



**REFINING NZ**  
Your Energy Hive

1<sup>st</sup> of March 2018

Northland Regional Council  
Private Bag 9021  
Whangarei Mail Centre  
Whangarei 0148

Attention: Ben Lee

Via Email: [BenL@nrc.govt.nz](mailto:BenL@nrc.govt.nz)

Dear Ben,

**MINUTE AND DIRECTIONS OF THE HEARING PANEL – Minute 1**

Please find attached the New Zealand Refining Company's response to Minute 1 as it relates to the Proposed Regional Plan for Northland.

As part of its submission (Attached as Annexure E), the New Zealand Refining Company included a Draft Outline Development Plan entitled DRAFT Refinery Outline Development Plan – Marsden Point Refinery. This draft plan set out a suite of provisions which provided mechanisms to manage the Company's operations at its Marsden Point facilities, that part of its 170 km Refinery to Auckland fuel pipeline that is within the Northland Region, including its activities within the Coastal Marine Area, the abstraction of water and those activities that discharge to air, land and water. The attached DRAFT and PRELIMINARY Section 32 analysis evaluates the Outline Development Plan approach against the Status Quo (or the approach that has been adopted by the Council) and a specific Zoning approach. Please note that the analysis provided is draft and preliminary and will be developed and built upon in evidence.

Please don't hesitate to contact the undersigned should you have any questions regarding the same.

Yours sincerely  
Refining New Zealand

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Riaan Elliot  
Environmental Affairs Manager

# REFINING NEW ZEALAND

## Refinery Outline Development Plan - Section 32

### Executive Summary

This section 32 analysis relates to the operations of the New Zealand Refining Company ('Refining NZ' or 'the Company') at its Marsden Point facilities, that part of its 170km Refinery to Auckland fuel pipeline that is within the Northland Region (including its activities within the Coastal Marine Area ('CMA')), the abstraction of water and those activities that discharge to air, land and water.

The Company is the country's only oil refinery and the leading supplier of refined petroleum products to the New Zealand market, including petrol, diesel, aviation fuel and other products. Refining NZ's operations are governed by a range of Northland Regional Council ('the Regional Council' or 'the Council') regional plans, including the Regional Air Quality Plan for Northland ('RAQP'), the Regional Coastal Plan for Northland ('RCP') and the Regional Water and Soil Plan for Northland ('RW&SP'). An opportunity exists through the current development of the Northland Regional Plan ('NRP') to specifically address the activities associated with the Refinery's operations in one place. The current Resource Management Act 1991 ('RMA' or 'the Act') planning documents, including the proposed Northland Regional Plan (the 'proposed NRP' or the 'pNRP') do not specifically provide for the activities on the Refinery Site. Rather, as with other activities in the region, general rules from the various sections (or in the case of the operative RMA plans, the separate documents) are required to be assessed. Given the rules are required to address all activities in the Northland Region, there is no recognition of the unique characteristics of the Company's operations and similarly the complexities associated with the Refinery Site. It is considered that such an approach is inefficient and does not accurately reflect the Refinery's status as nationally and regionally significant infrastructure, as provided for under the Northland Regional Policy Statement ('RPS'). Further, such an approach may result in unnecessary consenting requirements and the inappropriate management of environmental effects. Such inefficiencies will only be exacerbated over time as activities at the Refinery Site continue to develop.

In order to determine the best management option for addressing the activities undertaken by Refining NZ, three management options have been identified, being Option 1 - The Status Quo, Option 2 - Site Specific Provisions (Outline Plan), and Option 3 - Site Specific Provisions (Zoning).

The preferred management option is Option 2. Option 1 is not considered to satisfactorily meet any of the high-level objectives considered in the evaluation of the management options. It is noted that Options 2 and 3 both provide recognition of the importance of the Refinery Site by specifically identifying it within the NRP. Additionally, both these approaches also lead to specific rules being able to be drafted for the Refinery operations. This ensures that a range of rules, activity statuses and assessment criteria can be included that focus on the operational issues that are relevant, reflecting the historical activities, the substantial information that is held on the Site and the operations, the other regulatory requirements required to be undertaken, and the future development aspirations.

The key difference between Options 2 and 3 are the efficiency gains that are achieved by housing the provisions in a separate chapter. This approach ensures that the size and scale of the NRP is not unduly increased by the repetition of provisions and explanations that are required from the creation of additional zoning. Further, it ensures that other plan users, being the vast majority of people that are not associated with any of the Refinery operations, are not required to navigate through the entire plan document, that would include a large number of Refinery provisions. The removal of general provisions also results in more specific drafting and reduces uncertainty of implementation. Additionally, Option 3 ensures that the Refinery operations are clearly differentiated from other activities in the Northland Region, including other nationally and regionally significant infrastructure. The introduction of the proposed Outline Plan chapter (Option 2) provides an opportunity to identify what makes the Refinery different, being its historical development; unique standing as 'one of a kind' infrastructure in New Zealand; location and scale. Such an approach addresses any 'precedent' claims from other infrastructure providers that might also seek to have individualised provisions.

## Relevant Provisions

This evaluation supports the insertion of additional specific provisions into the NRP that expressly address the activities associated with Refining NZ. The provisions (which were identified in the Company's submission to the proposed NRP, including as a draft Outline Plan attached as Annexure E to the submission – entitled DRAFT Refinery Outline Development Plan – Marsden Point Refinery) provide mechanisms to manage the Company's operation at its Marsden Point facilities, that part of its 170km Refinery to Auckland fuel pipeline that is within the Northland Region, including its activities within the CMA, the abstraction of water and those activities that discharge to air, land and water.

Currently, the operations of the Company are governed by a range of Northland Regional Plans, including the RAQP, the RCP and the RW&SP. Refining NZ's operations are governed by a number of rules within the proposed NRP that are generally split into the following topics or chapters:

- C.1 Coastal Activities;
- C.3 Damming and Diverting Water;
- C.4 Land Drainage and Flood Control;
- C.5 Taking and Using Water;
- C.6 Discharges to Land and Water;
- C.7 Discharges to Air;
- C.8 Land Use and Disturbance Activities.

As noted above, the new provisions would seek to provide specific controls associated with Refining NZ's operations. The provisions would address:

- Structures in the CMA;
- Maintenance dredging and disposal;
- Capital dredging and disposal; and
- On-site activities including discharges to land, water and air; water takes; and land disturbing activities.

## Legal Background

### Resource Management Act 1991 (including regulations)

The Resource Management Act 1991 ('RMA' or 'the Act') sets the legal background for district and regional activities. The below section sets out some of the key sections of relevance to the Refinery and the direction that they provide. Part 1 (Interpretation and Application) defines the CMA as the foreshore, seabed, and coastal water, and the air space above the water between: a seaward boundary (territorial sea limit, which is presently 12 nautical miles offshore); and a landward boundary (the line of Mean High Water Springs), except where that line crosses a river, the landward boundary at that point shall be the lesser of one kilometre upstream from the mouth of the river or the point upstream that is calculated by multiplying the width of the river mouth by five.

The term 'coastal environment' is not defined in the RMA but the New Zealand Coastal Policy Statement 2010 sets out (in Policy 1) what the extent and characteristics of the coastal environment include, recognising that the 'coastal environment' will vary from region to region and locality to locality. The RMA defines 'occupy' as the activity of occupying any part of the coastal marine area –

- where the occupation is reasonably necessary for another activity; and*
- where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and*
- for a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense.*

The Act provides the basis for the management of contaminated land in New Zealand. It is the primary statute for the development of the proposed NRP provisions for contaminated land, hazardous substances and solid waste.

The Refinery is considered an industrial and trade premise, within Part 1 of the Act industrial and trade premises defined to mean –

- (a) any premises for any industrial or trade purposes; or*
- (b) any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or*
- (c) any other premises from which a contaminant is discharged in connection with any industrial or trade process;*

*but does not include any production land.*

Part 2 of the RMA (sections 5-8) sets out the purpose of the Act and principles which are to be applied in resource management decision-making. Air is specifically mentioned in section 5 as a resource that must be safeguarded. Air is not a matter of national importance under section 6 RMA. Air falls under the ambit of parts of section 7 RMA including: (b) the efficient use and development of natural and physical resources; (d) the efficient use and development of natural and physical resources; and (f) maintenance and enhancement of the quality of the environment.

