



REFINING NZ

**SUBMISSION ON “HE KURA KOIORA I HOKIA: A DISCUSSION
DOCUMENT ON A PROPOSED NATIONAL POLICY STATEMENT
FOR INDIGENOUS BIODIVERSITY”**

Submission by: The New Zealand Refining Company Ltd (“Refining NZ”)

To: Ministry for the Environment

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Dated: 13 March 2020

Executive summary

1. The proposed requirements for nationally significant infrastructure to strictly avoid certain effects (in relation to Significant Natural Areas (“SNAs”) ranked High) or to follow the effects management hierarchy, including the preliminary requirement to avoid effects “where possible” (for SNAs ranked Medium), are inappropriate and are unduly restrictive and inflexible. They will severely restrict the operation, maintenance, and development of nationally significant infrastructure and may ultimately affect their long-term ability to meet the needs of communities.
2. Instead, Refining NZ seeks that nationally significant infrastructure should be required to avoid, remedy, mitigate, offset or compensate (in no set hierarchy/order) effects on SNAs as appropriate. At the least, a modified effects management hierarchy should apply to nationally significant infrastructure activities in all areas (inside and outside SNAs), requiring a sequence of avoiding, remedying, mitigating, or offsetting/compensating “where practicable” as opposed to “where possible”.
3. In summary, Refining NZ’s key concerns with the Draft National Policy Statement for Indigenous Biodiversity (“NPSIB”) are:
 - (a) **the requirement for nationally significant infrastructure to strictly avoid effects (SNAs ranked High) is inappropriate;**
 - (b) **the requirement for nationally significant infrastructure to avoid effects “where possible” under the effects management hierarchy is also inappropriate;**
 - (c) **the separate framework for nationally significant infrastructure should apply to all SNAs, not just SNAs ranked Medium;**
 - (d) **the Marsden Point refinery; distributed renewable electricity generation; and other renewable energy infrastructure should each be explicitly included within the definition of nationally significant infrastructure;**
 - (e) **for biodiversity matters, the NPSIB should override the NZCPS (not the other way around); and**
 - (f) **high-level recognition of social, cultural, and economic wellbeing in the NPSIB should be maintained and/or strengthened; and the detailed management provisions in the NPSIB amended (including as requested in the above bullets) to better give effect to these high-level provisions.**

Refining NZ: background

4. Refining NZ operates New Zealand's only oil refinery at Marsden Point, Northland. It is the country's leading supplier of refined petroleum products. Established in 1961, the refinery processes more than 40 million barrels of crude oil a year. Crude oil is refined through a variety of processes into a range of high-quality transport fuels (primarily petrol, diesel and aviation fuels) for use across New Zealand. Refining NZ produces the majority of diesel, petrol, and jet fuel used in New Zealand.
5. Refining NZ also owns and operates the Refinery to Auckland Pipeline ("RAP"), a 170km long high-pressure pipeline running from the refinery at Marsden Point to the Wiri Oil Terminal in South Auckland. The RAP was first commissioned in 1985. It is buried along its entire length. Regular, premium, diesel and Jet A1 aviation fuel are transported down the RAP. It provides the vast majority of Auckland's road transport fuel, and all of Auckland International Airport's aviation fuel, and can transmit over 400,000 litres of product an hour.
6. As the owner/operator of New Zealand's only refinery, and the leading supplier of refined petroleum products, Refining NZ is proud to be a major contributor to the local and regional communities and the country's economy.¹ The national economy is heavily dependent on the petroleum products refined by Refining NZ and transported via the RAP. As noted above, 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. As such, the refinery and RAP are nationally significant infrastructure resources,² and their uninterrupted and efficient operation is of critical importance nationally. Refining NZ is deemed to be a "lifeline utility" under the Civil Defence Emergency Management Act 2002. The refinery and RAP have a combined replacement value of approximately NZ\$4.5 billion.
7. The September 2017 RAP incident, which resulted in the closure of the RAP for ten days, highlighted the vital national importance of the RAP. The subsequent *Government Inquiry into The Auckland Fuel Supply Disruption*³ and associated report also reinforce the nationally critical status of the RAP.

