IN THE ENVIRONMENT COURT AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA KI TĀMAKI MAKAURAU

Decision [2023] NZEnvC 137

IN THE MATTER OF an appeal under clause 14 of the First

Schedule of the Resource Management

Act 1991

BETWEEN FIRST GAS LIMITED

(ENV-2022-AKL-000067)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Environment Judge S M Tepania sitting alone under s 279 of the

Act

Last case event: 30 June 2023

Date of Order: 3 July 2023 Date of Issue: 3 July 2023

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, <u>orders</u> that:

(1) the GIZ, HIZ, GRUZ and RLZ Zone chapters in the Proposed Waikato District Plan be amended in accordance with **Appendix 1** to this order to introduce permitted standards for new buildings and

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alteration to buildings for sensitive land uses within the 'Gas network setback' (additions marked as <u>underlined</u> and deletions as <u>strikethrough</u>);

- (2) the planning maps are amended in accordance with **Appendix 2** to this order to show the 'Gas network setback' identifying the 6m setback from the centre of the gas transmission pipeline and the parcel boundary of land containing either a delivery point or the Rotowaro compressor station on the planning maps; and
- (3) the appeal in its entirety is otherwise dismissed.
- B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent order relates to an appeal against the decisions of Waikato District Council on the Proposed Waikato District Plan (**PDP**) in relation to submissions by the Appellant seeking the inclusion of additional rules to establish setbacks for sensitive activities from the gas network and the inclusion of matters of discretion for each proposed new setback.

Background

[2] The Appellant owns and operates the gas network, which transverses the General Industrial Zone (**GIZ**), Heavy Industrial Zone (**HIZ**), General Rural Zone (**GRUZ**) and Rural Lifestyle Zone (**RLZ**). The gas transmission pipeline component of the gas network is already identified on the planning maps.

¹ The gas network also traverses other zones but applying the Gas Network Overlay to these other zones is not within scope of the First Gas appeal.

Original Submission and PDP Decision

- [3] First Gas made a submission and further submission on the PDP seeking a variety of amendments to various definitions, planning maps, objectives, policies and rules relating to infrastructure and subdivision, use and development.
- [4] The main points advanced in the submissions were in relation to the inclusion of additional rules to establish setbacks for sensitive activities from various parts of the gas network which transverse the district and the inclusion of matters of discretion for each proposed new setback rule.
- [5] In a related decision, Decision Report 13: Infrastructure (**Decision 13**), the Independent Hearing Panel (**IHP**) addressed the management of network infrastructure and reverse sensitivity risk. In relation to acoustic-related setbacks from linear infrastructure the IHP stated that:²

... it was inherently unfair that the burden of mitigating the noise generated by the railway or state highway would be borne by the adjoining landowners.

- [6] Although the primary focus of Decision 13 related to the impacts on the railway corridor and state highways, this finding is equally relevant to the gas network as the burden of meeting the health and safety requirements for the gas network would also be borne by adjoining landowners if a setback was imposed.
- [7] In Decision Report 22: Rural Zone (**Decision 22**), the IHP clarified the link between the evidence presented by First Gas and the decisions made by the IHP in relation to acoustic-related setbacks. The IHP stated that:³

In line with our findings on acoustic-related setbacks, we have likewise not been convinced by the evidence and associated section 32 assessment provided by First Gas that the benefits of the additional regulation sought are sufficient to outweigh the costs on adjacent landowners.

[8] Based on this assessment, the IHP rejected the relief sought by First Gas and did not insert any setbacks from any part of the gas network or any related provisions into the PDP. Adopting the reasoning from Decision 13, and applying it to the gas network, the likely concerns of the IHP were:

² Decision Report 13: Infrastructure, paragraph 203.

³ Decision Report 22: Rural Zone, paragraph 5.37.

- (a) managing the risk of gas network failure is beyond the control of the adjoining landowner;
- (b) the absence of any rules in the PDP requiring First Gas to minimise the effects from its infrastructure on adjoining landowners; and
- (c) the number of properties potentially affected by the proposed setbacks the likelihood that the landowners affected by the proposed setback were not aware of the consequences of the submissions.⁴

Appeal

- [9] The Appellant seeks the inclusion of standards to establish setbacks for sensitive activities from various components of the gas network and the inclusion of matters of discretion for each proposed new setback.
- [10] The Appellant sought these changes to manage elevated risks to the gas network from adjacent development activities and maintain its health and safety obligations under its permitted operating regimes and licenses.
- [11] The Appellant contends it has experienced significant development pressure affecting several parts of its network due to residential growth and requires additional controls over and above the protections afforded by the limited width of its designations and existing gas transmission easements.
- [12] This part of appeal has been assigned to Topic 5.1 Linear Infrastructure (energy and transport).
- [13] Perry Group Limited, Federated Farmers of New Zealand and Havelock Village Limited have given notice of an intention to become a party to this appeal under section 274 of the Act.