With regard to contaminated land, section 5 requires the sustainable management of natural and physical resources to be managed in a way that enables people and communities to provide for their social, economic and cultural well-being and their health and safety. Contaminated land can directly impact people's health and safety. Section 5 also requires that the life-supporting capacity of the soil, air and water and ecosystems is safeguarded. Section 6 requires regional plans to recognise and provide for matters of national importance. Contaminated land, the discharge of solid waste and the discharge of hazardous substances are related to the matters mentioned in section 6, as these discharges can affect the natural character of freshwater bodies and the coastal marine area, and significant indigenous flora and fauna. Section 7 requires the management of natural and physical resources that particular regard is made to various matters. In relation to contaminated land, section 7(f) (the maintenance and enhancement of the quality of the environment), and section 7(g) (any finite characteristics of natural and physical resources) are the most relevant clauses.

Part 3 - Duties and restrictions under this Act - Section 9 sets out the 'Restrictions on the use of land', including its modification from earthworks.. The section is prefaced by the presumption that all activities are permitted unless they are restricted by a rule in a national environmental standard or rule in a regional or district plan. Regional rules can place controls on the use of land for the purposes specified in section 30. Section 10 recognises that lawfully established activities are protected by 'existing use rights', while section 11 places restrictions on the subdivision of land. Subdivision is not a matter that is addressed by the regional authority. Subdivision or use of contaminated land is regulated by a national environmental standard ('NES') and by rules in district and regional plans. The environmental standard supersedes rules in district plans, although district plans may have specific requirements for contaminated land outside the standard.

Section 12 sets out 'Restrictions on use of coastal marine area'. Unlike land where the general presumption is that people can do what they want unless a rule in a regional/district plan says otherwise, the opposite applies in the CMA. The general presumption is that you need a resource consent (coastal permit) to do anything (such as the placement of a structure, the disturbance of foreshore or seabed or reclaiming or draining the foreshore) unless expressly allowed by a NES, a rule in a RCP, or a resource consent. This is because the coastal marine area is generally perceived as public space or 'commons' and private occupation and use is treated as a privilege rather than a right.

Section 12 of the RMA requires people to gain a consent under section 12(1)(b) (for the erection or placement of structures) and if they wish to occupy it exclusively, a further consent to occupy under 12(2)(a). The term 'structure' is defined in the RMA as meaning "any building, equipment, devise, or other facility made by people and which is fixed to land; and includes any raft". Within the coastal marine area, being 'fixed to land' means fixed to the foreshore and/or seabed.

Section 14 provides for restrictions relating to water. Specifically, this section restricts the taking, damming, diverting of fresh water, open coastal water, or take or use of any heat or energy from water, in a manner that contravenes a NES or a regional rule unless the activity is expressly allowed by a resource consent or by section 20A.

Section 15 states that no person may discharge any contaminant or water into water; or contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or contaminant from any industrial or trade premises into air; or contaminant from any

industrial or trade premises onto or into land, unless the discharge is expressly allowed by a NES or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

Under Section 1(1c) of the RMA, all industrial and trade discharges to air require a resource consent. As noted above, the Refinery site is identified as an industrial or trade discharge. However, the starting point for other discharges to air is that they are permitted unless otherwise stated by a national environmental standard (s15(2)) or rule in a plan (s15(2A)).

Section 16 requires every occupier of land (including in the coastal marine area) to adopt the best practicable option to ensure that the emission of noise from land or water does not exceed a reasonable level.

Section 17 includes a general duty on anyone to avoid, remedy or mitigate any adverse effect on the environment (this is not enforceable by itself). However, an enforcement order or abatement notice may be served to: (a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Environment Court or an enforcement officer, is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment; or (b) require a person to do something that, in the opinion of the Environment Court or an enforcement officer, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person. The words 'objectionable and offensive' feature quite widely in relation to the management of the cross boundary effects of air within case law.

With regard to Part 4 - Functions, powers and duties of central and local government - Regional coastal plans or RCP's (which are the only mandatory regional plans under the RMA) control activities that councils manage under the RMA from the line of mean high water springs out to the 12 nautical mile limit of the territorial sea. These plans are very important because people are restricted from undertaking many activities in the CMA unless expressly allowed by a regional coastal plan or a resource consent. As well as rules, councils use a range of non-statutory mechanisms to achieve the sustainable management of the coastal environment (such as financial incentives, education, advocacy and coordination with volunteer groups).

The functions of regional councils are described in section 30, and include:

- The establishment, implementation and review of objectives, policies and methods to achieve integrated management of the natural and physical resources of the region; and
- In respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of: land and associated natural and physical resources, the occupation of space, the dumping and incineration of waste or other matter, the mitigation of the effects of noise and activities in relation to the surface of water;
- If appropriate, the establishment of a rule in a regional coastal plan to allocate space in the coastal marine area under Part 7A of the RMA;
- Regional councils also have the main function of controlling discharges to air, in particular: S30(d) in relation to the discharge of contaminants into air within the coastal marine area; S30(f) in relation to the discharge of contaminants into air; and S30(fa) (iv) in terms of allocating the use of air as a resource.
- Section 30(c)(v) and section 30(ca) relate to contaminated land and hazardous substances. Part (v) requires that regional plans control the use of land to prevent and mitigate any adverse effect from the storage, use, disposal or transport of hazardous substances. Section 30(c)(ii-iii) sets out a councils responsibilities in relation to water quality and the health of ecosystems in water bodies. These functions are relevant for solid waste, hazardous substances and contaminated land.

Section 31 gives district councils the general ability to create objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. This function enables district councils to set rules that help avoid potentially incompatible activities from locating in close proximity. This can be a major cause of air nuisance complaints and therefore it is important to ensure that effective separation distances and zoning are used to avoid these complaints in the future.

With respect to Part 5 - standards, policy statements and plans, regional coastal plans, section 63(2) provides that without limiting subsection (1) the purpose of regional coastal plans is to assist a regional council, in conjunction with the Minister of Conservation, to achieve the purpose of the Act in relation to the CMA. Section 64 outlines that there shall be at all times, for all the coastal marine area of a region, one or more regional coastal plans. These plans are the only mandatory regional planning document – all others are discretionary. This illustrates the importance of sustainably managing the coast. Clause 19 of Schedule 1 requires the Minister of Conservation to approve a regional coastal plan – this is unique in that no other Minister has powers to amend or approve regional plans. Additionally, Clause 22 of Schedule 1 allows 'any person' to request a regional council to change a regional coastal plan. Under section 64A, in preparing or changing a regional coastal plan,

regional councils are required to decide whether to impose coastal occupation charges. There is no obligation to impose charges and each regional council is required to make its own decision based on its unique circumstances. A decision on whether or not to impose a charging regime must be made by 1 October 2014 or within the next plan change after this date in accordance with section 401A(5).

Section 68: regional rules sets out that regional councils may (for the purposes of carrying out their functions under the Act) include rules in regional plans. Section 68A states that a regional coastal plan cannot authorise aquaculture activities in the coastal marine area as permitted activities. The RMA does not authorise a regional plan to differentiate between individuals or groups. In particular, section 68 does not contemplate the making of rules which would give preference to a particular sector or sectors of the community in the allocation of space in the CMA. Further, section 70A sets out that regional councils cannot have regard to climate change when developing rules to manage air discharges except in relation to where renewable energy enables a reduction into the air of greenhouse gases.

In turning to Part 6, if there is no relevant rule in the coastal plan for an activity and Part 3 (section 12 in particular) requires a resource consent to be obtained, section 87B of the RMA states that the activity must be treated as an application for a resource consent for a discretionary activity.

Section 88(3) enables a consent to be returned if there is not an adequate assessment of environmental effects, while section 92 sets out how a council can request further information on a consent application. Section 104 - consideration of applications, allows for regard to be had to relevant documents and considerations. Schedule 4 requires an assessment of environmental effects to include identification of affected parties, and an assessment of cultural effects.

Section 122 outlines that no coastal permit shall be regarded as an authority for the holder to occupy any part of the CMA to the exclusion of all or any class of persons.