¹ The refinery employs over 500 employees and contractors.

² Except where the context requires otherwise, where the term "Nationally Significant Infrastructure" is used in this submission, this includes the RAP **and** the Refinery in accordance with Refining NZ's relief sought in Key Issue Four of this submission.

³ *Government Inquiry into The Auckland Fuel Supply Disruption*; report dated 16 August 2019; authored by Dr Roger Blakely and Elena Trout.

The refinery and the RAP in the context of biodiversity

1. The NPSIB is very significant to Refining NZ, including for the following reasons:
 - (a) In relation to the **refinery**, while the substantive provisions of the NPSIB will not apply to the coastal marine area (including Refining NZ's jetties),⁴ it will apply to the refinery site which is within the coastal environment and includes a range of indigenous biodiversity. Refining NZ is therefore concerned to ensure that the ongoing operation, maintenance, and upgrading of the refinery is appropriately provided for in the NPSIB. It is critical that the refinery is not unduly constrained/impacted.
 - (b) The **RAP** traverses 170km from Marsden Point to South Auckland. It runs through, or adjacent to, numerous sites, including terrestrial environments and wetlands, containing indigenous biodiversity of various types. Refining NZ is therefore concerned to ensure that the ongoing operation, maintenance, and upgrading of the RAP is appropriately provided for in the NPSIB. Again, it is critical that the RAP is not unduly constrained/impacted.

Summary of Refining NZ's feedback on the NPSIB

2. Refining NZ is extremely conscious of its responsibility to manage the environmental impacts of its operations, including with respect to indigenous biodiversity, and is continually looking to improve environmental performance. Refining NZ generally supports the introduction of a national policy statement to set out objectives, policies and implementation requirements to manage natural and physical resources for the benefit of indigenous biodiversity. However, the NPSIB should not inappropriately constrain the refinery or the RAP or other nationally significant infrastructure including new renewable energy initiatives which will serve to reduce New Zealand's carbon emissions.
3. Refining NZ therefore supports aspects of the NPSIB, to the extent it recognises and provides for nationally significant infrastructure. Refining NZ also endorses the broad approach in the NPSIB and certain other draft national instruments⁵ of "carving out" key infrastructure from the "environmental bottom line" approach (i.e. absolute avoidance of effects). Such an approach is justified given the essential nature of such

⁵ See for example the Draft NES for Freshwater Management, which provides for vegetation clearance and earth disturbance where necessary for the purpose of building, maintaining, or operating any new or existing nationally significant infrastructure, subject to certain constraints.

infrastructure. The refinery and RAP, including their operation, maintenance and upgrading, have functional/operational requirements meaning that certain effects on indigenous biodiversity are – or may be – unavoidable/appropriate and this should be recognised and provided for in any biodiversity planning framework.

4. In the absence of a more effective separate framework for nationally significant infrastructure, the overly stringent and inflexible restrictions will cause operational constraints by way of increased costs in planning, design, consenting and construction; and at worst, may affect the viability of key infrastructure.⁶ Without amendment, the controls will likely have significant adverse effects on the ongoing operation, maintenance, upgrading, and/or provision of new nationally significant infrastructure.
5. Refining NZ therefore considers that the proposed framework for nationally significant infrastructure in the NPSIB does not go far enough and that a more comprehensive, permissive, and flexible separate framework for nationally significant infrastructure activities should be adopted. Refining NZ considers the Proposals need to adopt a more balanced approach that more explicitly recognises and provides for nationally significant infrastructure, including providing comprehensive and meaningful exceptions for infrastructure from certain controls that otherwise have the potential to severely constrain infrastructure. In other words, potential adverse effects of the proposed indigenous biodiversity regime on nationally significant infrastructure need to be appropriately managed. Improving biodiversity outcomes must not be at the expense of the safe and efficient operation of existing infrastructure, especially nationally significant infrastructure.
6. Refining NZ considers that stronger recognition and provision for nationally significant infrastructure in the NPSIB will likely have only a very limited impact on biodiversity values (including due to the very limited spatial extent of such infrastructure), but is crucial to ensure the ongoing operation, maintenance, upgrading, and provision of new nationally significant infrastructure is not unduly constrained.

