REFINING NZ

SUBMISSION ON THE “ACTION FOR HEALTHY WATERWAYS”
CONSULTATION DOCUMENT

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

To: Freshwater submissions, Ministry for the Environment

Personal details removed
Executive summary

1. Refining NZ is extremely conscious of its responsibility to manage the environmental impacts of its operations, including with respect to freshwater resources, and is continually looking to improve environmental performance. However, Refining NZ considers that it is critical that the proposed freshwater reforms do not inappropriately constrain the refinery or the Refinery to Auckland Pipeline ("RAP"), which are both nationally significant infrastructure.

2. Refining NZ therefore supports aspects of the Action for Healthy Waterways Discussion Document, including the proposed new National Policy Statement for Freshwater Management ("NPS-FM") and National Environmental Standards for Freshwater Management ("Freshwater NES") (together, the "Proposals"), to the extent that they appropriately recognise and provide for nationally significant infrastructure such as the refinery and RAP. But Refining NZ considers that amendments should be made to the Proposals to more appropriately provide for nationally significant infrastructure in the context of freshwater management. The refinery and RAP, including their operation, maintenance and upgrading, have functional/operational requirements meaning that certain freshwater effects are – or may be – unavoidable/appropriate and should be recognised and provided for in any freshwater management framework.

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 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.

*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. 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.

*The refinery and the RAP in the context of freshwater*

7. Situated at Marsden Point at the mouth of the Whangarei Harbour, planning frameworks applying to the coastal and marine environments are of obvious relevance to Refining NZ. However, freshwater management reform also has important potential impacts for Refining NZ, including for the following reasons:

(a) The RAP traverses 170km from Marsden Point to South Auckland. It crosses (or is located near to) several streams and wetland areas. Refining NZ is therefore concerned to ensure that the ongoing operation, maintenance, and upgrading of the RAP is appropriately provided for in the proposed NPS-FM and Freshwater NES. It is critical that the RAP is not unduly constrained/impacted.

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1. The refinery employs approximately 500 employees and contractors.
To manage historical contamination at the refinery site, a groundwater management programme was implemented in the 1980s, involving groundwater extraction to recover product which had been lost to ground. As authorised by resource consents, Refining NZ continues to abstract groundwater to create localised groundwater depression to contain subsurface hydrocarbons within its site. This mitigates the risk of any hydrocarbons flowing off-site by creating a flow gradient towards the recovery wells, and therefore has important benefits. While this activity may result in some degree of saline intrusion into the aquifer below the refinery site, it ultimately results in a positive environmental outcome. Refining NZ is concerned to ensure that its groundwater management regime is not unduly constrained by the Proposals.

Refining NZ's feedback on the Proposals

General

8. The proposed NPS-FM and Freshwater NES explicitly provide for and protect nationally significant infrastructure (which includes the RAP) in places, including by creating separate consenting frameworks for such infrastructure under the proposed Freshwater NES. Refining NZ supports this explicit recognition and provision. However, it considers that certain proposed wording does not ensure that nationally significant infrastructure such as the refinery and RAP will be appropriately protected from the freshwater controls proposed.

9. Given the vital importance of nationally significant infrastructure, Refining NZ considers that amendments to the Proposals should be made to more appropriately recognise and protect the refinery and RAP and other critical infrastructure within the planning/consenting framework, including to ensure that the proposed restrictions/controls do not unduly restrict such infrastructure. Without amendment, these controls could have potentially significant adverse effects on the ongoing operation, maintenance, upgrading, and/or provision of new of nationally significant infrastructure.

10. Given the stated purposes of the proposed NPS-FM and Freshwater NES, Refining NZ understands the focus on stopping degradation of freshwater resources and reversing past damage. However, Refining NZ considers the Proposals need to adopt

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3 There is capacity within the relevant aquifer to enable the take to occur.
a more balanced approach that more explicitly recognises and provides for nationally significant infrastructure, including appropriately excepting such infrastructure from certain freshwater controls that otherwise have the potential to severely constrain infrastructure. In other words, potential adverse effects of the proposed freshwater management regime on nationally significant infrastructure need to be appropriately managed. Improving freshwater outcomes must not be at the expense of the safe and efficient operation of existing infrastructure, especially nationally significant infrastructure such as the refinery and the RAP.

11. Refining NZ considers that stronger recognition and provision for such infrastructure in the Proposals will likely have only a very limited impact on freshwater values, but is crucial to ensure the ongoing operation, maintenance, upgrading, and provision of new of nationally significant infrastructure is not unduly constrained.

Feedback on Freshwater NES

Refining NZ supports a separate framework for “nationally significant infrastructure”

12. In Part 2 (wetlands, rivers, and fish passage) the Freshwater NES includes “nationally significant infrastructure” as a defined term. In subparts 1 (wetlands) and 2 (river bed infilling) of Part 2, which are most relevant to the refinery and RAP, the Freshwater NES also includes separate provisions for nationally significant infrastructure. In all cases, activities relating to nationally significant infrastructure are proposed to have a more permissive activity status (being discretionary as opposed to non-complying or prohibited) than equivalent activities undertaken for purposes not associated with nationally significant infrastructure.

