii) the statements in the Z Energy Certificate will not give rise to any liability of Z Energy to Ampol or any other person under this Agreement or otherwise.



6 Z ENERGY'S OTHER IMPLEMENTATION OBLIGATIONS

6.1 Information about Shareholders

Z Energy must:

- (a) comply with any reasonable request by Ampol to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and provide Ampol the information obtained as a result of requiring such disclosure; and
- (b) procure that its share registry provides to Ampol details of the Register and all other information about the Shareholders which Ampol reasonably requires in order to:
 - (i) canvas approval of the Scheme by Shareholders; or
 - (ii) facilitate the provision by Ampol of the Consideration in accordance with this agreement, the Scheme and the Deed Poll.

6.2 Promotion of Transaction

During the Exclusivity Period, Z Energy will use all reasonable endeavours to promote, and will provide all reasonable cooperation to Ampol in promoting, the merits of the Transaction to Shareholders, including:

- (a) providing (subject to Z Energy's statutory or contractual obligations) such information regarding Shareholders and their holdings as Ampol reasonably requests and will direct its share registry to provide all information reasonably requested by Ampol;
- (b) if requested by Ampol, Z Energy will retain the services of a proxy solicitation firm agreed with Ampol, to actively solicit affirmative proxies for the Scheme and provide Ampol with all information generated by that firm at regular intervals (but at least on a daily basis on each of the last seven Business Days before the Scheme Meeting) as to the aggregate tally of votes received by Z Energy in respect of the Scheme;
- (c) procuring that senior executives of the Z Energy Group are available on reasonable notice to:
 - (i) meet with key Shareholders if reasonably requested to do so by Ampol; and
 - (ii) communicate with the employees, joint venture partners and key suppliers of the Z Energy Group,in each case to discuss, and promote the merits of, the Transaction to such persons; and
- (d) undertake, in cooperation with Ampol, other reasonable actions to promote the affirmative vote of Shareholders for the Transaction, as reasonably requested by Ampol,



in each case subject to there being no Superior Proposal and the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for Z Energy.

6.3 **Board changes**

Subject to the Consideration having been paid to the Shareholders in accordance with and subject to the terms of the Scheme, Z Energy must procure that:

- (a) such persons as Ampol nominates (by notice to Z Energy no later than five Business Days before the Implementation Date) and who have provided to Z Energy a signed consent to act by that time are appointed as additional directors of Z Energy and/or such other Z Energy Group members on the Implementation Date (by no later than 5.00 pm); and
- (b) unless otherwise agreed by Ampol in writing, each member of the Board and, if requested by Ampol, any director of the other Z Energy Group members, other than those appointed in accordance with clause 6.3(a), resigns as a director of Z Energy and/or such other Z Energy Group member with effect from the Implementation Date and acknowledges in writing that he or she has no claim against any member of the Z Energy Group other than for accrued directors' fees and expenses.

6.4 **Release of Encumbrances**

After the signing of this agreement and in addition to its obligations under clause 9.1(c)(i)(B), Z Energy will assist Ampol to identify any Encumbrances over the assets of the Z Energy Group which are not Permitted Encumbrances and procure their release and removal from the PPSR with effect on the Implementation Date.

6.5 **Z Energy Long Term Incentive Plan**

- (a) Ampol acknowledges and agrees that:
 - (i) as at the date of this agreement, 3,238,616 Performance Rights have been issued by Z Energy in respect of 3,238,616 Shares for participants in the PRLTIP; and
 - (ii) if the Implementation Date is on or after 1 April 2022, Z Energy may issue up to a further 1,189,235 Performance Rights in respect of 1,189,235 Shares to participants in the PRLTIP.
- (b) Prior to the Record Date, the Z Energy Board will determine, in accordance with the PRLTIP Rules, that (at the Z Energy Board's discretion) some or all of the Performance Rights will become eligible to convert into Shares prior to the Record Date and that any remaining Performance Rights that do not convert into Shares prior to the Record Date will lapse and be cancelled, provided that:
 - (i) if the Implementation Date is on or prior to 31 March 2022, a maximum of 923,915 Shares may be transferred from treasury stock to participants in the PRLTIP on conversion of Performance Rights; and



- (ii) if the Implementation Date is on or after 1 April 2022, a maximum of 1,319,889 Shares may be transferred from treasury stock to participants in the PRLTIP on conversion of Performance Rights,

in each case with such Shares to be included as Scheme Shares.

(c) Z Energy must ensure that:

- (i) all Performance Rights that do become eligible for conversion into Shares in accordance with clause 6.5(b) are converted to Shares prior to the Record Date and that any Performance Rights that do not become eligible for conversion into Shares in accordance with clause 6.5(b) lapse or are cancelled or forfeited prior to the Record Date such that, on the Implementation Date, there are no Performance Rights on issue;
 - (ii) all Performance Rights that do become eligible for conversion into Shares in accordance with clause 6.5(b) are satisfied by the transfer of treasury shares from treasury stock to participants in the PRLTIP;
 - (iii) all remaining treasury shares held by Z Energy following the conversion of Performance Rights into Shares in accordance with clause 6.5(b) and clause 6.5(c)(ii) are cancelled prior to the Record Date such that, on the Implementation Date, there are no treasury shares held by Z Energy and no treasury shares shall form part of the Scheme Shares;
 - (iv) all Restricted Shares currently held by the LTI Trustee are transferred to Z Energy and cancelled for no net monetary consideration prior to the Record Date such that, on the Implementation Date, there are no Shares held by the LTI Trustee;
 - (v) LTI Trustee does not exercise the votes attached to any of the Restricted Shares that it holds at the Scheme Meeting on the basis there is no underlying beneficiary in respect of such Restricted Shares; and
 - (vi) no action is taken by Z Energy or any Z Energy Director in respect of the PRLTIP, which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236(A)(4) of the Companies Act) of votes in respect of the Scheme;
- (i) the PRLTIP is terminated with effect on and from the Implementation Date; and
 - (ii) no more than the maximum number of Shares specified in clause 6.5(b)(i) or (ii) (as applicable) are issued to participants in the PRLTIP prior to the Record Date.

6.6 Means of holding the Scheme Meeting

The parties acknowledge that Z Energy's intention is that the Scheme Meeting will be held as a physical meeting, as opposed to an electronic/video/streamed meeting. If, due to the COVID-19 pandemic and related government measures including the impact of any government-mandated alert levels and corresponding public health



restrictions, Z Energy is considering holding the Scheme Meeting by electronic/video/streamed means, Z Energy will consult in good faith with Ampol in relation to this and the parties will together consider whether holding the Scheme Meeting in such a manner may adversely impact the outcome of the Scheme Resolution. If the parties consider such an adverse impact to be reasonably likely, they will give due consideration to taking steps that may assist to mitigate such impact, including deferring the Scheme Meeting until such time as it is expected that a physical Scheme Meeting can be held.

7 COURT PROCEEDINGS

7.1 Court documents

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, Z Energy must prepare and provide Ampol successive drafts of all documents required to be given by Z Energy to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event not less than 72 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Ampol and its Representatives on those documents.
- (b) Z Energy must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without Ampol having consented in writing to such documents being submitted to the Court or such changes being consented to.

7.2 Representation

In relation to each Court application made in relation to the Scheme, including any appeal:

- (a) Z Energy consents to the separate representation of Ampol by counsel; and
- (b) Ampol may appear and be represented in relation to the Court applications.

7.3 Court proceedings and conditionality

- (a) If the Court declines to make the orders sought by Z Energy under clause 5.1(b) or 5.1(d)(ii), due in whole or in part to the lack of satisfaction of, or the potential timing for satisfaction of (or where capable of waiver, waiver of) the Conditions, Z Energy must promptly make a further application for Initial Orders or Final Orders (as applicable), as soon as practicable after the earlier of:
 - (i) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the Initial Orders or Final Orders (as the case may be) (*Court Guidance*); or
 - (ii) the OIO Condition and the NZCC Condition having been satisfied, or where capable of waiver, waived.
- (b) Z Energy will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated,



providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

7.4 **Appeal if orders not made**

If the Court does not make any order sought by Z Energy under clause 5.1(b) or 5.1(d)(ii) (the *Decision*) to the extent clause 7.3 does not apply:

- (a) Z Energy and Ampol must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and
- (b) if, within 10 Business Days after the Decision, Z Energy and Ampol agree to appeal the Decision or either of those parties obtains an opinion from an independent Queens Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
 - (i) Z Energy must appeal the Court's decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
 - (ii) the cost of any such appeal is to be borne:
 - (A) if Z Energy and Ampol agreed to appeal the Decision, equally between the parties; or
 - (B) if Z Energy and Ampol did not agree to appeal the Decision, by the party who obtained the opinion from the independent Queens Counsel;
 - (iii) if the End Date would otherwise occur before the appeal is finally determined, the End Date is deferred to the date that is 10 Business Days after the appeal from the Decision is finally determined; and
 - (iv) if the appeal is successful and the relevant order is made, the End Date is further deferred to the date which is X days after the original End Date (disregarding the effect of clause 7.4(b)(iii)) where X is equal to the number of days between the date of the Decision and the date on which the appeal from the Court's decision is finally determined, or to such other date as the parties agree in writing.

8 **RECOMMENDATION AND VOTING INTENTIONS**

8.1 **Recommendation and voting intentions of Z Energy Directors**

- (a) Z Energy must ensure that each Z Energy Director recommends that Shareholders vote in favour of the Scheme and that each Z Energy Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme subject to:
 - (i) no Superior Proposal having been received by Z Energy; and
 - (ii) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.



- (b) Z Energy must ensure that no senior executive of Z Energy makes any public statement that is not supportive of the implementation of the Scheme.

8.2 **Change to recommendation or voting intentions**

Z Energy must use all reasonable endeavours to ensure that no Z Energy Director changes, qualifies or withdraws the recommendation or the undertaking referred to in clause 8.1 or makes any statement inconsistent with that recommendation or that undertaking unless:

- (a) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares; or
- (b) Z Energy receives a Superior Proposal, and such change, qualification, withdrawal or statement is made in accordance with clause 12.8,

provided that reliance by Z Energy on the exclusions to this clause 8.2 will not prevent Ampol from having the benefit of, and enforcing, its rights under clause 12.8, 13.2 and clause 14.1(b).

8.3 **Notification of new circumstances**

Without limiting the operation of clauses 8.1, 8.2, 12, 13.2 or 14.1 if the Z Energy Board or Z Energy becomes aware that any one or more of the Z Energy Directors is reasonably likely to change, qualify or withdraw the recommendation or the undertaking referred to in clause 8.1 (other than under clause 8.2(b)), including as a result of the receipt or expected receipt of an unfavourable Independent Adviser's Report (including any update of or revision, amendment or supplement to, the Independent Adviser's Report), then Z Energy must:

- (a) immediately notify Ampol of that, and any public statement that the Z Energy Board or Z Energy intends to make if such event occurs; and
- (b) consult with Ampol in good faith for not less than two Business Days after the date the notice referred to in paragraph (a) above is given to consider and determine whether there are any steps that can be taken to avoid such change, qualification or withdrawal. Z Energy will ensure that the recommendation is not changed, qualified or withdrawn until the end of the consultation period.

9 **ACCESS, INFORMATION AND CONDUCT OF BUSINESS**

9.1 **Access and information**

Prior to satisfaction of OIO Condition and NZCC Condition

- (a) Until and including the time of satisfaction of the OIO Condition and the NZCC Condition, Z Energy must, subject at all times to the parties observing the Information Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:
 - (i) procure that Ampol and its Representatives are given reasonable access to the Designated Persons during normal business hours at mutually convenient times and on reasonable notice to Z Energy for the purposes of:
 - (A) implementing the Scheme; and



- (B) keeping Ampol informed of material developments relating to the Z Energy business, including the operations of the Z Energy Group's business and its financial position, prospects and affairs, in each case, to the extent reasonably necessary to enable Ampol to prepare for the transition of ownership of the Z Energy Group to Ampol,

except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that:

- (C) Ampol will focus on material issues, having regard to management commitments of the Designated Persons;
 - (D) providing access pursuant to this clause 9.1(a)(i) does not result in unreasonable disruptions to the Z Energy Group's business in the opinion of Z Energy (acting reasonably), require Z Energy to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Z Energy Group's legal professional privilege;
 - (E) nothing in this clause 9.1(a)(i) will require Z Energy to provide information concerning its directors' and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Z Energy's obligations under clause 12);
 - (F) nothing in this clause 9.1(a)(i) will, in relation to information that is (consistent with past practice) required to be provided to the Z Energy Board, require any person to provide any information to Ampol earlier than the time that information is provided to the Z Energy Board or in a different form than that information is provided to the Z Energy Board. The parties acknowledge that Z Energy's past practice is for material matters to be communicated to the Z Energy Board promptly; and
 - (G) nothing in this clause 9.1(a)(i) will require Z Energy to create any material new or additional report or other documentation that is not currently prepared by Z Energy;
- (ii) provide Ampol with summaries of decisions of the Board on material matters (provided that this clause does not require Z Energy to provide a summary of any decision that relates to its directors' and management's consideration of the Transaction or a Competing Proposal); and
 - (iii) provide Ampol with a monthly summary financial report reporting on the current financial performance, position and operations of Z Energy (in the same form and at the same time such information is provided to the Z Energy Board).