⁶ The section 32 analysis for the NPSIB states that it has not quantified the costs associated with the NPSIB's constraints on nationally significant infrastructure (Section 32 Report, page 117). Refining NZ considers the costs will be significant. In many cases they may ultimately be passed onto the public/consumers (either directly or indirectly), which needs to be borne in mind.

Analysis

Key Issue One: the requirement for nationally significant infrastructure to strictly avoid effects (SNAs ranked High) is inappropriate

7. Requiring nationally significant infrastructure to “avoid” a wide range of effects on SNAs ranked High is inappropriate and unjustified and will have major impacts on the operation, expansion and overall viability of key nationally significant infrastructure.⁷ Refining NZ does not consider it is appropriate in every case for biodiversity values to “veto” nationally significant infrastructure (even where adverse biodiversity effects associated with the operation or development of the infrastructure may not be significant), which is the position adopted by the NPSIB.
8. As a practical example, Refining NZ undertakes predator control at its refinery site, which assists the roosting and breeding of avifauna, including threatened or at-risk indigenous species. It does so voluntarily as an environmentally responsible entity, rather than due to any resource consent condition or other requirement. Due largely to this voluntary conservation initiative by Refining NZ, it is possible that the refinery site may at some point be argued to be an SNA, ranked High, due to avifauna. Numerous areas through which the RAP traverses may also be similarly assessed. This would trigger the absolute requirement in the NPSIB to avoid adverse effects for any new refinery/RAP resource consents and could ultimately lead to the decline of resource consents for aspects of the refinery’s operations.
9. The courts have established the prominence of “avoidance” plan provisions to set firm environmental limits when assessing resource consent applications.⁸ Refining NZ is therefore very concerned that caselaw has evolved to the point that a requirement to avoid adverse effects is an absolute, even where it may prevent the safe and efficient operation of an established nationally important facility without consideration of potential mitigation, offsetting, or compensation.⁹

⁷ The adverse effects that must be avoided under the default requirement are very broad (NPSIB Part 3.9(1)).

⁸ Refer the decision *Environmental Defence Society Inc v NZ King Salmon* [2014] NZSC 38 and subsequent authorities including *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

⁹ See for example the High Court’s recent decision in *Environmental Defence Society Incorporated v Otago Regional Council* [2019] NZHC 2278. The decision related to appeals on the Proposed Otago Regional Policy Statement involving consideration of how to appropriately draft the Plan to “give effect to” the New Zealand Coastal Policy Statement (“NZCPS”) and in particular, those directive “avoid” policies within the NZCPS. The Otago Regional Council was aware of the need to provide for the established ports in Otago – indeed, the NZCPS contains a policy recognising that a sustainable national transport system requires an efficient national network of safe ports (e.g. Policy 9). Other policies within the NZCPS require avoidance of effects (e.g. Policies 11, 13, 15, and 16). Port Otago contended that it needed to ensure an activity required for safety or operational purposes at the two ports is not prohibited, and that it would not have any difficulty with compliance if minor breaches were