Section 138A relates to special consideration of proposals for coastal dumping and incineration, which would otherwise contravene section 15A (which does not allow dumping or incineration without a resource consent). This is a requirement following the adoption of the Resource Management (Marine Pollution) Regulations 1998.

Part 7A relates to applications for, and the granting of, coastal permits to occupy space in the common marine and coastal area. The wider section contains provisions about managing occupation of the common marine and coastal area, in particular:

- (a) a power to refuse to receive an application for a coastal permit to occupy the common marine and coastal area if made within 1 year after refusing a similar application;
- (b) provisions about the contents of a regional coastal plan;
- (c) requirements for a regional council (before including a rule in a regional coastal plan or proposed regional coastal plan about the allocation of space in the common marine and coastal area) to have regard to, and be satisfied about, certain matters;
- (d) a power by Order in Council to direct a regional council not to proceed with the allocation of authorisations or to proceed as specified in the order;
- (e) a power of the Minister of Conservation to approve a method of allocating authorisations;
- (f) general provisions about authorisations;
- (g) a power of the Minister of Aquaculture, on request from a regional council, to suspend receipt of applications for coastal permits to occupy space in the common marine and coastal area for aquaculture activities or to direct a regional council to process and hear applications together.

Under the RMA, iwi authorities may prepare iwi planning documents to address a range of issues (including but not limited to coastal management issues). Councils must take into account any relevant planning document recognised by an iwi authority and lodged with the council, when preparing an RMA planning document.

## **Treaty Settlements and Statutory Acknowledgements**

### ***Statutory acknowledgements***

A statutory acknowledgement is a formal recognition by the Crown of the particular cultural, spiritual, historic, and traditional associations that an iwi has with a statutory area. Statutory acknowledgements may apply to land, rivers, lakes, wetlands, landscape features or a particular part of the CMA. Where a statutory acknowledgement relates to a river, lake, wetland or coastal area, the acknowledgement only applies to that part of the bed in Crown ownership or control. The purpose of statutory acknowledgements is to:

- 1) Require consent authorities, the Environment Court and the Historic Places Trust to have regard to the statutory acknowledgements;
- 2) Require consent authorities to forward summaries of resource consent applications for activities that would affect the area to which the statutory acknowledgement applies to the governance entity; and
- 3) Enable the governance entity and any member of the relevant iwi to cite a statutory acknowledgement as evidence of the association of the iwi with the areas to which the statutory acknowledgement relates.

While the only legal requirements with regard to statutory acknowledgements in the preparation of plans and policy statements is to attach them to the relevant planning document, they provide a clear statement of the interests of tangata whenua that can be used to inform plan preparation. Refining NZ is not aware of any statutory acknowledgements over the Refinery Site.

### **National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health**

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health ('NESCS') is a nationally consistent set of planning controls and soil contaminant values. It came into effect on the 1<sup>st</sup> of January 2012 and its purpose is to ensure that land affected by contaminants in soil is appropriately identified and assessed before it is developed and, if necessary, the land is remediated or the contaminants contained to make the land safe for human use. The NESCS classifies as permitted activities:

- The removal or replacement of fuel storage systems and associated soil, and associated subsurface soil sampling;
- Soil sampling;
- Small-scale (no greater than 25 m<sup>3</sup> per 500 m<sup>2</sup> of affected land) and temporary soil disturbance activities (no more than two months' duration); and
- Subdividing land or changing land use where a preliminary investigation shows it is highly unlikely the proposed new use will pose a risk to human health.

In accordance with the NESCS, the Northland Regional Council is required to investigate land for the purposes of identifying and monitoring contaminated land. To fulfil this function, most regional councils maintain a contaminated sites database. These are often the primary source for territorial authorities identifying potential Hazardous Activities and Industries List ('HAIL') sites.

It is noted that Refining NZ is identified as both a HAIL and contaminated site as a result of the storage and processing of hydrocarbon products.

### **Resource Management (National Environmental Standards for Air Quality) Regulations 2004**

The National Environmental Standards – Air Quality are a set of regulations produced under the RMA. National Environmental Standards can prescribe technical standards, methods or other requirements for environmental matters. Each regional, city or district council must enforce the same standard. In some circumstances, councils can impose stricter standards (as is the case for the air standards). The National Environmental Standards – Air Quality are made up of 14 separate but interlinked standards. The 14 standards include seven standards banning activities that discharge significant quantities of dioxins and other toxins into the air; five standards for ambient (outdoor) air quality; a design standard for new wood burners installed in urban areas; and a requirement for landfills over one million tonnes of refuse to collect greenhouse gas emissions. It is noted that the national standards were amended in June 2011 with the main changes being:

- Extending the target date for regional councils to meet the ambient particulate matter (PM<sub>10</sub>) standard. New split target dates are 1 September 2016 (airsheds with between one and 10 exceedances of the ambient PM<sub>10</sub> standard) and 1 September 2020 (airsheds with 10 or more exceedances of the ambient PM<sub>10</sub> standard)<sup>1</sup>;

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<sup>1</sup> Airsheds are defined areas where air quality has the potential to exceed national standards. Northland has five defined airsheds in Kaitiāia, Whangārei, Dargaville, Kerikeri and Marsden Point

- Making provision for the exclusion of exceptional events (for example, dust storms, volcanic eruptions);
- Requiring 'offsets' from certain new industries with PM<sub>10</sub> discharges in 'polluted' airsheds from September 2012, replacing the current restrictions on industrial consents; and
- Prohibiting new solid fuel-burning open fires in homes in polluted airsheds from September 2012.

As the Northland Region does not have any airsheds considered polluted (for example, more than one exceedance per year for PM<sub>10</sub>), most of the changes to the national standards do not apply.

The national standards prescribe a prohibition of all of the following types of burning (this applies universally as a regional rule cannot be more permissive than this standard):

- Landfill fires (Regulation 6);
- Burning of tyres in the open (Regulation 7);
- Bitumen burning (Regulation 8);
- Burning of coated wire in the open (Regulation 9);
- Burning of oil in the open (Regulation 10);
- School and healthcare incinerators unless a resource consent is obtained (Regulation 11); and
- High temperature incinerators (Regulation 12).

### **Civil Defence Emergency Management Act 2002**

The Civil Defence Emergency Management Act 2002 ('**CDEMA**'), which was recently amended in 2016 enables the recovery from emergencies to be more efficient and effective. Although its focus is on recovery from small to medium events, the Act is not limited to these types of emergencies. Its provisions can be used in a large scale emergency until any bespoke legislation is created.

It is noted that Refining NZ is a Lifeline Utility in accordance with the CDEMA. It is essential that lifeline utilities are resilient to emergencies and that their emergency planning is integrated with the wider community's CDEM planning. The CDEM Act requires lifeline utilities to be able to continue functioning to the fullest possible extent during and after an emergency, albeit this may be at a reduced level. It is essential that lifeline utilities are resilient to emergencies and that their emergency planning is integrated with the wider community's CDEM planning, so that both are effective at minimising loss and hastening a return to business. This can only be achieved by cooperative planning between utilities, local government and the emergency services. The focus is on business continuity planning to ensure essential services are continued or restored to priority facilities and customers.

### **Marine and Coastal Area Act 2011**

The Marine and Coastal Area Act 2011 ('**MCAA**') replaced the Foreshore and Seabed Act 2004 and established a new regime for the recognition of Māori customary rights and title over the 'common marine and coastal area'. It includes the marine and coastal area, excluding freehold title and areas owned by the crown as conservation areas, national parks or reserves. The Act sets out that neither the Crown nor any other person can own, or is capable of owning, the common marine and coastal area.

With regard to 'protected customary rights', a consent authority cannot grant a resource consent for an activity in a protected customary rights area if the activity will, or is likely to, have more than a minor adverse effect on the exercise of protected customary rights, unless the relevant group gives its written approval or the activity is exempted as an accommodated activity. In addition, to customary marine title – this gives right-holders the ability to give or withhold permission to resource consent applications, protect wāhi tapu areas, or create a planning document for the area. If an iwi, hapū or whānau group has applied for, but not yet been granted, customary marine title over the relevant marine and coastal area, then a resource consent applicant will have to notify the group and seek the group's views before lodging the consent application. If customary marine title has been recognised over the marine and coastal area, then, for most activities, a resource consent applicant will have to obtain permission from the group that holds customary marine title before a resource consent can begin. There is no right of appeal or objection to a refusal of permission (nor presumably to the conditions on which permission is granted).