After satisfaction of OIO Condition and NZCC Condition

- (b) From the time of satisfaction of the OIO Condition and NZCC Condition, Z Energy must, subject at all times to the parties observing the Information



Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:

- (i) procure that Ampol and its Representatives are given reasonable access to the properties, books and records and senior management team of the Z Energy Group during normal business hours at mutually convenient times and on reasonable notice to Z Energy and information about the Business reasonably requested by Ampol or its Representatives for the purposes of:
 - (A) implementing the Scheme;
 - (B) keeping Ampol informed of material developments relating to the Z Energy business; and
 - (C) enabling Ampol to understand the operations of the Z Energy Group's business, financial position, prospects and affairs in order to allow and facilitate the development and implementation of Ampol's plans for the carrying on of the Z Energy business following implementation of the Scheme to the extent reasonably necessary to prepare for the transition of ownership of the Z Energy Group to Ampol,except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed to third parties and provided that:
 - (D) Ampol will focus on material issues, having regard to management commitments and the impact of information requests on the Z Energy Group's business;
 - (E) providing access or information pursuant to this clause does not result in unreasonable disruptions to the Z Energy Group's business in the opinion of Z Energy (acting reasonably), require Z Energy to make further disclosure to any other entity or Government Agency or require the disclosure of any document that would compromise the Z Energy Group's legal professional privilege; and
 - (F) nothing in this clause will require Z Energy to provide information concerning its directors' and management's consideration of the Scheme or any Competing Proposal (but this proviso does not limit Z Energy's obligations under clause 12); and
- (ii) provide Ampol with copies of Board minutes and papers provided to the Board (including monthly management accounts for the Z Energy Group), however, Z Energy may redact information from such papers to the extent it relates to the Transaction or a Competing Proposal; and

Before and after satisfaction of OIO Condition and NZCC Condition

- (c) From the date of this agreement until and including the Implementation Date, Z Energy must, subject at all times to the parties observing the Information



Sharing Protocols and otherwise acting in accordance with the Commerce Act 1986:

- (i) without limiting clause 9.1(a)(i) or clause 9.1(b), Z Energy agrees to:
 - (A) provide reasonable and timely assistance to Ampol to finalise the preparation of any definitive financing documentation; and
 - (B) provide reasonable assistance to Ampol to prepare for any repayment of the Z Energy Group's existing indebtedness (including any preparation for the termination and release of related security interests), including, without limitation, by sending notices of intention to repay existing financiers prior to the Implementation Date,

provided, in each case, that:

- (C) neither Z Energy nor any member of the Z Energy Group shall be required to incur any liability in connection with any acquisition, debt or equity financing prior to implementation of the Scheme that is not reimbursable by Ampol;
- (D) Ampol must indemnify and hold harmless, and hereby does indemnify and hold harmless, Z Energy, members of the Z Energy Group and their respective Representatives from and against any and all Losses suffered or incurred by any of them in connection with, or as a result of, any act or omission in relation to any matter covered by this clause 9.1(c) or in connection with, or as a result of, any debt financing and any information utilised in connection therewith, in each case other than to the extent any of the foregoing arises from the fraud or wilful misconduct of, or breach of this agreement by Z Energy, a member of the Z Energy Group or their respective Representatives;
- (E) nothing in this clause 9.1(c), shall require cooperation to the extent that it would:
 - (AA) cause any condition precedent in clause 3.1 to not be satisfied or otherwise cause a breach of this agreement;
 - (BB) require Z Energy or a member of the Z Energy Group to take any action that would reasonably be expected to conflict with or violate its constituent documents, any law, stock exchange listing rules or any agreement to which it is party or by which it is bound; or
 - (CC) require the approval of Shareholders of Z Energy; and
- (F) no member of the Z Energy Group shall be required to execute prior to implementation of the Scheme any agreements, including any credit or other agreements, pledge or security



documents, or other certificates, legal opinions or documents in connection with the debt financing.

9.2 **Conduct of business**

From the date of this agreement until and including the Implementation Date, Z Energy must ensure that it and each other member of the Z Energy Group:

- (a) carries on its business in the ordinary course consistent with business plans and forecasts fairly disclosed in the Due Diligence Material, including in the FY22 Annual Forecast, and in substantially the same manner as previously conducted;
- (b) maintains insurance in respect of the Z Energy Group's business and assets, covering such risks and for such amounts as would be maintained in accordance with the Z Energy Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this agreement and not approve any proposal which would have the effect of reducing the level or extent of insurance maintained by any Joint Venture;
- (c) uses all reasonable endeavours to:
 - (i) keep available the services of its directors and the leadership team of Z Energy;
 - (ii) maintain its assets in a reasonable state of operating condition, order and repair as they were at the date of this agreement, having regard to the age and book value of such assets, except for ordinary depreciation and fair wear and tear (but provided, in the case of fair wear and tear, that the Z Energy Group continues to comply with its ordinary practices for monitoring and repairing wear and tear of its assets); and
 - (iii) preserve its relationships with all Government Agencies and all customers, suppliers, licensors, licensees, joint venturers, financiers and others with whom it has business dealings;
- (d) maintains all material Authorisations necessary to operate the Business, and ensures all conditions attaching to those Authorisations are complied with in all material respects;
- (e) promptly notifies Ampol of:
 - (i) any claim that is made or legal proceedings instituted against Z Energy, or another member of the Z Energy Group, or any director or employee of any member of the Z Energy Group (of which it becomes aware), other than any claim or legal proceeding that has potential liability which is less than \$250,000; and
 - (ii) any actual or threatened material enquiries or investigations by any Government Agency in relation to the Business (including in relation to



Tax) and any material correspondence with any Government Agency in relation to the Business;

- (f) does not:
 - (i) incur capital expenditure:
 - (A) that is Integrity Capital Expenditure that is not budgeted for in the FY22 Annual Forecast or, if it is budgeted for in the FY22 Annual Forecast, exceeds \$5,000,000 for a single item or related items that should reasonably be assessed together; or
 - (B) that is Growth Capital Expenditure that exceeds \$2,500,000 for a single item or related items that should reasonably be assessed together (irrespective of whether such capital expenditure is included in the FY22 Annual Forecast);
 - (ii) does not, except in the ordinary course of trading, transfer or otherwise dispose of, or create any Encumbrance in respect of, an asset or assets (either singularly or in the aggregate) having a value exceeding \$5,000,000;
 - (iii) create or incur any liability or indebtedness (whether contingent or otherwise), except normal liabilities or indebtedness incurred in the ordinary course of the Business and not exceeding (either singularly or in the aggregate) \$5,000,000;
 - (iv) increase the facility limit on any of the Z Energy Group's bank facilities or exceed borrowing or cash reserve limitations as established by any financier of the Z Energy Group, except for increases in the ordinary course of business not exceeding \$5,000,000 (provided that, for the avoidance of doubt, Z Energy is not restricted from increasing the aggregate level of its borrowings under any existing debt facility, where increasing the level of its borrowings does not require an increase in the facility limits of any of its existing bank facility);
 - (v) acquire or dispose of assets (including shares or other securities in any body corporate or any units in any trust, or other similar interests), other than current assets acquired or disposed of in the ordinary course of business, or an asset or assets (either singularly or in the aggregate) with a book value not exceeding \$5,000,000;
 - (vi) enter into, waive any material rights under, seek a waiver of material rights from the counterparty to, vary or terminate any contract, commitment or arrangement (including any lease but excluding any fuel purchase or procurement contract) which:
 - (A) restrains any member of the Z Energy Group from engaging in or competing with any business in any place;
 - (B) may require annual expenditure by the relevant member of the Z Energy Group in excess of \$5,000,000;



- (C) may result in annual revenues to the relevant member of the Z Energy Group in excess of \$10,000,000; or
 - (D) may result in aggregate expenditure by, or aggregate revenues to, the relevant member of the Z Energy Group for the minimum term of the relevant contract, commitment or arrangement (including any rights of renewal or extension) in excess of \$15,000,000;
- (vii) enter into, waive any material rights under, seek a waiver of material rights from the counterparty to, vary or terminate any material fuel purchase agreement or other procurement arrangement on terms which are materially inconsistent with the terms and conditions of Z Energy's previous equivalent or similar fuel purchase agreements or other procurement arrangements as fairly disclosed to Ampol in the Due Diligence Material provided that this clause will not require Z Energy to contract with the same counterparties it has contracted with in the past for any new fuel purchase agreement or procurement arrangement;
 - (viii) provide any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Z Energy Group;
 - (ix) enter into, amend or close out any material foreign exchange, interest rate, commodity or carbon contract, swap, derivative or hedge in a manner or to an extent that is materially inconsistent with Z Energy's existing hedging and foreign exchange risk management practices as at the date of this agreement and as fairly disclosed to Ampol in the Due Diligence Material;
 - (x) create or otherwise permit to arise any Encumbrance over any of its or any member of the Z Energy Group's assets other than in the ordinary course of business;
 - (xi) employ any new employee whose salary would exceed \$175,000 per annum other than:
 - (A) new employees employed in the ordinary course of business to fill a vacant position within the business and provided that the terms and remuneration of those new hires are consistent with Z Energy's past practices; or
 - (B) new employees employed as a result of a restructuring of roles provided that such new employees do not result in an increase in the aggregate remuneration expense of the Z Energy Group in connection with the restructured roles;
 - (xii) increase the total headcount of the Z Energy Group to more than 500 employees;



- (xiii) pay aggregate remuneration to employees of the Z Energy Group that is greater than the total employee remuneration expenses included in the FY22 Annual Forecast;
- (xiv) increase or accelerate the remuneration of (including any benefits in kind), make any retention payment or termination payment to, or otherwise change the terms and conditions of employment of, any Z Energy Director or any employee of any member of the Z Energy Group whose salary exceeds \$175,000 per annum except:
 - (A) for salary increases in the normal course and in the amount per annum permitted under the Z Energy Disclosure Letter; and
 - (B) as permitted under clause 6.5;
- (xv) make, or commit to make, any bonus payment to:
 - (A) any Z Energy Director or any member of the Z Energy Executive Team; or
 - (B) any other employee of any member of the Z Energy Group that is not consistent with Z Energy's Existing Remuneration Policies and Z Energy's past practices for payment of employee bonuses;
- (xvi) make any material Tax election (other than an election in the ordinary course of business consistent with past practice), or settle, compromise or prejudice any material Tax liability, or initiate or engage in any disputes procedures or challenge proceedings relating to Tax;
- (xvii) make any change in accounting methods, principles or practices used by it (except if required by a change in International Financial Reporting Standards);
- (xviii) change its constitution or pass any resolution of Shareholders or any class of Shareholders (other than the Scheme Resolution, any resolution to appoint (or reappoint) a director of Z Energy and any resolution to authorise the Board to fix the fees and expenses of Z Energy's auditor);
- (xix) fail to comply in all material respects with all laws and regulations applicable to the Business or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (xx) acquire any interest in "sensitive land" for the purposes of the Overseas Investment Act 2005;
- (xxi) enter into or exit any joint venture (including the Joint Ventures), strategic alliance or partnership;
- (xxii) commence, compromise or settle any litigation or similar proceedings for an amount exceeding \$1,000,000;



- (xxiii) make any material change to any publicly stated corporate policy or strategy;
- (xxiv) vote on or otherwise approve or disapprove any matter that requires the approval of the board of directors or shareholders of a Joint Venture that would result in the relevant Joint Venture undertaking an action that would be in breach of this clause 9.2(f) if done by a Z Energy Group member or that is otherwise outside of the ordinary course of business of the relevant Joint Venture; or
- (xxv) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 9.2(f), or announce or represent to any person that any of those things will be done.

9.3 **Exception**

Any member of the Z Energy Group may do any thing referred to in clause 9.2, or not do any thing required to be done under clauses 9.2(a) or 9.2(c):

- (a) with the prior written consent of Ampol (such consent not to be unreasonably withheld, conditioned or delayed);
- (b) necessary to comply with any law or any regulatory requirement or direction of a Government Agency;
- (c) as fairly disclosed in Z Energy Disclosure Letter;
- (d) reasonably and prudently required to respond to any emergency, act of god or other disaster, including the COVID-19 pandemic; or
- (e) to the extent required to give effect to the Scheme or as expressly contemplated or required under this agreement,

and in the case of the situations described in paragraphs (b), (d) or (e) above, only provided that Z Energy informs Ampol as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers any feedback or suggestions made by Ampol as to the proposed course of action. The parties note that the objective of this clause is that no action is taken or not taken, which may affect the future prospects of the Z Energy Group, including its relationships with third parties without reasonable involvement of Ampol.

For the avoidance of doubt: (a) the parties must at all times observe the Information Sharing Protocols and otherwise act in accordance with the Commerce Act 1986 in connection with any information shared or action taken or not taken under clauses 9.2 or 9.3; and (b) nothing in clauses 9.2 or 9.3 requires either party to act in any way that could reasonably be expected to give rise to a breach or a potential breach of the Commerce Act 1986.

