

**BEFORE THE HEARINGS COMMISSIONERS FOR THE GREATER  
WELLINGTON REGIONAL COUNCIL**

**UNDER** The Resource Management Act  
1991

**IN THE MATTER OF:** the proposed Wellington Natural  
Resources Plan (Hearing Stream 1)

**Brief of evidence of Perri Nicole Duffy in relation to a submission by the First Gas  
Limited (submitter #145)**

**Date: 5 May 2017**

## INTRODUCTION

1. My full name is Perri Nicole Duffy. I am a Senior Planner, in the firm of Beca Limited. I hold a Bachelor of Planning (honours) from the University of Auckland obtained in 2009. I am a Full Member of the New Zealand Planning Institute.
  
2. I have had over 7 years professional experience in Planning and resource management. During that period I have undertaken a wide range of planning projects including whole district plan reviews as well as plan changes, land use and development consenting, designations and public notification processes throughout New Zealand. Some of my relevant experience includes:
  - a. Writing hearing and decision reports on behalf of Council during the Kaipara District Plan review as part of the consultant team advising Council;
  
  - b. Analysing policy and presenting evidence on behalf of the New Zealand Fire Service for the Proposed Auckland Unitary Plan, Palmerston North Plan Changes 15A-H, a notice of requirement hearing and the Gisborne Freshwater Plan;
  
  - c. Part of the team drafting the Assessment of Effects on the Environment for East West Link – a NZ Transport Agency Project in Auckland;
  
  - d. Drafting multiple Assessment of Effects on the Environment reports on behalf of Chorus New Zealand Limited for the Ultra-Fast Broadband rollout; and
  
  - e. Processing resource consent applications for Auckland Council.
  
3. I am engaged by First Gas Limited (**'First Gas'**) which purchased the gas transmission network from Vector Gas Ltd on 20 April 2016. I am engaged to provide expert evidence in relation to the proposed Wellington Natural Resources Plan (PNRP). I am providing this evidence on Hearing Stream 1.

4. I confirm that I have read the submission by First Gas Limited (then Vector 'Gas' Limited) in relation to the PNRP.

### **CODE OF CONDUCT**

5. While I am conscious that this is a first instance hearing before the Council, I confirm that I have read and am familiar with the code of conduct for expert witnesses in the Environment Court Practice Note 2014. I give my evidence in compliance with this code. The evidence in my statement is within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might also detract from the opinions I express.

### **SCOPE OF EVIDENCE**

6. My evidence deals with:
  - a. The First Gas submission points relating to Hearing Stream 1 in the PNRP; and
  - b. The Section 42A report provided by the Wellington Regional Council (Council) on the PNRP.
7. I have used as a basis for my evidence and referred to where relevant:
  - a. The Section 42A report by Council on Hearing Stream 1; and
  - b. The statement of evidence tabled by Adam Du Fall on behalf of First Gas relating to the First Gas assets in Wellington Region.

### **FIRST GAS SUBMISSION**

8. As detailed by Mr Du Fall, First Gas owns and operates a high pressure gas transmission pipeline and 14 above ground facilities within the Wellington Region. This forms part of the regionally significant infrastructure network. First Gas is identified as a lifeline utility in the Civil Defence Emergency Management Act

2002 which means it must ensure it is able to function to the fullest possible extent during and after an emergency<sup>1</sup>. In order to operate and maintain the pipeline a variety of activities including land use, discharges and works in waterbodies are required from time to time.

9. Maintaining and upgrading utilities, including First Gas assets, is essential for enabling a consistent, reliable service to be provided. This is also a key method for avoiding potentially significant adverse effects that could arise as a result of poor maintenance of the existing network. Enabling maintenance and upgrading through planning provisions supports the ability to provide for uninterrupted gas supply in an efficient manner, including during times of emergency as far as possible.
10. In addition to maintaining and upgrading its assets, First Gas regularly reviews the requirement for any new assets, for example new delivery points. As outlined by Mr Du Fall, existing assets, design and operational requirements guide and sometimes constrain the locations in which assets can be located. For example, delivery points must be connected to the existing network.
11. It is also essential for First Gas that third party development or activities in close proximity to the gas transmission system are appropriately managed to avoid adverse effects on the existing system.
12. The key points that First Gas has submitted on and that I address in my evidence are:
  - a. The definition of *Regionally Significant Infrastructure*;
  - b. Objectives and policies relating to *Beneficial Use and Development*;
  - c. Objectives and policies relating to *Integrated Catchment Management*; and
  - d. Policies relating to *Maori values*.