As a number of the Refining NZ operations are within the CMA the MCAA provisions are potentially applicable.

### **Reserves Act 1977**

The Reserves Act ('**RA**') offers tools to provide public access to and along the coast, including through mechanisms such as marginal strips and esplanade reserves, which can be required as part of a resource consent for subdivision. These are transferred to the territorial authority.

The Company's Marsden Point Site directly adjoins the CMA with one of its overflow structures located partially within a Whangarei District Council vested esplanade reserve, and its jetty and boat ramp also cross the reserve. It is noted that Refining NZ has an easement across the esplanade reserve for the overflow structure spillway.

### **Local Government Act 2002**

The Local Government Act 2002 ('**LGA**') gives councils the ability to set bylaws within their respective region or district. For example, section 145 gives authority to district councils to adopt bylaws to regulate activities which can be carried out on roads, in public places and in reserves. The Northland Regional Council's 'Navigation and Safety Bylaw 2012' was produced under this Act. This bylaw (which is discussed further in the following section) specifically references the Refinery, prohibiting a number of activities around the Refinery berths at Marsden Point. With respect to air discharges, it is noted that council fire prevention bylaws exist in the Whangārei, Far North and Kaipara districts.

### **Maritime Transport Act 1994**

The Maritime Transport Act 1994 ('**MTA**') includes powers for regional councils to make bylaws to regulate a number of activities that relate to the function of a regional coastal plan (Section 33M), including to:

- 1) Regulate and control the use or management of ships;
- 2) Regulate the placing and maintenance of moorings and maritime facilities;
- 3) Prevent nuisances arising from the use of ships and seaplanes;
- 4) Prevent nuisances arising from the actions of persons and things on or in the water;
- 5) Reserve the use of any waters for specified persons, ships, or seaplanes;
- 6) In relation to boat races, swimming races, or similar events:
  - a. prohibit or regulate the use of ships;
  - b. regulate, or authorise the organisers of an event to regulate, the admission of persons to specified areas; and
- 7) Regulate and control the use of anchorages.

The Navigation and Safety bylaw 2012 has been prepared by the Northland Regional Council (in accordance with section 33M of the MTA). The by-law applies to the waters in estuaries, inlets, harbours and along the Northland coast between the following boundaries:

- a. The outer boundary being 12 nautical miles from the shore; and
- b. The inner boundary being the line of mean high water springs, except where the line crosses a river, in which case the inner boundary is deemed to be the landward boundary of the CMA as defined in the RCP for Northland.

It is noted that there is a Port Exclusion Zone designation indicated around the Refining NZ Jetty. The purpose of which is for the safety of other users of the marine area. All vessels are restricted from the Port Exclusion Zone designation unless permission from Refining NZ has been provided.

### **Hazardous Substances and New Organisms Act 1996**

The Hazardous Substances and New Organisms Act 1996 ('**HSNO**') is administered by the Environmental Protection Agency ('**EPA**') for the introduction of new organisms and certification, recertification and use of hazardous substances and the Ministry of Business, Innovation and Employment ('**MBIE**') for enforcing safe work practices. Through the provisions in the Act, the EPA can introduce controls and limitations on the use of chemicals and other hazardous agents in the environment. This can overlap with regional rules governing burning and the application of agrichemicals and spray coating where there can be controls on the rate and application of chemicals.

The Refining NZ Site houses materials that are classified as hazardous substances, further, its operation as an Industrial and Trade premise, means that it must abide by the applicable HSNO provisions.

### **Health Act 1956**

Northland District Health Board and the associated district councils both operate their public health functions under the Health Act 1956. The medical officer of health at the District Health Board can initiate investigations under the terms of the Act where an activity has the potential to be injurious to public health. District councils have a similar function to investigate incidents of activities that may be injurious to public health. Dust and spray can all cause or aggravate health problems and therefore there are overlaps between a regional council's role to control the discharges into air of these contaminants and district health boards and district councils' roles to investigate activities with adverse health effects. District councils also have functions under this Act which allow them to control fire and smoke nuisance.

### **Health and Safety at Work Act 2015**

The Health and Safety at Work Act 2015 ('**H&SWA**') requires the identification and management of risk at work places. This law is mainly concerned about work place practices rather than environmental effects caused by the activity, nevertheless one can clearly have an effect on the other and there are overlaps between the management of workplace risk and the management of environmental effects. For example, the storage of hazardous substances to prevent their release into the environment (into water, onto the land or into the air).

### **Conservation Act 1987**

The Conservation Act 1987 ('**CA**') is the preeminent conservation legislation in New Zealand. Under the CA, the Department of Conservation ('**DoC**') has a number of functions. These include:

- The management for conservation purposes of all land and natural and historic resources held under the Conservation Act;
- The preservation of indigenous freshwater fisheries (so far as is practicable);
- The protection of recreational freshwater fisheries and freshwater fish habitats;
- Conservation advocacy;
- Promotion of the benefits of international co-operation on conservation matters;
- Promotion of the benefits of the conservation of natural and historic resources in New Zealand, the sub-antarctic islands, the Ross Dependency and Antarctica;
- The provision of educational and promotional conservation information;
- Fostering recreation and allowing tourism on conservation land, providing the use is consistent with the conservation of the resource; and
- Provision of advice to the Minister of Conservation.

The Whangarei harbour contains habitat for a number of threatened and endangered species. Refining NZ work with the DoC with regard to pest management and the rehousing of nesting species around the Refinery Site.

### **Wildlife Act 1953**

The Wildlife Act 1953 deals with the protection and control of wild animals and birds and the management of game. Permits are necessary to deal with certain wildlife. The Refinery operations are located adjacent to the Whangarei harbour which provides habitat for wide variety of bird species of which some are endangered.

Refining NZ work with the DoC with regard to the rehousing of nesting species around the Refinery Site.

## **Planning Documents**

### **New Zealand Coastal Policy Statement 2010**

A national policy statement is an instrument available under the RMA to help local government decide how competing national benefits and local costs should be balanced. The Northland Regional Council is required to give effect to relevant provisions of the national policy statement in planning documents, and resource consent authorities must have regard to relevant provisions when considering resource consent applications. The New Zealand coastal policy statement ('**NZCPS**') is the only mandatory national policy statement under the RMA. The purpose of an NZCPS is to state policies to achieve the purpose of the RMA, in order to promote the sustainable management of natural and physical resources in relation to New Zealand's coastal environment (section 56 RMA).

The NZCPS guides regional, city and district councils in their day to day management of the coastal environment. It is of particular relevance in respect to this evaluation, as Policy 6 of the NZCPS promotes activities that have a functional need, an efficient use of occupied space and maintaining the character of the CMA amongst other things.

The Company's Marsden Point Site is adjacent to the CMA and a number of structures and operations are located within the coastal environment.

### **National Policy Statement on Electricity Transmission 2008**

The proposed NRP must give effect to the requirements of the National Policy Statement on Electricity Transmission 2008 ('**NPSET**') which sets out objectives and policies to enable the management of the effects of the electricity transmission network under the RMA.

Policy 7 of the NPSET seeks to minimise the adverse effects of the transmission network on urban amenity and to avoid the adverse effects on areas of high recreational value or amenity and existing sensitive activities. The CMA is acknowledged as having high recreational and amenity values, so giving effect to Policy 7 is of particular relevance.

Further, Policy 8 of the NPSET requires that the planning and development of transmission networks should seek to avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreational value and amenity.

The Refinery Site is serviced by the Transpower High Voltage transmission network.

### **Regional Policy Statement for Northland**

The Northland Regional Policy Statement ('**RPS**') has no specific air quality provisions. There is direction to district councils to avoid incompatible land uses from being sited in close proximity (such as odorous activities near a residential area). With regard to the coastal environment, the Northland Regional Council has mapped the landward extent of the coastal environment of the Northland Region, and included this mapping in the RPS. This will assist council with implementing the NZCPS as well as the RPS. The RPS has many provisions that specifically apply to land within the CMA and are applicable the Refining NZ Marsden Point Refining Site including the areas identified as Outstanding Natural Character areas, such as Marsden and Mair Banks adjacent to the Refinery jetty and navigation channel.