9.4 **Consents to change of control and waivers of pre-emptive and other rights**

In respect of each contract that Z Energy and Ampol agree (acting reasonably) in writing prior to the First Court Date requires a counterparty notification or consent in relation to the change of control of Z Energy or a waiver by a counterparty in respect of pre-emptive rights or other rights (including rights arising for Z Energy's financiers under Z Energy's financing facilities and note documents, including in



relation to an event of review or prepayment event, howsoever described) that arise as a result of the change of control of Z Energy:

- (a) Z Energy and Ampol will agree in good faith a communications plan to notify the relevant counterparty of the change of control of Z Energy that will occur if the Scheme becomes Effective and Z Energy will, and will procure that each member of the Z Energy Group will, make such notifications to the counterparties and use all reasonable endeavours to obtain (with Ampol's reasonable assistance) the consents or waivers required in relation to the change of control of Z Energy and any resulting pre-emptive rights or other rights of the counterparties;
- (b) each party must promptly provide to the relevant counterparty all information reasonably required for the purposes of making any notification or seeking any consent referred to in clause 9.4(a); and
- (c) after the Scheme Meeting and if the Scheme has been approved by Shareholders, to the extent reasonably requested by Ampol, Z Energy will use all reasonable endeavours (including committing resources of its senior employees) to assist with obtaining the agreed consents or approvals and will collaborate with Ampol to introduce it to relevant Z Energy Group counterparties to jointly discuss the implications of the Transaction, including change of control consents or notifications or waivers of pre-emptive or other rights.

Nothing in this clause 9.4 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person or otherwise be contrary to the interests of either party, as the case may be.

9.5 **Transition Committee**

- (a) As soon as practicable, and in any event within one week after the date of this agreement, Z Energy and Ampol shall form a transition committee (*Transition Committee*) in accordance with this clause 9.5. The Transition Committee will, subject to this agreement, establish its terms of reference, meeting schedules, information sharing protocols and escalation methodologies.
- (b) The Transition Committee shall comprise two representatives of each of Z Energy and Ampol. A party may appoint, replace or nominate a representative by giving written notice to the other party.
- (c) The Transition Committee will, subject at all times to observing the Information Sharing Protocols:
 - (i) co-ordinate implementation of the Scheme between the parties;
 - (ii) co-ordinate preparation for the transition of ownership of Z Energy to Ampol;
 - (iii) discuss and resolve matters arising in relation to this agreement or the Transaction within its terms of reference; and
 - (iv) undertake any other matters reasonably requested by a party that are material in connection with the Transaction.



- (d) The representatives of Ampol on the Transition Committee will have authority to provide consent in writing on behalf of Ampol to any actions of Z Energy that would otherwise be restricted under clause 9.2.
- (e) The representatives of Z Energy on the Transition Committee will have authority to provide consent in writing on behalf of Z Energy to any actions of Ampol that would otherwise be restricted under this agreement.

9.6 **Permitted Dividends**

- (a) To avoid doubt, where Z Energy declares any Permitted Dividend it may declare a supplementary dividend in respect of shareholders that Z Energy has reasonably determined are non-resident for the purposes of the Income Tax Act 2007.
- (b) The amount of imputation credits that may be attached to any Permitted Dividend must be restricted to the amount of income tax payable (or estimated tax payable using reasonable forecasts) for the period up to the date on which the relevant Permitted Dividend is paid plus any brought forward imputation credits, provided that the imputation credit account of Z Energy shall not have a debit balance as at the Implementation Date.
- (c) Z Energy must consult with Ampol in relation to the proposed amount of imputation credits that are intended to be attached to any Permitted Dividend (including providing appropriately detailed working papers).

10 **REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

10.1 **Z Energy representations, warranties and undertakings**

- (a) Z Energy represents and warrants to Ampol on the date of this agreement, immediately prior to the last affidavits being filed in respect of the Final Orders and at 8.00am on the Implementation Date that each of the Z Energy Warranties is true, accurate and not misleading.
- (b) Z Energy undertakes to Ampol to comply with each of the Z Energy Undertakings.
- (c) The Z Energy Warranties are given subject to and are qualified by matters and circumstances:
 - (i) fairly disclosed to Ampol in the Due Diligence Material; or
 - (ii) fairly disclosed through the NZX market announcement platform at least two Business Days' prior to the date of this agreement.

10.2 **Ampol representations, warranties and undertakings**

- (a) Ampol represents and warrants to Z Energy on the date of this agreement, immediately prior to the last affidavits being filed in respect of the Final Orders and at 8.00am on the Implementation Date that each of the Ampol Warranties is true, accurate and not misleading.
- (b) Ampol undertakes to Z Energy to comply with each of the Ampol Undertakings.



10.3 **Indemnity by Z Energy**

Subject to clause 13.7, Z Energy indemnifies Ampol against, and must pay to Ampol on demand an amount equal to, all Losses directly incurred or suffered by the Ampol Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Z Energy Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Z Energy Undertakings.

10.4 **Indemnity by Ampol**

Subject to clause 13.7, Ampol indemnifies Z Energy against, and must pay to Z Energy on demand an amount equal to, all Losses directly incurred or suffered by the Z Energy Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Ampol Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Ampol Undertakings.

10.5 **Scheme becoming Effective**

After the Scheme becomes Effective, any breach of the representations and warranties or the undertakings made or given under this clause 10 may only give rise to a claim for damages or under the indemnities in this clause 10 and does not entitle a party to terminate this agreement.

11 **RELEASES**

11.1 **Release of Z Energy Indemnified Persons**

Ampol waives and releases, and must procure that each member of the Ampol Group waives and releases, all rights and claims which it may have against any Z Energy Indemnified Person (other than Z Energy) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Z Energy Indemnified Person in connection with any representation, warranty or undertaking given by Z Energy in this agreement or the preparation of the Z Energy Information or the Due Diligence Material except where the Z Energy Indemnified Person has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Z Energy has sought and obtained the waiver and release in this clause 11.1 as agent for and on behalf of each Z Energy Indemnified Person and may enforce the provisions of this clause 11.1 on behalf of any Z Energy Indemnified Person;
- (b) any Z Energy Indemnified Person may plead this clause 11.1 in response to any claim made by any member of the Ampol Group against them; and
- (c) the undertakings contained in this clause 11.1 are given for the benefit of each Z Energy Indemnified Person and are intended to be enforceable against Ampol by each Z Energy Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.



11.2 Release of Ampol Indemnified Persons

Z Energy waives and releases, and must procure that each member of the Z Energy Group waives and releases, all rights and claims which it may have against any Ampol Indemnified Person (other than Ampol) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Ampol Indemnified Person in connection with any representation, warranty or undertaking given by Ampol in this agreement or the preparation of the Ampol Information except where the Ampol Indemnified Party has engaged in wilful misconduct or fraud. The parties acknowledge and agree that:

- (a) Ampol has sought and obtained the waiver and release in this clause 11.2 as agent for and on behalf of each Ampol Indemnified Person and may enforce the provisions of this clause 11.2 on behalf of any Ampol Indemnified Person;
- (b) any Ampol Indemnified Person may plead this clause 11.2 in response to any claim made by any member of the Z Energy Group against them; and
- (c) the undertakings contained in this clause 11.2 are given for the benefit of each Ampol Indemnified Person and are intended to be enforceable against Z Energy by each Ampol Indemnified Person in accordance with the provisions of the Contract and Commercial Law Act 2017.

11.3 D&O Insurance and Indemnity

- (a) Ampol acknowledges that, subject to clause 11.3(b), Z Energy may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy that is effective on the Implementation Date in respect of any Z Energy Directors or officers (or the directors or officers of any other member of the Z Energy Group) for a seven year period (the *D&O Run-off Policy*) and pay all premiums required.
- (b) Provided that the D&O Run-off Policy is, to the extent practicable, obtained on terms consistent with the terms of Z Energy's existing directors' and officers' liability insurance policy as provided in the Due Diligence Material, Ampol agrees that:
 - (i) Z Energy entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this agreement; and
 - (ii) after the Implementation Date it will not, and will procure that no member of the Z Energy Group will, vary or cancel the D&O Run-off Policy (for so long as such member of the Z Energy Group remains a Related Entity of Z Energy).
- (c) Z Energy and Ampol will consult in good faith on the selection of the D&O Run-off Policy.
- (d) Z Energy will keep Ampol informed of material developments and communications with brokers and insurers in relation to the obtaining of the D&O Run-off Policy.
- (e) Following the Implementation Date, to the extent permitted by law, Ampol will procure that Z Energy maintains in place all indemnities and associated rights of access to information provided by Z Energy for the benefit of the



current and former directors and officers of Z Energy (including any indemnity provided in accordance with, or set out in, Z Energy's Constitution) and which have been fairly disclosed to Ampol in the Due Diligence Material.

12 **EXCLUSIVITY**

12.1 **No existing discussions**

Z Energy represents and warrants that, other than in relation to the discussions with Ampol in relation to the Scheme, it is not currently in negotiations or discussions in respect of any Competing Proposal with any person.

12.2 **No shop restriction**

Subject to clause 12.13, during the Exclusivity Period, Z Energy must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.2(a) on its behalf.

12.3 **No talk restriction**

Subject to clause 12.4 and clause 12.13, during the Exclusivity Period Z Energy must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.3(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Z Energy or any of its Representatives or has been publicly announced.

12.4 **No talk exception**

The restriction in clause 12.3 does not apply to the extent that it restricts Z Energy or its Representatives from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated or initiated in contravention of clause 12.2 or 12.3) if, acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:

- (a) the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal; and
- (b) it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of the Z Energy directors.



12.5 **No due diligence restriction**

Subject to clause 12.6 and clause 12.13 but without limiting clauses 12.3 and 12.4, during the Exclusivity Period, Z Energy must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Z Energy or any of its Related Entities that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.5(a) on its behalf.

12.6 **No due diligence exception**

The restriction in clause 12.5 does not apply in respect of a bona fide Competing Proposal (in either case which was not encouraged, solicited, invited, facilitated or initiated in contravention of clauses 12.2 to 12.4) if all of the following requirements are satisfied:

- (a) acting in good faith and after having obtained written advice from its external financial and legal advisers, the Board has determined that:
 - (i) the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal; and
 - (ii) it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of the Z Energy directors;
- (b) the Third Party has first entered into a written agreement in favour of Z Energy restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms not substantially more favourable to the Third Party than those in the Confidentiality Agreement; and
- (c) to the extent that any information made available to the Third Party has not previously been provided to Ampol (or differs from any information previously provided to Ampol), Z Energy provides that information to Ampol at the same time as it is provided to the Third Party.

12.7 **General notification obligations**

- (a) During the Exclusivity Period, Z Energy must as soon as practicable in the circumstances and in any event within 48 hours notify Ampol if:
 - (i) Z Energy or any of its Representatives receives any Competing Proposal; or
 - (ii) Z Energy or any of its Representatives receives any request for information relating to the Z Energy Group or its business or any request for access to any non-public information of any member of the Z Energy Group in connection with a current or future Competing Proposal; or



- (iii) Z Energy proposes to take any action in reliance on the exceptions in clause 12.4 or clause 12.6.
- (b) A notice given under clause 12.7(a) must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who provided the Competing Proposal or made the relevant approach, inquiry or proposal to initiate discussions or to whom any information is proposed to be provided as referred to in clause 12.7(a);
 - (ii) all material terms and conditions of any Competing Proposal including the amount and form of consideration to be offered, the conditions to which it is subject, the proposed timetable and any break fee arrangements (to the extent known); and
 - (iii) the nature of the information or access requested and/or provided or action proposed to be taken.
- (c) Without limiting Z Energy's other obligations under this clause 12.7, Z Energy shall keep Ampol reasonably informed on a prompt and timely basis of the status and any material developments regarding any Competing Proposal and the material terms and conditions thereof (including any change in price or form of consideration or other material amendment thereto), within 24 hours after receipt or delivery thereof and provide information regarding any Competing Proposal as reasonably requested by Ampol.

12.8 Matching rights

- (a) Without limiting clause 12.2 or clause 12.3, during the Exclusivity Period, Z Energy:
 - (i) must not, and must procure that each of its Representatives does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;
 - (ii) must procure that no Z Energy Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and
 - (iii) must not make, and ensure that no Z Energy Director makes, any public statement recommending any Competing Proposal to Shareholders,unless and until:
 - (iv) acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:
 - (A) the Competing Proposal is a Superior Proposal; and
 - (B) failing to take one or more of the actions specified in clause 12.8(a)(i) to (iii) would be likely to constitute a breach of the



fiduciary duties or statutory obligations of the directors of Z Energy; and

- (v) Z Energy has provided Ampol with all the information in relation to the Competing Proposal it is required to provide under clause 12.7 and a written explanation as to why Z Energy considers the Competing Proposal is a Superior Proposal; and
- (vi) Z Energy has given Ampol at least five Business Days from the date Z Energy gives notice to Ampol under clause 12.8(a)(v) (including all of the information required to be provided under that clause) in respect of the Competing Proposal (*Matching Period*) in which to provide a Counter Proposal in accordance with clause 12.8(b); and
- (vii) upon the expiry of the Matching Period:
 - (A) Ampol has not provided a Counter Proposal under clause 12.8(a)(vi); or
 - (B) if Ampol has provided a Counter Proposal under clause 12.8(b) and Z Energy having complied with clause 12.9(a) then, acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that:
 - (AA) the Competing Proposal nevertheless continues to constitute a Superior Proposal (taking into account the Counter Proposal); and
 - (BB) failing to respond to such Competing Proposal would be likely to continue to constitute a breach of the fiduciary duties or statutory obligations of the Board.
- (b) During the Matching Period Ampol may (but is not required to) make a proposal (a *Counter Proposal*) to amend the terms of the Scheme and this agreement or make an alternative proposal to Z Energy or Shareholders with a view to providing an outcome for Shareholders that, taken as a whole, is no less favourable to Shareholders than that offered under the relevant Competing Proposal.

