

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under Clause 14 of Schedule 1 of the Act in relation to the Proposed Regional Plan for Northland

BETWEEN THE NEW ZEALAND REFINING COMPANY LIMITED
(ENV-2019-AKL-000121)

Appellant

AND NORTHLAND REGIONAL COUNCIL

Respondent

Environment Judge J A Smith sitting alone under s 279 of the Act
In Chambers at Auckland

CONSENT ORDER

[A] Under s 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with **Annexure A** to this Order.

(1) The order resolves the New Zealand Refinery Company's appeal it relates to rules for new rules for stormwater discharge from the Marsden Point Refinery Site and a definition of the Marsden Point Refinery Site.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] This appeal is against the Northland Regional Council's decision on the Proposed Regional Plan for Northland. This consent order resolves the appeal as it relates to the rules for stormwater discharges. These appeal points were allocated to Topic 7.
- [2] The New Zealand Refining Company Limited sought to amend Rule C.6.4.4 Stormwater discharges onto or into contaminated land or from high-risk industrial or trade premises, or the inclusion of a controlled activity rule to provide for the re-consenting of existing stormwater discharges from the Marsden Point Refinery Site. It also sought the inclusion of a new restricted discretionary activity rule for new stormwater discharges from the Marsden Point Refinery Site.
- [3] The Marsden Point Refinery is identified as regionally significant infrastructure in the Regional Policy Statement for Northland and has specific stormwater discharge requirements that are not shared by other industrial or trade premises throughout Northland. Furthermore, the Marsden Point Refinery has an existing stormwater discharge consent and a long history of appropriately managing stormwater discharges from the site.
- [4] For these reasons, the parties have agreed that it was appropriate to provide for a two-tiered regime for stormwater discharges from the Marsden Point Refinery as follows:
- (a) a controlled activity rule for re-consenting existing stormwater discharges; and
 - (b) a restricted discretionary rule for new stormwater discharges.
- [5] A suite of matters of control and matters of discretion have been agreed, which ensure that the potential adverse effects of stormwater discharges are considered, and appropriate conditions of consent can be imposed.
- [6] These include:
- (a) the concentration or load of contaminants in the discharge;



- (b) the location and velocity of the discharge;
- (c) the size of the zone of reasonable mixing;
- (d) the effects on sites and areas of significance to tangata whenua mapped in the Regional Plan;
- (e) consideration of the treatment of the discharge prior to disposal; and
- (f) effects on indigenous biodiversity and ecosystems.

[7] The parties have agreed to include a definition for the 'Marsden Point Refinery Site' as follows – '*Land legally described as Section 10 Block VII Ruakaka Survey District, with record of title number NA 10A/371*'. The parties consider this appropriate as it is important to clearly define where these new rules apply.

[8] The parties consider that the new rule regime gives effect to the New Zealand Coastal Policy Statement 2010 and Regional Policy Statement for Northland.

[9] In making this order the Court has read and considered the memorandum of the parties dated 13 March 2020, which proposes to resolve the appeal that relates to rules for stormwater discharges.

[10] The following people gave notice of their intention to become parties under s 274 of the Act and have signed the memorandum of the parties seeking this order:

- (a) BP Oil New Zealand;
- (b) Mobil Oil New Zealand;
- (c) Z Energy Limited;
- (d) Northport Limited;
- (e) The Royal Forest and Bird Protection Society of New Zealand; and
- (f) Patuharakeke Trust Board.

[11] The Court is making this order under s 279(1)(b) of the Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:



- (a) All parties to the proceedings that have an interest in the appeal points that have been resolved by this order have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

[12] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.

[13] The order resolves the New Zealand Refinery Company's appeal it relates to rules for new rules for stormwater discharge from the Marsden Point Refinery Site and a definition of the Marsden Point Refinery Site.

[14] There is no order as to costs.

DATED at Auckland this 20th day of May 2020





J A Smith
Environment Judge

Annexure A

C.6.4.3A Re-consenting of existing stormwater discharges from the Marsden Point Refinery Site – controlled activity

The re-consenting of a diversion and discharge of stormwater into water, or onto or into land where it may enter water, from the Marsden Point Refinery Site is a controlled activity, provided:

- 1) the discharge is authorised by an existing resource consent at the time of the re-consent application, and
- 2) there is no increase in the rate and volume of the discharge or change to the composition of the discharge as authorised by the current resource consent.

Matters of Control:

- 1) the concentration or load of contaminants in the discharge,
- 2) the location and velocity of the discharge,
- 3) the size of the zone of reasonable mixing,
- 4) the effects on sites and areas of significance to tangata whenua mapped in the Regional Plan (refer [I Maps | Ngā mahere matawhenua](#)),
- 5) consideration of the treatment of the discharge prior to disposal, and
- 6) effects on indigenous biodiversity and ecosystems.

Notification:

Resource consent applications under this rule are precluded from public notification (but are not precluded from limited notification).

For the avoidance of doubt this rule covers the following RMA activities:

- Diversion of [stormwater](#) (s14(2)).
- Discharge of [stormwater](#) into water or onto or into land where it may enter water (s15(1)).
- Discharge of [stormwater](#) onto or into land (s15(2A)).

C.6.4.3B New stormwater discharges from the Marsden Point Refinery Site – restricted discretionary activity

A new diversion and discharge of stormwater into water, or onto or into land where it may enter water, from the Marsden Point Refinery Site is a restricted discretionary, provided:

- 1) the discharge does not cause any of the following effects in receiving water after reasonable mixing:
 - a) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials, or
 - b) any conspicuous change in the colour or visual clarity, or
 - c) any emission of objectionable odour, or



- d) any significant adverse effect on aquatic life, and
- 2) the discharge does not scour or erode the bed of any water body or the coastal marine area.

Matters of discretion:

- 1) the composition of the discharge, and
- 2) the location and velocity of the discharge, and
- 3) the effects on sites and areas of significance to tangata whenua mapped in the Regional Plan (refer [I Maps | Ngā mahere matawhenua](#)), and
- 4) consideration of the treatment of the discharge prior to disposal, and
- 5) effects on indigenous biodiversity and ecosystems.

Notification:

Resource consent applications under this rule are precluded from public notification (but are not precluded from limited notification).

For the avoidance of doubt this rule covers the following RMA activities:

- Diversion of [stormwater](#) (s14(2)).
- Discharge of [stormwater](#) into water or onto or into land where it may enter water (s15(1)).
- Discharge of [stormwater](#) onto or into land (s15(2A)).

New Definition of Marsden Point Refinery Site (Section B – Definitions)

Land legally described as Section 10 Block VIII Ruakaka Survey District, with record of title number NA70A/371.