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<sup>1</sup> Section 60 of the Civil Defence Emergency Management Act 2002

## COUNCIL'S POSITION

13. The Officers recommendations have not accepted any of the submission points requested by First Gas (nor have they accepted the submissions of most other infrastructure and utility operators).
14. In my opinion it is unusual for a Council to not give consideration to the needs of infrastructure as set out in submissions in its planning policy framework.

## REQUESTED CHANGES

### *Definitions*

15. First Gas is seeking that incidental equipment and facilities associated with pipelines are also recognised as a component of Regionally Significant Infrastructure.
16. The inclusion of these within the definition will reflect the assets that together form part of the high pressure gas network. In my opinion and based on Mr Du Falls evidence the absence of these may result in an essential part of the network being afforded less recognition for its significance to the region. This could create consenting risks and inconsistency in application of policies for different parts of the high pressure gas pipeline network that provides vital lifeline services in emergencies along with daily services to the Wellington Region. Mr Du Fall outlines that incidental equipment and facilities are an integral part of the network and I rely on his evidence to reach the conclusion that it is appropriate to reflect this within the definition in the Plan.
17. For the reasons outlined above, I propose the following changes to the definition of *regionally significant infrastructure*:

*Regionally significant infrastructure includes:*

- *Pipelines and incidental equipment and facilities for the distribution or transmission of natural or manufactured gas or petroleum.*

## ***Beneficial Use and Development***

18. In its submission First Gas has sought a number of changes to objectives and policies relating to beneficial use and development to not only recognise but also provide for regionally significant infrastructure within the Plan.
19. The changes I recommend to the *beneficial use and development provisions* are as follows:

*Objective 12: The social, economic, cultural and environmental benefits of regionally significant infrastructure and renewable energy generation activities are recognised within the region and beyond.*

*Objective 13: The use and ongoing operation of regionally significant infrastructure and renewable energy generation activities ~~in the coastal marine area~~ are protected from new incompatible use and development occurring under, over, or adjacent to the infrastructure or activity.*

*Policy 12: The benefits of regionally significant infrastructure and renewable energy generation activities are recognised and provided for by ~~having regard to taking into account:~~*

*(a) . . .*

*(b) the investment in, and the location of existing infrastructure and structures, and*

*(c) . . . .*

*(d) the functional need for ~~port activities~~ regionally significant infrastructure to be located within the coastal marine area and the coastal environment, and*

*(e) the functional need for regionally significant infrastructure to be located over, under, within and adjacent the beds of rivers and lakes, and*

(f) operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure and renewable energy generation activities.

*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, by locating and designing any new use and development to avoid, remedy or mitigate any reverse sensitivity effects which may compromise the efficient and effective use, maintenance, upgrading replacement or development of that infrastructure.*

*New Policy: Enable the major upgrade and development of new regionally significant infrastructure to meet the needs of the community whilst considering effects by taking into account:*

- (a) the nature and location of the activity and the sensitivity of the receiving environment to adverse effects; and
- (b) the benefits of the activity;
- (c) the presence of existing development and whether the activity or development can effectively utilise existing physical resources; and
- (d) the functional and locational needs and operational requirements associated with the activity; and
- (e) the financial implications of the activity when compared to other options.

20. I consider the proposed changes above to be appropriate because:

- a. It is important to provide for, as well as recognise, regionally significant infrastructure to facilitate major upgrades and development. This is necessary because they provide vital services to the community and need to function properly at all times. In addition, some infrastructure, such as the high pressure gas pipeline, have no alternative readily available in the region making

maintenance of existing assets essential for the wellbeing of local communities.

