SUBMISSION ON THE PROPOSED NATIONAL POLICY STATEMENT ON URBAN DEVELOPMENT (“NPS-UD”)

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

To: National Policy Statement on Urban Development Consultation, Ministry for the Environment

By email: npsurbandevelopment@mfe.govt.nz

Address for service: The New Zealand Refining Company Ltd

[Redacted for privacy]

Attention: [Redacted for privacy]

Email: [Redacted for privacy]

Phone: [Redacted for privacy]
Executive summary

1. Urban development proximate to the Refinery to Auckland Pipeline ("RAP") needs to be appropriately managed, because inappropriate development proximate to the RAP has the potential for significant adverse effects.

2. Refining NZ considers that changes should be made to the NPS-UD to more appropriately recognise and provide for the legitimate constraints on urban development represented by existing critical infrastructure such as the RAP. Refining NZ considers that amendments to the proposed NPS-UD should be made to:

   (a) provide for the avoidance and/or management of sensitive urban development proximate to certain significant infrastructure sites and/or corridors (including the RAP);

   (b) provide stronger recognition of the potential adverse effects of inappropriate urban development proximate to certain significant infrastructure sites and/or corridors (including the RAP) for plan changes and resource consent applications; and

   (c) require increased engagement by local authorities with providers of existing critical infrastructure such as the RAP.

Introduction and background

Refining NZ

3. Refining NZ operates New Zealand’s only oil refinery at Marsden Point, Northland, and 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.

The RAP

4. Refining NZ also owns and operates the 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 almost 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 up to 400,000 litres of product an hour. The remaining product is distributed by coastal tanker to other regions around New Zealand or is transported by road tanker.

**Importance of the Refinery and RAP**

5. 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. The national economy is heavily dependent on the petroleum products refined by Refining NZ and transported via the RAP. And 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, 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.

6. 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 and associated report also reinforce the critical importance of the RAP.

**Urban growth and the RAP**

7. The RAP is subject to a comprehensive suite of protections – comprising physical, procedural and legal mechanisms – aimed to prevent any third-party interference with the RAP and/or to identify and avoid (or manage effects of) development of certain sensitive activities proximate to the RAP. For example, Refining NZ holds designations under Part 8 of the Resource Management Act 1991 for the RAP in the Whangarei, Kaipara, and Auckland districts. It also holds easements over each property through which the RAP traverses.

8. Since the RAP’s commissioning in 1985, urban growth has resulted in third-party subdivision and development proximate to the RAP which, based on Refining NZ’s experience, has accelerated in recent years. Increasing third-party

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1. The refinery employs approximately 500 employees and contractors.
2. Government Inquiry into The Auckland Fuel Supply Disruption; report dated 16 August 2019; authored by Dr Roger Blakely and Elena Trout.
activities/development proximate to the RAP generally increases the likelihood of conduct having the potential to damage or otherwise hinder the operation of the RAP, and also introduces a gradual change to the risk environment around the RAP from a public safety perspective. Urban development, particularly intensive development and/or the introduction of “sensitive” type activities (e.g. schools, hospitals) can change the risk profile proximate to the RAP.

9. The proliferation of urban activities proximate to the RAP is therefore a very important issue for Refining NZ. For proposals for sensitive activities (including residential development) proximate to the RAP the company allocates considerable time and resources to understand the implications for Refining NZ, and where necessary become involved in third-party applications for resource consent and/or plan changes. This is both to ensure that the potential for third party interference with the RAP – due to new activities and land-uses – is appropriately managed; and also to ensure that the risks presented by the RAP (for example risks to the public in the event of an incident involving the RAP) are appropriately minimised.

Government Inquiry Into The Auckland Fuel Supply Disruption

10. The report of the Government Inquiry Into The Auckland Fuel Supply Disruption stated that “…there is a case for expanding the legal protection of the RAP, using the tools in the Resource Management Act 1991”.3 The Inquiry also specifically recommended the following:4

Expand the protection of the RAP under the RMA

That the Ministry for the Environment works with MBIE and the Treasury, in consultation with Refining NZ, to assess the type of national direction under the RMA that might be most suitable for creating better protection of the RAP and similar networked infrastructure.

