

**IN THE MATTER** of the Resource Management Act 1991 ("**the Act**")

**AND**

**IN THE MATTER** **PLAN CHANGES** 82 A & B, 88 A-J, 109, 115, 136, 143, 144, 145, 147 & 148 ('**Urban and Services**') to the **OPERATIVE WHANGAREI DISTRICT PLAN**

**MEMORANDUM OF COUNSEL ON BEHALF OF REFINING NZ (No. 3)**

**To:** Hearings Panel  
Whangarei District Council  
Private Bag 9023  
Whangarei 0148

Email: [eden.edwardson@wdc.govt.nz](mailto:eden.edwardson@wdc.govt.nz) / [ataria.sharman@wdc.govt.nz](mailto:ataria.sharman@wdc.govt.nz)

Copy to: [mailroom@wdc.govt.nz](mailto:mailroom@wdc.govt.nz)

As counsel for Refining NZ, a submitter and further submitter in relation to the Urban and Services proposed plan changes to the Operative Whangarei District Plan, we advise the Council as follows:

1. Refining NZ attended the 'Urban and Services' plan change hearing on Friday 6 December and provided the following evidence:
  - (a) Mr Jack Stewart gave company evidence on behalf of Refining NZ;
  - (b) Mr Blair Masefield gave expert planning evidence relating to Refining NZ's proposed amendments; and
  - (c) Mr Stephen Brown was unable to attend the hearing but has tabled a statement of expert visual and landscape evidence.
2. During the hearing, the Hearings Panel requested further information in relation to Mr Masefield's and Mr Brown's evidence to be provided by **Tuesday 10 December**. We consider these matters can be most efficiently addressed by way of this memorandum, rather than by supplementary statements of evidence from Messrs Masefield and Brown.

*District Growth and Development Chapter: Policies*

3. In response to questioning by the Commissioners, Mr Masefield expanded upon the amendments he proposed to the provisions relating to regionally significant infrastructure. As a result of that discussion, the Commissioners invited Mr Masefield to provide any further consequential amendments to policies SD-P32 and SD-P34. Mr

Masefield does not seek any further amendment to policy SD-P32 beyond the wording set out at paragraph 28 of his primary statement of evidence. However, he does consider some further amendments to add more of the matters of RPS Policy 5.3.3(3) to policy SD-P34 are appropriate, to more adequately give effect to the RPS. The updated version of SD-P34 proposed by Mr Masefield is set out below, with proposed further amendments in mark-up:

*SD-P34 – Managing Adverse Effects of ~~Existing~~ Regionally Significant Infrastructure*

*To manage adverse effects from the operation, maintenance and upgrading of ~~existing~~ network utilities and regionally significant infrastructure by:*

- ~~1. Allowing adverse effects that are not significant while the maintenance or upgrading is being undertaken.~~
- ~~2. Requiring that any permanent adverse effects are the same or similar to the adverse effects that existed before the maintenance or upgrading was undertaken.~~
1. Recognising constraints that limit the design and location of the activity, including any alternatives that have been considered which have proven to be impractical, or have greater adverse effects;
2. Requiring adverse effects to be avoided, remedied, mitigated or off-set to the extent practicable;
3. Taking into account any monitoring programme or adaptive management regime to address significant adverse effects with unknown or uncertain outcomes (including modification to the consented activity).

*Height rules in the Marsden Point Energy Precinct*

4. Mr Masefield, at paragraph 11 of his supplementary statement of evidence, proposed permitted height standards applicable to the Marsden Point Energy Precinct. Following questioning of Mr Masefield, the Commissioners queried whether some further amendments to that proposed standard may be appropriate, including possibly the inclusion of a restricted discretionary activity where the permitted activity standards are not met. Mr Masefield has reconsidered this issue in response to the questioning during the hearing and proposes the amended wording below.
5. By way of explanation, Mr Masefield recommends the inclusion of a restricted discretionary activity rule, with appropriate matters of discretion. As a consequence of this addition, he also recommends inclusion of an additional permitted activity standard, to ensure that the precinct rules are not inadvertently made more restrictive (in terms of permitted building height) than the underlying Heavy Industry Zone. The proposed amendment seeks a permitted maximum height limit of up to 40m, where no more than 25% of the net site area is occupied by buildings and structures that exceed 20m above ground level. It is proposed that applications for resource consent pursuant to the restricted discretionary activity rule would be precluded from public notification (but may be limited notified). Mr Masefield considers this rule structure is appropriate for the precinct given the context of the existing environment, and with reference to Mr Brown's visual and landscape evidence.
6. The proposed amended rules are set out below:

## HEIGHT

Activity Status: Permitted

Construction, alteration or replacement of a building or structure is a permitted activity if:

1. The building or structure exists at [operative date] and following the alteration or replacement works, its height is not materially increased; or
2. In the case of the existing Flare Stack, following alteration or replacement, its height is not increased above 130m above ground level; or
3. One (1) additional Furnace Stack is constructed to a height not exceeding 75m above ground level; or
4. Up to three (3) additional Columns are constructed to a height not exceeding 56m above ground level.