13. Refining NZ supports the proposed approach of providing a separate framework under the Freshwater NES for nationally significant infrastructure. Refining NZ also considers that:

(a) discretionary activity status is generally appropriate for activities undertaken for nationally significant infrastructure (for those activities within the scope of Subparts 1 and 2 of Part 2 of the Freshwater NES); and
(b) it is appropriate that the separate framework for nationally significant infrastructure applies to “building, maintaining, or operating any new or existing nationally significant infrastructure”.\(^4\)

14. Refining NZ also considers that in accordance with s43B of the RMA the Freshwater NES should state that councils cannot include rules in their plans (or impose conditions on resource consents) that are more stringent with respect to nationally significant infrastructure. This would afford a nationally consistent approach for such infrastructure.

*Refining NZ generally supports the wetland standard condition for nationally significant infrastructure*

15. Clause 6 of the proposed Freshwater NES will apply to all resource consents for nationally significant infrastructure that engage the NES subpart relating to wetlands.

16. Refining NZ generally supports the proposed wording of the standard condition, including:

(a) clause 6(a) which requires that “to the extent that 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 gain”\(^5\) (although Refining NZ considers that the clause should refer to “no net loss” as opposed to “net gain”, including for consistency with proposed NES clause 18(2)(a)); and

(b) the standard wetland monitoring condition (Freshwater NES clause 5) referred to in clause 6(b).

*The Marsden Point refinery should be explicitly included within the definition of “nationally significant infrastructure”*

17. The definition of “nationally significant infrastructure” in the proposed Freshwater NES specifically includes the RAP. 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), and requests that the following be included as a new clause in the definition:

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\(^4\) Emphasis added.

\(^5\) Emphasis added.
nationally significant infrastructure means all or any of the following:

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

18. 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\(^6\) explicitly confirmed that both the refinery and RAP are "nationally critical infrastructure".

Feedback on NPS-FM

The NPS-FM should include comprehensive exceptions for nationally significant infrastructure

19. For the reasons outlined above, it is essential that nationally significant infrastructure is not unduly constrained by the Proposals. The Freshwater NES includes a comprehensive separate framework for nationally significant infrastructure, which Refining NZ supports. However, the NPS-FM does not generally provide exceptions for nationally significant infrastructure. Only clause 3.16(5), relating to the infilling of streams, provides an express exception for nationally significant infrastructure. Refining NZ supports this provision, but it is unclear why equivalent provisions do not apply to other activities covered by the NPS-FM. The NPS-FM also provides more comprehensive exceptions for certain existing large hydro schemes. Notwithstanding hydro schemes' clear linkages to freshwater activities, Refining NZ is unclear why other nationally significant infrastructure should not also attract appropriate comprehensive exceptions/ protections under the NPS-FM.

20. In several cases the proposed NPS-FM provisions are drafted in directive/absolute terms, including requiring the "avoidance" of certain effects (see for example the list of provisions identified in paragraph 22 below). Refining NZ considers that in the context of nationally significant infrastructure, such provisions are inappropriate. They are inconsistent with the Freshwater NES which includes separate frameworks for nationally significant infrastructure and explicitly provides for the granting of resource

\(^6\) 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).
consents in a manner that would be contrary to certain directive NPS-FM policies as drafted. The proposed NPS-FM should adopt a more balanced approach.

21. Refining NZ therefore considers that comprehensive exceptions for nationally significant infrastructure should be incorporated into the NPS-FM. This could be achieved by the addition of a single new overarching provision providing that certain NPS-FM provisions do not apply to nationally significant infrastructure (broadly similar to the approach currently adopted in the NPS-FM for large hydro schemes).

22. NPS-FM provisions that Refining NZ considers should be subject to a suitably worded exceptions for nationally significant infrastructure include the following:  

(a) **Policy 8:** "There is **no further loss or degradation** of natural inland wetlands";

(b) **Subpart 3 – Specific requirements: 3.15(2) Inland wetlands:** "Every regional council must include in its regional policy statement the following policy (or words to the same effect): ‘The loss or degradation of all or any part of a natural inland wetland is **avoided.**’"  

(c) **Subpart 3 – Specific requirements: 3.15(4) Inland wetlands:** "Every regional council must make or change its policy statement and plan to ensure that, when considering an application for a consent, adverse effects on any natural inland wetland are managed by applying the **effects management hierarchy.**"

[In the alternative, if no exception is provided for nationally significant infrastructure for clauses 3.15(4) and 3.16(3), Refining NZ considers that – at least for nationally significant infrastructure – the definition of “effects management hierarchy” should be amended so that the requirement is that adverse effects are avoided “where practicable”, not “where possible”. Especially for nationally significant  