11. Refining NZ considers that the amendments sought by Refining NZ in this submission on the proposed NPS-UD form part of giving effect to the Inquiry’s recommendation above. Refining NZ would also strongly support in principle any initiative for national direction focussing specifically on the protection of the RAP and other network infrastructure.

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3 Government Inquiry into The Auckland Fuel Supply Disruption; report dated 16 August 2019; authored by Dr Roger Blakely and Elena Trout (page vii).
Refining NZ’s feedback on the proposed NPS-UD

General

12. As outlined above, proliferation of urban development proximate to the RAP may have significant negative impacts. Potential adverse effects may relate to the RAP itself (for example the increased threat of third-party interference with the RAP) and to those people living/working near the RAP (for example the increased public safety risks posed by a RAP incident). Therefore, inappropriate growth in the form of sensitive urban development urban development proximate to the RAP should be avoided or appropriately managed.

13. The NPS-UD Discussion Document states that “[t]he Government wants planning culture to shift to enabling urban development, while also appropriately managing its effects.” Refining NZ considers that amendments to the proposed NPS-UD should be made to appropriately manage potential negative impacts of urban growth by requiring (or at least promoting) recognition and protection for the RAP and other existing critical infrastructure within the planning/consenting framework. This should include explicit provision in the NPS-UD for the avoidance of, and/or appropriate restrictions on, sensitive urban development proximate to certain critical infrastructure sites and/or corridors (including the RAP). Refining NZ considers that stronger recognition and provision for such infrastructure in the NPS-UD will likely have only very limited impact on overall capacity for urban growth, but is crucial to ensure that such growth is planned and managed appropriately.

14. The proposed NPS-UD Discussion Document states that it aims to enable growth “up and out”. Given the stated intent of the proposed NPS-UD, Refining NZ understands its focus on enabling development, as opposed to factors such as existing infrastructure (including the RAP) which may appropriately constrain urban development and which needs to be protected from uncontrolled urban growth. For the same reason, with respect to the proposed NPS-UD’s approach to infrastructure, Refining NZ can understand the focus on the funding and provision of “enabling” “development infrastructure” supporting urban growth, as opposed to existing infrastructure (such as the RAP) which may represent a legitimate constraint to urban development.

15. However, Refining NZ considers the NPS-UD needs to adopt a balanced approach that more explicitly recognises the legitimate and critical constraints to urban development represented by certain existing infrastructure, including the RAP.
Notwithstanding the proposed NPS-UD’s focus on enabling development infrastructure, Refining NZ considers it also needs to recognise and protect certain existing infrastructure from inappropriate development.

16. Growth needs to be strategically planned, including with respect to existing infrastructure. And this should be recognised from the top of the planning hierarchy (including national direction such as the proposed NPS-UD) through to district plans. While the proposed NPS-UD Discussion Document states that the NPS will ensure growth is strategically planned, the wording of the present proposal provides limited assurance that existing infrastructure will be appropriately planned for and managed.

17. Adverse effects of growth, including on and from existing infrastructure, need to be appropriately managed. Making room for growth must not be at the expense of the safe and efficient operation of existing infrastructure, especially nationally critical infrastructure such as the RAP.

18. While a stated purpose of the proposed NPS-UD is to remove unnecessary restrictions in the planning system so that RMA plans do not inappropriately constrain development, some restrictions (such as restrictions in designations and plans on sensitive activities near to the RAP) are necessary and need to maintained – and in fact strengthened – as growth and urban expansion occurs. With respect to the RAP this is especially the case for greenfield development in previously rural areas, via which the introduction of sensitive urban activities proximate to the RAP can materially change the risk profile for the RAP.

Provide for the avoidance/management of sensitive development proximate to the RAP

19. In light of the above, in summary Refining NZ considers that the NPS-UD should be amended to explicitly recognise and provide for, including at least through the proposed Future Development Strategy (“FDS”) process:

(a) the avoidance of sensitive urban development proximate to certain significant infrastructure sites and/or corridors (including the RAP); and/or

(b) the imposition of appropriate controls on sensitive urban development proximate to certain significant infrastructure sites and/or corridors (including the RAP).
20. Several “no go” areas (areas which urban development may be required to avoid) are outlined in the proposed NPS-UD Discussion Document, for example areas relating to biodiversity, cultural, freshwater, and productive soil values. The FDS framework provides a mechanism for local authorities to identify areas where development may not be appropriate (PD1), but importantly does not set out the types of matters that may justify avoidance. Refining NZ considers that such matters/areas should be explicitly listed in the NPS-UD, at least in P1Da), and that “areas proximate to existing significant infrastructure sites and/or corridors, including for safety purposes” (or similar) should be included as potential areas within which urban development should be avoided and/or subject to appropriate restrictions.