For all other buildings and structures not covered above, the maximum permitted height is:

- a. 20m above ground level; or
- b. 40m above ground level provided no more than 25% of the net site area is occupied by buildings and structures that exceed 20m above ground level.

Activity Status when not Permitted: Restricted Discretionary

Matters of Discretion:

1. The effects of the bulk and location of the building or structure;
2. The effects on Cultural Values, Outstanding Natural Character, Outstanding Natural Landscapes and Outstanding Natural Features;
3. Methods to avoid, remedy or mitigate significant adverse effects from the structure height; and
4. The operational and safety requirements for the structure.

Notification:

Applications processed under this rule are precluded from public notification.

### Stephen Brown evidence

7. As Mr Brown was unable to attend the hearing due to an existing hearing commitment, Refining NZ offered to put any questions from the Commissioners to Mr Brown and seek his response. The Commissioners sought further clarification on the following:
  - (a) a map showing the viewpoint locations for the various photo montages appended to Mr Brown's evidence; and
  - (b) whether taking images with a 35mm equivalent lens is industry practice and sought further confirmation as to the method used by Mr Brown; and
  - (c) that Mr Brown consider the landscape and visual effects of three additional columns within the Marsden Point Energy Precinct at 56m and advise whether this would result in any changes to the conclusions in his statement of evidence.

8. We respond to each of these queries in turn, with reference to the attachments available [here](#) (due to their very large size they are unable to be emailed).
9. First, Mr Brown has provided a viewpoint map location map which is provided in the linked document as **Attachment 6**.
10. Second, Mr Brown advises that the photos employed for these images comply with the NZILA Best Practice Guide Visual Simulations 10.2, which states that:

*5.6 As viewers typically direct their attention over different widths of view, the size of the photograph required to represent a particular view may vary for different projects and viewpoints, depending on the specific characteristics of the view and the extent of the proposed activity or modification that needs to be included. In some instances a single frame photograph may capture all that is required, while in other instances it may be necessary to use a series of frames joined together to form a panoramic image (see Figure 6 overleaf). The difference in geometry between a single frame and a panorama may not be apparent, so photographs should be clearly identified as being either a single frame or a panorama. However, it is generally accepted that the horizontal field of view is 124°, and it is recommended that this angle of view not be exceeded, but rather a separate simulation that encompasses the area beyond the 124° be generated.*

*5.7 While panoramic cameras are available, most panoramas are produced using conventional single frame photography and then digitally splicing the individual images together to form a panoramic view. A panorama manually spliced together from conventional planar photographs and viewed on a flat surface does not result in a true panorama, as it does not form a true cylindrical or rectilinear representation.. However, appropriate image editing software should have the ability to join each individual frame by applying rigorous mathematical transformations.*

#### **Lens Focal Length**

*5.8 The printed size of an image is independent of the focal length of the camera lens. Focal length does not alter the perspective of the image. The main difference that various focal lengths make is to change the extent of the image captured on the film or the digital sensor.*

*5.9 Today good lenses should be relatively free of distortion and other defects. The image taken with a 100mm lens will be the same as the centre portion of that taken with a 50mm lens and enlarged to fill the whole frame (see Figure 7 on previous page). The printed size of an image is therefore independent of the focal length. If an image is defined in terms of its horizontal field of view and its correct viewing distance, then these parameters identify the printed size of the image for optimum viewing.*

*5.10 The larger image scale obtained by using a longer focal length lens is accompanied by a correspondingly smaller field of view in the image – Figure 8 illustrates this. Wide angle lenses of 28mm focal length or less are prone to distortion around the image margins and should therefore be used with caution.*

11. Mr Brown also confirmed that the images taken for the 'indicative images' were all captured with a 35mm equivalent lens in order to show the Refinery as clearly as possible, together with some of its landscape context. The two sets of stitched imaged (attachments 2 and 5 to his statement of evidence) were all combined using cylindrical projection, which is also recommended by the NZILA guide.
12. Third, and finally, Mr Brown has provided an updated photo montage(s) showing the three columns at 56m. These additional photos are provided in the linked document as

**Attachments 1D, 2D, 3D, 4D and 5D.** Mr Brown has also clarified that it remains his opinion that any effects generated by the introduction of the columns within the Refinery, all at 56m height, would be of a very low level (less than minor).

13. We trust the above additional information assists the Hearings Panel. Should the Hearings Panel have any further questions, please do not hesitate to contact us.

Dated 10 December 2019

Counsel for Refining NZ



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Chris Simmons  
ChanceryGreen

PO Box 47516, Ponsonby

Auckland 1144

t: 09 357 0600

e: [chris.simmons@chancerygreen.com](mailto:chris.simmons@chancerygreen.com)