

**BEFORE THE GREATER WELLINGTON REGIONAL COUNCIL
PROPOSED NATURAL RESOURCES PLAN INDEPENDENT HEARINGS
PANEL**

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of Hearing Stream 1 Overall
Policy Framework, Beneficial
Use and Development, Areas
and Sites with Significant Mana
Whenua Values

**ORAL STATEMENT OF EVIDENCE OF DAVID LE MARQUAND FOR
Z ENERGY LTD, MOBIL OIL NZ LTD, BP OIL NZ LTD (“*THE OIL COMPANIES*”,
Submission #55) AND POWERCO LIMITED (Submission #29)**

8 June 2017

**Hearing Stream One, Overall Plan Framework, Beneficial Use and Development,
and Areas and sites with significant mana whenua values**

1. My name is David William le Marquand. I am a Director of Burton Planning Consultants Limited. I have the qualifications and experience as set out in my evidence in chief.
2. I appear here on behalf of Powerco Limited and Z Energy, BP Oil NZ Limited and Mobil Oil NZ Limited (*the Oil Companies*). I will highlight the main points of primary evidence, in light of reviewing the other expert evidence, and will comment on the changes put forward by officers on the first day of the hearing.

Regionally Significant Infrastructure

3. The definition adequately addresses and provides for the Oil Companies' bulk fuel supply infrastructure. The key matter in dispute is the nature and scope of the definition of Regionally Significant Infrastructure as it applies to Powerco's electricity network, although its gas network is adequately provided for and no party is seeking any changes to that. I note, with some disappointment, that the officer has made no recommendations for a change to the definition in relation to the electricity distribution network arising from consideration of my and others (e.g. WEL) evidence on this. In my view Powerco's distribution network should fall to be considered as Regionally Significant Infrastructure. If it is deemed by the Panel that the electricity distribution network is not regionally significant infrastructure then there will, in my view, be a need to consider specific and separate objectives and policies that can ensure the on-going maintenance, upgrading, development and protection of the network. At this stage I have not given any detailed thought as to what that may require, although there is scope to consider that within Powerco's submission.
4. There are a number of, in my opinion, compelling reasons why the infrastructure is regionally significant. The first one is that its exclusion reflects an interpretation of the RPS advanced by the Reporting Planner, and that interpretation is not necessarily an appropriate or correct interpretation. The evidence of Christine Foster for Meridian is that such infrastructure is included already. Indeed this was the starting point taken in the original Powerco submission and was illustrated and supported in the example in my evidence of the approach taken by EBOP. There is almost identical wording in the EBOP RPS (to that in Wellington) and there staff have, appropriately in my view, taken the opposite view of the GWRC Reporting Planner, and where the lack of clarity in the definition was quite properly acknowledged and rectified in the Regional Coastal Plan definition of Regionally Significant Infrastructure. In this regard the GWRC staff approach and thinking is an outlier. In my evidence I set out the approach taken by

other North Island Councils – whereby Powerco’s electricity distribution infrastructure is included. I can also add the ECAN RPS to that: it includes “Electricity distribution network” in its definition of regionally significant infrastructure. Similarly, in terms of intent, the Southland RPS has the following definition of regionally significant infrastructure: *Infrastructure in the region which contributes to the wellbeing and health and safety of the people and communities of the region, and includes all critical infrastructure*. For the sake of certainty, while Powerco’s electricity distribution network would meet the first part of the definition, it is also covered by the definition ‘critical infrastructure’. I note that the Otago RPS, which defines regionally significant infrastructure through a policy, is currently under appeal.