12.9 **Z Energy's response to Counter Proposal**

If, during the Matching Period, Ampol makes a Counter Proposal:

- (a) Z Energy must use all reasonable endeavours to procure that the Board considers the Counter Proposal in good faith; and
- (b) if the Board acting in good faith determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
 - (i) the parties must each use all reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and



- (ii) Z Energy must procure that each Z Energy Director makes a public statement recommending the Counter Proposal to Shareholders.

12.10 **Changes to Proposals**

Any material change to a Competing Proposal including:

- (i) any material change to the terms referred to in clause 12.7(b)(i) and/or (ii); or
- (ii) any incomplete or non-binding proposal or expression of interest becoming complete, capable of acceptance or binding on the Third Party bidder,

will be taken to constitute a new Competing Proposal in respect of which Z Energy must separately comply with its obligations under clause 12.7 to clause 12.9.

12.11 **Termination if unmatched Superior Proposal progresses**

If:

- (a) Z Energy has complied fully with clause 12.7 in relation to a Competing Proposal; and
- (b) in full compliance with clause 12.8(a):
 - (i) Z Energy enters into, or agrees to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement the Competing Proposal; or
 - (ii) any Z Energy Director changes, qualifies or withdraws his or her recommendation in favour of the Scheme in order to publicly recommend the Competing Proposal; or
 - (iii) Z Energy makes, or any Z Energy Director makes, any public statement recommending the Competing Proposal to Shareholders,

then either party may terminate this agreement by notice to the other party in accordance with clause 14.

12.12 **Standstill arrangements with other parties**

During the Exclusivity Period, except with the prior written consent of Ampol, Z Energy must not amend or waive, and must enforce, the terms of any standstill agreement or arrangement between Z Energy and any person other than a member of the Ampol Group.

12.13 **Normal provision of information**

Nothing in this clause 12 prevents a party from:

- (a) providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or ASX Listing Rules; or
- (b) making presentations to, and responding to bona fide enquiries from, stockbrokers, portfolio investors and equity market analysts in relation to the Scheme or in accordance with its usual practices.



13 **BREAK FEES AND REVERSE BREAK FEE**

13.1 **Acknowledgement and agreement**

Z Energy (on the one hand) and Ampol (on the other hand) each acknowledges and agrees that:

- (a) the other and its Related Entities have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
 - (i) advisory costs;
 - (ii) costs of management and directors' time;
 - (iii) in respect of Ampol, funding costs;
 - (iv) out of pocket expenses; and
 - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and its Related Entities are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee, Ampol Regulatory Approval Break Fee and Reverse Break Fee are each liquidated damages based on a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and its Related Entities in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 13 in this agreement and would not have entered into this agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 13 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee, Ampol Regulatory Approval Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clause 13.2, 13.3 or 13.4 (as applicable) in order to secure the other party's entry into this agreement.

13.2 **Circumstances where Break Fees payable**

- (a) Subject to clause 13.6 and clause 13.8, Z Energy must pay the Break Fee to Ampol if:
 - (i) at any time before this agreement is terminated a Competing Proposal is announced and the person making the Competing Proposal or one or more persons that Control, or are under the Control of, that person completes, within 15 months of the date of termination, a transaction in all material respects of the kind referred to in the definition of Competing Proposal;
 - (ii) at any time before this agreement is terminated, any Z Energy Director fails to make the recommendation, or any Z Energy Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking or makes any



statement materially inconsistent with that recommendation or that undertaking, except:

- (A) in response to a Superior Proposal and then subject to Z Energy's full compliance with clause 12.8; or
 - (B) where, subject to clause 13.2(b), the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or
 - (iii) Ampol terminates this agreement as permitted under clause 14.1(a), 14.1(b) or 14.1(d) due, in relation to termination under clause 14.1(d), to a Prescribed Occurrence occurring on or after the date of this agreement (but not, for the avoidance of doubt, where Ampol terminates this agreement as permitted under clause 14.1(d) due to a Material Adverse Change); or
 - (iv) either party terminates this agreement under clause 12.11.
- (b) If the exception to paragraph 13.2(a)(ii)(B) applies, the Break Fee will nonetheless be payable by Z Energy to Ampol if, prior to the issue of the Independent Adviser's Report concluding that the Consideration was not within or above the Independent Adviser's valuation range, a Competing Proposal is received by Z Energy or made public and within 15 months after the date that Competing Proposal is received or becomes public, the person making the Competing Proposal or one or more persons that Control, or are under the Control of, that person completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal.

13.3 Circumstances where Ampol Regulatory Approval Break Fee payable

Subject to clause 13.6 and clause 13.8, Ampol must pay the Ampol Regulatory Approval Break Fee if this agreement is terminated:

- (a) by Z Energy under clause 14.5 because of a material breach by Ampol of its undertakings with respect to satisfying the NZCC Condition and the OIO Conditions under clause 3.3 or clause 3.4 (unless the NZCC Condition or the OIO Condition is nonetheless satisfied by the End Date); or
- (b) by either party under clause 14.5 because of the failure to satisfy the OIO Condition or the NZCC Condition by the End Date in accordance with the terms of this agreement (or clause 14.8 following such failure), other than where such failure is due to a breach by Z Energy of its undertakings with respect to satisfying the NZCC Condition or the OIO Condition under clause 3.3 or 3.4.



13.4 **Circumstances where Reverse Break Fee payable**

Subject to clauses 13.6 and clause 13.8, Ampol must pay the Reverse Break Fee to Z Energy if Z Energy terminates this agreement as permitted under clause 14.2(a), (b) or (c) (and not, for clarity, under clause 14.2(d)).

13.5 **Payment of Break Fees**

If the Break Fee, Ampol Regulatory Approval Break Fee or Reverse Break Fee become payable under this agreement, Z Energy or Ampol (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 10 Business Days after receipt of a written demand for payment from the other party.

13.6 **Break Fee or Reverse Break Fee not payable**

Notwithstanding anything else in this agreement:

- (a) none of the Break Fee, Ampol Regulatory Approval Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective;
- (b) each of the Break Fee, Ampol Regulatory Approval Break Fee and Reverse Break Fee is payable only once;
- (c) in the event that Z Energy pays the Break Fee under this clause 13, in no circumstances will Ampol be required to pay the Ampol Regulatory Approval Break Fee or the Reverse Break Fee (and vice versa); and
- (d) in the event that Ampol pays the Reverse Break Fee under this clause 13, in no circumstances will Ampol be required to pay the Ampol Regulatory Approval Break Fee (and vice versa).

13.7 **Sole and exclusive remedy**

- (a) Ampol acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Ampol in connection with any event or occurrence referred to in clause 13.2 and Z Energy is not liable for any loss or damage arising in connection with any such event or occurrence other than its obligation to pay Ampol the Break Fee under this clause 13.
- (b) Z Energy acknowledges and agrees that payment of the Ampol Regulatory Approval Break Fee or the Reverse Break Fee are the sole and exclusive remedy available to Z Energy in connection with any event or occurrence referred to in clause 13.3 and clause 13.4 respectively and Ampol is not liable for any loss or damage arising in connection with any such event or occurrence other than its obligation to pay Z Energy the Ampol Regulatory Approval Break Fee or Reverse Break Fee (as the case may be) under this clause 13.

13.8 **Amendments to Break Fee Arrangements**

If either of the following occurs:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee, Ampol Regulatory Approval Break Fee or Reverse Break Fee or the circumstances in which any of them is to be paid (the *Break Fee Arrangements*) as a condition of not opposing the Scheme; or



- (b) the Court requires any modification to a Break Fee Arrangement as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 13 to the extent required to give effect to the requirements of the Takeovers Panel or the Court, as the case may be, and, in the circumstances referred to in clause 13.8(b), the parties must give any required undertakings.

13.9 **Specific performance and other rights**

- (a) Subject to clause 13.7 and clause 13.11, nothing in this agreement precludes Z Energy from suing Ampol for specific performance or from otherwise terminating this agreement in accordance with its terms and/or suing Ampol for damages (the amount of which it is acknowledged will be limited to the amount of any Ampol Regulatory Approval Break Fee or Reverse Break Fee actually paid to Z Energy by Ampol in accordance with this agreement).
- (b) Subject to clause 13.7 and clause 13.10, nothing in this agreement precludes Ampol from suing Z Energy for specific performance or from otherwise terminating this agreement in accordance with its terms and/or suing Z Energy for damages (the amount of which it is acknowledged will be limited to the amount of the Break Fee actually paid to Ampol by Z Energy in accordance with this agreement).

13.10 **Z Energy's limitation of liability**

Notwithstanding any other provision of this agreement:

- (a) the maximum aggregate liability of Z Energy to Ampol under or in connection with this agreement, howsoever arising and including in respect of any breach of this agreement, will be the amount of the Break Fee;
- (b) a payment by Z Energy of the Break Fee represents the sole and absolute liability of Z Energy to Ampol under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Z Energy to Ampol in connection with this agreement; and
- (c) the amount of the Break Fee payable to Ampol under this clause 13 shall be reduced by the amount of any loss or damage recovered by Ampol in relation to a breach of any other clause of this agreement.

13.11 **Ampol's limitation of liability**

Notwithstanding any other provision of this agreement:

- (a) the maximum aggregate liability of Ampol to Z Energy under or in connection with this agreement, howsoever arising and including in respect of any breach of this agreement, will be the amount of either (and not both) the Reverse Break Fee or the Ampol Regulatory Break Fee;
- (b) a payment by Ampol of either the Reverse Break Fee or the Ampol Regulatory Break Fee represents the sole and absolute liability of Ampol to Z Energy under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by Ampol to Z Energy in connection with this agreement; and



- (c) the amount of the Reverse Break Fee or the Ampol Regulatory Break Fee payable to Z Energy under this clause 13 shall be reduced by the amount of any loss or damage recovered by Z Energy in relation to a breach of any other clause of this agreement.

13.12 Trigger Dispute

- (a) A Trigger Dispute is to be provisionally determined in accordance with clauses 13.12 - 13.14.
- (b) If a Trigger Dispute arises, the party contending that the relevant event has occurred must, as soon as reasonably practicable, deliver a notice specifying the details and particulars of its position, the facts upon which it relies, and enclosing copies of the documents upon which it relies and a statement (not more than 10 standard pages) explaining the rationale for its position on the Trigger Dispute. Such statement shall be signed or endorsed by a senior manager or director of the relevant party.
- (c) The other party must, within 10 Business Days of the receipt of the documents provided for in clause 13.12(b) above, deliver a notice specifying the details and particulars of its position, the facts upon which it relies, and enclosing copies of the documents upon which it relies and a statement (not more than 10 standard pages) explaining the rationale for its position on the Trigger Dispute. Such statement shall be signed or endorsed by a senior manager or director of the relevant party.
- (d) Following exchange of statements in accordance with clause 13.12(c), the parties respective Chief Executive Officers (or any nominated representatives of such persons) shall endeavour in good faith to reach resolution on the Trigger Dispute within five Business Days.

13.13 Expert Determination

If the Trigger Dispute is not resolved within 10 Business Days of the exchange of the documents provided for under clause 13.12(c):

- (a) either party may, by written notice to the other, refer the Trigger Dispute to the Expert to be determined in accordance with sub-paragraphs (b) to (g) below (such Expert to be appointed jointly by the parties on the basis of these provisions);
- (b) within 10 Business Days of the Expert being appointed, the party referring the Trigger Dispute to the Expert must provide the Expert (copying the other party) with:
 - (i) this agreement;
 - (ii) the statements provided in accordance with clause 13.12;
 - (iii) statement(s) of evidence signed or endorsed by a senior manager or director of the relevant party in reply to the material provided by the other party under clause 13.12(c), together with any additional documents referred to in the statement(s); and



- (iv) written submissions of not more than 10 standard pages in support of that party's position;
- (c) within 10 Business Days of receiving the documents specified in clause 13.13(b), the other party must provide the Expert (copying the other party) with:
 - (i) statement(s) of evidence signed or endorsed by a senior manager or director of the relevant party in rejoinder to the statement(s) of evidence provided by the other party under clause 13.13(b)(iii), together with any additional documents referred to in its statement(s); and
 - (ii) written submissions of not more than 10 standard pages in support of that party's position;
- (d) the parties shall procure that the Expert shall make his/her determination (with reasons which substantiate the determination) within 4 weeks of receipt of the information under clause 13.13(c);
- (e) in determining the dispute, the Expert must act as an expert and not an arbitrator;
- (f) the parties agree that there will be no ex parte communication between any party and the expert regarding any matter in the Trigger Dispute and that all written communications by any party to the Expert will be copied to the other party; and
- (g) the Expert's fees will be borne equally by the parties.

13.14 Determination is provisional only

- (a) If the Expert determines that a payment is required to be made by a party under this clause 13, then such payment shall be made promptly in accordance with clause 13.14(c).
- (b) After either:
 - (i) the Expert delivers a decision on the Trigger Dispute; or
 - (ii) the Expert has failed to deliver a decision on the Trigger Dispute within eight weeks of receipt of the information under clause 13.13(c), whichever is earlier,

either party is at liberty to commence proceedings in the New Zealand courts for the final determination of the Trigger Dispute and any other related issues, provided that, if the Expert decides that a payment is required to be made by a party under this clause 13, such payment must be made by that party in accordance with clause 13.14(a) and clause 13.14(c) before commencing proceedings.

