

BEFORE THE WHANGAREI DISTRICT COUNCIL

IN THE MATTER

of the Resource Management Act 1991 ("RMA")

AND

IN THE MATTER

of proposed plan changes 82 A and B, 88 A-J, 109, 115, 136, 143, 144, 145, 147 and 148 ('Urban and Services') to the Whangarei District Plan by Whangarei District Council

LEGAL SUBMISSIONS ON BEHALF OF THE NEW ZEALAND REFINING COMPANY LIMITED

6 December 2019

Solicitors Acting: CH Simmons/ EJ Ellis

ChanceryGreen

PO Box 47516, Ponsonby 1144

+64 9 357 0600

chris.simmons@chancerygreen.com / ebony.ellis@chancerygreen.com



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 82 A and B, 88 A-J, 109, 115, 136, 143, 144, 145, 147 and 148 (the "Plan Changes") to the Whangarei District Plan ("District Plan").
- 1.2 Refining NZ made submissions and further submissions on the Plan Changes.¹ Those submissions largely supported the Plan Changes but sought several amendments.
- 1.3 Refining NZ operates New Zealand's only oil refinery, situated at Marsden Point at the entrance to the Whangarei Harbour (the "Refinery"). The evidence of Mr Stewart sets out the background to the Refinery, its operations and the significance it has for the region and nationally. He also describes the environmental initiatives that Refining NZ focuses on as part of its commitment to minimising its impacts. Recently those initiatives have extended to exploring and advancing alternative energy generation technologies.

2. SUMMARY

- 2.1 A number of matters in Refining NZ's submission and further submission have been satisfactorily addressed by the Council's s42A report. For efficiency, these submissions only focus on those matters which are still in dispute.
- 2.2 Refining NZ continues to seek the following amendments:
- (a) Amendments to the objectives and policies in the District Growth Development (previously Strategic Directions) to strengthen the protection of regionally significant infrastructure against potential adverse effects;
 - (b) The inclusion of two new policies to the Marsden Point Energy (previously Oil Refinery) Precinct provisions to expressly recognise the regional significance of the Refinery and to enable the development of alternative energy generation technologies at the Refinery;
 - (c) The inclusion of a maximum building height rule in the Marsden Point Energy Precinct to allow buildings up to 130m as a permitted activity;
 - (d) Amendments to the permitted activity rules in the Heavy Industrial Chapter so that commercial services and food and beverages activities are provided for as discretionary activities, not permitted activities;

¹ Submitter #260 and Further Submitter X352.

- (e) Amendments to the consequential amendments to NAV6.1 to retain the status quo and avoid potentially unintended implications for compliance at the Refinery.

2.3 Refining NZ will call the following evidence:

- (a) Mr Blair Masefield: expert planning evidence relating to Refining NZ's proposed amendments. Mr Masefield's evidence will describe the changes sought by Refining NZ and his expert planning opinion as to why those changes are appropriate and necessary. His evidence includes as an attachment a letter from Marshall Day Acoustics specifically addressing acoustic issues and the proposed amendment to NAV.6.1; and
- (b) Mr Jack Stewart: company evidence on behalf of Refining NZ explaining the process requirements for future structures within the Marsden Point Energy Precinct, and describing Refining NZ's approach to managing environmental issues and discussing initiatives for future alternative energy generation at the Refinery.

2.4 In addition, Refining NZ has tabled evidence of Mr Stephen Brown. Mr Brown has provided expert visual and landscape evidence confined to the change sought by Refining NZ to the permitted building heights within the Marsden Point Energy Precinct.

3. AGREED MATTERS

3.1 The Council officer's section 42A report dated 18 October 2019 ("Council's s42A report") has recommended that many of the amendments sought in Refining NZ's submission be accepted or accepted in part. Refining NZ supports these recommendations. These areas of agreement between Refining NZ and the Council's s42A report are set out in the table attached as **Appendix 1**.