21. Refining NZ considers that the NPS-UD should require the above be given effect to in the relevant lower order plans, including district plans. (As drafted, P1H, currently states that local authorities are “strongly encouraged to use their FDS to inform… any other relevant strategies, plans and documents.”)

Stronger recognition of potential reverse sensitivity and other adverse effects for plan changes and resource consent applications

22. Managing reverse sensitivity effects is identified in the “example” NPS-UD policy relating to plan changes providing for further greenfield development. This addresses one aspect of the concerns Refining NZ outlines above and is helpful (and should be retained or strengthened) but insufficient.

23. The scope of potential adverse effects that are relevant to protecting the RAP and other existing infrastructure from inappropriate urban development are wider than just reverse sensitivity effects. For example, potential effects relating to safety/societal risk resulting from the locating of sensitive development proximate to the RAP are not within the meaning of reverse sensitivity effects as defined under RMA case law. The proposed greenfield development policy includes a criterion relating to whether the proposed development can occur in a way that is “appropriate, safe, and resilient in the long term” with respect to natural hazards and their effects. Refining NZ considers that an equivalent criterion should address existing infrastructure such as the RAP and the adverse effects of locating sensitive urban development proximate to it. In the context of the proposed “example” greenfield policy, Refining NZ considers

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5 Page 39 of the NPS-UD Discussion Document.
6 Page 39 of the NPS-UD Discussion Document.
adding a new criterion along the following lines (or words to similar effect) is appropriate:7

When considering a plan change that enables urban development that is not otherwise enabled in the plan, local authorities must provide for urban development when all of the following apply:

... 

(f) adverse effects on and from any proximate significant existing infrastructure (including with respect to safety) are appropriately managed.

24. Refining NZ also considers that such considerations should apply to resource consent applications for urban development, not just plan changes, and that this should be provided for in the NPS-UD. In addition, while a key focus for Refining NZ is on urban development in greenfield areas, the considerations outlined above apply equally to urban intensification in brownfield areas, and this should be reflected in the NPS-UD.

25. In summary, potential adverse effects of inappropriate urban development proximate to existing infrastructure (including the RAP) should be given greater recognition and wider application in the NPS-UD.

**Increased engagement with providers of existing critical infrastructure**

26. As part of the above, it will be necessary for local authorities to engage with providers of existing critical infrastructure such as the RAP, including to identify areas within which urban development should be avoided and/or appropriate restrictions imposed. Such mandatory engagement should be required in the NPS-UD. Refining NZ therefore supports: the extension of Objective O10 (“coordinated planning”) to also cover “providers of infrastructure”; and the intent of P10B which requires local authorities to work with providers of development and other infrastructure, including to achieve integrated land use and infrastructure planning.

27. However Refining NZ considers that stronger requirements to engage with providers of critical existing infrastructure should be added to the NPS-UD, especially with respect to providers of critical existing infrastructure such as the RAP that need to be protected from inappropriate urban development, as opposed to providers of future “lead” / “enabling” development infrastructure.

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7 Proposed additions are shown underlined.
Explanation of changes sought

28. Refining NZ’s core concerns with the proposed NPS-UD are outlined in general terms in this submission. Those concerns are capable of being addressed in numerous ways through changes to the proposed NPS-UD. 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 proposed NPS-UD. Notwithstanding the changes suggested by Refining NZ, Refining NZ would also support more fundamental changes providing more direct/stronger intervention in the NPS-UD to more explicitly provide for and protect the RAP and other existing infrastructure from inappropriately located urban development; and may support other changes addressing the issues raised.8

Conclusion

29. Refining NZ is grateful for the opportunity to submit on the proposed NPS-UD and is willing to provide detailed wording changes which it seeks to the NPS-UD, and/or discuss its submission if that would be helpful.

Yours faithfully

The New Zealand Refining Company Ltd

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8 For example, changes could potentially be made to O10 and P10B (coordinated planning); and P1D and P1E relating to the development of FDSs.