

**BEFORE THE INDEPENDENT HEARING PANEL FOR THE
PROPOSED CENTRAL HAWKES BAY DISTRICT PLAN**

UNDER of the Resource Management Act 1991
IN THE MATTER OF Proposed Central Hawkes Bay District Plan
AND
IN THE MATTER OF Notice of Requirement by Firstgas Limited

WRITTEN STATEMENT OF EVIDENCE OF GRAEME JOHN ROBERTS

**Hearing Stream 7:
Designations**

Evidence date: 30 November 2022

Hearing Commencement date: 14 December 2022

INTRODUCTION

Qualifications and Experience

1. My name is Graeme John Roberts.
2. I have practised as a planning professional for over 40 years. I hold a MA (Hons) in Geography from the University of Canterbury and a Diploma in Town Planning from the University of Auckland. I have been a Full Member of the New Zealand Planning Institute since 1981.
3. I am currently employed at Beca Limited in the position of Technical Director – Planning. I have been employed in this capacity since 2000. Prior to this I worked in a variety of planning roles with central government in NZ and Hong Kong and consultancies in Hong Kong and NZ.
4. I have supported Firstgas Limited (Firstgas) (and its predecessors) in relation to resource management matters since the early 2000's. I am familiar with the approach that Firstgas have in terms of their assets and activities and the approach to resource management framework and processes.

Code of Conduct

5. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014 and my evidence has been prepared in compliance with that Code. Unless I state otherwise this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

6. My written evidence covers the submission points lodged by Firstgas in relation to the Designation framework. I have also read the following relevant s42A Report as it relates to Firstgas' submissions (and others where relevant), and my evidence responds to the commentary and recommendations in the report where necessary to do so:

- (a) Officer's Report: Designations – Alison Francis, dated 23 November 2022;
7. My written evidence will briefly address the following:
- (a) The planning background for Firstgas' submissions and an outline of the need to provide sufficient recognition and protection of the high-pressure gas transmission network in the District in higher order planning documents / frameworks.
 - (b) My responses to the recommendations made in the Section 42A report on Firstgas' submissions.

Planning Background and Higher Order Planning Documents

8. Ultimately, the purpose of the Resource Management Act 1991 (RMA) is to promote the sustainable management of natural and physical resources. The term 'sustainable management' is defined in Section 5 and includes enabling people and communities to provide for their social, economic and cultural well-being and for their health and safety.
9. In my view, reference to 'economic', 'social well-being' and 'health and safety' in Section 5 of the RMA puts gas related services and activities at the heart of the overall purpose of the RMA. The gas network delivers significant benefits to people and communities, supporting their social and economic well-being, as well as providing for their health and safety. Activities and operations associated with the gas transmission network clearly provides a critical role in this context for the Central Hawkes Bay region.
10. The RMA recognises the importance of infrastructure pipelines that distribute or transmit natural or manufactured gas and regulates the provision of infrastructure. This is demonstrated through recognising Firstgas, the network utility operator, as a Requiring Authority under Section 167 of the RMA.
11. The Hawkes Bay Regional Policy Statement 2019 (HBRPS) recognises the importance of physical resources and infrastructure to enable communities to provide for their social, economic and cultural wellbeing and the importance of

achieving quality built forms that mitigate reverse sensitivity effects on physical infrastructure. This recognition is further demonstrated by the following objectives in the HBRPS:

Objective 1 To achieve the integrated sustainable management of the natural and physical resources of the Hawke's Bay region, while recognising the importance of resource use activity in Hawke's Bay, and its contribution to the development and prosperity of the region.

Objective UD1 Establish compact, and strongly connected urban form throughout the Region, that achieves quality built environments that: avoids, remedies or mitigates reverse sensitivity effects on existing strategic and other physical infrastructure.

Objective UD5 Ensure through long-term planning for land use change throughout the Region, that the rate and location of development is integrated with the provision of strategic and other infrastructure, the provision of services, and associated funding mechanisms.