- (c) The party required to make a payment under clause 13.14(a) must:



- (i) make such payment within 20 Business Days of the Expert's determination; or
- (ii) if it wishes to further litigate the merits of the Trigger Dispute, within 20 Business Days of the Expert's determination:
 - (A) make such payment into a solicitor's trust account to be held in escrow pending final determination of the Trigger Dispute by a court, from which no appeal has been or could be taken; and
 - (B) file proceedings in the High Court in respect of the Trigger Dispute and continue thereafter to pursue such proceedings expeditiously.
- (d) It is acknowledged and agreed that:
 - (i) the purpose of clauses 13.12 to 13.14 (inclusive) is to deliver a provisional payment outcome but without prejudicing either party in relation to the further litigation of the underlying Trigger Dispute; and
 - (ii) none of the conclusions or findings in the Expert's determination in any way limit the parties' ability to have the merits of the Trigger Dispute determined on the merits, de novo and afresh through proceedings in the New Zealand courts.

14 TERMINATION

14.1 Events affecting the Z Energy Group

Subject to clause 14.3, Ampol may terminate this agreement by giving notice in writing to Z Energy before 8.00am on the Implementation Date if:

- (a) Z Energy is in breach of any Z Energy Warranty or any event occurs or circumstance arises that would cause any Z Energy Warranty to be untrue as at 8.00am on the Implementation Date, where the consequences of that breach (other than in respect of a Fundamental Warranty) are material in the context of the Scheme and the Z Energy Group (taken as a whole);
- (b) Z Energy is in breach of any Z Energy Undertaking or any other provision under this agreement and that breach is material in the context of the Scheme, or to the Z Energy Group taken as a whole. For the avoidance of doubt, it will be a material breach of this agreement if any Z Energy Director fails to make the recommendation, or any Z Energy Director fails to give the undertaking, referred to in clause 8.1 or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking, except where there is a Superior Proposal in full compliance with clause 12.8(a) or where the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares;
- (c) the Condition set out in clause 3.1(d) is not satisfied (or waived by Ampol under clause 3.5) by the End Date;



- (d) a Material Adverse Change or a Prescribed Occurrence occurs on or after the date of this agreement; or
- (e) clause 12.11 applies and Z Energy has not already terminated this agreement.

14.2 **Events affecting Ampol**

Subject to clause 14.3, Z Energy may terminate this agreement by giving notice in writing to Ampol before 8.00am on the Implementation Date if:

- (a) a breach of any Ampol Warranty or any event occurs or circumstance arises that would cause any Ampol Warranty to be untrue as at 8.00am on the Implementation Date where the consequences of that breach are material in the context of the Scheme;
- (b) Ampol is in breach of any Ampol Undertaking or any other provision of this agreement and that breach is material in the context of the Scheme or to the Ampol Group taken as a whole;
- (c) an Insolvency Event occurs in respect of Ampol; or
- (d) clause 12.11 applies and Ampol has not already terminated this agreement.

14.3 **Notice of termination**

A party may only exercise a right of termination under clause 14.1 or clause 14.2 if:

- (a) the party wishing to terminate has given notice to the other party setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 8.00am on the Implementation Date; and
- (c) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 8.00am on the Implementation Date.

14.4 **Recommendation and Independent Adviser's Report**

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if the Independent Adviser's Report concludes prior to the Scheme Meeting that the Consideration is below the Independent Adviser's valuation range for the Shares.

14.5 **Regulatory Conditions not satisfied**

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if:

- (a) any of the Regulatory Conditions that are for the benefit of that party (or both parties) are not satisfied by the End Date;
- (b) the relevant Regulatory Conditions, if capable of waiver under clause 3.5, have not been waived by the End Date; and



- (c) the terminating party has complied in all material respects with its obligations under clauses 3.3 and 3.4 in relation to the satisfaction of the relevant Regulatory Condition.

14.6 **Scheme Resolution not passed**

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if:

- (a) the Scheme Meeting is held but the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; and
- (b) the terminating party has complied in all material respects with its obligations under this agreement.

14.7 **Court determines not to grant the Final Orders**

Subject first to complying with clauses 7.3 and 7.4, either party may terminate this agreement by giving notice in writing to the other party if the Court determines not to grant the Final Orders and the terminating party has complied in all material respects with its obligations under this agreement.

14.8 **End Date**

Either Z Energy or Ampol may terminate this agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that the terminating party's failure to comply with its obligations under this agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

14.9 **Effect of termination**

If this agreement is terminated under this clause 14 then:

- (a) except as provided in clause 14.9(c), all the provisions of this agreement cease to have effect and each party is released from its obligations to further perform this agreement;
- (b) each party retains all rights that it has against the other party in respect of any breach of this agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 14 and each of the Surviving Clauses survive termination of this agreement.

15 **ANNOUNCEMENTS**

15.1 **Initial announcements**

As soon as reasonably practicable after this agreement is signed Z Energy must issue an announcement in a form agreed with Ampol and including a statement that:

- (a) each Z Energy Director recommends that Shareholders vote in favour of the Scheme; and
- (b) each Z Energy Director undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,



in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

15.2 **Other announcements**

Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this agreement other than:

- (a) the announcement referred to in clause 15.1;
- (b) in the case of Z Energy, any administrative information in relation to the Shareholders approving the Scheme at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;
- (c) with the written consent of the other party, which must not be unreasonably withheld or delayed; or
- (d) if required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or the ASX Listing Rules, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement,

provided that the obligations in this clause will not prevent Ampol or Z Energy from responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this agreement, including this clause 15.2.

16 **PAYMENTS**

16.1 **Manner of payments**

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this agreement must be made in NZ\$ by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

16.2 **Default interest**

If a party defaults in making any payment when due of any sum payable under this agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 5% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.



17 GST

17.1 Interpretation

Words and expressions that are defined in the GST Act have the same meaning when used in this clause 17. For the purposes of this clause 17, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

17.2 Consideration exclusive of GST

For avoidance of doubt, the parties agree that the supply of Shares pursuant to this agreement is an exempt supply of a financial service and therefore not subject to GST. All other stated amounts payable or consideration to be provided under or in connection with this agreement do not include GST (GST Exclusive Consideration).

17.3 Payment of GST

If GST is chargeable on any supply made under or in connection with this agreement the recipient must pay to the party that has made or will make the supply (the *Supplier*), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the *Additional Amount*). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued a tax invoice (or other similar document or information) under clause 17.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

17.4 Tax invoice or taxable supply information

For any supply to which clause 17.3 applies, the Supplier must issue a tax invoice (or other similar document or information) which complies with the GST Act.

17.5 Adjustments

If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this agreement, the GST payable on that supply will be recalculated to reflect that adjustment, a debit note or credit note (or other similar document or information) will be issued as required by the GST Act and an appropriate payment will be made between the parties.

17.6 Input tax credits

Notwithstanding any other provision of this agreement, if an amount payable under or in connection with this agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates.



18 NOTICES

18.1 Manner of giving notice

Any notice or other communication to be given under this agreement must be in writing (which includes email) and may be physically delivered or sent by email to the party to be served as follows:

(a) to Z Energy at:

Address: 3 Queens Wharf, Wellington Central, Wellington,
6011, New Zealand

Email: debra.blackett@z.co.nz

For the attention of: Debra Blackett

with a copy (which does not constitute notice) to:

Address: Chapman Tripp, Level 34, PwC Tower, 15 Customs
Street, Auckland Central, Auckland 1010

Email: josh.blackmore@chapmantripp.com /
roger.wallis@chapmantripp.com

For the attention of: Josh Blackmore and Roger Wallis

(b) to Ampol at:

Address: 29-33 Bourke Road Alexandria NSW 2015

Email: secretariat@ampol.com.au

For the attention of: Company Secretary

with a copy (which does not constitute notice) to:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland
Street, Auckland 1010

Email: haydn.wong@bellgully.com /
james.gibson@bellgully.com

For the attention of: Haydn Wong and James Gibson

or at any such other address or email address notified for this purpose to the other parties under this clause 18.1.

18.2 When notice given

Any notice or other communication is deemed to have been given:

(a) if delivered, on the date of delivery but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or



communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt; or

- (b) if sent by email:
 - (i) between 9am and 5pm on a Business Day in the jurisdiction of the recipient (as recorded on the device from which the sender sent the email), at the time of transmission unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message); or
 - (ii) if clause 18.2(b)(i) does not apply, at 9am on the Business Day most immediately after the time of sending in the jurisdiction of the recipient.

18.3 **Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

18.4 **Documents relating to legal proceedings**

This clause 18 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this agreement.

19 **GENERAL**

19.1 **Amendments**

- (a) This agreement may only be amended prior the Scheme becoming Effective.
- (b) Any amendment to this agreement will only be effective if it is in writing and signed by all the parties.
- (c) Notwithstanding clauses 11.1(c) and 11.2(c) this agreement may be varied by the parties to it without the approval of any Z Energy Indemnified Person, any Ampol Indemnified Person or any director, officer or employee of Z Energy or of any other member of the Z Energy Group.

19.2 **Assignments**

None of the rights or obligations of a party under this agreement may be assigned, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

19.3 **Costs**

Except as otherwise expressly provided in this agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this agreement, the Scheme and the Deed Poll.



19.4 **Entire agreement**

This agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreement and the Information Sharing Protocols.

19.5 **Execution in counterparts**

This agreement may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this agreement by executing a counterpart. Scanned signatures are taken to be valid and binding to the same extent as original signatures.

19.6 **Exercise and waiver of rights**

The rights of each party under this agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non exercise of any such right is not a waiver of that right.

19.7 **Further assurance**

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this agreement.

19.8 **Severability**

The provisions contained in each clause of this agreement are enforceable independently of each other clause of this agreement and the validity and enforceability of any clause of this agreement will not be affected by the invalidity or unenforceability of any other clause.

20 **GOVERNING LAW AND JURISDICTION**

20.1 **Governing law**

This agreement and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.

20.2 **Jurisdiction**

The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



20.3 **Service of process**

Ampol:

- (a) appoints Haydn Wong or James Gibson of Bell Gully as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this agreement; and
- (b) will ensure that at all times prior to the Implementation Date or termination of this agreement, the agent noted in clause 20.3(a) or a replacement appointed by Ampol and notified to Z Energy, is authorised and able to accept service of process and other documents on its behalf in New Zealand.



EXECUTION PAGE


EXECUTED on behalf of **AMPOL LIMITED**



Signature of director

Steven Gregg

Name of director



Signature of director ~~/company~~
~~secretary~~

Matthew Halliday

Name of director ~~/company secretary~~

EXECUTED on behalf of **Z ENERGY LIMITED**

Signature of director

Name of director

Signature of director

Name of director



EXECUTION PAGE

EXECUTED on behalf of **AMPOL LIMITED**

Signature of director

Signature of director / company secretary

Name of director

Name of director / company secretary

EXECUTED on behalf of **Z ENERGY LIMITED**

Signature of director

Abby Foote

Name of director

Signature of director

Mark Cross

Name of director



SCHEDULE 1 – PRESCRIBED OCCURRENCES

- 1 Z Energy or another member of the Z Energy Group authorises, declares, pays, or makes any dividends, bonuses or other payments or distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any share buybacks, redemptions or other form of capital reduction), other than:
 - (a) any distribution from a wholly owned Z Energy Group member to Z Energy or another wholly owned Z Energy Group member; or
 - (b) a Permitted Dividend.
- 2 Any Z Energy Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issuing of shares by a wholly owned Z Energy Group member to Z Energy or another wholly owned Z Energy Group member.
- 3 Z Energy or a member of the Z Energy Group:
 - (a) altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the Z Energy Group; or
 - (b) converting all or any of the Shares into a larger or smaller number.
- 4 Any alteration to the constitutional documents of any member of the Z Energy Group.
- 5 An Insolvency Event occurs in respect of Z Energy, or an Insolvency Event occurs in respect of another member of the Z Energy Group that is material to the Z Energy Group taken as a whole.
- 6 A resolution is passed for any amalgamation of any member of the Z Energy Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Z Energy and/or one or more wholly owned Z Energy Group member).
- 7 The Shares cease to be quoted, or are suspended from trading for a period of longer than three trading days, on the NZX or the ASX (other than in connection with implementation of the Scheme).
- 8 A member of the Z Energy Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any member of the Z Energy Group becoming a subsidiary of Ampol or under Ampol's control, which is material in the context of the Z Energy Group taken as a whole (unless approved in writing by Ampol or as expressly provided for in the Z Energy Disclosure Letter).
- 9 A member of the Z Energy Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies



the terms of employment of, or terminates the employment of, any of its directors, officers or members of the Z Energy Executive Team, other than within the exceptions provided in clauses 9.2(f)(xiv) or 9.3 or on the basis of retirement by rotation under the NZX Listing Rules.

- 10 A member of the Z Energy Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than as permitted under clause 6.5 in respect of the PRLTIP.
- 11 A member of the Z Energy Group enters into a transaction with a Related Party (other than a Related Party that is also a member of the Z Energy Group) that is material to the Z Energy Group taken as a whole.
- 12 Z Energy or another Z Energy Group member amends (or agrees to amend) in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or enters into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.
- 13 The board or shareholders of a Z Energy Group member passes a resolution or to do or authorise the doing of any act or matter referred to in any of paragraphs 1 to 12 above.