4. STRATEGIC DIRECTIONS

Regionally Significant infrastructure

4.1 Refining NZ seeks further amendments to the following objectives and policies in the District Growth and Development Chapter (previously the Strategic Directions Chapter) relating to regionally significant infrastructure. Specifically, Refining NZ seeks changes to:

- (a) SD-O15 (previously SD-O23) Adverse effects;

- (b) SD-P32 (previously SD-P15) Benefits of Regionally Significant Infrastructure;
- (c) SD-P33 (previously SD-P16) Adverse effects of new Regionally Significant Infrastructure; and
- (d) SD-P34 (previously SD-P17) Adverse effects of existing Regionally Significant Infrastructure.

4.2 Refining NZ's original submission sought a series of amendments intended to better recognise and provide for regionally significant infrastructure.² A number of these have been accepted by the Council's reporting officer (refer to Appendix 1), however, the Council's s42A report recommended that the above submission points³ be rejected.⁴

4.3 In his evidence, Mr Masefield sets out why he considers the relief sought by Refining NZ is necessary and appropriate to give effect to the RPS and, more generally, to recognise and provide for the Refinery as regionally significant infrastructure.

4.4 For the reasons set out in the submission and in the evidence of Mr Masefield, Refining NZ seeks that the relief sought be accepted as outlined below.

Relief sought

4.5 SD-O15 – Adverse effects:

~~Avoid remedy, or mitigate or offset~~ Manage to the extent practicable adverse effects of ~~arising from~~ the development, operation, and maintenance and upgrading of regionally significant infrastructure.

4.6 SD-P32 – Benefits of Regionally Significant Infrastructure:

~~To have regard to the social, economic and cultural benefits of Regionally Significant Infrastructure by enabling it's ongoing operation, maintenance, development and upgrading where adverse effects can be avoided, remedied, or mitigated or off-set.~~

4.7 SD-P33 – ~~Adverse Effects of New or Upgraded~~ Minor Effects of New or Upgraded Regionally Significant Infrastructure activities:

~~To manage adverse effects created by~~ enable the development and operation of new and existing, and/or maintenance and upgrading of network utilities and regionally significant infrastructure whereby:

² Submission by Refining NZ (#260) at pp 4, 6, and 7.

³ Submission points 260.2, 260.5, 260.6, and 260.7.

⁴ Council Officer's s42A Report, 18 October 2019. Part 2 at [188], [305], [325], and [343].

1. ~~Avoiding adverse effects, or allowing a~~Adverse effects of new or existing works and operations that have been avoided, remedied, mitigated or off-set to the extent that they are no more than minor, including on the features and values as set out in Policies 4.4.1(1), 4.4.1(2), 4.6.1(1)(a), 4.6.1(1)(b), 4.6.1(2), 4.6.2(1) of the Northland Regional Policy Statement: -and
2. ~~Ensuring d~~Damage to or loss of the relationship of iwi with ancestral sites, sites of significance, wāhi tapu, customary activities and or taonga is arising from new or existing works and operations are avoided or otherwise agreed to by the affected iwi or hapū;
3. Adverse effects arising while maintenance or upgrading is being undertaken are not significant; and
4. Any permanent adverse effects are the same or similar to the adverse effects that existed before the maintenance or upgrading was undertaken.

4.8 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. Requiring adverse effects to be avoided, remedied, mitigated or off-set to the extent practicable.

5. PRECINCTS

5.1 Refining NZ strongly supports the Marsden Point Energy Precinct (previously the Oil Refinery Precinct). Its submission sought a number of amendments to the provisions of the Marsden Point Energy Precinct (the “Precinct”). The Council’s s42A report has recommended that most of these amendments be accepted and Refining NZ endorses those recommendations as set out in Appendix 1 to these submissions.

5.2 However, Refining NZ continues to seek the inclusion of two new policies,⁵ which the Council’s reporting officer recommended be declined:⁶

MPEP-P2 – Regional Significance: To recognise the regional significance of the Marsden Point Refinery by providing for a wide range of existing and future refinery activities within the Marsden Point Energy Precinct.