10. For SNAs ranked High, the NPSIB expressly bars nationally significant infrastructure from accessing any separate more flexible framework and requires the strict “avoidance” of effects. Therefore, for Refining NZ the very act of encouraging certain species proximate to the refinery could directly lead to the strict application of the NPSIB to the refinery and its surrounds and result in severe operational constraints, for example by imposing limits or controls on the resource consents needed for the refinery’s ongoing operations. Significantly, it could also result in the decline of resource consent for aspects of the refinery’s operations, if such continued operation was held to have adverse effects on those species. Other key infrastructure such as roading, and electricity transmission could be similarly affected. It is not difficult to conceive of situations where nationally significant infrastructure is prevented or not pursued as a direct consequence.
11. It is submitted that such outcomes would be out of proportion and ultimately would not achieve sustainable management (by unduly automatically elevating biodiversity values over nationally critical infrastructure and its benefits). In addition, the NPSIB could have perverse outcomes, including the possible unintended implication of discouraging other infrastructure operators, developers and landowners from proactively taking steps to provide habitat for indigenous flora and fauna.
12. Notwithstanding the above, the NPSIB does include several positive high-level provisions recognising infrastructure and other use and development:
 - (a) Policy 8 recognises *“the locational constraints that apply to specific subdivisions, uses and developments”*;
 - (b) Policy 10 provides for certain existing activities; and
 - (c) Part 3.7 states that in implementing the NPSIB, local authorities must recognise *“that the maintenance of indigenous biodiversity does not preclude subdivision, use and development in appropriate places and forms, within appropriate limits”*.

permissible or potential adverse effects could be avoided or managed. Port Otago wished to avoid the situation where the avoidance policies under the NZCPS do not allow the safe and efficient operation of the ports. Despite this argument, the High Court determined that the Plan must require port activities to “avoid adverse effects” on outstanding coastal sites, including activities associated with safety and efficiency.

13. In addition, the NPSIB Discussion Document (“Discussion Document”) *“...acknowledges that some infrastructure is essential to the nation and often constrained to specific areas”*.¹⁰
14. Therefore, on the one hand the NPSIB includes high-level provisions that recognise and support nationally significant infrastructure; but on the other hand the detailed management approach of the NPSIB still requires such infrastructure to avoid effects on SNAs ranked High and to avoid effects “where possible” (through the effects management hierarchy) on SNAs ranked Medium and outside SNAs. Refining NZ considers that the approach adopted by the NPSIB is not reconcilable with the reality recognised in the Discussion Document that certain infrastructure is *“essential to the nation and often constrained to specific areas”*. A more flexible approach is required in the NPSIB.
15. Refining NZ considers that nationally significant infrastructure should be required to avoid, remedy, mitigate, offset or compensate (in no set hierarchy/order) effects on SNAs as appropriate. Refining NZ does not consider that in every case an SNA (High) should “trump” nationally significant infrastructure by requiring it to avoid adverse effects. This is an overly blunt management response, in a context where the RMA provides for much more appropriate and nuanced frameworks that appropriately recognise the importance of both infrastructure *and* biodiversity. A more lenient and flexible framework is justified in the context of nationally significant infrastructure and the essential national benefits they deliver. The social and economic benefits to people and communities associated with having effective and reliable infrastructure are widely recognised. A more flexible framework is consistent with the RMA itself, by seeking to promote sustainable management (with all its various facets) in each case.
16. A more flexible approach would be consistent with the Proposed National Environmental Standards for Freshwater which propose more stringent controls on use and development of natural wetlands, but recognise that vegetation clearance and earth disturbance may be necessary for the purpose of building, maintaining, or operating any new or existing nationally significant infrastructure.¹¹ Where that is the case, a mandatory condition of any resource consent would require that where adverse effects on a natural wetland cannot be avoided, remedied, or mitigated, any residual adverse effects on the natural wetlands must be offset to achieve a net

¹⁰ Discussion Document Page 46.

¹¹ Proposed NES for Freshwater, Parts 7 and 10.

gain.¹² While Refining NZ has some concerns with the detail/operation of that particular proposed national direction,¹³ it endorses in principle the approach of expressly removing key infrastructure from the “environmental bottom line” (or absolute avoidance of effects) approach.

17. A more flexible approach for nationally significant infrastructure would also be broadly consistent with the approach of the NPSIB to plantation forestry. The Discussion Document provides the following with respect to plantation forestry:¹⁴

A number of existing SNAs are next to, or surrounded by, plantation forests which are harvested about every 25 years. Because the forests provide a stable environment for a long time, threatened or at-risk flora or fauna may use or become established in these plantations. Under the proposed criteria in Appendix 1 of the proposed NPSIB, the presence of these species may trigger identification of an SNA within productive forest areas. If the SNA management approach in clause 3.9(1) were to apply, forestry harvest would likely not be possible in many parts of the country, as it would be impossible to avoid the four adverse effects to the SNA within plantation forests. This would have a significant impact on the economic viability of those forests, which can also provide important environmental benefits for emissions, erosion and water quality while they grow.