SCHEDULE 2 – Z ENERGY WARRANTIES AND UNDERTAKINGS

Part 1 - Z Energy Warranties

- 1 Z Energy is a corporation validly existing under the laws of New Zealand.
- 2 Z Energy has the power to execute and deliver this agreement and to perform its obligations under this agreement and the Scheme, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
- 3 Z Energy's obligations under this agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by Z Energy of this agreement and the performance of its obligations under this agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgement, award, injunction, decree, rule or regulation by which Z Energy is bound.
- 5 As at the date of this agreement, Z Energy's capital structure is as set out in Schedule 4 Part A, and the Z Energy Group's capital structure is as set out in Part B and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the Z Energy Group on issue, nor has any member of the Z Energy Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any Third Party.
- 6 As at 8.00am on the Implementation Date, there will be on issue no more than 519,289,407 Shares, and no securities, options, performance rights or instruments will be outstanding or become outstanding which give (or may give) any right to or which may become convertible into Shares.
- 7 Z Energy has filed with the Registrar, NZX and ASX all documents required to be filed with the Registrar, NZX or ASX, including pursuant to NZX Listing Rule 3.1 (*Z Energy Reporting Documents*) and is not in breach of its continuous and periodic disclosure obligations under the Companies Act, the NZX Listing Rules or the ASX Listing Rules and is not relying on the carve-out in NZX Listing Rule 3.1 to withhold any information from public disclosure. The Z Energy Reporting Documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later Z Energy Reporting Document.
- 8 The Due Diligence Material has been prepared and provided in good faith and, as far as Z Energy is aware, as at the date it was prepared, the Due Diligence Material was true and accurate in all material respects and no information that has been included in the Due Diligence Material was, when given, materially false or misleading, including by omission.



- 9 As at the date of this agreement, Z Energy is not aware of any material circumstance which has not been disclosed in the Due Diligence Material and which might reasonably be expected materially and adversely to affect the financial position, business, assets, prospects or profitability of the Z Energy Group or the value of the Shares, or which might otherwise reasonably be expected to be material to a purchaser of the Shares.
- 10 No member of the Z Energy Group has a legal or equitable interest in land that has not been fairly disclosed in the Due Diligence Material.
- 11 No Prescribed Occurrence has occurred on or after the date of this agreement.
- 12 Each member of the Z Energy Group has complied in all material respects with all New Zealand and foreign laws and regulations applicable to them, has all material Authorisations for them to conduct the business of the Z Energy Group as presently being conducted and, so far as Z Energy is aware, no member of the Z Energy Group is under investigation with respect to the violation of any laws, regulations or applicable Authorisations.
- 13 As at the date of this agreement, Z Energy is not in negotiations or discussions (other than with Ampol and its Representatives) with any party relating to, or which may reasonably be expected to lead to, any Competing Proposal.
- 14 The execution of this agreement by Z Energy will not affect any waiver or amendment of any standstill agreement or arrangement between Z Energy and any person other than a member of the Ampol Group.
- 15 Z Energy Group does not have any outstanding financing (other than, for the avoidance of doubt, foreign exchange hedging which has been fairly disclosed in the Due Diligence Material or which is entered into in the ordinary course of business during the period commencing on the date of this agreement and ending the Implementation Date) that is not reflected in its financial statements and notes thereto for the year ended 31 March 2021, and since 31 March 2021 no member of Z Energy Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
- 16 Other than as fairly disclosed in the Due Diligence Material, there is no current or, so far as the Z Energy is aware on the date of this agreement, pending or threatened claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Z Energy Group of more than \$2,000,000.

Part 2 - Z Energy Undertakings

- 1 Z Energy will ensure that the Z Energy Information:
 - (a) is prepared in good faith and on the understanding that each of the Ampol Indemnified Parties will rely on that information for the purposes of considering and approving the Ampol Information in the Scheme Booklet;
 - (b) complies with the Companies Act, FMCA and all other applicable laws and the NZX Listing Rules and ASX Listing Rules; and



- (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 Z Energy will provide to Shareholders and Ampol all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Z Energy Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission.
- 3 All information provided by or on behalf of Z Energy to the Independent Adviser will be provided in good faith and:
 - (a) to the extent such information relates to topics or matters in respect of which information has also been made available to Ampol as part of the Due Diligence Material, relates to time periods prior to the date of this agreement and such information is material as it relates to the assessment of the value of the Scheme Shares, that information will be consistent in all material respects with the information made available to Ampol in relation to the same topics or matters; and
 - (b) on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive including by omission.



SCHEDULE 3 – AMPOL WARRANTIES AND UNDERTAKINGS

Part 1 - Ampol Warranties

- 1 Ampol is a corporation validly existing under the laws of its place of incorporation.
- 2 Ampol has and, in relation to the Deed Poll, will have upon execution of the Deed Poll, the power to execute and deliver and to perform its obligations under this agreement and the Deed Poll, and has taken or, in relation to the Deed Poll, will take prior to execution of the Deed Poll, all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
- 3 The obligations of Ampol under this agreement are, and the obligations of Ampol under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
- 4 The execution and delivery by Ampol of this agreement and the execution and, in due course, delivery by Ampol of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which Ampol is bound.
- 5 As at 8.00am on the Second Court Date Ampol will have binding agreements in place to fund its obligation to pay the Consideration in accordance with the Scheme and the Deed Poll conditional only upon:
 - (a) the Court approving the Scheme and the Scheme becoming Effective; and
 - (b) the Conditions (to the extent they have not been satisfied or waived prior to the Second Court Date) and other customary conditions precedent to draw down.

Part 2 - Ampol Undertakings

- 1 Ampol will ensure that the Ampol Information:
 - (a) is prepared in good faith and on the understanding that each of the Z Energy Indemnified Parties will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;
 - (b) complies with the Companies Act and the FMCA and all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet is sent to Shareholders.
- 2 Ampol will provide to Z Energy all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date



of the Scheme Meeting which is necessary to ensure that the Ampol Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.

- 3 All information provided by or on behalf of Ampol to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.
- 4 Subject to the Companies Act and the Scheme becoming Effective, Ampol undertakes in favour of Z Energy and each Z Energy Indemnified Party that it will:
 - (a) subject to clause 5 below, for a period of 7 years from the Implementation Date, ensure that the constitutions of Z Energy and each Z Energy Group member continue to have equivalent obligations to those currently contained in their constitutions at the date of this agreement that provide for each company to indemnify each of its current and former directors and officers against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Z Energy Group; and
 - (b) procure that Z Energy and each Z Energy Group member complies with any provisions in deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time (provided that such deeds have been fairly disclosed in the Due Diligence Material) and without limiting the foregoing, Ampol will not, and will procure that no member of the Z Energy Group will, vary or cancel the D&O Run-off Policy put in place in accordance with clause 11.3, subject to clause 5 below, for a period of 7 years from the retirement date of each director and officer. For the avoidance of doubt, this clause does not intend to impose any obligation on Ampol to pay for run-off insurance or any further insurance to achieve these purposes.
- 5 The undertakings contained in clause 4 above are given until the earlier of the end of the relevant period specified in that clause or the relevant Z Energy Group member ceasing to be part of the Ampol Group.



SCHEDULE 4 – CAPITAL STRUCTURE

Part A – Z Energy

Type of security	Total number on issue
Quoted Ordinary Shares (including treasury shares and Restricted Shares)	520,136,969
Treasury shares	1,968,326
Restricted Shares	199,125
Performance Rights	3,238,616

Part B – Z Energy Group

Entity name	Total number on issue	Class	Name of shareholder(s)
Z Energy 2015 Limited	12,500,001	Ordinary	Z Energy Limited
Flick Energy Limited	58,001,802	Ordinary	Z Energy Limited (70.17%) Other shareholders (29.83%)
Z Energy ESPP Trustee Limited	1	Ordinary	Z Energy Limited
Z Energy LTI Trustee Limited	1	Ordinary	Z Energy Limited



SCHEDULE 5 - STANDARD OIO CONDITIONS

For the purposes of clause 3.1(a)(i) of this agreement, the terms and conditions are:

- (a) Ampol must acquire the Shares and the land that is the subject of the application by the date stated in the consent, otherwise the consent will lapse or become invalid and Ampol must not acquire the Shares or the land that is the subject of the application;
- (b) the requirement that Ampol or the Ampol Nominee must acquire the Shares and the land that is the subject of the application using the acquisition, ownership and control structure described in Ampol's application, and that only Ampol or the Ampol Nominee as the consent holders may acquire the Shares, not any other subsidiary, trust or other entity;
- (c) the requirement for Ampol to notify the Overseas Investment Office (*OIO*) in writing within two months after the date of settlement confirming that settlement of the acquisition of the Shares took place, such notice to include:
 - (i) the date of settlement;
 - (ii) the final consideration paid (plus GST if any);
 - (iii) the structure by which the acquisition was made and who acquired the Shares; and
 - (iv) copies of transfer documents and settlement statements.
- (d) the requirement that the individuals with control of Ampol must remain not unsuitable to own or control the Shares;
- (e) the requirement that Ampol must notify the OIO within 20 working days if Ampol:
 - (i) becomes aware that it does not or any individual who controls Ampol does not meet any of the investor test factors listed in section 18A(4) of the Overseas Investment Act 2005;
 - (ii) ceases to be an overseas person;
 - (iii) disposes of all or any part of the Shares or the land the subject of the application; or
 - (iv) Ampol's New Zealand service address as stated in its application changes;
- (f) the requirement that Ampol report in writing annually to the OIO detailing progress of its business plan during the financial year;
- (g) the requirement that Ampol must allow a person appointed by the OIO to conduct an inspection any land which is the subject of the application for the consent (*Inspector*) for the purpose of monitoring compliance with the OIO consent conditions (*Inspection*), provided that Ampol has been given at least two weeks' written notice of the Inspection.



- (h) the requirement that, for the purpose of conducting an Inspection, Ampol must allow an Inspector to:
 - (i) gather information and provide that information to the OIO;
 - (ii) enter any land, including any building on it, other than a dwelling, which is the subject of the application for the consent;
 - (iii) remain for as long as is reasonably required to conduct the Inspection;
 - (iv) conduct surveys, inquiries, tests, and measurements;
 - (v) take photographs and video recordings; and
 - (vi) do all other things that are reasonably necessary to enable an Inspector to carry out an Inspection;
- (i) the requirement that Ampol must take all reasonable steps to facilitate an Inspection, including:
 - (i) directing its employees, agents, tenants or other occupiers to permit an Inspector to conduct an Inspection; and
 - (ii) being available, or requiring its agents, employees, tenants or other occupiers to be available at all reasonable times during an Inspection to facilitate access by an Inspector onto and across the land which is the subject of the application for the consent, including providing transport across the land if reasonably required.



SCHEDULE 6 – SUMMARY TIMETABLE

	Event	Indicative Date
1.	Ampol to submit its: (i) clearance application under Commerce Act 1986 to the New Zealand Commerce Commission; and (ii) application under the Overseas Investment Act 2005	Q4 CY2021
2.	Application for Initial Orders filed and First Court Date	Q1 CY2022
3.	Scheme Meeting	Q1 CY2022
4.	OIO Condition and NZCC Conditions satisfied	Q2 CY2022
5.	Final Orders Date and Implementation	Q2 CY2022



ANNEXURE 1 - SCHEME PLAN

SCHEME OF ARRANGEMENT PURSUANT TO PART 15 OF THE COMPANIES ACT 1993

PARTIES

Z ENERGY LIMITED ("Z Energy")

AMPOL LIMITED ("Ampol")

Each person who is registered in the Register as the holder of one or more Scheme Shares (together the "**Scheme Shareholders**")

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Scheme Plan, unless the context otherwise requires:

Ampol Nominee means [].

ASX means ASX Limited or the Australian Securities Exchange, as the context requires.

Business Day means any day other than a Saturday, Sunday, a statutory public holiday in Auckland, New Zealand or Sydney, Australia and excluding any day between 25 December 2021 and 4 January 2022 (both dates inclusive).

Companies Act means the Companies Act 1993.

Conditions means:

- (a) the conditions set out in clause 3.1 of the Scheme Implementation Agreement; and
- (b) such other conditions made or required by the Court under section 236(1) or section 237(1) of the Companies Act and approved in writing by Z Energy and Ampol in accordance with clause 3.2 of the Scheme Implementation Agreement.

Consideration means \$3.78 in respect of each Scheme Share held by a Scheme Shareholder, as adjusted in accordance with the Scheme Implementation Agreement, which is payable in cash.

Court means the High Court of New Zealand, Wellington Registry.

Deed Poll means the deed poll entered into by Ampol [and Ampol Nominee] in favour of the Scheme Shareholders.

Encumbrance means:

- (a) any security interest within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999 and any option, right to acquire, right of pre-emption, assignment by way of security or trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business); and
- (b) any agreement to create any of the foregoing.



End Date has the meaning given to that term in the Scheme Implementation Agreement

Final Court Orders means orders made, on application of Z Energy, that the Scheme is binding on Z Energy, Ampol, any Ampol Nominee, the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

Final Orders Date means the day on which the Final Court Orders are granted by the Court.

Funds has the meaning given to that term in clause 3.1.

Government Agency means any government, department, officer or minister of any government and any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity, and includes the Overseas Investment Office, the Takeovers Panel, and the Financial Markets Authority.

Implementation Date means the day on which the Scheme is to be implemented, being the date five Business Days after the Record Date, or such other date as Ampol and Z Energy agree in writing, and *Implementation* correspondingly means the time at which implementation commences with the first step under clause 4.1(a).

LINK means LINK Market Services Limited.

NZX means NZX Limited and, where the context requires, the main board financial market that it operates.

NZX Listing Rules means the NZX Listing Rules for the NZX Main Board.

Record Date has the meaning given to that term in the Scheme Implementation Agreement.