12. The Central Hawkes Bay Plan is required to 'give effect' to these higher order planning documents or in other words implement. My view is that the relevant HBRPS objectives related to infrastructure imparts a clear enabling and protective focus in relation to the gas network across the region, including the Central Hawkes Bay District.
13. Objective 1 recognises the importance of physical resources such as the gas transmission network and its contribution to the development and prosperity of the region.
14. Objective UD1 recognises the importance of achieving built environments which avoid, remedy or mitigate reverse sensitivity effects on existing strategic and other physical infrastructure. This aligns with Firstgas' objective to avoid reverse sensitivity effects of the Gas Transmission network.

15. Objective UD5 recognises the importance of the rate and location of development in relation to infrastructure, including the Gas Transmission network. This provides a clear and directive focus that the Central Hawkes Bay District Plan 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. The Firstgas Gas Network is appropriately recognised in the Strategic Directions of the Proposed District Plan, thereby acknowledging its strategic importance to the District in terms of its economic and social wellbeing.

Section 42A Report Recommendations

17. I have set out in **Appendix A** the Notice of Requirement (NOR) lodged by Firstgas (as contained in the s42A Report in relation to the designations framework), the recommendation made on that NOR, and whether I agree or disagree with the recommendation.

Section 42A Report Recommendations – Designations

FGL-1 - Gas Transmission Network

18. The s42A Report concludes that the “designation is an appropriate method to manage the pipeline”¹ however, withholds a recommendation until such a time that the further information requested in the s42A is provided. In brief, and as addressed in this statement of evidence, the requested further information within the s42A report pertains to the following topics:
 - a. Purpose of the designation
 - b. Effect of designation (section 176 of the RMA)
 - c. Scope of “maintenance works”
 - d. Accidental Discovery Protocol condition

¹ Officer’s Report: Designations, dated 23 November 2022, para 6.1.24.

19. Additional information from the s42A Reporting Officer was sought via email correspondence on 29 November 2022 in regard to the following topics:
 - a. Effects on Significant Natural Areas
 - b. Construction Effects

20. I have provided a summary of the information requested by the Reporting Officer for each of the above topics and included my response in the following sections of this statement of evidence.

Purpose of the Designation

21. The Reporting Officer concluded that there was not enough information provided in the purpose of the designation to provide surety to the Council and surrounding landowners as to the activities that could occur as part of this designation¹. Therefore, it was considered by the Reporting Officer that the land use related activities that had been put forward in the NOR be included in the purpose of the designation¹.

22. Upon reviewing the NOR and analysis provided in the s42A Report, I consider that the Primary purpose of the designation is for Gas Transmission. The secondary purpose is to permit essential maintenance activities which may result in the nominated land use activities which will generally be of a short-term duration.

23. Therefore, I consider the following amendments to the 'Designation Purpose' will be appropriate to satisfy the concerns of the Reporting Officer by way of specifying the activities required to ensure the primary purpose of the designation can be satisfied (underline indicates additions, ~~striketrough~~ indicates deletions):

Primary Purpose:

The ongoing operation ~~and maintenance~~ of the Gas Transmission Network within the Central Hawke's Bay District, inclusive of above ground incidental equipment.

Secondary Purpose:

Undertaking maintenance works to ensure the operation of the Gas Transmission Network. Works typically include (but are not limited to) the following activities:

- Earthworks (including to access and reinstate land near / adjacent to waterbodies)
- Vegetation clearance
- Construction related activity and noise
- Operational noise
- Temporary odour for gas detection purposes
- Temporary noise during emission of gas
- Temporary visible / light effect (flame)

Effect of designation (section 176 of the RMA)

24. Regarding proposed Condition 2.1.2(1) of the NOR, the Reporting Officer seeks that this condition is deleted on the basis that this is already covered by section 176 of the RMA and any private agreements attached to the easement on the Record of title².
25. While I agree that the condition reiterates elements of section 176 of the RMA, the rationale behind the condition was to bring to the attention of Plan users their obligations under the RMA regarding designations. I consider that the retention of the condition does not constitute a direct duplication of section 176 of the RMA, rather provides a useful reminder for Plan users who may not otherwise be versed in the various sections of the RMA.
26. For clarity, given the retention of the condition is not fundamental to the designation, I am neutral to the retention or deletion of the condition. I therefore turn to the discretion of the Panel to retain or delete Condition 2.1.2(1).

