

**BEFORE THE WHANGAREI DISTRICT COUNCIL**

**IN THE MATTER**

of the Resource Management Act 1991 ("RMA")

**AND**

**IN THE MATTER**

of proposed plan changes 87 and 114 to the Whangarei District Plan by Whangarei District Council

**EVIDENCE** 03  
**TOPIC** 85A-D, 86A+B, 87, 102, 114  
**SUB#** Rural Plan Changes  
**DATE** 03-07-2017

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**SUBMISSIONS ON BEHALF OF THE NEW ZEALAND REFINING COMPANY LIMITED**

**3 JULY 2017**

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## **1. INTRODUCTION AND BACKGROUND**

- 1.1 These submissions have been prepared on behalf the New Zealand Refining Company Limited, trading as Refining NZ. They relate to Proposed Plan Changes 87 (PC87) and 114 (PC114) to the Whangarei District Plan (District Plan).
2. Refining NZ made submissions and further submissions on PC87<sup>1</sup> and PC114<sup>2</sup>. Those submissions largely supported the plan changes but sought several amendments.
- 2.1 Refining NZ operates New Zealand's only oil refinery, situated at Marsden Point at the entrance to the Whangarei Harbour (the Refinery). The Refinery produces petrol, diesel, and jet fuel for consumption throughout the country. Refining NZ also owns and operates the Refinery to Auckland Pipeline (RAP), a 170km long high-pressure fuel products pipeline running from the Refinery at Marsden Point to the Wiri Oil Terminal in South Auckland. The RAP is subject to designations over its entire length.
- 2.2 The Refinery is a major regional and national infrastructure resource, producing approximately 70% of New Zealand's fuel requirements. The Refinery and RAP have a combined replacement value estimated at NZ\$3.2 billion, and their uninterrupted and efficient operation are of critical importance nationally. Refining NZ is deemed to be a "lifeline utility" pursuant to the Civil Defence Emergency Management Act 2002. The Refinery and RAP are recognised as regionally significant infrastructure in the Northland Regional Policy Statement (RPS).

## **3. SUMMARY**

- 3.1 As a lifeline utility and regionally significant infrastructure, it is important that the District Plan enables Refining NZ to undertake maintenance, repair, upgrades and expansion.
- 3.2 The RPS expressly recognises the importance of regionally significant infrastructure to the Northland region, particularly in terms of business opportunity and economic wellbeing. The RPS takes into account the benefits of infrastructure and enables growth of the region through innovation and growth of infrastructure.
- 3.3 Refining NZ, through its operation of the Refinery and RAP is a very significant economic contributor to Whangarei. Refining NZ considers it is important that the ongoing operation of this physical resource is not unreasonably or unintentionally hindered, including in order to avoid negative impacts for the Whangarei community in terms of its economic and social wellbeing.
- 3.4 With regard to PC87, Refining NZ supports the objective of protecting Whangarei's coastal areas from inappropriate use and development. Refining NZ was pleased to see that feedback provided on the draft plan change had been taken into account and some of its suggested amendments were incorporated into the notified version.

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<sup>1</sup> Submitter number 158

<sup>2</sup> Submitter number 444

- 3.5 However, Refining NZ is of the view that the District Plan must recognise and appropriately enable regionally significant infrastructure (consistent with the RPS), including the Refinery and the RAP. Refining NZ considers that some provisions of PC87 require further amendment in order to achieve an appropriate balance between protecting the coastal environment, and allowing for regionally significant infrastructure to operate within and proximate to it.
- 3.6 With regard to PC114, Refining NZ supports the appropriate recognition and protection of those particular qualities and characteristics which contribute to Outstanding Natural Landscapes (ONLs) and Outstanding Natural Features (ONFs). However, Refining NZ considers that some amendments are necessary to PC114 in order to appropriately provide for regionally significant infrastructure – including where such infrastructure is located either within or proximate to ONLs and/ or ONFs. Refining NZ considers that the objectives and policies of the proposed new Landscape Chapter of the District Plan must recognise and provide for the continued operation, maintenance and expansion of lawfully established regionally significant infrastructure – and particularly infrastructure.

#### 4. PC87: COASTAL AREA

##### *Policy CA.1.3.23*

- 4.1 Refining NZ submitted that proposed Policy CA.1.3.23 should be retained with the following minor amendments:

To recognise that there can be a functional need to locate, operate, maintain and expand infrastructure in the Coastal Area proximate to existing infrastructure.