18. The NPSIB excludes plantation forests from *Part 3.9 – Managing adverse effects on SNAs* (including the requirements to avoid adverse effects) and implements a separate permissive framework, including the obligation to simply “manage” effects on threatened or at-risk flora. The above articulates a policy rationale for a separate framework for a certain activity (forestry) broadly consistent with what Refining NZ is seeking with respect to nationally significant infrastructure. Refining NZ is unclear why, on the face of it, individual plantation forests are given considerably greater protection in certain respects than nationally significant infrastructure.
19. Finally, the provisions of the NPSIB relating to existing activities in SNAs¹⁵ provide limited comfort to Refining NZ because they do not apply to any proposals that would increase the character, intensity, or scale of the Refinery or RAP. The reality is that nationally significant infrastructure often requires upgrades and/or new activities in order to meet demand or indeed to minimise effects on the environment (e.g. through reduced discharges).¹⁶ It is unrealistic, and potentially counterproductive, to expect infrastructure to permanently remain at their existing character, intensity and scale.

¹² Proposed NES for Freshwater, clause 6.

¹³ Refining NZ made a separate submission to the Ministry for the Environment on the ‘Action for Healthy Waterways’ discussion document, including the proposed NES for Freshwater.

¹⁴ Discussion Document pages 48.

¹⁵ NPSIB Part 3.12.

¹⁶ For example, Refining NZ’s recent Te Mahi Hou Project, including CCR (Continuous Catalyst

Key Issue Two: the requirement for nationally significant infrastructure to avoid effects “where possible” under the effects management hierarchy is also inappropriate

20. For nationally significant infrastructure the NPSIB requires adherence to the effects management hierarchy – including sequentially avoiding and remedying effects “where possible” – in relation to SNAs ranked Medium (subject to a number of other conditions) and outside SNAs (Parts 3.9(2) and 3.13). For SNAs ranked High it also requires adherence to the effects management hierarchy for the “other adverse effects” identified in NPSIB Part 3.9(1).
21. The Discussion Document states that Part 3.9 of the NPSIB sets out “*a more flexible and pragmatic management approach for some specified new activities*”.¹⁷ While Refining NZ agrees that a more flexible and pragmatic approach is required and justified for nationally significant infrastructure, it does not consider the current NPSIB delivers such a management approach.
22. Refining NZ considers that the addition of the words “where possible” to the requirement to avoid effects does not materially change its meaning from the absolute requirement outlined above. This is because almost all outcomes are “possible” given infinite resources. For linear infrastructure such as the RAP, for example, it will almost always be “possible” in a strict sense to avoid a particular effect on a particular wetland for example, but this may involve prohibitive costs and may lead to worse environmental outcomes overall. In contrast, the “practicable” test is commonly used in the RMA field, including extensively in the NPSIB itself. As clarified in case law, “practicability” appropriately includes relevant notions of cost and feasibility going beyond whether something is “possible” in a strict/practical sense.
23. Refining NZ considers that the following excerpt from the Discussion Document illustrates a major misunderstanding or misinterpretation of the meaning of the word “possible” in this context, one that may lead to major (apparently unintended) consequences:¹⁸

Use of the term ‘where possible’ was chosen over ‘where practicable’ to ensure resource consent applicants **adequately consider** each step of the hierarchy, and **assess what may be technically or financially feasible**. Use of ‘where practicable’ is considered weaker and, in practice, results in less avoidance of effects than is actually possible.

¹⁷ Regeneration) technology, enabled many benefits, including a reduction in carbon dioxide emissions of around 120,000 tonnes a year. The Project had major benefits consistent with key government emissions policy, but may have increased the character, intensity, or scale of certain adverse effects. Discussion Document page 46.