MPEP-P3 – Alternative Energy Generation Technology: To enable the development and implementation of new alternative energy generation technologies, where adverse effects are appropriately avoided, remedied or mitigated.

⁵ Submission points 260.11 and 260.12.

⁶ Council Officer’s s42A Report, 18 October 2019. Part 12, at [27].

- 5.3 The Council's reporting officer considers that SD-O22 and SD-O33 "provide sufficient recognition of the importance of regionally significant infrastructure" and infers that the inclusion of the proposed policies would be repetition of matters covered by objectives and policies in the Strategic Directions chapter.⁷
- 5.4 The regional (and indeed national) significance of the Refinery is widely accepted, including via recognition in the Civil Defence Emergency Management Act 2002, RPS and the recent Government Inquiry into the Auckland Fuel Supply Disruption. Refining NZ submits that it is appropriate to include express recognition of the Refinery's regional significance within the Precinct provisions.
- 5.5 The evidence of Mr Stewart and Mr Masefield outlines the recent strategic shift in direction of Refining NZ to look to utilise emerging technologies, including new alternative energy generation technologies. Accordingly, Refining NZ considered proposed policy MPEP-P3 remains appropriate and should be included. Refining NZ seeks that it is able to proactively respond to changing technology and emerging markets. This may include establishing new renewable energy sources on site or other appropriate responses, particularly in light of the recently enacted Climate Change Response (Zero Carbon) Act 2019.

Relief sought

- 5.6 MPEP-P2 – Regional Significance:

To recognise the regional significance of the Marsden Point Oil Refinery by providing for a wide range of existing and future refinery activities within the Marsden Point Energy Precinct.

- 5.7 MPEP-P3 – Alternative Energy Generation Technology:

To enable the development and implantation of new alternative energy generation technologies, where adverse effects are appropriately avoided, remedied or mitigated.

Maximum building height

- 5.8 Refining NZ's submission sought a very permissive maximum building height of 130m within the Precinct.⁸ The Council's s42A report has recommended that this submission point be

⁷ Above, n7.

⁸ Submission point 260.16.

rejected as it is a significant departure from the status quo 40m building height limit and because no evidence was provided to specifically support the such a departure.⁹

5.9 The evidence of Mr Stewart¹⁰ describes the business needs for appropriate flexibility to construct a limited number of new structures (e.g. a new furnace stack and three columns¹¹) above the 40m height limit. Mr Masefield in his supplementary evidence proposes some appropriate Precinct rules regarding building height which reflect the future operational needs of Refining NZ. These proposed changes are supported by Mr Brown in his expert landscape evidence. The evidence of Mr Brown comments on the existing industrial nature of the landscape as Marsden Point (including the Refinery and the port)¹² and notes that there are existing tall structures including stacks.¹³ Mr Brown considers that raising the height of the existing flare stack to 130m, and the construction of a new furnace stack and three columns would not appreciably alter the character or quality of views towards the refinery, or beyond.¹⁴

5.10 For the reasons set out in its submission, and the evidence of Mr Brown and Mr Stewart, Refining NZ submits that the rules for permitted height limits in the Marsden Point Energy Precinct be amended according to the relief as set out in the evidence of Mr Masefield.

6. HEAVY INDUSTRIAL ZONE

Permitted activities

6.1 Refining NZ's submission¹⁵ sought that rules HI-R14 Commercial Services and HI-R15 Food and Beverage should not be a permitted activity but should instead be a discretionary activity. The Council's s42A report appears to have misinterpreted the relief sought by Refining NZ as relating to the activity status of these activities when compliance with the permitted activity standards is not achieved. This is incorrect. Refining NZ is seeking that these activities are not permitted in the Heavy Industrial Zone but are instead fully discretionary activities, irrespective of floor area.

⁹Council Officer's s42A Report, 18 October 2019. Part 12, at [29].

¹⁰ Statement of Evidence of Jack Stewart, 6 December 2019. At [24].

¹¹ Statement of Evidence of Stephen Brown, 4 December 2019. At [19].

¹² Statement of Evidence of Stephen Brown, 4 December 2019. At [9].