Scope of “maintenance works”

² Officer’s Report: Designations, dated 23 November 2022, para 6.1.25.

27. Turning to Condition 2.1.3(1), the Reporting Officer considers that this condition be deleted on the basis that there is not sufficient information in the description of the designation to provide certainty to Council as to what “maintenance works” entails³.
28. In response, I turn your attention to the definition of “maintenance” contained within the PDP. Specifically, that part of the definition that relates to the maintenance of ‘network utilities’, as follows:

any replacement, repair or renewal work or activity necessary to continue the operation and/or functioning of an existing network utility. Includes the replacement of an existing line, building, structure or other facilities with another of the same or similar height, size and scale, within the same or similar position and for the same or similar purpose. Also includes the addition of extra lines to existing or replacement poles or other support structures.

29. I consider that this definition provides an adequate description of what “maintenance works” would entail in relation the NOR sought by Firstgas. For the avoidance of doubt, this definition could be incorporated into the condition – albeit tailored to the Gas Transmissions Network – although I recognise that this approach could constitute an unnecessary repetition. Moreover, if my recommended amendments to the ‘Designation Purpose’ are accepted – specifically, the additional text pertaining to those activities required as part of the ongoing maintenance of the Gas Transmission Network contained in paragraph 22 of this statement of evidence – then I am of the opinion the NOR, as a whole, provides surety to the extent of the “maintenance works” sought through the designation.
30. For clarity, I am opposed to the deletion of condition 2.1.3(1). I support, in part, amending the condition to incorporate elements of the definition of “maintenance” from the PDP (as specific to network utilities). However, if my recommended amendments to the ‘Designation Purpose’ are accepted, and noting the definition of “maintenance” contained in the PDP, then I am in favour of retaining condition

³ Officer’s Report: Designations, dated 23 November 2022, para 6.1.27.

2.1.3(1), as drafted, and removing the reference to Accidental Discovery Protocol within 2.1.3 for the reasons described below.

Accidental Discovery Protocol

31. Lastly, the Reporting Officer requested that Firstgas provide wording to the effect of an accidental discovery protocol condition, or request that Council provide wording that can be agreed on⁴. I note Condition 2.1.3(2) simply reads “Accidental Discovery Protocol condition”.
32. I concur with the Reporting Officer that Condition 2.1.3(2) does not, as currently drafted, constitute a condition. The PDP relies on the Heritage New Zealand Pouhere Taonga Act as a method (other than those contained within the rule section) for implementing relevant policies of the Earthworks Chapter. To achieve consistency with the PDP, I am of the opinion that the Accidental Discovery Protocol condition be removed. Details around the necessary management of Accidental Discovery Protocol will be provided within a Construction Environmental Management Plan, as discussed below.
33. For clarity, I support the deletion of Condition 2.1.3(2).

Construction Effects

34. I concur with the Reporting Officer that there is the potential for significant effects, particularly in relation to construction effects. I therefore recommend an additional condition for a Construction Environmental Management Plan to avoid, remedy or mitigate the potential adverse construction effects of the activities enabled by the designation, as suggested within Appendix B.

Effects on Significant Natural Areas

35. I concur with the Reporting Officer that in the event the works are within any Significant Natural Area of the PDP, then there is the potential for significant effects, particularly in relation to ecological effects. I therefore recommend an additional

⁴ Officer’s Report: Designations, dated 23 November 2022, para 6.1.28.

condition for an Ecological Assessment to avoid, remedy or mitigate the potential adverse effects of the activities enabled by the designation, as suggested within Appendix B.