- 4.2 The Refinery has a functional need to locate in the coastal area due to proximity to existing infrastructure, transport links, coastal access, stable geology and proximity to Auckland. This location was carefully selected when it established there many decades ago. Obviously, any expansion of the facility would need to co-locate together with the existing infrastructure.
- 4.3 This policy as amended by Refining NZ is consistent with and give effect to the NZCPS<sup>3</sup> and the RPS<sup>4</sup> which encourage flexible, resilient and adaptable development of infrastructure and comments on the importance of realising the long-term needs of regionally significant infrastructure<sup>5</sup> to operate, maintain and enhance its assets.<sup>6</sup>
- 4.4 The reporting officer recommended that this submission point is accepted in part. The officer suggested “operate and maintain” are included in the Policy wording, but not “expand”. The reporting officer considered that to include “expand” would be permissive and gives rise to a risk of significant adverse effects on the coastal area.
- 4.5 Refining NZ considers there are several objectives, policies and rules which are directly intended to address effects on the coastal environment, including PC14 (which we discuss shortly). proposed Policy CA.1.3.23, is submitted is intended to provide some ‘balance’ by

<sup>3</sup> NZCPS Objective 6; Policy 6(2)(c)

<sup>4</sup> RPS Objectives 3.7 and 3.8; Policies 5.2.2 and 5.2.3

<sup>5</sup> Which includes the Oil Refinery at Marsden Point. See the New Zealand Coastal Policy Statement, Appendix 3

<sup>6</sup> See the Explanation to Objective 3.7 of the RPS

appropriately recognising the functional need for – and by implication the numerous benefits that attach to – infrastructure. Further, there is support in the higher order policy documents to include “expand” in this policy.

- 4.6 Policy 5.2.3 of the RPS is to promote the provision of infrastructure as a means to shape, stimulate and direct opportunities for growth and economic development. Benefits from growth and expansion of the Refinery are passed on to the economy and this leads to positive effects locally, regionally and nationally.
- 4.7 The explanation to RPS Policy 6.1.1 provides that the plan should be effects focused to encourage innovation and avoid unnecessarily restricting uses and developments and to minimise compliance costs. It goes on to note that plans should provide the ability to innovate and adapt where possible.
- 4.8 Perhaps most relevant however, is RPS Objective 3.7 which provides:

Recognise and promote the benefits of regionally significant infrastructure, (a physical resource), which through its use of natural and physical resources can significantly enhance Northland’s economic, cultural, environmental and social wellbeing.

- 4.9 The explanation to that objective specifically addresses this issue, stating:

To ensure that the benefits of regionally significant infrastructure can be fully realised, it is also important to recognise the long-term needs of infrastructure providers to operate, maintain and enhance benefits.

- 4.10 It is therefore submitted that it is not only practically sensible, but consistent with higher level policy direction for the district plan to allow for operation, maintenance and expansion to regionally significant infrastructure.

Relief sought:

- 4.11 Refining NZ seeks that proposed Policy CA1.3.23 is amended as follows:

To recognise that there can be a functional need to locate, operate, maintain and expand infrastructure in the Coastal Area proximate to existing infrastructure.

#### *Interaction with Chapter 49*

- 4.12 Refining NZ seeks clarification that the Coastal Area Overlay (CAO) and associated rules will not override Chapter 49<sup>7</sup> of the District Plan and the Oil Refinery Overlay Area<sup>8</sup> (ORO). Instead Refining NZ seeks that the ORO be exempted from the CAO provisions.
- 4.13 The reporting officer<sup>9</sup> disagreed with this submission, stating that the CAO applies across all underlying zones. The reporting officer has, however, recommended that the earthworks rules

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<sup>7</sup> Chapter 49 relates to scheduled activities. The explanation for these rules says they take precedence over the other rules for the Environment in which the scheduled activity is located.

<sup>8</sup> See map 54E. The Oil Refinery Overlay is zoned Business 4. In this area, any activity that is related to the primary function of the oil refinery site is permitted.