¹³ Statement of Evidence of Stephen Brown, 4 December 2019. At [10].

¹⁴ Statement of Evidence of Stephen Brown, 4 December 2019. At [15], [18] and [21].

¹⁵ Submission points 260.23 and 260.24.

6.2 As set out in Refining NZ's submission,¹⁶ the definition of 'commercial activities' in the consequential amendments is very broad. It includes activities (for example grocery stores, general retail and garden centres) which Refining NZ considers are not appropriately located in the Heavy Industrial Zone. These activities, together with 'food and beverage activities' have the potential to give rise to reverse sensitivity effects when located in the Heavy Industrial Zone. While Refining NZ accepts that there is some need for these activities to support operations within in the Heavy Industrial Zone, it submits that such activities should not be able to be undertaken as a permitted activity.

Relief sought

6.3 HIZ-R14 Commercial Services:

Activity status: Discretionary

6.4 HIZ-R15 Food and Beverage Activity:

Activity status: Discretionary

Building Height

6.5 Patuharakeke Te Iwi Trust Board ("Patuharakeke") made a submission¹⁷ on HI-R2 seeking a reduction in the permitted building height from 40m to 20m. Refining NZ opposed this submission in its further submission as it considers that a 40m maximum height is appropriate in the Heavy Industrial Zone and will enable sustainable development of Heavy Industrial Zoned land (which is itself a scarce resource).

6.6 The Council's s42A report has recommended that Patuharakeke's submission be accepted in part, noting the potential for the 40m height limit to result in significant adverse landscape, cultural and amenity effects, particularly in the coastal environment.¹⁸ The Council's s42A report proposes the following relief:

The maximum building height and major structure height is:

a. 40 20m above ground level; or

¹⁶ Submission of Refining NZ (#260) at p 17.

¹⁷ Submitter #173.

¹⁸ Council Officer's s42A Report, 18 October 2019. Part 5, at [99].

- b. 35m above ground level provided that no more than 25% of the net site area is occupied by buildings and major structure that exceed 20m above ground level.

~~No more than 25% of the net site area is occupied by buildings that exceed 20m in height.~~

6.7 Refining NZ disagrees with the Council's position and reasoning. The Heavy Industrial Zone is, by its nature, highly industrial in character. It is not unusual for industrial activities to require higher structures due to operational needs and health and safety requirement. Anticipated and indeed, existing activities in the Heavy Industrial Zone utilise existing structures that exceed 20m. It is submitted that a 40m height limit in the Heavy Industrial Zone is appropriate and notes that there are a number of existing structures in the Heavy Industrial Zone which exceed 20m. Therefore, Refining NZ seeks that the submission point be rejected.

7. NOISE

- 7.1 Refining NZ's submission sought the establishment of a Marsden Point Industrial Noise Overlay to appropriately manage the interface between different land use zones and to avoid the potential for reverse sensitivity effects on the ongoing operation of regionally significant infrastructure, including the Refinery. The Council's s42A report has recommended that this submission point be declined as there is a lack of technical evidence to support the inclusion of such an overlay.¹⁹ Refining NZ, while it remains of the view that an overlay for the Refinery may be appropriate, proposes that it is better to instead deal with this by way of a change to the noise rules which Council seeks to amend as consequential changes associated with the Plan Changes.
- 7.2 As set out in Refining NZ's submission, its Refinery directly abuts a thin stretch of Conservation Zoned land. The proposed consequential amendments as part of the Plan Changes include changes to NAV6.1 which would, if implemented, introduce noise limits at this boundary. Such a proposed change is likely to create unanticipated compliance issues for Refining NZ, as set out in the letter of Peter Ibbotson of Marshall Day Acoustics, annexed to the evidence of Mr Masefield.
- 7.3 Refining NZ considers that amending NAV.6.1 is the most appropriate way to address to the issues raised above.²⁰ This approach is endorsed in the evidence of Mr Masefield.²¹

¹⁹ Council Officer's s42A Report, 18 October 2019. Part 5, at [219].