¹⁸ Discussion Document page 44 (emphasis added).

24. Requiring consent applicants to “adequately consider” each step of the hierarchy and to “assess what may be technically or financially feasible” would be achieved through use of the well-understood word “practicable”. That is commonly held to be the intent of the word in the RMA field. In contrast, “where possible” requires a strict, absolute, and inflexible standard that is not in accordance with the apparent intended use of the word “possible” as outlined in the above excerpt from the Discussion Document.
25. Refining NZ considers that the separate framework provided to nationally significant infrastructure under the NPS is therefore of almost no benefit to nationally significant infrastructure operators, because the requirement to avoid effects is practically the same as the requirement to avoid effects “where possible”.
26. The NPSIB would therefore operate to significantly constrain nationally significant infrastructure where avoiding effects on SNAs ranked Medium was possible but prohibitively expensive and/or infeasible (potentially costing so much as to make the project/business unviable).
27. The NPSIB would also operate to require certain outcomes at one step in the hierarchy (e.g. avoid or remedy), where a much better overall environmental outcome may be achieved by use of one or more steps lower down the hierarchy (e.g. offset or compensation). This will lead to perverse outcomes, which may be especially stark given that the effects management hierarchy applies to effects of all levels (i.e. there is no requirement, for example, for only “more than minor” adverse effects to be subject to certain or all of the effects management hierarchy sequence).
28. For example, the NPSIB could mean that to avoid or remedy relatively minor adverse effects on indigenous biodiversity would require a solution that has a prohibitive cost and significant adverse effects on a range of other non-biodiversity values out of all proportion with the effects to be remedied. In the case of a new road or railway, for example, the NPSIB may require changing a proposed route to avoid only moderate adverse effects on biodiversity, when: (a) this may lead to very significant other adverse effects that would not have otherwise occurred, such as landscape/visual, archaeological, and/or cultural effects; and (b) the adverse biodiversity effects could have been appropriately offset/compensated, including to achieve a net gain in terms of biodiversity values. This inflexible outcome necessitated by the NPSIB would lead to a worse environmental outcome overall and would not achieve sustainable management. While a hypothetical example, this illustrates the inflexibility and potentially perverse nature of the restrictions proposed in the NPSIB.

29. Refining NZ strongly agrees with the following comments recorded in the Discussion Document:¹⁹

...a number of BCG members have indicated a strong concern that **requiring strict application of the effects management hierarchy [including the “where possible requirement] will drive perverse and inflexible approaches, which are not well tailored to the outcomes sought.** This concern is increased given the level of detail in the proposed NPSIB around biodiversity offsetting and biodiversity compensation (Appendices 3 and 4 of the proposed NPSIB). They have expressed a preference for the BCG’s original, outcomes-based proposal.

Feedback from some BCG members indicates a concern that a focus on the effects management hierarchy means **councils may decline resource consent applications for some activities that could have minimal impact to biodiversity, or where a better biodiversity outcome could be gained through offsetting or compensation.**

30. Refining NZ therefore considers that nationally significant infrastructure should be required to avoid, remedy, mitigate, offset or compensate (in no set hierarchy/order) as appropriate. Without prejudice to this relief sought, at the least, a modified effects management hierarchy should apply to all nationally significant infrastructure activities, requiring a sequence of avoiding, remedying, mitigating, or offsetting/compensating “where practicable” as opposed to “where possible”.²⁰

Key Issue Three: the separate framework for nationally significant infrastructure should apply to all SNAs, not just SNAs ranked Medium

31. As identified above, Refining NZ considers that any requirement for nationally significant infrastructure to avoid adverse effects (either absolutely, or “where possible” under the effects management hierarchy) is inappropriate. Refining NZ is therefore seeking a comprehensive and more permissive independent framework apply to all nationally significant infrastructure proposals.
32. Independent of that relief sought, Refining NZ considers there is no compelling case for nationally significant infrastructure to be treated differently with respect to “Medium” versus “High” SNAs. Refining NZ does not accept the policy rationale for this distinction. For the reasons outlined above, Refining NZ considers that the proposed separate regimes for High and Medium SNAs with respect to nationally significant infrastructure is an overly blunt policy response. While Refining NZ understands the rationale relating to functional/operational need and the requirement

¹⁹ Discussion Document Pages 52 and 43 (emphasis added).