The Refinery and the adjacent facilities at the Northport are physical infrastructure requiring sustainable management under the Act. Both are listed in Appendix 3 of the RPS, and thus are deemed to be Regionally Significant Infrastructure for the purposes of this planning instrument. This is in addition to the nationally significant recognition that the Refinery receives in the introductory sections of the RPS (Refer to section 2.3 – Economic Potential and Social Wellbeing)

### **Regional Air Quality Plan for Northland**

This Plan applies to air in the whole of the Northland region, excluding the CMA. The Plan identifies the significant air quality issues and sets out policies and rules so that these will be managed. Air quality in the CMA is managed through the RCP.

This is the current plan for managing the air resource in accordance with the Act. For practical purposes, the current RAQP limits regulation of air discharges with only a minor adverse effect. It does this in two ways, depending on whether the air discharge is from an industrial or trade premise or any other place or source. Under Section 15(1c) of the RMA, all industrial and trade discharges to air require a resource consent unless permitted by a rule in a plan. Therefore, the RAQP specifies those industrial and trade activities where consent is not required.

Section 15(2A) of the Act on the other hand states that only through a rule in a plan can air emissions from any other place or source be regulated. Therefore, many activities are simply not listed in the RAQP, thus requiring no consent, as their effects have been considered to be only minor. Nevertheless, there are a modest number of consents in the region for an air discharge, 359 on land (as of December 2013) and 14 in the coastal marine area (regulated separately through the RCP) making a total of 373 in total. Overall however the plan generates a relatively small number of consents compared with those held under rules for other plans. The RCP for example, has 4519 currently held coastal permits. The policy approach (in general) is to permit an activity that has a high ability to internalise effects within the boundaries of the site.

The Refining NZ Site operations result in the discharge of contaminants to air. The Company holds a number of resource consents for these activities in accordance with the RAQP and the RCP.

### **Regional Coastal Plan for Northland**

The RCP covers the Northland region's CMA, which is the area from mean high water springs to the 12 nautical mile (22.2 km) limit of New Zealand's territorial sea. The Plan assists the Northland Regional Council, in conjunction with the Minister of Conservation, to promote the sustainable management of the CMA.

The Company's Marsden Point Site is adjacent to the CMA and a number of structures and operations are located within the coastal environment, including, but not limited to the Wharf and Jetty structures. As such, the RCP is of particular relevance to Refining NZ.

### **Regional Water and Soil Plan for Northland**

The RS&WP covers the effects of land use activities on water and soil in Northland above the line of mean high water springs. The plan identifies the significant water and soil issues and seeks to address these through the policies and rules.

The Company's Marsden Point operations are considered as an Industrial and Trade premise and the Site is contaminated as a result of the processing of hydrocarbon products.

### **Whangarei District Plan**

The RMA requires local authorities to prepare a District Plan.

The Whangarei District Plan ('WDP') sets out rules, policies and objectives for sustainably managing natural and physical resources in the Whangarei District (landward of mean high-water springs). The plan became operative on 3 May 2007.

The Company's Marsden Point Site is located within the Whangarei District and as a result the WDP is applicable to the landuse activities undertaken on the Site. Parts of the Refinery to Auckland Pipeline ('RAP') are located within the Whangarei District. Refining NZ is a requiring authority under section 168 of the RMA and the RAP route is designated under section 166.

### **Iwi and hapū management plans**

Iwi/hapū environmental management plans are planning document recognised by an iwi authority (the authority that represents an iwi and that is recognised by that iwi as having authority to do so). Iwi/hapū environmental management plans may be formal planning documents similar to council policy documents, or they may be a statement of iwi/hapū policies in a less formal and detailed memo or report. Plans may be developed by iwi, hapū or whānau and provide a statement on the position of tangata whenua on a range of issues so that these can be heard and considered by councils and other stakeholders.

There are a range of sections within the RMA that provide for Māori interests. When preparing regional plans, regional councils are required to "...take into account any relevant planning document recognised by an iwi authority and lodged with council" under section 66(2A)(a) of the RMA .

The following is a list of those iwi and hapū who have developed environmental management plans (recognised by an iwi authority) and formally lodged them with the Northland Regional Council.

#### **Ngātiwai Trust Board**

Te Iwi o Ngātiwai Iwi Environmental Policy Documents 2007

Ngātiwai Aquaculture Plan 2005

**Te Rūnanga o Ngāti Rehia**

Ngati Rehia Environmental Management Plan 2007 (updated 2015 yet to be formally lodged with council)

**Patuharakeke Te Iwi Trust Board**

Hapū Environmental Management Plan 2015

**Te Rūnanga o Ngāti Hine**

Ngā Tikanga mo te Taiao o Ngāti Hine 2008

**Kororareka Marae**

Kororareka Marae Environmental Hapū Management Plan 2009

**Te Uri o Hau Settlement Trust**

Te Uri o Hau Kaitiakitanga O Te Taiao 2012

**Ngāti Kuta**

Whakatakoto Kaupapa Mo Te Hapū o Ngāti Kuta ki Te Rawhiti

**Ngā Hapū o Te Wahapū o Te Hokianga Nui A Kupe**

(Ngāti Korokoro, Ngāti Wharara, Te Poukā) Hapū Environmental Management Plan 2008

**Te Rūnanga o Whaingaroa (Te U Kaipo RMU)**

Kia Matau, kia mohia e ora ana Te U Kaipo 2011

**Ngati Hau**

Ngati Hau Environmental Management Plan 2016

**Te Uriroroi, Te Parawhau and Te Māhurehure ki Whatitiri**

Whatitiri Resource Management Plan 2016

## The Problem, Opportunity and / or Requirement

### BACKGROUND

Refining NZ is the country's only oil refinery and the leading supplier of refined petroleum products to the New Zealand market, including petrol, diesel, aviation fuel and other products. As New Zealand's only supplier of locally refined petroleum products, the Company is a major contributor to both the local community and the country's economy. Its Marsden Point Site and 170 km purpose-built RAP are identified as nationally and regionally significant pieces of infrastructure in the operative RPS.

The Company's Marsden Point Site was chosen as the location for the refinery following a review by the New Zealand Government into the viability of a New Zealand based refinery operation. The location was selected because it provides a convenient deep-water harbour close to the main North Island markets, low earthquake risk and the availability of considerable land adjacent to the Site. Building began in 1962 and the refinery was officially opened on 30 May 1964 by the Prime Minister, Keith Holyoake.

The Refinery was substantially expanded and upgraded in the mid-1980s to accommodate increased production. Extra tanks, utility supplies and environmental treatment units were built, along with a 170 km RAP and the Wiri terminal. At the height of the expansion project, an estimated 5000 contractors were working on site with the final cost coming in at NZ\$1.84 billion.

In 1988 the energy industry was deregulated, following the introduction of the Petroleum Sector Reform Act in December 1987. New processing agreements with the oil companies and improved operational performance have since seen the Refinery maintain a strong, cost-competitive position in this deregulated market. Recently, the Company has embarked on a \$180 million 'Future Fuels' upgrade, to remove sulphur from diesel and benzene from petrol, ensuring that the operations will remain at Marsden Point into the future.

The Company's Marsden Point Site is a considerable land holding, encompassing 1.195 km<sup>2</sup> in area at the mouth of the Whangarei Harbour. The delivery of crude oil to the refinery is made by Aframax and Suezmax tankers to the Company's

dedicated jetty. Suezmax vessels are rated for slightly in excess of 1 million barrels of crude product, however Suezmax tankers currently visiting the refinery carry only around 900,000 barrels of crude oil as a result of the channel depth in a number of locations. For comparison, smaller Aframax tankers have a maximum capacity of 700,000 barrels of crude oil. The RAP transports almost half of the refinery's fuel production and is capable of transmitting approximately 400,000 litres of product an hour. The remaining product is distributed by coastal tanker to other regions around New Zealand, or is transported throughout the Northland Region by road tanker. Refining NZ is deemed to be a "lifeline utility" under the Civil Defence Emergency Management Act 2002.