⁴ For the application of these principles to the acoustic-related setbacks see Decision Report 13: Infrastructure, paragraphs 203-207.

Agreement reached between the parties

[14] Since the appeal was filed, the parties have engaged in direct discussions and have reached agreement to fully resolve the Appellant's interest in Topic 5.1 relating to the GIZ, HIZ, GRUZ and RLZ Zone chapters in the PDP. The agreed amendment will also fully resolve the Appellant's appeal in its entirety.

[15] The agreed amendments to the PDP are:

- (a) insertion of a new permitted activity standard into the GIZ, HIZ, GRZ and RLZ chapters of the PDP for new or altered buildings for a sensitive land use. The new standard requires buildings or alterations to be setback 6m from the centre of a gas transmission pipeline or the parcel boundary of land containing either a delivery point or the Rotowaro compressor station, identified on the planning maps;
- (b) where the permitted standard is not achieved, insertion of a new matter for discretion: "The safe, effective, and efficient operation, maintenance and upgrade of the gas network"; and
- (c) amend the planning maps to include a new overlay titled "Gas network setback" which shows the 6m setback from the centre of the gas transmission pipeline and the parcel boundary of land containing either a delivery point or the Rotowaro compressor station, identified on the planning maps, for new or altered buildings for a sensitive land use within the GIZ, HIZ, GRUZ and RLZ Zones. The planning maps follow the mandatory mapping standards specified in the National Planning Standards however, as the Gas network setback does not fall within the mandatory mapping symbols, it is proposed to introduce two new symbols; blue shading to represent the setback and hatched polygons to represent First Gas above ground infrastructure.⁵ The changes made to the planning maps are shown in **Appendix 2**.

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⁵ The gas transmission line is not a new symbol, it is currently shown on the PDP maps for information purposes only with no associated provisions. The only proposed change is the addition of the 6m setback around it.

- [16] The 'Gas network setback' is limited to undesignated parts of the gas network that traverse the GIZ, HIZ, GRUZ and RLZ as the scope of the First Gas appeal is limited to these four zones. First Gas prioritised achieving a setback in these four zones as they either contain the majority of the gas network (GRUZ and RLZ) or they are zones with potentially serious consequences if there was a gas network failure (e.g., industrial zones containing hazardous materials). Although applying the overlay consistently across all zones traversed by the gas network would have been preferable, the ability to grant this relief was limited by scope.
- [17] First Gas has requested that the 'Gas network setback' does not apply around the delivery points located on the Huntly Power Station site, which is owned by Genesis Energy Limited. This is on the basis that First Gas and Genesis Energy Limited already have extensive agreements in place as to how interactions between the delivery points and other activities occurring on the Huntly Power Station site will occur and a 6m setback for buildings containing sensitive land uses is not required in this instance. Council have agreed to this request for reduced relief.

Section 32AA evaluation

- [18] Section 32AA of the Act requires a further evaluation for any changes to a proposal since the initial section 32 evaluation report and the decision. The parties prepared a section 32AA evaluation of the appropriateness of the agreed amendments.
- [19] It is agreed by the parties that these amendments satisfy the concerns raised in the Appeal as the setback will provide for the safe, effective, and efficient operation, maintenance and upgrade of the gas network in a way that avoids placing an undue consent burden (and associated costs) on landowners to manage risks beyond their control to mitigate (e.g., gas network failure). The provisions are efficient as they focus the setback on managing the construction of new or altered dwellings containing a sensitive land use and ensuring these buildings do not interfere with First Gas' ability to manage the gas network effectively.
- [20] The provisions are also efficient in that they address one of the key concerns raised by First Gas, the need to facilitate discussions with landowners about future

land development and subdivision plans and potential impacts on the gas network, without using the resource consent process. Mapping the gas network and drawing landowner attention to its presence with a setback should go some way to facilitating these discussions and assisting First Gas to meet their health and safety obligations as gas network operators.