²⁰ This is consistent with the relief sought by Refining NZ on the Draft NPS-FM.

for there to be no practicable alternative locations (Part 3.9(2)), Refining NZ considers that for nationally significant infrastructure a separate framework should apply to effects on all SNAs, not just SNAs ranked Medium.

Key Issue Four: amend the definition of “nationally significant infrastructure”

Include the refinery as nationally significant infrastructure

33. The definition of “nationally significant infrastructure” in the NPSIB specifically includes the RAP, which Refining NZ strongly supports. However, the Marsden Point refinery itself is not included in the definition, which appears to be an important oversight. Refining NZ considers that the definition of nationally significant infrastructure should explicitly include the refinery (the nation’s only refinery). While Refining NZ does not anticipate there will be any debate regarding the refinery’s classification as nationally significant infrastructure, as identified above, the report from the *Government Inquiry into The Auckland Fuel Supply Disruption*²¹ explicitly confirmed that both the refinery and RAP are “nationally critical infrastructure”.

34. Refining NZ requests that the following be included as a new clause in the definition:

nationally significant infrastructure means all or any of the following:

...

(i) the Marsden Point refinery, including associated and/or ancillary activities

35. Refining NZ agrees with the Discussion Document that consistency in definitions between national instruments is desirable. The company sought the same relief in relation to the proposed National Environmental Standards for Freshwater Management.

Include distributed renewable electricity generation

36. The NPSIB currently defines nationally significant infrastructure to include “national renewable electricity generation facilities that connect with the national grid”. Refining NZ considers that the restriction to only include facilities which connect with the national grid is misplaced, and inconsistent with the Government’s commitment to a national target for renewable electricity generation.

37. The NPS for Renewable Electricity Generation (“NPSREG”) contains a sole objective, which is:

²¹ *Government Inquiry into The Auckland Fuel Supply Disruption*; report dated 16 August 2019; authored by Dr Roger Blakely and Elena Trout (see for example pages iii; 2; and 35).

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

38. The NPSREG defines renewable electricity generation activities to include “small and community-scale distributed renewable generation”, which is in turn defined to mean “renewable electricity generation for the purpose of using electricity on a particular site, or supplying an immediate community, or connecting into the distribution network”. Accordingly, Refining NZ considers there is a disjoint between the NPSREG and NPSIB: in that the NPSREG recognises the national significance of “embedded” renewable generation; but the NPSIB restricts nationally significant infrastructure to include only those renewable electricity generation facilities that connect with the national grid. There does not appear to be any clear explanation or justification for this approach.
39. To place this discussion in a practical context, Refining NZ has recently announced plans to proceed with Maranga Ra, a 31 hectare solar farm that will supply 26.7 MW or around 10% of the refinery's total electricity need - reducing CO2 emissions by 18,000 tonnes per year. Refining NZ is actively exploring other potential opportunities for renewable electricity generation in order to supply the refinery. There is no sound policy reason why projects like Maranga Ra, or other future renewable electricity projects, should not be treated as nationally significant infrastructure pursuant to the NPSIB simply because they do not connect with the national grid.
40. Refining NZ acknowledges that there may need to be some minimum generation capacity in order for renewable electricity generation facilities to qualify as nationally significant infrastructure. This could either be made express in the NPSIB or left as a matter of implementation for local authorities.

