

IN THE MATTER of the Resource Management Act
1991.

AND

IN THE MATTER of Private Plan Change (PC135)
at Marsden Primary Centre by
GNLC Limited

**STATEMENT OF EVIDENCE BY RIAAN ELLIOT ON BEHALF OF THE NEW
ZEALAND REFINING COMPANY**

1.0 INTRODUCTION

1.1 My name is Riaan Elliot. I am the Environmental Affairs Manager for the New Zealand Refining Company¹ and I have been employed in this role for 5 years. I hold the qualification of Bachelor of Agricultural Science from Massey University and a Post Graduate Diploma in Applied Sciences (Environment) from Auckland University. I have more than 28 years experience in the Resource Management field including undertaking assessments of resource consent applications, compliance monitoring, incident investigation, enforcement, and the provision of expert evidence to Council hearings and the Environment, District and High Courts. As the Environmental Affairs Manager for Refining NZ, I am responsible for, amongst a number of other things, evaluating all plan changes that could impact upon the Company's operations.

1.2 Refining NZ is the country's only oil refinery and the leading supplier of refined petroleum products to the New Zealand market. As New Zealand's leading supplier of refined petroleum products, the Company is a major contributor to both the local community and the country's economy. The Company's Marsden Point Site and 170 km purpose built Refinery to Auckland Pipeline are identified as regionally significant pieces of infrastructure in the Operative Northland Regional Policy Statement.

1.3 Refining NZ lodged submissions and further submissions to proposed Plan Change 135.

1.4 For completeness, I confirm that I am authorised to present this evidence on behalf of Refining NZ. Please also note that I am not presenting technical expert evidence, and as such this brief should be read as company evidence expressing the position of Refining NZ.

2.0 SCOPE OF MY STATEMENT

2.1 My evidence will cover:

- a. An overview of the Company's operations, its location in relation to the land subject to the plan change and the potential adverse effects resulting; and

¹ hereafter referred to as 'Refining NZ' or 'the Company'

- b. The revised proposal and its effectiveness at addressing the potential environmental effects;
 - c. Section 16 implications; and
 - d. The relief sought.
- 2.2 In preparing this evidence I have considered (in no particular order) the proposed Plan Change documents, the submission and further submission documents, the Council Officer's Section 42A report and the evidence of a number of technical experts, including that of Mr Peter Ibbotson of Marshall Day Acoustics on behalf of the Applicant.

3.0 BACKGROUND AND SUBMISSION

- 3.1 As I noted in section 1.2 of this statement, the Company is New Zealand's only oil refinery. It's manufacturing site has occupied the current location at Marsden Point since its construction in 1961 and includes such facilities as a deep-water port and underground pipeline direct to the Wiri Terminal in South Auckland. The pipeline carries diesel, petrol and jet fuel. Approximately half of the Refinery's production is distributed via the pipeline, with the remainder transported via coastal tanker and road. Other products that are produced by the Refinery, including carbon dioxide, liquid sulphur, and roading bitumen, are predominantly transported by road. There is significant inbound traffic to the Refinery associated with the transport of fabricated components and machinery for maintenance work, shut downs and upgrades or expansion work. Many of the company staff and contractors come to site each day via bus. As a result, the road network servicing the Refinery site plays a critical role in the viability of the company's operations. The Refinery site is located approximately 4.5 kilometres from the area subject to the Plan Change.
- 3.2 The Operative Northland Regional Policy Statement has categorised the Refinery's operations as being Regionally Significant Infrastructure. Further, State Highway 15A that services the Refinery is also identified as Regionally Significant Infrastructure, as well as a Strategic Freight Route in the Northland Regional Land Transport Strategy.
- 3.3 As was identified in Refining NZ's primary submission, the Company is of the opinion that the proposed Plan Change (including its associated Assessment of Environmental Effects report) does not adequately address the operation of the Refinery, or the importance of State Highway 15A as the key transportation link to it. As such, the Company believes that, as publicly notified, the Plan Change is likely to give rise to potential reverse sensitivity effects on the legally established Refinery operations, from the establishment of noise sensitive activities that do not contain appropriate noise attenuation measures.
- 3.4 For completeness, the Company sought, through its submission and further submission, that the Proposal be declined on these grounds.