5. Further reasons include:

- The current definition is an inclusive definition;
- Like most of the other examples listed in the definition the local electricity distribution network is a life line utility;
- The electricity distribution network is provided for as a network utility under the RMA;
- The concepts of scale and significance appear to be misunderstood by the Reporting Planner, as the s42A Report does not properly understand the importance and functioning of the network;
- There is inconsistency across the definition. Other distribution networks are included e.g. water supply and gas, but electricity is not;
- If electricity distribution is excluded it raises questions as to how RPS Policy 7 can be given effect;
- Other regionally significant infrastructure relies on a connection to the electricity distribution network and will have difficulty operating without such connectivity;
- The efficacy of the electricity distribution network depends upon the functioning of many elements. The evidence of Spark and Chorus has also identified the role and function of, and the need to understand, utilities operating as functioning networks rather than trying to identify which are more important parts than others, while it may be able to be done (and I note Northland RPS and Horizons has attempted to do this) it would require a lot more detailed consideration;
- The difficulty in rationalising and identifying which parts of a network infrastructure is more important than another part in any particular circumstance was the basis the notion of regional significance was rejected by the Independent Hearing Panel on the Auckland Unitary Plan, headed by Judge Kirkpatrick. The regional significance policy provisions were effectively applied to all infrastructure;

6. In my opinion, the amendments I proposed in my evidence in chief should be made as follows:

Facilities for the generation and/or transmission of electricity where it is supplied to the national electricity grid and/or the local electricity distribution network. This includes supply within the local electricity distribution network.

Policy 4

7. **Policy 4** is about defining the meaning and application of “minimisation” across the whole Plan. It is a significant and overarching policy affecting the interpretation and

application of two objectives and some 40 other policies. It is therefore a very important policy to get right. I note it has attracted a significant amount of comment from many of the experts. There seems to be some agreement that Policy 4 lacks clarity in its current form, inappropriately sets out mandatory requirements and inappropriately includes and applies a locational avoidance requirement for all activities occurring in certain specified Scheduled environments. It is also, in my view, at odds with some of the specific policy approaches taken for those areas – in that some of the policies for those areas don't require an avoidance only approach. As indicated in my evidence in chief (and supported by some of the other expertise e.g. Sylvia Allan), I would not oppose its removal altogether. However that is beyond the scope of the Powerco and Oil Companies submissions, and would need to be done in accordance with submissions of other parties.

8. I note that further consideration has been given to Policy 4 by Emily Greenburg in the Council response to matters arising on 22 May 2017. She has recommended deleting clause (b), which I support, but she has also proposed a new clause as follows:

Minimisation is not appropriate for activities in areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (Indigenous biodiversity). For these activities Policies P39, P45, P46 and P41 shall be applied.

9. I do not support the inclusion of the new clause. It still enunciates an additional policy response (i.e. minimisation is not appropriate in those specified scheduled areas). It still creates uncertainty. It would appear that the additional clause has to be applied to activities in the entire suite of scheduled areas (e.g. Schedule A1-A3; C1-C5 etc)? There are more policies for those areas than the ones identified. Some of them include an “avoid in the first instance” approach and then remedy or mitigate. As a consequence the examples of minimisation listed in Policy 4 may in fact be quite appropriate responses in some circumstances within those Scheduled areas as part of a mitigation response. I think the attempt to add a clarification statement in Policy 4 just adds confusion, is unnecessary and should be deleted.
10. The list of matters in a) to e) should, in my opinion, be examples that can be considered. They should not be mandatory requirements. I note a number of other experts have raised this issue. It seems to me that the policy as drafted (and using the “and” to link the clauses) potentially requires a party to satisfy and/or demonstrate consideration of every matter listed. Again this is not appropriate in my view: if they are to be included, then these matters should simply be examples of what may be considered minimisation. As a consequence of these concerns, I have included

consideration of the BPO as that may be a means of reducing effects to the smallest amount practicable when implementing "minimisation" policies in relation to discharges.