Since opening in 1964, the original plant has undergone several major expansions, the first of which took place in the mid 1980's. The 2005 "Future Fuels" project allowed the Refinery to produce cleaner fuels by providing the latest plant and equipment necessary to remove sulphur from diesel, and benzene from petrol. The 2009 "Point Forward" Project included a substantial plant upgrade that increased capacity by 15% to around 135,000 barrels per day. Most recently, Refining NZ invested \$365 million in a Continuous Catalyst Regeneration Platformer to replace the existing petrol-making plant (the project is known as Te Mahi Hou, or The New Venture). Te Mahi Hou has enabled Refining NZ to process more crude oil, and a wider range of crudes, more effectively and efficiently. As a result, Te Mahi Hou has reduced the Refinery's CO<sub>2</sub> emissions by around 120,000 tonnes per annum. Each project has increased Refining NZ's capability, efficiency and reliability. The Company is currently in the process of advancing the 'Crude Shipping Project', which provides for fully laden Suezmax tankers to service the Site as a result of dredging activities to widen and deepen parts of the channel.

### **THE PROBLEM, OPPORTUNITY AND / OR REQUIREMENT**

It is clear from the recent investment in the Site that the intention of the Company is to remain and enhance its position at Marsden Point into the future. This results in significant economic benefit to the Regional economy. Such an outcome also provides an opportunity for the economic benefits to be enhanced by enabling the ongoing operations on the Site (including maintenance) and providing for future operations, whilst ensuring the protection of the recognised environmental and cultural values of the area.

The current RMA planning documents, including the proposed NRP, do not provide for the activities on the Refinery Site specifically. Rather, as with other activities in the Region, general rules from the various sections (or in the case of the operative planning documents, the separate documents) are required to be assessed. Given the rules are required to address all activities in the Region, there is no recognition of the unique characteristics of the Company's operations and similarly, the complexities associated with the Refinery Site. It is considered that such an approach is inefficient and does not accurately reflect the Refinery's status as regionally, and nationally, significant infrastructure. Further, such an approach may result in unnecessary consenting requirements and the inappropriate management of environmental effects. These inefficiencies include, amongst other things, the duplication of consenting processes between territorial and regional authorities (such as the requirement for resource consents associated with contaminated land under the regional planning documents and the NESCS). Such inefficiencies will only be exacerbated over time as developments of the Refinery Site continue to occur.

An opportunity exists through the development of the pNRP to specifically address the Refinery Site to ensure the current and future operations are provided for whilst appropriately managing potential effects on the environment and enabling the economic benefits to the Northland Region to be realised. A similar approach has been developed for the Port of Tauranga ('the PoT') through two generations of regional planning documents. Refining NZ's future development programme, including the Crude Shipping Project, has resulted in a significant amount of comprehensive and technically robust information being gathered on how the Refinery Site can be managed in the future, to achieve the balance between economic development and environmental sustainability that is promoted by both the RMA, the NZCPS and the RPS.

There is an opportunity for this information to be used to introduce specific provisions into the pNRP to recognise and provide for activities at the Site of the Refinery through a detailed policy and rule framework. More specifically, the provisions would establish a series of mechanisms that enable the on-going and proposed operations of the Refinery, including the construction and maintenance of coastal erosion protection structures and ongoing dredging (including the deposition of all dredged material) operations, subject to controls that reflect the existing environmental values that could be affected by such activities. As identified above, a similar approach has been developed for the PoT where an 'Outline Plan' for the PoT has been directly included within the Bay of Plenty Regional Coastal Environment Plan.

Such a mechanism is able to be incorporated into the proposed NRP to provide for identified activities/works at the Refinery. This would involve the application of tailored permitted, controlled, restricted discretionary or discretionary activity rules (with appropriate permitted standards or matters for control/discretion). The geographic extent of the provisions would include all of the Company's existing structures, and the areas of proposed dredging and deposition that have been identified as being suitable through the comprehensive technical assessments undertaken as part of the Crude Shipping Project.

The structure of such a mechanism should apply classifications in the following hierarchy:

1. A permitted activity classification applies to:
  - The continued existence and operation of a structure that was legally authorised at the time the Plan was publicly notified and includes the maintenance, minor upgrading, replacement or removal of such structures;
  - New structures that are identified in the future development schedule;
  - Wet abrasive blasting;
  - Contaminated land investigations; and
  - Earthworks up to the identified threshold.
2. A controlled activity classification applies to:
  - Maintenance dredging of the shipping channel shown on a specified Plan;
  - The disposal of the dredged spoil to one or more of the disposal sites shown on a specified Plan;
  - The 're-consenting' of existing, lawfully established and new scheduled discharges to ground, water (including coastal water) or air; and
  - Coastal erosion works (including hard protection works) that are in accordance with a Council recognised strategy, such as the Company's Erosion Management Strategy 2013.
3. A restricted discretionary classification applies to:
  - The construction of (and any occupation by) new structures (excluding structures in identified areas of significance) not identified in the future development schedule;
  - New discharges (to air and water); and
  - Capital dredging of the shipping channel shown on a specified Plan; and
  - Maintenance dredging of the shipping channel outside of the area shown on a specified Plan.
4. A discretionary activity classification applies to:
  - New capital dredging outside of the future development schedule.

## Management Options

This section summarises the management options for addressing the activities undertaken by Refining NZ within its Marsden Point Site, the CMA and land adjacent to and associated with the RAP. The intention is not to identify every different combination of approaches, as there would be many, but to represent the range of options and highlight key differences in approaches.

### Option 1 – Status Quo

**Overview:** This option addresses the Refinery operations on an issue by issue basis. Such an approach only considers elements of activities against individual rules. The triggers for resource consent and assessment criteria associated with them are largely generic in nature and, at times, have limited relevance to the operation that they are being applied to.

**Background:** This approach has been adopted for the current operative planning documents and is proposed in the latest generation of the NRP or the proposed NRP.

Development controls	Key policy approach
A mix of permitted through to non-complying activities in each chapter of the Plan.	
Multiple controls throughout different documents and chapters.	Policy direction provided in separate chapters of the planning document, little to no integration between activities.
Existing, maintenance and future operations generally addressed by generic standard.	

The Status Quo Option would not result in any changes to the approach advanced through the pNRP process, in so much as the Refinery operations are not specifically provided for within the rule or policy framework and limited recognition is given to nationally and regionally significant infrastructure as a whole.

## Option 2 – Site Specific Provisions (Outline Plan)

**Overview:** This option provides for the consideration of the Refinery operations in a holistic manner, having given consideration to the historical development of the site, established and consented activities present, its isolated location and specific constraints. The triggers for resource consent specifically reflect these matters, are unique to the Refinery and are set in recognition of the environmental values relevant to the area.

**Background:** This approach is based on the Outline Development Plan approach that has been adopted by the Bay of Plenty Regional Council as part of its Regional Coastal Environment Plans since 1994. The Outline Plan process was originally proposed by Refining NZ through consultation to the Draft NRP in September 2016.

Development controls	Key policy approach
Specific provisions for structures, land-based activities and dredging activities (maintenance and capital works).	Policy direction provided within a complete chapter of the planning document, including integration between activities.
Ability to provide recognition of existing, maintenance and future activities.	
Specific assessment criteria that align with relevant environmental standards, consented and established activities and specific site constraints. Cascading activity status based on measurable standards.	

Further to the discussion set out above, Option 2 would apply tailored permitted, controlled, restricted discretionary or discretionary activity rules (with appropriate permitted activity standards or matters for control/discretion) according to the following hierarchy.