4.0 THE REVISED PROPOSAL

- 4.1 Following the close of submissions and further submissions, the Applicant modified the proposal by introducing '100 metre buffer areas'² adjacent to the State Highway and rail corridors. I understand that this modification was advanced on the basis that it would address potential reverse sensitivity effects from activities on the State Highway network.

² Hereon referred to as 'the buffer areas'.

- 4.2 The Company has considered the proposed amendments to the Proposal, including the implications of the changes to properties within and out of the buffer areas.
- 4.3 Mr Ibbotson has addressed the potential operational noise reverse sensitivity issues in section 7 of his evidence and within the supplementary report attached to that evidence. In particular, he has identified the separation of the Refinery and likely noise generated from its operations on the properties subject to this Plan Change. The Company has not commissioned a further acoustic expert to peer review Mr Ibbotson's conclusions. This reflects Marshall Day's knowledge of the Refinery and its operations (Marshall Day has done, and continues to do work for the Refinery) and our general comfort with the veracity of the advice they provide. Mr Ibbotson has identified the separation of the main Refinery operations from the Site and undertaken calculations regarding the degree of attenuation achieved as a result. The Company is comfortable with his conclusion that the establishment of sensitive activities within the Noise Zone 2 area will not require further attenuation measures to buildings, in order to ensure that the legally established noise generated from the Refinery operations is below the existing Operative District Plan attenuation standard.
- 4.4 Sections 7.5 to 7.8 of Mr Ibbotson's evidence address the potential reverse sensitivity effects associated with the operation of the State Highway. Whilst the assessment identifies that the Proposal is generally consistent with the appropriate New Zealand Transport Agency guidelines and recognised standards, it is unclear (to the Company) if the buffer area is of an adequate size to effectively mitigate the potential effects on sensitive activities from noise generated from State Highway 15A. At paragraph 7.8(a) of his statement, Mr Ibbotson concludes that the proposed provisions '*do not protect land outside of the 100-metre buffer*'. He goes on to conclude that the internal noise level for properties beyond the buffer area is in the range of 38 to 41 dB $L_{Aeq(24h)}$. My understanding is that this level is outside the current Operative District Plan level of 35 dB L_{Aeq} (with this also the standard proposed for within the buffer area). It is further noted that at section 6.5 of his evidence, Mr Ibbotson comments that the 35 dB L_{Aeq} standard does not provide '*the optimum level of amenity for sleep*'. As a result of this, the Company is concerned that the adoption of the proposed revised provisions may still result in potential reverse sensitivity noise effects for properties that exist beyond the buffer area. I note, in particular, that the retirement village development being advanced by the Applicant is directly adjacent to the buffer area and as such introduces a considerably large cluster of sensitive activities within an area that may not be adequately protected from noise generated by the State Highway.
- 4.5 Throughout his evidence, Mr Ibbotson has identified that the removal of the current noise attenuation standards will result in a reduction in construction costs associated with the establishment of noise sensitive activities. Further to this, he concludes that the amendments to both the noise generation and attenuation standards will likely 'alter the make-up' of activities within the area, by suppressing the development of noisier activities and encouraging the establishment of residential activities. The Company believes that both of these outcomes have the potential to negatively impact on its operations, if adequate controls are not in place to appropriately manage reverse sensitivity effects. Refining NZ is of the opinion that the Company should not bare any further costs or restrictions as a consequence of the operations of an aspirant resource user.