<sup>9</sup> Section 42A Report, Part 4, PC87 para 262

in the CAO do not apply to the Business 4 Environment<sup>10</sup> and considers it is unlikely that any of the other rules in the CAO provisions would be triggered by Refining NZ's activities in any case and recommends that the submission is declined.<sup>11</sup>

- 4.14 While we agree that – at a practical level, the implications of the CAP to the Refining NZ site may seem to be of only minor consequence, we consider that it is not an effective planning outcome to have the CAO extend over a (very small) part of the Refinery site - a longstanding heavy industrial site - in the absence of any site-specific reason to do so (we understand that only a high-level mapping exercise has been undertaken). The additional time and cost to Refining NZ of ensuring compliance with different overlays at different parts of its site outweigh the benefits (if any) of imposing the CAO rules.
- 4.15 Instead, the Refinery site is already subject to a site-specific overlay. Refining NZ can see no reason to detract from those considered and long-standing operative provisions which provide a tailored suite of provisions and controls specific to the needs of that site, on the basis of a district-wide approach.
- 4.16 Policy 6.1.1(g) of the RPS provides that the district plan shall focus on effects. It is important to consider the potential effects of activities undertaken at the Refinery in accordance with the Oil Refinery Overlay rules. These effects are known (as these activities are currently permitted by the ORO) and constant (the Refinery has been operating at this site for many decades). There is no reason that the Refinery cannot continue to operate in this way and be exempted from the CAO.

Relief sought:

- 4.17 Include an Advice Note, site-specific zoning notation or similar mechanism to exclude the CAO from applying in the ORO.

*Earthworks/ Earthworks within sand dunes*

- 4.18 Refining NZ seeks clarity of how the definition of "Earthworks"/ "Earthworks within sand dunes" and the corresponding earthworks provisions operate. In particular, whether they relate to single instances or an aggregate volume over the course of a project.
- 4.19 The reporting officer recommended that Refining NZ's submissions on the earthworks rules were rejected. The reporting officer clarifies that the rule allows for a one-off opportunity to undertake earthworks. Refining NZ accepts this interpretation, but remains of the view that this clarification should be expressly set out in the plan change text by way of advice note, amendment to the wording of the rules or otherwise.

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<sup>10</sup> This recommendation was made in response to a submission by NIWA (submitter 542). See discussion in the Section 42A Report at para 229

<sup>11</sup> Section 42A Report, Part 4, PC87 para 265

Relief sought:

- 4.20 Include an advice note to the earthworks rules or definitions of “earthworks”/ “earthworks within sand dunes” stating that the provisions allow a one-off opportunity to undertake earthworks up to 150m<sup>3</sup> in volume.

*Further submissions*

- 4.21 Refining NZ was a further submitter in respect of a number of submission points including a submission by the Far North District Council (FNDC)<sup>12</sup> seeking the removal of the words “where practicable” after “avoid” from proposed Policy CA.1.3.5.
- 4.22 FNDC sought the deletion of the words “where practicable” after ‘avoid’ in Policy CA.1.3.5, on the basis that it is not consistent with the New Zealand Coastal Policy Statement (NZCPS).<sup>13</sup> FNDC refers to Policy 6(1)(h) of the NZCPS as support for its submission. When looking at the wording of Policy 6(1)(h) however, that policy reads:

Consider how adverse visual impacts of development can be avoided in areas sensitive to such effects...and **as far as practicable and reasonable** apply controls or conditions to avoid those effects.

[Emphasis added]

- 4.23 It is therefore submitted that the drafting of proposed policy CA.1.3.5 is entirely consistent with the NZCPS. The reporting officer considers that accepting this relief would make the policy too rigid and accepts that there may be instances in which buildings or structures have a functional need to be located on ridgelines, and although this is not desirable, there may be no alternative location.<sup>14</sup> The reporting officer therefore recommends that the submission is rejected.<sup>15</sup>
- 4.24 The reporting officer’s position is consistent with the NZCPS and the RPS which recognises that certain activities have functional needs to locate in certain areas. The RPS notes, with regards to regionally significant infrastructure, that securing alternative locations is not always possible.<sup>16</sup>

Relief sought:

- 4.25 Refining NZ supports and endorses the reporting officer’s recommendation and seeks that the FNDC submission is rejected and that Policy CA.1.3.5 is adopted as proposed.

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<sup>12</sup> Submitter number 410

<sup>13</sup> NZCPS Policy 6(1)(h) provides for consideration of how adverse visual impacts of development can be avoided in areas sensitive to such effects, and as far as practicable and reasonable apply controls or conditions to avoid those effects.