11. I therefore consider the Policy should be worded as follows:

Policy P4: Minimising adverse effects

Where minimisation of adverse effects is required by policies in the Plan, minimisation means reducing adverse effects of the activity to the smallest amount practicable and shall may include:

(a) consideration of practicable alternative locations and methods for undertaking the activity that would have less adverse effects, and

(b) ~~locating the activity away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and consideration of the application of the best practicable option;~~

(c) timing the activity, or the adverse effects of the activity, to avoid times of the year when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects, and

(d) using good management practices for reducing the adverse effects of the activity, and

(e) designing the activity so that the scale or footprint of the activity is as small as practicable.

Objective 13 and Policy 14

12. My evidence discusses provisions relating to regionally significant infrastructure and reverse sensitivity. The additional S42A Report prepared by Paul Denton and presented to the Panel after consideration of the expert evidence is dismissive of all changes proposed by other experts. In my evidence in chief I supported the broadening of the scope of the objective in accordance with the Transpower submission.

13. A key consideration when assessing impacts on regionally significant infrastructure has to be the extent to which the operation and ability of that infrastructure to meet the ongoing demands (including upgrading) is constrained. My view is that the explanation in Policy 8 of the RPS on page 96 supports this:

Incompatible subdivisions, land uses or activities are those which adversely affect the efficient operation of infrastructure, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. It

may also include new land uses that are sensitive to activities associated with infrastructure.

14. I also consider that Objective 13 is unnecessarily limited to consideration of such effects within the CMA. Consideration needs to also be given to lake and river beds for such matters. The original s42A report confirmed that the scope of RPS Policy 8 is not limited to the CMA. On that basis alone it seems to me that the scope of the objective should be broadened.
15. For Policy 14 I outline in my evidence in chief that regionally significant infrastructure should be protected from other adverse effects not just those that relate to reverse sensitivity effects. This, in my view, is also compatible with and gives effect to Policy 8 of the RPS which states:

District and regional plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.
16. For example, a gravel extraction activity in a river bed which undermines a gas line crossing in that same river bed would be likely to be considered an incompatible activity.
17. Incompatible use and development is not, in my view, limited to those matters specified in the definition of reverse sensitivity. Without such specification there is a potential policy gap in the “protection” of regionally significant infrastructure.
18. I support the following wording:

Objective 13

The ongoing use, and ongoing operation, maintenance and upgrade of regionally significant infrastructure and renewable energy generation activities ~~in the coastal marine area~~ are protected from new incompatible or inappropriate use and development occurring under, over or adjacent to the infrastructure or activity.

Policy 14

*Regionally significant infrastructure and renewable energy generation activities shall be protected from new incompatible use and development occurring under, over or adjacent to it [*sic – should be ‘them’ or ‘those activities’*], by locating and designing any new use and development to avoid, remedy or mitigate any adverse effects, including reverse sensitivity effects.*

Policy 12

19. In my evidence in chief I addressed the concern that the recognition of functional need in Policy 12 was limited to port activities in the CMA, but that this was a matter that needed to be applied more broadly, as regionally significant infrastructure is required to

locate in a range of environments including lake and river beds. In reviewing other expert evidence on this matter I note that in the evidence of Lyndsay Daysh for the Port of Wellington, he proposes an amendment to policy 12 (d) (at paragraph 47) as follows:
(d) the functional need for port activities and infrastructure to be located within the coastal marine area

20. I support Mr Daysh's proposed amendment for the reasons given in his evidence. I also note the evidence of Perri Duffy for First Gas and note the recommended amendments to Policy 12 with a new (e), which includes a specific functional need requirement for regionally significant infrastructure within beds of lakes and rivers. I support the intent to broaden the application of functional need beyond the CMA. I note that this was the reason that Powerco supported the First Gas submission. I support both sets of relief.

21. In the alternative, I had referred the Panel to a policy in the Auckland Unitary Plan which gives broader effect and recognises the locational requirements of (regionally significant) infrastructure if the Panel was not supportive of the First Gas amendment. I also suggested a further alternative, however I would suggest wording that a statement as follows:

f) the functional need or operational requirement of regionally significant infrastructure to be located in a variety of environments.

DW le Marquand 8th June 2017