Conclusion

36. In summary, my view is that the gas transmission network provides for peoples' and communities' well-being and health and safety. These matters are at the heart of sustainable management as defined by Section 5 of the RMA.

37. I consider that, subject to the amendments outlined in this statement of evidence, the Designation sought will appropriately:
 - (a) recognise Firstgas' transmission network and pipeline by providing appropriate provisions throughout the plan and set a platform to recognise the strategic importance of this network to the Central Hawkes Bay District;
 - (b) provide for the safe, efficient and effective operation, maintenance, replacement, upgrade, removal and/ or development of the network;
 - (c) give effect to the relevant policies of the HBRPS and Strategic Objectives of the Proposed plan; and
 - (d) will ensure that the Regionally Significant Infrastructure is protected from subdivision and future development through the consenting process - allowing the Firstgas Gas Transmission Network to operate efficiently and safely.

Graeme John Roberts

30 November 2022

Appendix A

Table 1: Summary of my opinion on the Section 42A Network Utilities – Firstgas Submissions

| Submission reference | Provision | Submission intent | Section 42A report recommendation | My opinion on the section 42A recommendation |
|----------------------|-------------|--|-----------------------------------|--|
| Designations | | | | |
| FGL-1 | Designation | Firstgas sought a Notice of Requirement pertaining to the ongoing operation and maintenance of the Gas Transmission Network within the Central Hawke's Bay District, inclusive of above ground incidental equipment. | Reject | Disagree |

Appendix B

1. Construction Environmental Management Plan

The Requiring Authority shall submit a Construction Environmental Management Plan (or Plans) (CEMP) to the Council for approval with any Outline Plan submitted in accordance with section 176A of the RMA. The purpose of the CEMP is to detail the methods, processes and practices to avoid, remedy or mitigate the adverse effects of construction activities associated with operation or maintenance of the Gas Transmission Network. The CEMP shall be prepared with sufficient detail corresponding with the scale and extent of the works, and shall as a minimum include details of construction management methods, practices and processes to address:

- a. Description of the works;
- b. Construction vehicle access and parking;
- c. Traffic management;
- d. Noise and vibration;
- e. Air quality (dust);
- f. Erosion and sediment control;
- g. Earthworks stability;
- h. Accidental discovery protocol management;
- i. Incident management;
- j. Complaints management; and
- k. Roles and responsibilities.

2. Significant Natural Areas

The Requiring Authority shall submit an Outline Plan to the Council in accordance with section 176A of the RMA for any works that include or result in the trimming, pruning or removal of indigenous vegetation or any earthworks within a Significant Natural Area identified in ECO-SCHED5 – Schedule of Significant Natural Areas.

Note: This condition shall not apply to any work that has been otherwise approved under the RMA.

The Requiring Authority shall provide an Ecological Assessment prepared by a suitably qualified and experienced ecologist to the Council with any Outline Plan submitted in accordance with Condition 3(1) section 176A of the RMA.

The Ecological Assessment must include recommendations on the management of the works within the Significant Natural Area, so that:

- a. The works avoid adverse effects on indigenous biodiversity values in relation to:
 - i. Loss of ecosystem representation and extent;
 - ii. Disruption to sequences, mosaics or ecosystem function;
 - iii. Fragmentation or loss of buffering or connectivity within the SNA and between other indigenous habitats and ecosystems; and
 - iv. A reduction in population size or occupancy of threatened species using the SNA for any part of their life cycle; and
- b. Any other adverse effects on the identified indigenous biodiversity as a result of the works are:
 - i. Avoided where possible;
 - ii. Minimised where avoidance is not possible;
 - iii. Remedied where they cannot be avoided or minimised;
 - iv. Only addressed through biodiversity offsetting where residual adverse effects cannot otherwise be avoided, minimised or remedied; and
 - v. Only addressed through biodiversity compensation after first considering biodiversity offsetting and where the principles of APP9 – Biodiversity Compensation are met.