<sup>14</sup> Section 42A Report, Part 4, PC87 para 117

<sup>15</sup> Section 42A Report, Part 4, PC87 para 120

<sup>16</sup> See the Explanation to Policy 3.6 in the RPS which recognises that “securing alternative sites for existing infrastructure is extremely difficult”

## 5. PC114: LANDSCAPES

### *Policy LAN.1.3.9*

5.1 Refining NZ considers proposed Policy LAN.1.3.9 is unclear and requires amendment. Policy LAN.1.3.9 as proposed reads:

To allow for adverse effects arising from the establishment and operation regionally significant infrastructure and community facilities in or on ONFs or ONLs where

- (a) It is demonstrated that there is no practical alternative location;
- (b) The proposal is generally consistent with policies 3(a) and 4; and
- (c) Measures are in place to avoid adverse effects to the greatest extent practicable, and adverse effects that cannot be avoided are remedied or mitigated to the extent they are no more than minor.

5.2 The basis of this policy likely stems from the RPS:

- (a) Objective 3.7 of the RPS requires the recognition and promotion of the benefits of regionally significant infrastructure. The Explanation to this objective acknowledges that regionally significant infrastructure may have adverse effects on the environment and that the planning framework should recognise these effects cannot always be practicably avoided or internalised, but that it is important to recognise the benefits of regionally significant infrastructure; and
- (b) Policy 5.3.3 provides for transitory effects arising from the maintenance and upgrading of existing regionally significant infrastructure.

5.3 In light of this higher level policy direction it is submitted that the criteria that accompany the proposed Policy 9 are unreasonable and require amendment.

5.4 With regards to criterion (b) of proposed Policy LAN.1.3.9, Policy 3(a) provides:

- 3. Within a coastal area, to avoid adverse effects of subdivision, use and development on the characteristics and the qualities of Outstanding Natural Features and Outstanding Natural Landscapes and by restricting activities to those:
  - a. of a scale, location and design that have only minor or transitory effects...

and Policy 4 provides:

- 4. Outside of the Coastal Area, to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects (including cumulative adverse effects) of subdivision, use and development on the characteristics and qualities of Outstanding Natural Features and Outstanding Natural Landscapes.

5.5 Criterion (b) of proposed Policy LAN.1.3.9 in particular fails to adequately recognise the importance of regionally significant infrastructure (in line with the RPS<sup>17</sup>) to people and

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<sup>17</sup> A guiding principle to the RPS is “economy within the environment” and there is emphasis throughout the RPS on the importance of regionally significant infrastructure to the economy and economic wellbeing of

communities. It does not adequately provide for regionally significant infrastructure, itself a physical resource which requires sustainable management under Part 2 RMA.

5.6 Criterion (b) negates the direction of the policy to “allow for adverse effects” by requiring that a proposal must be “generally consistent” with policies which direct the avoidance of adverse effects. It is not clear what the intention of this criterion is, nor how it ought to apply without contradicting the direction of proposed Policy LAN.1.3.9. Refining NZ therefore seeks that (b) is deleted.

5.7 Refining NZ considers the threshold proposed in criterion (c) is unduly onerous and does not appropriately take into account the level of effects in any particular instance. Policy 6.1.1 of the RPS provides that plans should have an effects based focus. Refining NZ suggests the following amendments to criterion (c) to allow for better readability and clarity:

(c) measures are in place to avoid adverse effects ~~to the greatest extent possible~~ as far as reasonably practicable, and adverse effects that cannot be avoided are appropriately remedied or mitigated ~~to the extent they are no more than minor~~.

Relief sought:

5.8 Refining NZ seeks that proposed Policy LAN.1.3.9 is amended as follows:

To allow for adverse effects arising from the establishment and operation regionally significant infrastructure and community facilities in or on ONFs or ONLs where

- (a) It is demonstrated that there is no practical alternative location;
- (b) ~~The proposal is generally consistent with policies 3(a) and 4;~~ and
- (c) Measures are in place to avoid adverse effects ~~to the greatest extent possible~~ as far as reasonably practicable, and adverse effects that cannot be avoided are appropriately remedied or mitigated ~~to the extent they are no more than minor~~.