Include other renewable energy infrastructure

41. The future of transport will require a mix of energy options. This includes conventional fuels as well as renewable biofuels (biodiesel and biojet). Looking ahead Refining NZ sees the opportunity to leverage its existing infrastructure and deep technical capability as New Zealand transitions to a lower carbon economy. For example:

- (a) As the largest producer of pure hydrogen in the country Refining NZ sees the potential for green hydrogen made from solar-generated power to reduce its CO₂ emissions by around 50%.
 - (b) Biojet production could reduce Air New Zealand's CO₂ emissions by an estimated 400,000 tonnes per year.
42. Refining NZ considers that the definition of nationally significant infrastructure in the NPREG should not be limited to renewable *electricity* generation only. Notwithstanding the NPSREG, Refining NZ cannot understand any sound policy reason why renewable *electricity* generation should be afforded an advantage over other forms of renewable energy generation, such as biofuels and hydrogen. Other renewable energy projects/infrastructure may contribute towards meeting New Zealand's emissions targets, and the NPSIB should include all forms of renewable energy infrastructure within the definition of nationally significant infrastructure. Again, Refining NZ acknowledges that there may need to be a minimum scale requirement for renewable energy facilities to qualify as nationally significant infrastructure.

Key Issue Five: The NPSIB should override the NZCPS

43. The NPSIB provides:²²
- Both the New Zealand Coastal Policy Statement and this National Policy Statement apply in the terrestrial coastal environment. If there is a conflict between the provisions of this National Policy Statement and the New Zealand Coastal Policy Statement 2010 (or any later New Zealand coastal policy statement issued under the Act), the New Zealand coastal policy statement prevails.
44. The NZCPS is a broad document covering a wide range of topics in the coastal environment. Refining NZ considers that with respect to indigenous biodiversity within the coastal environment but outside the CMA there is no reason why the NZCPS should automatically "trump" the NPSIB in the event of any conflict. Given that the NPSIB is a more recent document focussing on indigenous biodiversity only, Refining NZ considers that the simplest and best option is for the NPSIB to apply, and the NZCPS not apply to the extent that it addresses biodiversity matters in the coastal environment outside the CMA. This would greatly simplify matters for the parties involved in interpreting and applying the various provisions of the national direction instruments.

²² Part 1.6.

Key Issue Six: recognition of social, cultural, and economic wellbeing in the NPSIB should be maintained and/or strengthened

45. As already outlined, Refining NZ considers that the NPSIB should adopt a more balanced approach that more appropriately recognises the full range of environmental values and imperatives, including those relating to nationally significant infrastructure. Refining NZ therefore supports NPSIB Objective 6 to the extent it promotes the enablement of people and communities to provide for their social, economic, and cultural wellbeing.
46. The key issue however, addressed above, is that the high-level recognition of the importance of social, economic and cultural wellbeing in the NPSIB does not flow down into the proposed management framework. While biodiversity management is important, matters like the ability of communities to provide for their economic and social wellbeing (including through the operation of nationally significant infrastructure) are also critical, and should not be unduly subjugated. While significant, biodiversity management should not be at the unnecessary expense of physical resources (including nationally significant infrastructure) or social and economic wellbeing. Biodiversity management is only one aspect of sustainable management.²³
47. Therefore, Refining NZ considers that the NPSIB's recognition of social, cultural, and economic wellbeing should be maintained and/or strengthened.

Explanation of changes sought

48. Without prejudice to the totality of Refining NZ's concerns, in this submission Refining NZ has identified certain specific amendments that would assist in addressing the issues raised. The changes proposed by Refining NZ generally fit within the existing framework, format, and structure of the NPSIB. Notwithstanding the changes suggested by Refining NZ, Refining NZ would also support more fundamental changes providing more direct/stronger protection for nationally significant infrastructure in the NPSIB; and may support other changes addressing the issues raised.

²³ The above is consistent with Refining NZ's submission to the Resource Management Review Panel on *Transforming the Resource Management System: Opportunities for Change - Issues and Options Paper*.

Conclusion

49. Refining NZ is grateful for the opportunity to submit on the Proposals and is willing to provide detailed wording changes which it seeks to the NPSIB, and/or discuss its submission if that would be helpful.

Yours faithfully

Jack Stewart

HSSE Manager
The New Zealand Refining Company Ltd