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7 Emphasis added. Other such provisions include: **Policy 2:** “Freshwater is managed through a national objectives framework, in order to ensure that the health and wellbeing of waterbodies and freshwater ecosystems is **maintained or improved**”; **Policy 7:** “Freshwater is allocated and used efficiently, all existing over-allocation is **phased out**, and future over-allocation is **avoided**”; **Policy 11:** “The habitats of indigenous freshwater species are **safeguarded**”; **Subpart 3 – Specific requirements: 3.16(1) Streams:** “Every regional council must include the following policy (or words to the same effect) in its regional policy statement: ‘The extent and ecosystem health of rivers and streams in the region, and their associated freshwater ecosystems, are at least maintained’” [while 3.16(2) states that the policy must be read subject to any rules that give effect to the requirements of the Freshwater NES, Refining NZ considers that an explicit exception for nationally significant infrastructure would be preferable and more transparent]; and **Subpart 3 – Specific requirements: 3.16(4) Streams:** “Every regional council must make or change its regional policy statement and plans to ensure that the following do not result in a **net loss** in the extent or ecosystem health of a stream: a) permanently diverting a stream; b) culverting a stream, where that is allowed and as far as practicable.”

8 While 3.15(3) states that the policy must be read subject to any rules that give effect to the requirements of the Freshwater NES, Refining NZ considers that an explicit exception for nationally significant infrastructure would be preferable and more transparent.
infrastructure, Refining NZ considers this is a more appropriate test, and “practicability” is used elsewhere in the NPS-FM in the context of nationally significant infrastructure. 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 wetland, but this may lead to worse environmental outcomes overall and may involve prohibitive costs.]

(d) **Policy 9:** “There is no further net loss of streams”;

(e) **Subpart 3 – Specific requirements: 3.16(3) Streams:** “Every regional council must make or change its policy statement and plan to ensure that, when considering an application for a consent, adverse effects on any stream are managed by applying the effects management hierarchy.”

The NPS-FM should adopt a more balanced approach, including with respect to the proposed Objective and Policy 13

23. As already outlined, Refining NZ considers that the NPS-FM 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. While it is of significant importance, freshwater management should not be at the expense of physical resources (including nationally significant infrastructure) or social and economic wellbeing. Freshwater management is only one aspect of sustainable management.

24. Refining NZ therefore supports the NPS-FM Objective and Policy 13 to the extent that they promote the enablement of communities to provide for their wellbeing. However, the Objective and Policy 13 establish social, economic, and cultural wellbeing as secondary or tertiary considerations. While freshwater 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 to freshwater aims. The RMA, including the definition of sustainable management, does not require a hierarchy of this nature.

25. Refining NZ considers that the NPS-FM Objective and Policy 13 should be amended in line with the above.

*The NPS-FM should provide for the types of water take undertaken by Refining NZ*
26. The NPS-FM promotes the efficient allocation and use of water. As outlined above, Refining NZ carries out a freshwater management regime whereby it abstracts groundwater to manage passive discharges from the site. Overall, this take/use of water by Refining NZ has important environmental benefits, however it may not be considered "efficient" on a narrow interpretation of the word (Refining NZ does not "use" the water taken in a traditional sense – it takes the water because the fact it is taken has important benefits.)

27. Refining NZ considers that the NPS-FM should better provide for such takes/use of water, in relation to which "efficiency" in the strict sense of the word should not be the primary consideration.

28. Proposed Policy 7 states "freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided". Because the definition of "efficient allocation" in the NPS-FM includes "economic efficiency," Refining NZ considers that it is wide enough to encompass considerations relevant to – and justifying – Refining NZ's water take. However, this should be made more explicit in the NPS-FM. In addition, Refining NZ has identified no corresponding definition of "efficient use" in the NPS-FM, meaning that Refining NZ's water take may – on the face of the meaning of the word "efficient" – be interpreted as being contrary to proposed Policy 7 as it relates to using water. A potential method of satisfying Refining NZ's concerns would therefore be to include in the NPS-FM an appropriate definition of "efficient use" in relation to water.

Explanation of changes sought

29. Refining NZ's core concerns with the Proposals are outlined in general terms in this submission. Those concerns are capable of being addressed in numerous ways through changes to the proposed NPS-FM and Freshwater NES. 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 Proposals. Notwithstanding the changes suggested by Refining

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9 Emphasis added. See also NPS-FM 3.19.
10 Economic efficiency
11 In addition, Subpart 3 – Specific requirements: 3.19(1)(b) Water allocation requires every regional council to make or change its regional plan to include criteria for deciding how to improve and maximise the efficient allocation of water. And 3.19(2) requires regional councils to identify in regional plans methods to encourage the efficient use of water.
NZ, Refining NZ would also support more fundamental changes providing more direct/stronger protection for nationally significant infrastructure in the NPS-FM and Freshwater NES; and may support other changes addressing the issues raised.

Conclusion

30. 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 NPS-FM and/or the Freshwater NES, and/or discuss its submission if that would be helpful.

Yours faithfully

Personal details removed

HSSE Manager
The New Zealand Refining Company Ltd