²⁰ Refining NZ in its Further submission (X352) on submission point 206.23 (Northland District Health Board) sought a change to rule NAV.6.1 to address this issue.

²¹ Statement of Evidence of Blair Masefield, 26 November 2019. At [59].

Relief sought

7.4 Refining NZ's preferred relief is to include an advice note in NAV.6.1 as follows:

The noise limits do not apply to noise generated within the Marsden Point Energy Precinct when measured within a Conservation or Open Space Zone.

7.5 In the alternative, Refining NZ seeks that the Council's proposed consequential amendments to NAV.6.1 Noise Arising from Activities within Zones are rejected.

8. CONCLUSION

8.1 Refining NZ is generally supportive of the Plan Changes. However, it seeks minor amendments as set out above in order to satisfy its position as set out in its submission and further submission, and respectfully requests that the relief sought in these submissions is granted.

REFINING NZ

By its solicitors ChanceryGreen, per:



CH Simmons / EJ Ellis

APPENDIX 1

AREAS OF AGREEMENT WITH COUNCIL REPORTING OFFICER

Provision	Relief sought in submission	Council position/proposed amendments	Comments
Strategic Directions			
SD-O5 -- Reverse sensitivity	Retain as notified (260.1).	<p>Accept in part:</p> <p>Incompatible Activities <u>Reverse Sensitivity</u></p> <p><u>Avoid, remedy or mitigate conflict between incompatible land use activities from new subdivision and development.</u></p>	Refining NZ accepts officer's position.
SD-O13 – Identification and Protection; and SD-O14 – Recognised Benefits (previously SD-O22)	Retain as notified (260.1).	<p>Accept in part, split into two objectives as follows:</p> <p><u>SD-O2213 - Recognised Benefits Identification and Protection</u></p> <p>Identify and protect Regionally Significant Infrastructure and recognise the benefits it provides.</p>	Refining NZ accepts officer's position.

		<p><u>Regionally Significant Infrastructure are recognised and provided for.</u></p> <p><u>SD-O14 – Recognised Benefits</u></p> <p><u>The benefits of Regionally Significant Infrastructure are recognised and provided for.</u></p>	
SD-P2 – Reverse sensitivity	Retain as notified (260.3).	<p>Accept in part:</p> <p><u>Incompatible Land-Uses Reverse Sensitivity</u></p> <p><u>To manage the establishment and location of new activities and expansion of existing activities to avoid conflicts between incompatible land uses.</u></p>	Refining NZ accepts officer's position.
SD-P5 - Sustainable Infrastructure	Retain as notified (260.3).	Accept relief.	N/A
SD-P6 - Urban Expansion	Minor amendments sought (260.4).	<p>Accept in part:</p> <p><u>To avoid inappropriate urban expansion by:</u></p>	Refining NZ accepts officer's position.

		<p>1. Ensuring that urban development occurs:</p> <p>a. <i>In a planned and coordinated manner.</i></p> <p>b. <i>Where appropriate infrastructure and services can be provided.</i></p> <p>2. Requiring new urban development to be consolidated within or adjacent to Urban Areas and rural villages.</p> <p>3. <i>Avoiding urban residential development sprawling into the Rural Area and Heavy Industrial Zone.</i></p>	
SD-P15 – Heavy Industrial Zone (previously SD-P25)	Retain as notified (260.3).	Accept relief.	N/A
Precincts			
PREC1 – Marsden Point Energy Precinct	Amend title to 'Marsden Point	Accept relief and move precinct provisions into Heavy Industrial Zone Chapter.	N/A

	Energy Precinct' (260.8).		
MPEP-O1 – Regional Significance (previously OPR-O1)	Seeks amendments (260.9).	Accept relief.	N/A
MPEP-P1 Refinery Functioning (previously OPR-P1)	Seeks amendments (260.10).	Accept relief.	N/A
Definition of 'Oil Refinery Activities'	Seeks amendments (260.13).	Accept relief.	N/A
MPEP-R2 – Building Setbacks (New rule)	Insert new permitted activity set back rule (260.14).	Accept relief.	N/A
Light Industrial Zone			
LIZ-O2 – Adverse Effects	Minor amendments sought (260.27).	Considers changes more appropriately incorporated into LIZ-O4 – Reverse Sensitivity as follows:	Refining NZ accepts officer's position.