5.0 SECTION 16 IMPLICATIONS

- 5.1 As an owner of a large industrial facility, the Company is acutely aware of its obligations under various pieces of legislation and the contribution that it makes to the wellbeing of the community. As a result of this, the Company actively manages its business to ensure that it operates within the scope of its resource consents and the permitted activity standards of the various applicable planning instruments, amongst other things. These activities include the management of noise from the Site and compliance with the Operative Whangarei District Plan noise provisions. Whilst the Company works to ensure that the operations are within the permitted activity limits, it is subject to periodic noise complaints from properties within a range of locations from the plant, sometimes regardless of the level of noise generated at the Refining Site.
- 5.2 Section 16 of the Resource Management Act 1991 contains a requirement that the Company adopt the best practicable option to ensure that noise emissions from its Site do not exceed a reasonable level. The Company understands that this is a well litigated section of the Act and caselaw has directed that ensuring compliance with this standard may result in the Company undertaking actions that exceed its obligations under the Operative District Plan noise standards.
- 5.3 The evidence of Mr Ibbotson identifies that the noise generated by the Company's operations is likely to meet the District Plan noise standards. However, it is the Company's view that the establishment of additional sensitive activities within such a proximity of the Refinery increases the risk of additional noise complaints, particularly under the broader and overarching section 16 'reasonable noise' provisions. As a result, the establishment of an increased number of sensitive activities potentially encumber the Company's current and future operations. Given the Company's unique position in the Country and status as Regionally Significant Infrastructure, the imposition of any additional encumbrances is not aligned with the sustainable management purpose of the Resource Management Act 1991.

6.0 RELIEF SOUGHT

- 6.1 The Company's submission requested that the proposal be declined. It is still the Company's view that this relief would provide the greatest degree of certainty to its continued unencumbered operation. However, the revised Proposal suggests that a certain level of development may be able to occur in a manner that does not unacceptably detract from the existence and operation of Regionally Significant Infrastructure that exists in the vicinity. To this end, the Company would not oppose the approval of the Plan Change, subject to the following, as a minimum, amendments:
- The extension of the 100 metre buffer areas to a distance from the State Highway that will ensure the attenuated noise level within noise sensitive rooms is below 35 dBL_{Aeq} (the exact distance is to be determined by a suitably qualified acoustic engineer); and
 - The amendment of the rule framework to require the establishment of noise sensitive activities (being residential accommodation, including rest homes and retirement villages) in all of the Marsden Primary Centre zones, to seek the written approval of Refining NZ, Northport and the New Zealand Transport Agency, as providers of Regionally Significant Infrastructure in the vicinity of the Marsden Primary Centre.

6.2 I note that the Company has had preliminary discussions with the Applicant regarding the imposition of a no complaints covenant onto the certificates of title of the properties that it owns within the Marsden Primary Centre zones. While this approach addresses some of the concerns that the Company has identified, it is not considered to be a complete solution to address the reverse sensitivity issues that have arisen. Furthermore, the Company feels that that such an approach may fall outside of the scope of matters able to be considered through this Plan Change process and therefore, the relief sought in 6.1 above is considered to be the only appropriate means of achieving a sustainable outcome.

7.0 SUMMARY

7.1 As was set out in its submission and further submission, Refining NZ operates an established and unique manufacturing plant in the vicinity of the Marsden Primary Centre, which is subject to this plan change. The Company considers that the amendments to the Operative Whangarei District Plan that are proposed, may result in reverse sensitivity effects on its ongoing and future operations.

7.2 The amendments proposed by the Applicant following the submission period have gone some way to addressing the potential effects, however the Company is of the opinion that the buffer area proposed does not fully address the attenuation of noise from the State Highway for an adequate distance into the Site. Further to this, the proposed Plan Change is likely to increase the proliferation of noise sensitive activities within the Marsden Primary Centre zone and as a result increase the potential for reverse sensitivity effects on the lawfully established Refinery operations.

7.3 The Company is of the opinion that an effective means of addressing this new effect is to amend the provisions of the Marsden Primary Centre zones to require the written approval from the providers of Regionally Significant Infrastructure in the area, being Refining NZ, Northport and the New Zealand Transportation Agency, prior to the establishment of any noise sensitive activity within the Marsden Primary Centre zones.

7.4 The Company does not oppose the modified proposal, subject to the incorporation of the additional measures that are set out in paragraph 6.1 of this statement.

7.5 In conclusion, I thank the Commissioner for the consideration of this statement of evidence.

Riaan Elliot
Environmental Affairs Manager
New Zealand Refining Company

24th of May 2017