1. A permitted activity classification applies to:
  - The continued existence and operation of a structure that was legally authorised at the time the Plan was publicly notified and includes the maintenance, minor upgrading, replacement or removal of such structures;
  - New structures that are identified in the future development schedule;
  - Wet abrasive blasting;
  - Contaminated land investigations; and
  - Earthworks up to the identified threshold.
2. A controlled activity classification applies to:
  - Maintenance dredging of the shipping channel shown on the Outline Plan;
  - The disposal of the dredged spoil to one or more of the disposal sites shown on the Outline Plan;
  - The 're-consenting' of existing, lawfully established and new scheduled discharges to ground, water (including coastal water) or air; and
  - Coastal erosion works (including hard protection works) that are in accordance with a Council recognised strategy, such as the Company's Erosion Management Strategy 2013.
3. A restricted discretionary classification applies to:
  - The construction of (and any occupation by) new structures (excluding structures in identified areas of significance) not identified in the future development schedule;
  - New discharges (to air and water); and
  - Capital dredging of the shipping channel shown on the Outline Plan; and
  - Maintenance dredging of the shipping channel outside of the area shown on the Outline Plan.
4. A discretionary activity classification applies to:
  - New capital dredging outside of the future development schedule.

## Option 3 – Site Specific Provisions (Zoning)

**Overview:** This option provides for the consideration of the Refinery operations via specific zoning within the structure of the proposed NRP. The option enables separation of the refinery operations from the general region wide provisions, enabling

specific relevant controls to be put in place. The provisions are provided in the relevant sections throughout the document, rather than in one consolidated place.

**Background:** This approach represents a similar structure to a territorial authority planning document, although acknowledging that the Refinery operations are both on land, within the CMA and involve discharges to air, water and land.

Development controls	Key policy approach
Specific provisions located as rules within the existing chapters of the planning document.	Policy direction provided within the existing chapters of the planning document, including limited integration between activities.
Ability to provide recognition of existing, maintenance and future activities.	
Specific assessment criteria that align with relevant environmental standards, consented and established activities and specific site constraints.	

Option 3 would provide a similar structure to activities and their status to that identified for Option 2, however the planning maps would require amendment to identify the extent of the zoning and the zone rules would be required to be incorporated within each chapter of the existing Plan. The proposed zoning would replace the current Coastal Commercial Zone notation within the pNRP that is identified within the CMA adjacent to the Refinery Site and also be applied to the Refinery Site landward of the CMA.

For completeness, it is anticipated that the structure of the rules would follow a similar hierarchy to Option 2, being:

1. A permitted activity classification applies to:
  - The continued existence and operation of a structure that was legally authorised at the time the Plan was publicly notified and includes the maintenance, minor upgrading, replacement or removal of such structures;
  - New structures that are identified in the future development schedule;
  - Wet abrasive blasting;
  - Contaminated land investigations; and
  - Earthworks up to the identified threshold.
2. A controlled activity classification applies to:
  - Maintenance dredging of the shipping channel shown on a specified plan;
  - The disposal of the dredged spoil to one or more of the disposal sites shown on a specified plan;
  - The 're-consenting' of existing, lawfully established and new scheduled discharges to ground, water (including coastal water) or air; and
  - Coastal erosion works (including hard protection works) that are in accordance with a Council recognised strategy, such as the Company's Erosion Management Strategy 2013.
3. A restricted discretionary classification applies to:
  - The construction of (and any occupation by) new structures (excluding structures in identified areas of significance) not identified in the future development schedule;
  - New discharges (to air and water); and
  - Capital dredging of the shipping channel shown on a specified plan; and
  - Maintenance dredging of the shipping channel outside of the area shown on a specified plan.
4. A discretionary activity classification applies to:
  - New capital dredging outside of the future development schedule.

## Screening the Management Options

### Option 1 – Status Quo

Positive attributes	Negative attributes
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<ul style="list-style-type: none"> <li>• Does not introduce new provisions into the NRP;</li> <li>• Does not set a precedent approach for all special activities to have specific provisions;</li> <li>• Less complication and duplication of provisions;</li> <li>• Lower cost option for the Council;</li> <li>• Retains an established approach which parties are familiar with.</li> </ul>	<ul style="list-style-type: none"> <li>• There is a risk that the policy direction does not provide for the holistic consideration of the Refinery activities, rather it only enables consideration of effects and outcomes on a topic by topic basis;</li> <li>• No recognition is provided of the complexity of issues associated with the historical development of the Refinery Site and the other legislative requirements that compliance is required with;</li> <li>• Disconnect between the relevance of the provision with the historical development of the Refinery Site;</li> <li>• Plan administration and implementation is unnecessarily hampered by the separation of provisions between chapters;</li> <li>• Does not provide for distinction between sites, such as other nationally or regionally significant infrastructure or part activities (note also identified as a positive attribute);</li> <li>• Risk that the Refinery is not able to adequately provide for anticipated growth and development which may in turn effect local and regional economic growth;</li> <li>• Does not give effect to the policy direction of the RPS with regard to nationally and regionally significant infrastructure.</li> </ul>
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**Option 2 – Site Specific Provisions (Outline Plan)**

Positive attributes	Negative attributes
<ul style="list-style-type: none"> <li>• Provides recognition of historical development and consented activities on the Refinery Site;</li> <li>• Recognises the unique nature of the activities, the Sites status as nationally and regionally significant infrastructure and its economic contribution to the Region;</li> <li>• Provides for integration between activities;</li> <li>• Plan administration is assisted by the collation of all Refinery activities together in one place within the Plan which provides clarity to NRP users by ensuring they are not required to scrutinise provisions that are not relevant to them;</li> <li>• Provides an opportunity for a partnership between Council and Refining NZ to streamline the zone management and development</li> <li>• Ensures the Refinery is more readily recognised as a strategic and significant physical asset.</li> </ul>	<ul style="list-style-type: none"> <li>• Introduces an additional chapter to the NRP;</li> <li>• Is the only activity to be specifically provided for by a schedule or chapter in the NRP, which runs the risk of setting a 'precedent' approach to other activities;</li> <li>• Financial costs associated with going through the Regional Plan review process.</li> </ul>

**Option 3 – Site Specific Provisions (Zoning)**

Positive attributes	Negative attributes
<ul style="list-style-type: none"> <li>• Provides recognition of historical development and consented activities on the Refinery Site;</li> <li>• Recognises the unique nature of the activities, the sites status as nationally and regionally significant</li> </ul>	<ul style="list-style-type: none"> <li>• Introduces additional provisions throughout the NRP;</li> <li>• Plan administration and implementation is unnecessarily hampered by the separation of provisions between chapters;</li> </ul>

<p>infrastructure and its economic contribution to the Region;</p> <ul style="list-style-type: none"> <li>• Provides for some integration between activities;</li> <li>• Ensures the Refinery is more readily recognised as a strategic and significant physical asset;</li> <li>• Provides an opportunity for a partnership between Council and Refining NZ to streamline the zone management and development;</li> <li>• Provisions and zoning that meet long term demand for the Refinery will provide significant economic benefit for the Region.</li> </ul>	<ul style="list-style-type: none"> <li>• There remains a disconnect between land, water and air based activities;</li> <li>• The Refinery Site is the only activity to be specifically provided for in the Plan;</li> <li>• Financial costs associated with going through the Regional Plan review process;</li> <li>• Scope of the zoning may not provide for the establishment of non-Refinery based activities within the zone, which could result in a loss of economic opportunities with regard to these activities.</li> </ul>
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### High Level Objectives

Section 32 requires an assessment of “...the efficiency and effectiveness of the provisions in achieving the objectives...”. This analysis does this by analysing the management options against a set of high level objectives and measures.

‘High level objectives’ capture the fundamental things (or values) that matter to people (the key costs and benefits) when determining the best management option. They signal a direction for where we want to head, without stating how far we go – that comes later (they are the beginnings of objectives).

Measures make the high level objectives specific. They are a metric for the high level objective and are used to test the management options against.

High level objective	Measure
Recognise and provide for New Zealand’s only Refinery operation.	1 = No recognition, Refinery not specifically provided for. 2 = Some recognition, Refinery reflected in policy framework. 3 = Full recognition, Refinery specifically provided for.
Ensure the appropriate balance is reached between the protection of environmental values and providing for economic sustainability while minimising un-necessary regulation and cost.	Environmental effects are appropriately managed: 1 = Development controls are so restrictive that development is unable to readily occur. 2 = Provisions are easily measurable against recognised standards and rules provide pathway to consent process. 3 = Provisions are easily measurable against recognised standards and reflect the established and consented environment, rules provide pathway to consent process only where specific effects require management.
Ensure that Refinery specific provisions do not hamper the administration of the Plan.	The size and complexity of the Plan is minimised for ease and efficiency of use. 1 = High complication. Plan does not contain specific rules for Refinery the operation and plan users are required to assess all provisions, even those that are specifically designed for Refinery operations. 2 = Moderate ease of administration. Refinery related provisions are contained within the general body of the Plan but are specifically identified as being relevant to the Refinery operations. 3 = Ease of administration. Plan users are not required to scrutinise provisions that are not relevant to them.