- b. Linear infrastructure can often extend beyond one region, this means the positive effects can be wide reaching which I believe should be recognised in the PNRP. For example the First Gas pipeline is connected from Taranaki Region, through Manawatu-Wanganui Region to Wellington, and also extends north to Auckland and Whangarei and east to Gisborne and Napier.
- c. Mr Du Fall explains there are a range of operational constraints that influence the location of assets. For example, they can't just be located anywhere as they need to function with the rest of the network as well as serve the end users. Other considerations for defining locations include environmental, social, cultural and economic matters. It is my opinion it is important for planning provisions to enable a range of issues to be taken into account when assessing the merits of a proposal.
- d. The PNRP should recognise the importance of enabling new as well as existing regionally significant infrastructure for the social and economic wellbeing, growth and development of the region. I consider there to be a gap in the existing objectives and policies in providing for new regionally significant infrastructure.
- e. I consider that including planning provisions that recognise the importance of regionally significant infrastructure is consistent with the purpose of the Resource Management Act as outlined in Section 5 because it provides for the social and economic wellbeing of the community and region;
- f. It is my opinion that the changes proposed by First Gas, as outlined above will give effect to the Regional Policy Statement for the Wellington Region (2013) which recognises benefits of regionally significant infrastructure and considers a case by case basis to

determine appropriateness of each circumstance to be the appropriate planning approach.

### ***Integrated Catchment Management***

21. First Gas is seeking the following amendments to Policy P4:

*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 include:*

*(a) consideration of 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*

*(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.*

22. The changes seek to focus on achieving the best practicable option, rather than minimise effects to the smallest amount practicable. The requirement to minimise adverse effects to the smallest amount practicable is very stringent and does not allow flexibility for assessment of the best practicable option. There will be circumstances where minimising effects may not result in the best outcome overall. For example the minimising to the smallest amount could result in significant financial, time or design implications without a proportional benefit in the level of minimisation (of effects). This is especially relevant for large projects

such as infrastructure. As discussed in paragraph 31 I believe an holistic assessment and consideration of a wide range of issues and effects to be integral to planning for good outcomes.

23. As drafted, Policy P5 states:

*The conditions of existing resource consents to discharge contaminants to fresh water or coastal water, and to take and use water, may be reviewed pursuant to section 128 of the Resource Management Act 1991 in respect of future changes to the Plan.*

24. First Gas is seeking the deletion of Policy P5 in its entirety. The purpose of policies is to implement the objectives<sup>2</sup>. Policies are predominantly used to assist with assessing resource consent applications or to gain understanding of the approach to interpreting rules. In practical terms, policies become relevant when a consent or Notice of Requirement is being assessed. In my opinion, Policy P5 as drafted, does not assist with assessing a resource consent or provide any assistance to interpreting the rules or appropriately managing effects on the environment.

25. In addition, it is my understanding that review conditions (under s128) are often placed on resource consents. I consider resource consents to be a more appropriate place to address the potential review of a consent or condition than a policy within a plan because it can be specific to a situation and activity.

26. For the reasons stated above I consider the changes First Gas suggests to the Integrated Catchment Management Policies to be appropriate and good planning practice.

### ***Māori Values***

27. The Officer statement at paragraph 152 outlines that policy P45 reflects a cascading hierarchy of avoid – remedy - mitigate. I recognise that avoidance is highlighted as the primary means of managing effects on mana whenua values and also that there is an alternative means provided.

28. In the officers report at paragraph 157 the following is stated:

*the final clause of Policy P45 makes it clear that activities that will have more than a minor adverse effect on significant mana whenua values identified in Schedule C sites should not go ahead*

29. First Gas proposes the following changes to Policy P45:

*In the first instance, activities in sites with significant mana whenua values identified in Schedule C (mana whenua) shall be avoided where practicable.*

*If the site cannot be avoided, more than minor adverse effects on the significant mana whenua values must be evaluated through a cultural impact assessment undertaken by the relevant iwi authority or iwi authorities. The adverse effects of activities shall be managed in accordance with tikanga and kaupapa Māori and shall take into consideration any recommendations as recommended in the cultural impact assessment by:*

*(a) avoiding more than minor adverse effects, and*

*(b) where more than minor adverse effects cannot be avoided, remedying them, and*

*(c) where more than minor adverse effects cannot be remedied, mitigating them, and*