Register means the Share register maintained by LINK on behalf of Z Energy.

Registered Address means, in relation to a Shareholder, the address of that Shareholder shown in the Register as at the Record Date.

Scheme means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Z Energy and Ampol in writing.

Scheme Implementation Agreement means the scheme implementation agreement dated 10 October 2021 between Z Energy and Ampol.

Scheme Meeting means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) and 236A(2) of the Companies Act in respect of the Scheme (and including any meeting convened following any adjournment or postponement of that meeting).

Scheme Shareholder means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

Scheme Shares means all of the Shares on issue on the Record Date.

Share means a fully paid ordinary share in Z Energy.



Shareholder means a person who is registered in the Register as the holder of one or more Shares from time to time.

Takeovers Panel means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993.

Trading Halt Date means the date which is two Business Days after the Final Orders Date or such other date as Ampol and Z Energy agree in writing.

Trust Account has the meaning given to that term in clause 3.1.

Unconditional means all of the Conditions having been satisfied or, if capable of waiver in accordance with the Scheme Implementation Agreement, waived.

1.2 **Interpretation:** In this Scheme Plan, unless the context otherwise requires:

- (a) headings are to be ignored in construing this document;
- (b) the singular includes the plural and vice versa;
- (c) words of any gender include all genders;
- (d) a reference to a clause, is a reference to a clause of this Scheme Plan;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) reference to any document (including this Scheme Plan) includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (g) reference to a party, person or entity includes:
 - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
 - (ii) an employee, sub-contractor, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity;
- (h) written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form;
- (i) the words including or includes do not imply any limitation;
- (j) a reference to any time is a reference to that time in New Zealand; and
- (k) references to money or \$ are to New Zealand dollars.

1.3 **Things required to be done other than on a Business Day:** Unless otherwise indicated, if the day on which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.



1.4 **No contra proferentem:** No term or condition of this Scheme Plan will be construed adversely to a party solely because that party was responsible for the preparation of this Scheme Plan or a provision of it.

1.5 **Ampol Nominee:** Ampol may elect a directly or indirectly wholly-owned subsidiary of Ampol (*Ampol Nominee*) to acquire all of the Scheme Shares under the Scheme by giving written notice to Z Energy of the relevant subsidiary at least five Business Days before the First Court Date. If Ampol nominates an Ampol Nominee to acquire all of the Scheme Shares pursuant to the Scheme Implementation Agreement, Ampol will ensure that the Ampol Nominee completes the acquisition of the Scheme Shares, and Ampol will pay the Consideration on behalf of the Ampol Nominee, each in accordance with the terms of the Scheme Implementation Agreement and the Deed Poll.

2. CONDITIONS

2.1 **Conditions:** The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date; and
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Implementation Date.

3. CONSIDERATION INTO TRUST ACCOUNT

3.1 **Obligation to pay Consideration into Trust Account:** Subject to the Scheme Implementation Agreement not having been terminated and the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(d), (h), (i) and (j) of the Scheme Implementation Agreement), Ampol must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to Scheme Shareholders in a New Zealand dollar denominated trust account operated by LINK and notified by LINK to Ampol no later than 5.00pm on the Business Day falling three Business Days before the Implementation Date (the *Funds* and that account the *Trust Account*).

3.2 **Details of Trust Account:**

- (a) Subject to clauses 3.2(b), 5.4, 5.5 and 5.6, the Trust Account will be held and operated by LINK on the basis that the Funds are held on trust for Ampol and to its order, such that only Ampol may direct how the Funds will be paid from the Trust Account.
- (b) Clause 3.2(a) is subject to a standing written direction from Ampol to Z Energy and to LINK to make payment of the Consideration to the Scheme Shareholders in accordance with this Scheme Plan upon transfer of the Scheme Shares to Ampol under clause 4.1(a).
- (c) The details of the Trust Account will be provided to Ampol by (or on behalf of) LINK not less than three Business Days before the Implementation Date.

3.3 **Interest:** Any interest earned on the amount deposited in the Trust Account up to Implementation will be payable to Ampol by LINK as directed by Ampol (less bank fees and other third party charges relating to the Trust Account).



- 3.4 **Scheme not implemented:** Should the implementation of the Scheme not occur by 5.00pm on the Implementation Date for any reason, LINK will immediately repay the Funds to Ampol to such New Zealand dollar denominated account instructed to LINK by Ampol.

4. IMPLEMENTATION

- 4.1 **Implementation:** Subject to any amendments or variations as may be required by the Court, the conditions referenced in clause 2 being satisfied (to be confirmed to LINK by written notice given by Ampol and Z Energy prior to 9.00 am on the Implementation Date, which written notice must be so given immediately after 8.00am on the Implementation Date upon the conditions set out in clause 2 being satisfied), the Consideration having been deposited into the Trust Account in accordance with clause 3.1, commencing at 9.00 am on the Implementation Date, the following steps will occur sequentially:

- (a) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to the Ampol Nominee, and Z Energy must enter, or procure LINK enter, the name of Ampol Nominee in the Register as holder of all of the Scheme Shares; and
- (b) in accordance with the direction set out in clause 3.2(b), subject to compliance in full with clause 4.1(a), Z Energy must instruct LINK to pay or procure the payment from the Trust Account of the cash Consideration to each Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as set out in the Register as at the Record Date.

5. PAYMENT OF CONSIDERATION

- 5.1 **Method of payment:** The payment obligations under clause 4.1(b) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and Z Energy to make payments of New Zealand dollars by electronic funds transfer, LINK must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;
- (b) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and Z Energy to make payments of Australian dollars by electronic funds transfer, LINK must pay the Consideration to the Scheme Shareholder by electronic funds transfer of the relevant amount in Australian dollars to the bank account nominated by that Scheme Shareholder;
- (c) where a Scheme Shareholder that has an address outside of New Zealand and Australia has, prior to the Record Date, registered provided sufficient written instructions to enable LINK to make payment in foreign currency, LINK must pay that Consideration (less any applicable costs and fees) to such Scheme Shareholder (in the currency nominated by such Scheme Shareholder at such exchange rate that LINK may obtain to convert the New Zealand dollar amount of Consideration to that foreign currency); or
- (d) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a), 5.1(b) and 5.1(c) to enable payment to be made to such Scheme Shareholder in a manner contemplated



by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank) LINK must retain the Consideration owed to that Scheme Shareholder in the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

- 5.2 **Joint holders:** In the case of Scheme Shares held in joint names:
- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of Z Energy, nominated by the holder whose name appears first in the Register as at the Record Date; and
 - (b) any other document required to be sent under this Scheme Plan will be sent to either, at the sole discretion of Z Energy, the holder whose name appears first in the Register as at the Record Date or to the joint holders.
- 5.3 **Surplus in Trust Account:** To the extent that, following satisfaction of the obligations under clause 4.1(b), there is a surplus in the Trust Account, that surplus (less the aggregate amount of the Consideration retained in the Trust Account in accordance with clause 5.1(d) or clause 5.6(b), and less bank fees and other third party charges relating to the Trust Account) shall be promptly paid in full to Ampol.
- 5.4 **Holding on Trust:** Z Energy must, in respect of any monies retained by LINK pursuant to clause 5.1(d) or clause 5.6(b), instruct LINK to hold such monies in the Trust Account on trust for the relevant Scheme Shareholders for a period of two years and thereafter, subject to clause 5.6, to pay any remaining money in the Trust Account to Z Energy.
- 5.5 **Unclaimed monies:** During the period of two years commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a), 5.1(b) or 5.1(c), LINK must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a), 5.1(b) or 5.1(c), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a), 5.1(b) or 5.1(c) (or in any other manner approved by LINK and agreed to by that Scheme Shareholder).
- 5.6 **Orders of a court or Government Agency:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to Z Energy prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:
- (a) requires Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4.1(b), Z Energy will be entitled to procure, and Ampol will be deemed to have instructed LINK to ensure, that provision of that Consideration is made in accordance with that order or direction; or
 - (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(b), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with



clause 4.1(b) or clause 5.5 (as applicable) is permitted by that order or direction or otherwise by law,

and such provision or retention (as the case may be) will constitute the full discharge of Ampol's and Z Energy's obligations under clause 4.1(b) with respect to the amount so provided or retained.

5.7 **Exchange Rate:**

- (a) If a Scheme Shareholder elects to be paid in Australian dollars as contemplated by clause 5.1(b), the conversion of the Consideration into Australian dollars will be undertaken in a manner and at an exchange rate determined by LINK, and neither Z Energy nor Ampol will be responsible for (or have any liability in connection with) any such conversion.
- (b) If a Scheme Shareholder elects to be paid in a foreign currency as contemplated by clause 5.1(c), the conversion of the Consideration into such foreign currency will be undertaken in a manner and at an exchange rate determined by LINK, and neither Z Energy nor Ampol will be responsible for (or have any liability in connection with) any such conversion.

6. **DEALING IN SHARES**

6.1 **Trading Halt:**

- (a) Following the sealing of the Final Court Orders Z Energy will advise NZX and ASX of the grant of the Final Court Orders and, once known, the Trading Halt Date and Record Date and use its reasonable endeavours to procure that the NZX and ASX suspend trading in the Shares from the close of trading on the Trading Halt Date.
- (b) Z Energy must not accept for registration, nor recognise for any purpose (except a transfer to Ampol pursuant to this Scheme Plan and any subsequent transfer by Ampol or its successors in title), any transfer or transmission application or other request received after 7.00 pm on the Record Date or received prior to such time, but not in registrable or actionable forms.

6.2 **Register:**

- (a) Z Energy must register registrable transmission applications or registrable transfers of Shares received prior to the Trading Halt Date before 7.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Z Energy to register a transfer that relates to a transfer of Shares on which Z Energy has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares, or any interest in them, after 7.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Z Energy and Ampol shall be entitled to disregard any such disposal.
- (c) For the purposes of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, Z Energy must maintain the Register in accordance with the provisions of this clause 6 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.



- (d) From 7.00pm on the Record Date, each entry that is current on the Register (other than entries on the Register in respect of Excluded Shares), will cease to have effect except as evidence of entitlement to the Consideration in respect of the Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 7.00pm on that day, Z Energy must make available to Ampol in the form Ampol reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

7. GENERAL PROVISIONS

7.1 **Amendments to Consideration:** Ampol may increase the Consideration by written notice at any time to Z Energy prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the receipt of such notice by Z Energy.

7.2 **Title to and rights in Scheme Shares:**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Ampol will, at the time of transfer to Ampol [Nominee], vest in Ampol [Nominee] free from all Encumbrances and free from any restrictions on transfer of any kind.
- (b) Each Scheme Shareholder is taken to have warranted to Ampol [and Ampol Nominee] on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to Ampol [and Ampol Nominee] together with any rights and entitlements attaching to those Shares.

7.3 **Authority given to Z Energy:** Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date, irrevocably appoints Z Energy as its attorney and agent for the purpose of enforcing the Deed Poll against Ampol (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints Z Energy as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Z Energy accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of Z Energy's directors or senior managers.

7.4 **Binding effect of Scheme:**

- (a) The Scheme binds:
 - (i) Z Energy;
 - (ii) Ampol;



- (iii) any Ampol Nominee; and
 - (iv) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on the Scheme, did not vote at the Scheme Meeting, or voted against the Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Z Energy.

7.5 **End Date:** If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Ampol of any Funds deposited in accordance with clause 3 and the interest thereon (less bank fees and other third party charges relating to the Trust Account)).

7.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers or employees of Z Energy or Ampol, will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

7.7 **Successor obligations:** To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on Ampol or Z Energy that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of Ampol or Z Energy (as applicable) in which case the obligation will be satisfied as if performed by Ampol or Z Energy (as applicable).

7.8 **Governing law:**

- (a) This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by and must be construed in accordance with the laws of New Zealand.
- (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and the parties irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



ANNEXURE 2 - DEED POLL

This **Deed Poll** is made on

2021

- between** (1) **Ampol Limited** (*Ampol*)
- and** (2) **[any Ampol Nominee]** (*Ampol Nominee*)
- and** (2) **Each registered holder of Scheme Shares as at 7.00pm on the Scheme Record Date** (*Scheme Shareholders*)

Introduction

- A. Z Energy Limited (**Z Energy**) and Ampol are parties to the Scheme Implementation Agreement.
- B. Z Energy has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Z Energy, Ampol, and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Ampol [Nominee] and Ampol will provide or procure the provision of the Consideration to the Scheme Shareholders.
- C. Ampol is entering into this Deed Poll for the purpose of undertaking in favour of Scheme Shareholders to pay the Consideration [on behalf of Ampol Nominee] to Scheme Shareholders in accordance with the terms of the Scheme Plan.
- D. [Ampol Nominee is entering into this Deed as Ampol's nominee to acquire all of the Scheme Shares in accordance with the terms of the Scheme Plan in consideration for, and simultaneously with, the payment of the Consideration by Ampol on behalf of Ampol Nominee to Scheme Shareholders.]

It is agreed

1 DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

In this Deed, unless the context requires otherwise:

Final Orders means orders made on application of Z Energy, that the Scheme is binding on Z Energy, Ampol, [Ampol Nominee], the Scheme Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

Scheme Implementation Agreement means the scheme implementation agreement between Z Energy and Ampol Limited dated 10 October 2021;

Scheme Plan means the scheme plan attached as Annexure 1 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Ampol and Z Energy in writing and which are disclosed to the Court prior to the Court making the Final Orders; and

words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.