### Recognise and provide for New Zealand’s only Refinery Operation

As New Zealand's only Refinery, Refining NZ is a major contributor to both the local community and the country's economy. The national economy is heavily dependent on the petroleum products refined by Refining NZ and transported via the RAP. Refining NZ produces the majority of diesel, petrol and jet fuel used in New Zealand. The Auckland region is heavily reliant on the refinery and the RAP for its road transport fuel needs, and Auckland International Airport is entirely dependent on the refinery and the RAP for supply of aviation fuel. The September 2017 RAP incident, which resulted in the closure of the RAP for 10 days, highlighted the vital national importance of the RAP. Further, Refining NZ provides a considerable contribution to the local Whangarei, Marsden Point and Ruakaka communities and the wider regional and national economy. The Refinery has approximately 500 employees and contractors, 94% of whom reside in Northland.

The Refinery and RAP have a combined replacement value of approximately NZ\$4.5 billion, and their uninterrupted and efficient operation is of critical importance nationally. The reasons why the location for the Refinery continue to be valid (being the location to a convenient deep-water harbour close to the main North Island markets, low earthquake risk and the availability of considerable land adjacent to the site) and the relocation of it is not a viable option, given the infrastructure and investment that is continuing to be developed on the Site. Refining NZ is deemed to be a "lifeline utility" under the Civil Defence Emergency Management Act 2002 and is identified as regionally significant infrastructure in the RPS. The operation of the Refinery is both unique in the Northland Region and within New Zealand.

**Ensure the appropriate balance is reached between the protection of environmental values and providing for economic sustainability while minimising un-necessary regulation and cost.**

Refining NZ holds considerable information on the historic development of the site, including extensive monitoring of performance and environmental impact, as well as assessments associated with the potential effect of future activities. Given the existence of such extensive information, operations on the Site are able to be conducted, with precision, in order to appropriately manage effects generated by and impacting on the Refinery. The development of site specific controls to address the effects can enable good environmental practices to be undertaken within a permissive framework, where certainty regarding the outcomes are known. Further, the application of specific controls reduces the risk that the Refinery activities are either i) not captured by the generic rule provisions and thus result in adverse effects on the environment, or ii) are unnecessarily captured by generic rules and therefore require resource consent, potentially resulting in a duplication of process and inefficient regulation.

The acknowledgement of existing established and consented activities within the rule framework of the pNRP will result in certainty for future development and operations on the Site, enabling further development of the facility and therefore promoting economic sustainability for the Region. Failure to address current unnecessary regulation will exacerbate the inefficient consenting requirements and result in additional costs, which will be compounded over time.

**Ensure that Refinery specific provisions do not hamper the administration of the Plan**

The pNRP provides the environmental regulation for activities across the Northland Region. Users of the Plan range from 'lay-people' to planners and other industry professionals. The structure of the Plan should be such that its size and complexity is not of a scale that renders it incomprehensible to the general user. The operation and function of the Refinery Site is complex and addresses activities on land and water and well as discharges to air and the CMA. As a result, the activities cut across a number of the chapters of the proposed NRP. The insertion of targeted provisions that appropriately address all of the relevant aspects of the Refinery operation into each chapter could result in a considerable increase in the number of provisions. The structure of the Plan is based on chapters, meaning that Plan users are required to navigate through all of the provisions of the chapters that are relevant to their activity. The isolation of specific Refinery related provisions from the main body of the Plan, to a stand-alone chapter or schedule, results in efficiencies in administration by removing, for the majority of users, the need to navigate through provisions that are designed specifically for the Refinery operations. Further, such an approach removes uncertainty regarding the application of rules and implementation measures should the drafting not clearly indicate if the rules are applicable to Refinery or other operations.

**Evaluating the Management Options**

Objectives and options for the management of activities associated with the Refinery operation.

High level objective for Refinery site	Option 1 status quo	Option 2 Site specific provisions (Outline Plan)	Option 3 Site specific provisions (Zoning)
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<p>Recognise and provide for New Zealand's only refinery operation.</p> <p>1 = No recognition, Refinery not specifically provided for.  2 = Some recognition, Refinery reflected in policy framework.  3 = Full recognition, Refinery specifically provided for.</p>	1	3	3
<p>Ensure the appropriate balance is reached between the protection of environmental values and providing for economic sustainability while minimising un-necessary regulation and cost.</p> <p>Environmental effects are appropriately managed:</p> <p>1 = Development controls are so restrictive that development is unable to readily occur.  2 = Provisions are easily measurable against recognised standards and rules provide pathway to consent process.  3 = Provisions are easily measurable against recognised standards and reflect the established and consented environment, rules provide pathways to consent processes only where specific effects require management.</p>	2	3	3
<p>Ensure that Refinery specific provisions do not hamper the administration of the Plan.</p> <p>The size and complexity of the Plan is minimised for ease and efficiency of use.</p> <p>1 = High complication. Plan does not contain specific rules for Refinery the operation and plan users are required to assess all provisions, even those that are specifically designed for Refinery operations.  2 = Moderate ease of administration. Refinery related provisions are contained within the general body of the Plan but are specifically identified as being relevant to the Refinery operations.  3 = Ease of administration. Plan users are not required to scrutinise provisions that are not relevant to them.</p>	1	3	2

### Certainty about the Evaluation

We're confident that the evaluation is accurate enough to make a decision on the preferred option. It is impossible to estimate the future development aspirations and consenting requirements required for the Refinery Site, nor changes to legislation that could necessitate additional regulatory requirements. However, historical development on the Site and an analysis of existing resource consents applicable to the Refinery operations enables a reasonable assessment of the implications of the proposed NRP framework on the activities.

There is a degree of certainty regarding the anticipated use of the pNRP by users not associated with the Refinery. Similarly, as a result of the consultation and submission process, there is a reasonable understanding of the volume of provisions that would require insertion into the pNRP document to effectively provide for and regulate the activities being undertaken on the Refinery Site, the abstraction of water, discharges to air, land and water and activities within the CMA.

The economic and social value of the Refinery operation to the Regional and New Zealand economy is well documented and as such, a considerable degree of certainty is available regarding this high level objective.

### **Time-frame of the Evaluation**

The evaluation is made over the life-time of the plan (10-15 years). The effects of all of the options will become evident immediately upon implementation of the Plan.

### **The Preferred Management Option**

The preferred management option is Option 2.

Options 2 and 3 both provide recognition of the importance of the Refinery Site by specifically identifying it in the pNRP. Additionally, both of these approaches also lead to specific rules being able to be drafted for the Refinery operations. This ensures that a range of rules, activity statuses and assessment criteria can be included that focus on the operational issues that are relevant, reflecting the historical activities, the substantial information that is held on the Site and the operations, the other regulatory obligations required to be undertaken and the future development aspirations.

The key difference between Options 2 and 3 is the efficiency gains that are achieved by housing the provisions in a separate chapter. This approach ensures that the size and scale of the Plan document is not unduly increased by the repetition of provisions and explanations that are required from the creation of additional zoning. Further, it ensures that other Plan users, being the vast majority of people that are not associated with any of the Refinery operations, are not required to navigate through the entire Plan document that includes the Refinery provisions. The removal of general provisions also results in more specific drafting and reduces uncertainty of implementation.

Additionally, Option 3 ensures that the Refinery operations are clearly differentiated from other activities in the Northland Region, including other nationally and regionally significant infrastructure. The introduction of the chapter/schedule provides an opportunity to identify what makes the Refinery different, being its historical development; unique standing as a 'one of a kind' infrastructure in New Zealand; location and scale. Such an approach addresses any 'precedent' claims from other infrastructure providers that might also seek to have individualised provisions.

Option 1 is not considered to satisfactorily meet any of the high level objectives.