*(d) seeking to obtain ~~receiving~~ written consent of the iwi authority.*

*Where more than minor adverse effects on significant mana whenua values identified in Schedule C (mana whenua) cannot be avoided, remedied or mitigated, the activity may be ~~is~~ inappropriate. Offsetting of effects in sites with significant mana whenua values is generally inappropriate.*

30. The officers report further outlines that the sites that are to be avoided are discrete and limited. Whilst many of the sites are discrete, Map 3 identifies a long

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<sup>2</sup> Section 75(1)(b) of the Resource Management Act 1991.

stretch of the Ōtaki River that is identified as a site of significance. The existing First Gas high pressure pipeline<sup>3</sup> crosses directly through this site. As stated previously, the location of First Gas assets are determined from various factors which include operational constraints, with source and delivery locations being important considerations.

31. It is my view that seeking to understand Māori values through working with Mana Whenua on a case by case basis to identify and address concerns is appropriate. In my opinion, planning provisions need to be able to accommodate this approach.

## CONCLUSION

32. For clarity, all changes I have recommended in the body of my evidence are included within Attachment A.

**Date:** 5 May 2017



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**Perri Nicole Duffy**

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<sup>3</sup> Illustrated in Appendix A to the First Gas submission

## ATTACHMENT A - PROPOSED CHANGES

### *Regionally significant infrastructure Definition*

Regionally significant infrastructure includes:

- Pipelines and incidental equipment and facilities for the distribution or transmission of natural or manufactured gas or petroleum.

### *Objective O12*

The social, economic, cultural and environmental benefits of regionally significant infrastructure and renewable energy generation activities are recognised within the region and beyond.

### *Objective O13*

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

### *Policy P4*

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 include:

- (a) consideration of 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
- (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.

*Policy P5*

~~The conditions of existing resource consents to discharge contaminants to fresh water or coastal water, and to take and use water, may be reviewed pursuant to section 128 of the Resource Management Act 1991 in respect of future changes to the Plan.~~

*Policy P12*

The benefits of regionally significant infrastructure and renewable energy generation activities are recognised and provided for by having regard to taking into account:

- (a) . . .
- (b) the investment in, and the location of existing infrastructure and structures, and
- (c) . . . .

- (d) the functional need for port activities and other regionally significant infrastructure to be located within the coastal marine area and the coastal area, and
- (e) the functional need for regionally significant infrastructure to be located over, under, within and adjacent the beds of rivers and lakes, and
- (f) operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure and renewable energy generation activities.

#### *Policy P14*

Regionally significant infrastructure and renewable energy generation activities shall be protected from new incompatible use and development occurring under, over or adjacent to it, by locating and designing any new use and development to avoid, remedy or mitigate any reverse sensitivity effects which may compromise the efficient and effective use, maintenance, upgrading replacement or development of that infrastructure.

#### *New Policy in the Beneficial Use and Development Section*

Enable the major upgrade and development of new regionally significant infrastructure to meet the needs of the community whilst taking into account:

- (a) the nature and location of the activity and the sensitivity of the receiving environment to adverse effects; and
- (b) the adverse effects on the environment of the activity when compared with other options; and
- (c) the benefits of the activity;
- (d) the presence of existing development and whether the activity or development can effectively utilise existing physical resources; and

- (e) the functional and locational needs and operational requirements associated with the activity; and
- (f) the financial implications of the activity when compared to other options.

*Policy P45*

In the first instance, activities in sites with significant mana whenua values identified in Schedule C (mana whenua) shall be avoided where practicable.

If the site cannot be avoided, more than minor adverse effects on the significant mana whenua values must be evaluated through a cultural impact assessment undertaken by the relevant iwi authority or iwi authorities. The adverse effects of activities shall be managed in accordance with tikanga and kaupapa Māori and shall take into consideration any recommendations as recommended in the cultural impact assessment by:

- (a) avoiding more than minor adverse effects, and
- (b) where more than minor adverse effects cannot be avoided, remedying them, and
- (c) where more than minor adverse effects cannot be remedied, mitigating them, and
- (d) seeking to obtain ~~receiving~~ written consent of the iwi authority.

Where more than minor adverse effects on significant mana whenua values identified in Schedule C (mana whenua) cannot be avoided, remedied or mitigated, the activity may be ~~is~~ inappropriate. Offsetting of effects in sites with significant mana whenua values is generally inappropriate.