1.2 Interpretation

Clauses 1.2 and 1.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to “this Scheme Plan” are to be read as reference to “this Deed Poll”.

2 NATURE OF THIS DEED POLL

2.1 Third party rights and appointment of attorney

- (a) This Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to the Deed Poll.
- (b) Under the Scheme Plan, each Scheme Shareholder appoints Z Energy as the Scheme Shareholder’s attorney and agent to enforce this Deed Poll against Ampol with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder’s right to itself enforce this Deed Poll).

Notwithstanding clauses 2.1(a) and 2.1(b), this Deed Poll may be varied by Ampol and Z Energy in accordance with clause 7.2 without the approval of any Scheme Shareholder.

2.2 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (c) Ampol and Ampol Nominee have fully performed their respective obligations under this Deed Poll; or
- (d) this Deed Poll is terminated under clause 3.2.

3 CONDITIONS

3.1 Conditions

This Deed Poll, and the obligations of Ampol and Ampol Nominee under it, are conditional in all respects on the Scheme becoming Unconditional.

3.2 Termination

The obligations of Ampol and Ampol Nominee under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional, unless Ampol and Z Energy otherwise agree in writing.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then Ampol and Ampol Nominee are each released from their respective obligations to further perform this Deed Poll.



4 SCHEME CONSIDERATION

- (a) Subject to the Scheme Implementation Agreement not being terminated and the Scheme having become Unconditional (save for the Conditions set out in clauses 3.1(d), 3.1(h), 3.1(i) and 3.1(j) of the Scheme Implementation Agreement), Ampol undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by LINK in accordance with the Scheme Plan.
- (b) Subject to clause 3, Ampol irrevocably acknowledges and agrees that, subject to compliance in full by Z Energy with its obligations under clause 4.1(a) of the Scheme Plan, the Consideration deposited into the Trust Account must be, and will be, paid in accordance with clause 4.1(b) of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

5 WARRANTIES

[Each of Ampol and Ampol Nominee] warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into, and perform its obligations under, this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken, or will prior to the Implementation Date take, all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

6 NOTICES

6.1 Manner of giving notice

Any notice or other communication to be given under this Deed Poll must be in writing and may be physically delivered or sent by email to Ampol at:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street,
Auckland 1010

Email: james.gibson@bellgully.com /haydn.wong@bellgully.com

For the attention of: James Gibson and Haydn Wong



or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

6.2 **When notice given**

In the absence of earlier receipt, any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00 pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00 am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

6.3 **Proof of service**

In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

6.4 **Documents relating to legal proceedings**

This clause 6 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Deed Poll.

7 **GENERAL**

7.1 **Waiver**

- (a) Neither Ampol nor Ampol Nominee may rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of clause 7.1(a):
 - (i) conduct includes a delay in exercising a right;
 - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and



- (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

7.2 **Variation**

- (a) Subject to clauses 7.2(b) and 7.2(c), this Deed Poll may not be varied.
- (b) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between Ampol and Z Energy, in which event Ampol and, if applicable Ampol Nominee, will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that Ampol enters into a new deed poll which has the effect of reversing any variation under clause 7.2(b), then, if Ampol so agrees, Ampol and, if applicable, Ampol Nominee, must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

7.3 **Cumulative rights**

The rights, powers and remedies of Ampol, Ampol Nominee and Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, power or remedies provided by law independently of this Deed Poll.

7.4 **Assignment**

The rights and obligations of Ampol, Ampol Nominee and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.4 is invalid.

7.5 **Further assurance**

Ampol must, at its own expense, do all things reasonably required of it to give full force and effect to this Deed Poll and the transactions contemplated by it.

7.6 **Governing law and jurisdiction**

- (a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and Ampol and Ampol Nominee irrevocably submit to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.



EXECUTION

Executed as a deed poll.

Ampol Limited by

Director

Director / Company Secretary

Print Name

Print Name

[Ampol Nominee] Limited by

Director

Director

Print Name

Print Name

Confidential Appendix 6: Proposed Divestment Deed

[redacted]

Confidential Appendix 7: Relevant Ampol internal documents

[redacted]

Appendix 8: New Zealand fuel industry participants

Market participant	Overview of industry involvement
The Parties	
Gull	As set out in detail in section 2 above.
Z (including Challenge and Caltex)	<p>As set out in detail in section 3 above.</p> <p>Having acquired Chevron NZ (now known as “Z Energy 2015 Limited”), Z operates the Caltex network of retail service stations in New Zealand using the brand under licence from Chevron International.</p> <p>The Challenge brand is owned by Z. Challenge branded retail service stations are typically owned and operated by individual owners who set the retail price. The owners each have individual agreements with Farmlands to be supplied fuel. Farmlands is in turn supplied by Z.</p>
The larger competitors (excluding Z)	
BP	BP Oil New Zealand Limited
Mobil	Mobil Oil New Zealand Limited
The smaller competitors	
McKeown	<p>McKeown Group Limited – McKeown supplies bulk fuel to commercial customers and its own retail service stations.</p> <p>Its fuel is supplied by Z.</p>
Southfuels	<p>Southfuels distributes fuel and lubricants to the primary sector throughout New Zealand. Southfuels also delivers fuel to around eight of its own retail sites operating under the Southfuels or Northfuels brand, including some independently owned and operated sites.</p> <p>Its fuel is supplied by Z.</p>
Gas	Gasoline Alley Services Limited – Gas owns “g.a.s.” the retail service station brand, under which there are a large network of independently owned and operated retail service stations. Its fuel is supplied by BP.
RD	<p>RD Petroleum Limited – RD distributes bulk fuel, lubricants and petroleum related products to the rural, residential and commercial sectors, and to its own network retail service stations in the South Island. It operates tankers from bases in Nelson, the West Coast, Christchurch, Timaru, Dunedin and Invercargill.</p> <p>RD is owned 49% by BP and its fuel is supplied by BP.</p>
McFall	<p>McFall Fuel Limited – McFall primarily provides bulk fuel delivery services to commercial customers and delivers fuel its retail service stations.</p> <p>McFall is owned 49% by BP and its fuel is supplied by BP.</p>
NPD	<p>NPD Limited – NPD provides bulk fuel delivery services to commercial customers and its network of retail service stations and truck stops, including some that are independently owned and operated. NPD is traditionally strong in the South Island, but has recently expanded into the North Island with retail service stations from Auckland to New Plymouth. It is also looking to expand into Northland.</p> <p>NPD’s fuel is supplied by Mobil.</p>

Waitomo	<p>Waitomo Petroleum Limited – Waitomo provides bulk fuel delivery services to commercial customers and delivers fuel to its retail service stations and truck stops in the North Island. Waitomo has recently expanded into the South Island and Wellington regions and is actively looking for new sites in other regions.</p> <p>Waitomo’s fuel is supplied by Mobil.</p>
Allied (and Wealleans Allied)	<p>Allied Petroleum Limited – Allied delivers fuel to its network of retail service stations throughout New Zealand, including fuel stops, which primarily cater to commercial vehicles and do not sell petrol. Some of Allied Petroleum’s sites are independently owned and operated. Allied also provides bulk fuel delivery services to Mobil’s retail service station network, Mobil’s commercial customers, and its own commercial customers.</p> <p>Allied also has a 50% interest in Weallans Allied Petroleum Ltd. There are around four Weallans branded retail service stations.</p> <p>Allied’s fuel is supplied by Mobil.</p>
Foodstuffs	<p>Foodstuffs Fuel Limited - operates ‘convenience’ service stations at certain grocery retail sites (e.g., Pak’nSave supermarkets) in connection with Z.</p> <p>[redacted]</p>
Other industry participants	
Refining NZ	<p>The New Zealand Refining Company Limited – Refining NZ owns and operates the Marsden Point refinery. Refining NZ is owned 43% by BP, Mobil and Z. Refining NZ has decided to cease refining fuel at the Marsden Point refinery and instead will use the facilities at Marsden Point as an import-only terminal.</p>
COLL	<p>Coastal Oil Logistics Limited - COLL operates coastal shipping vessels to deliver fuel from the refinery at Marsden Point to various storage terminals around New Zealand. COLL is a joint venture company owned by BP, Mobil and Z. Gull does not participate.</p>
TOSL	<p>Timaru Oil Services Limited – TOSL is a new entry into the wholesale fuel import market which operates a recently built a storage terminal at the Port of Timaru. TOSL has sought to further expand by establishing a terminal in Tauranga, however, it was denied consent.</p> <p>TOSL has terminals around the Pacific Islands.</p>

Appendix 9: Competitive overlaps in each Local Retail Market

Please see paragraph 15.8 of the clearance application as to the methodology applied to conduct this overlaps analysis. The station analysis is conducted as at the beginning of October 2021.

No.	Gull station location	Competitors pre-transaction	Competitors post-transaction	Competitors present
1.	Kaiwaka, Kaiwaka	2	1	None
2.	Forrest Hill, Forrest Hill	2	1	None
3.	Hawera, Hawera	2	1	None
4.	Kawerau, Kawerau	2	1	None
5.	Ngatea, Ngatea	2	1	None
6.	Papakura, Papakura	2	1	None
7.	Sanson	2	1	None
8.	Tramway, Hamilton	2	1	None
9.	Whitianga, Whitianga (Mercury Bay)	2	1	None
10.	Bethlehem, Bethlehem	3	2	BP
11.	Feilding, Feilding	3	2	BP
12.	Gonville, Whanganui	3	2	BP
13.	Kumeu, Kumeu	3	2	BP
14.	Landing Road, Whakatane	3	2	BP
15.	Helensville, Helensville	3	2	GAS
16.	Melville, Melville	3	2	BP
17.	Opotiki, Opotiki	3	2	Mobil
18.	Paeroa, Paeroa	3	2	GAS
19.	Tauriko, Tauriko	3	2	BP
20.	Te Ngae Road, Lynmore	3	2	BP
21.	Te Puke, Te Puke	3	2	BP
22.	Waione, Wellington	3	2	Allied Petroleum
23.	Waipukurau, Waipukurau	3	2	Mobil
24.	Waiuku, Waiuku	3	2	Gas
25.	Wellsford, Wellsford	3	2	Mobil
26.	Te Irirangi, East Tamaki	3	2	Mobil
27.	Kaitaia, Kaitaia	3	2	BP
28.	Botany Downs, Burswood (Botany Downs)	3	2	BP
29.	Gisborne, Gisborne	3	2	Mobil
30.	Victoria Ave, Whanganui	3	2	BP
31.	Kingsland, Kingsland	4	3	GAS, Mobil
32.	Papatoetoe, Papatoetoe	4	3	GAS, Mobil
33.	Marua Road, Mt Wellington	4	3	BP, Mobil
34.	East Tamaki Road (Otara), Otara	4	3	Mobil, BP
35.	Roscommon Road, Wiri	4	3	Mobil, NPD

36.	Glen Eden, Glen Eden	4	3	Mobil, BP
37.	Greville Road, Pinehill	4	3	GAS, BP
38.	Henderson Valley, Henderson	4	3	BP, Mobil
39.	Matamata, Matamata	4	3	Waitomo, Mobil
40.	Mokoia, Birkenhead	4	3	BP, Mobil
41.	Portage Road, New Lynn	4	3	Mobil, BP
42.	Rifle Range Road, Taupo	4	3	BP, Mobil
43.	Saleyards	4	3	Mobil, Gas
44.	Sel Peacock Drive, Henderson	4	3	Mobil, BP
45.	Te Kuiti, Te Kuiti	4	3	BP, Waitomo
46.	Tremaine Avenue, Palmerston North (Roslyn)	4	3	Mobil, BP
47.	Hocking Street, Hocking Street	4	3	BP, Waitomo
48.	Takanini, Manurewa	4	3	BP, Mobil
49.	Cloverlea, Palmerston North	4	3	BP, Mobil
50.	Taharoto Road, Takapuna	4	3	BP, Mobil
51.	Mayfair, Hastings (Mayfair)	4	3	GAS, BP
52.	New Plymouth, New Plymouth	4	3	Mobil, BP
53.	Te Rapa, Te Rapa	4	3	Mobil, GAS
54.	Chapel Street, Masterton	5	4	Mobil, BP, GAS
55.	Woolston	5	4	Waitomo, BP, NPD
56.	Gore, Gore	5	4	McKeown, NPD, BP
57.	Lake Road, Koutu	5	4	BP, Mobil, Waitomo
58.	Morrinsville, Morrinsville	5	4	BP, Waitomo, Mobil
59.	Omahu Road, Hastings (Frimley)	5	4	BP, Allied Petroleum, Mobil
60.	Onehunga, Onehunga	5	4	GAS, Mobil, BP
61.	Stanmore Rd	5	4	NPD, Mobil, BP
62.	Taradale, Napier	5	4	BP, Waitomo, Allied Petroleum
63.	Hewletts Road, Hewletts Road	5	4	BP, Mobil, Waitomo
64.	Pukekohe, Pukekohe	5	4	Mobil, BP, Waitomo
65.	South Hagley	5	4	BP, NPD, Mobil
66.	Levin, Levin	5	4	Mobil, BP, Allied Petroleum
67.	Norton Road, Frankton	6	5	GAS, Mobil, BP, Waitomo

Overlaps analysis between Gull and sites Z supplies as a distributor

No.	Gull station location	Distributor within 2km	Competitors pre-transaction	Competitors post-transaction	Competitors present
1.	Tokoroa, Tokoroa	Challenge	4	3	BP, Mobil

Appendix 10: Gull Site List as at 26 October 2021

[redacted]