#### *Objective LAN.1.2.5*

5.9 Proposed Objective LAN.1.2.5 recognises existing land use and development, including regionally significant infrastructure, forms part of the characteristics and qualities of the environment where they are located in or on ONFs or ONLs. The reporting officer recommends this submission is accepted and the Objective is retained as notified. Refining NZ endorses the reporting officer’s recommendation.

Relief sought:

5.10 Retain Proposed Objective LAN.1.2.5 as notified.

#### *Further submission points*

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Northland. There is a focus on the benefits of such infrastructure. For example, see Objectives 3.5, 3.6, 3.7 and 3.8; Policy 5.2.3; Policy and Method package 5.3.



5.11 Refining NZ was a further submitter in respect of the submission made by FNDC seeking the removal of the term “to the greatest extent” from proposed Policy LAN.1.3.5 and the removal of the term “to the greatest extent practicable” from proposed Policy LAN.1.3.11.

5.12 Refining NZ considers that the proposed policy as presently worded is entirely consistent with the NZCPS. Objective 6 of the NZCPS provides:

To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:

- The protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- Some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;
- Functionally some uses and developments can only be located on the coast or in the coastal marine area...

5.13 The NZCPS provides:

- (a) Policy 6(1)(a), in relation to the coastal environment, for recognition that the provision of infrastructure (among other things) is an activity which is important to the social, economic and cultural wellbeing of people and communities.
- (b) Subsection (b) goes on to provide for consideration of the rate at which built development should be enabled to provide for reasonably foreseeable needs.
- (c) Again, at policy 6(2)(c) there is recognition in relation to the coastal marine area that there are activities which have a functional need to locate in the coastal marine area and recognises the need to provide for those activities in appropriate places.
- (d) Policy 18 of the NZCPS directly addresses preservation of the natural character of the coastal environment and its protection from inappropriate (but not all) subdivision, use and development.
- (e) Similarly, Policy 15 provides for protection of natural features and natural landscapes of the coastal environment from inappropriate (but not all) subdivision.

5.14 Given the above, Refining NZ does not consider that the NZCPS directs total avoidance of subdivision, use and development within the coastal environment.

5.15 Similar direction is found in the RPS. Objective 3.14 provides for the protection of the qualities and characteristics that make up the natural character of the coastal environment, ONLs and ONFs from inappropriate subdivision. The explanation to the objective notes that it does not seek absolute protection in all case. It considers that in many cases individual elements of these resources can accommodate a degree of modification. The level of protection will depend on the values of these areas.

- 5.16 Once again there is express recognition of the need for some flexibility in the approach to subdivision, use and development. Refining NZ agrees with the position in the Council's reporting officer's section 42A report, which considers that the submission on proposed Policy LAN.1.3.11 is "factually incorrect" and considers that minor/ transitory adverse effects are allowable within coastal ONFs or ONLs.<sup>18</sup> The reporting officer considers that total avoidance is not required by the NZCPS or the RPS<sup>19</sup> and recommends that the submissions are rejected.<sup>20</sup> This view, it is submitted, is consistent with Policy 5.3.3 of the RPS.
- 5.17 Refining NZ agrees with the position of the reporting officer and opposes any submissions by FNDC seeking amendments to "strengthen" policies to 'avoid'. Refining NZ agrees with the reporting officer that absent express and uncontested higher level policy direction – which is the case here – total avoidance of effects is not appropriate nor necessary.
- 5.18 Importantly it is only adverse effects on those qualities or characteristics which are deemed to contribute to the ONL/ ONF status that should be avoided, rather than simply all or any adverse effects. This is consistent with guidance in the higher order planning documents.<sup>21</sup>
- 5.19 To include provision which have no flexibility risks unintentionally limiting activities and potentially reduces the availability of resource consents.

Relief sought:

- 5.20 That policies LAN.1.3.5 and LAN.1.3.11 are retained as notified.

## 6. CONCLUSION

- 6.1 Refining NZ is generally supportive of PC87 and PC114. It seeks minor amendments as set out above and respectfully requests that the relief sought in these submissions is granted.

### REFINING NZ

By its solicitors ChanceryGreen, per:



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C H Simmons / EJ Ellis

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<sup>18</sup> Section 42A Report, Part 2, PC114 para 291

<sup>19</sup> Section 42A Report, Part 2, PC114 para 228

<sup>20</sup> Section 42A Report, Part 2, PC114 para 298

<sup>21</sup> NZCPS Objective 2, RPS Objective 3.14, Policy 4.6.1