			Avoid activities that may generate reverse sensitivity effects or <u>that compromise the operation of future industrial activities within the Light Industrial Zone or Heavy Industrial Zone.</u>	
Heavy Industrial Zone				
HIZ-01 – Effective and Efficient Functioning	Retain as notified (260.18).	Accept in part: Large-scale and noxious Industrial activities, particularly those which are noxious or generate objectionable odour, dust or noise, function effectively and efficiently without constraint from non-compatible activities.	Refining NZ accepts officer's position.	
HIZ-02 – Adverse Effects	Retain as notified (260.18).	Accept in part: Adverse effects on the natural environment and amenity of adjacent zones, <u>excluding the Light Industrial Zone, are managed.</u>	Refining NZ accepts officer's position.	
HIZ-04 – Reverse Sensitivity	Retain as notified (260.18).	Accept in part: Activities that may compromise the operation of noxious or large-scale industrial activities, particularly those which are noxious or generate objectionable	Refining NZ accepts officer's position.	

<p>HIZ-P1 – Character and Amenity</p>	<p>Retain as notified (260.19).</p>	<p><u>odour, dust or noise, within the Heavy Industrial Zone, or generate reverse sensitivity or increased risk effects, are avoided.</u></p>	
<p>Accept in part: To recognise and protect <u>maintain the character and amenity values of the Heavy Industrial Zone including, but not limited to:</u></p> <ol style="list-style-type: none"> <u>1. High levels of noise and heavy traffic activity.</u> <u>2. Large allotment sizes, often with restricted public access.</u> <u>3. Moderate to high levels of exposure to potential nuisances such as noise, odour and other air emissions.</u> <u>4. High levels of heavy traffic, particularly on arterial routes and during day time hours.</u> <u>5. A low presence of active building frontages and landscaping.</u> 			<p>Refining NZ accepts officer's position.</p>

<p>HIZ-P2 – Industrial Activities</p>	<p>Sought deletion of “unreasonable” (260.20).</p>	<p>Accept with other amendments: <i>To enable larger scale and industrial activities, particularly those which are potentially noxious or generate objectionable odour, dust or noise industrial activities to locate and operate in the H Heavy Industrial Zone without unreasonable constraint from other activities.</i></p>	<p>Refining NZ accepts officer’s position.</p>
<p>HIZ-P4 – Non-industrial Activities</p>	<p>Sought amendment to include reference to “operation, and/or expansion” in part 4 (260.21).</p>	<p>Accept in part: To avoid non-industrial activities, including sensitive activities, except for activities that:</p> <ol style="list-style-type: none"> 1. Support and Are ancillary activities to the operation of industrial activities within the Zone, and are necessary to be located as part of the industrial activity. 2. Would <u>Do</u> not undermine the integrity of the other Business Zones. 3. Do not generate reverse sensitivity or increased risk effects. 	<p>Refining NZ accepts officer’s position.</p>

		Do not have the potential to hinder or constrain the establishment, operation, and/or expansion of activities otherwise anticipated within the <u>Heavy Industrial Zone</u> .	
HIZ-P5 – Surrounding Environment	Retain as notified (260.19).	Accept relief sought.	N/A
HIZ-P7 – Subdivision	Retain as notified (260.19).	Accept relief sought.	N/A
Conservation Zone			
CON-03 – Regionally Significant Infrastructure	Sought the inclusion of a new objective for regionally significant infrastructure proximate to the Conservation Zone (260.29).	Reject relief sought.	Refining NZ accepts officer's position.

Residential

All living zones	Sought the inclusion of new policy to address reverse sensitivity on regionally significant infrastructure (260.28).	Reject relief as this is adequately dealt with in the Strategic Directions chapter.	Refining NZ accepts officer's position.
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