[21] The combination of mapping the gas network using an overlay and imposing the 6m setback is the most appropriate way to give effect to relevant objectives and policies in the PDP, namely AINF-O2 relating to ensuring the ability of infrastructure providers to manage their infrastructure assets is not compromised, and AINF-P1 which provides for the development, operation, maintenance, repair, replacement, upgrading and removal of infrastructure, while recognising the needs, constraints and benefits of that infrastructure.

Consideration

- [22] In making this order the Court has read and considered:
 - (a) the notice of appeal dated 1 March 2022; and
 - (b) the Joint Memorandum of the parties dated 25 May 2023.
- [23] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:
 - (a) all parties to the proceedings have executed the memorandum requesting this order; and
 - (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.
- [24] The Court is satisfied that the changes sought are within the scope of the Appellant's submission and appeal.

Order

- [25] The Court orders, by consent, that:
 - (a) the GIZ, HIZ, GRUZ and RLZ chapters of the Proposed Waikato District Plan be amended in accordance with **Appendix 1** to this order to introduce permitted standards for new buildings and alteration to buildings for sensitive land uses within the Gas network setback (additions marked as <u>underlined</u> and deletions as <u>strikethrough</u>);
 - (b) the planning maps are amended in accordance with **Appendix 2** to this order to show the Gas network setback identifying the 6m setback from the centre of the gas transmission pipeline and the parcel boundary of land containing either a delivery point or the Rotowaro compressor station, identified on the planning maps;
 - (c) the appeal in its entirety is otherwise dismissed; and
 - (d) there is no order as to costs.

S M Tepania Environment Judge



Appendix 1: Amendments to the GIZ, HIZ, GRUZ and RLZ chapters of the Proposed Waikato District Plan

New standard: GIZ-S8

GIZ-S8	Building setback - sensitive land use		
(1) Activity status: PER		(2) Activity status where compliance not	
Where:		achieved: RDIS	
(a) Any new building or alteration to an		Council's discretion is restricted to the	
existing building for a sensitive land		following matters:	
use must be set back a minimum of		(a) The safe, effective, and efficient	
6m from the Gas network setback		operation, maintenance and	
shown on the planning maps.		upgrade of the gas network.	

New standard: HIZ-S10

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<u>HIZ-S10</u>	Building setback - sensitive land use			
(1) Activity status: PER		(2) Activity status where compliance not		
Where:		achieved: RDIS		
(a) Any new building or alteration to an		Council's discretion is restricted to the		
existing building for a sensitive land		following matters:		
use must be set back a minimum of		(a) The safe, effective, and efficient		
6m from the Gas network setback		operation, maintenance and		
shown or	the planning maps.	upgrade of the gas network.		

Amended standard: RLZ-S11

RLZ-S11 Building setback - sensitiv		e land use
existing buse must (i) 15m region (ii) 35m bour Expr (iii) 200r Extra sand (iv) 500r Extra rock (v) 300r anot inter	building or alteration to an building for a sensitive land be set back a minimum of: from a national route or onal arterial boundary; from the designated ndary of the Waikato essway; m from an Aggregate action Area containing a laresource; m from an Aggregate action Area containing a resource; m from the boundary of there site containing an ansive farming activity; m from oxidation ponds	(2) Activity status where compliance not achieved: RDIS Council's discretion is restricted to the following matters: (a) Road network safety and efficiency (b) On-site amenity values; (c) Odour, dust and noise levels received at (d) the notional boundary of the building; (e) Mitigation measures; and (f) Potential for reverse sensitivity effects; and (g) The safe, effective, and efficient operation, maintenance and upgrade of the gas network.

that are part of a municipal

- wastewater treatment facility on another site;
- (vii) 30m from a municipal wastewater treatment facility where the treatment process is fully enclosed; and-
- (viii) 6m from the Gas network setback shown on the planning maps.

Amended standard: GRUZ-S13

GRUZ-S13 Building setback - sensitive land use

(1) Activity status: PER Where:

- (a) Any building for a sensitive land use must be set back a minimum of:
 - (i) 5m from the designated boundary of the railway corridor;
 - (ii) 15m from a national route or regional arterial road;
 - (iii) 35m from the designated boundary of the Waikato Expressway;
 - (iv) 200m from an Aggregate Extraction Area or Extractive Resource Area containing a sand resource;
 - (v) 500m from an Aggregate Extraction Area or Extractive Resource Area containing a rock resource, or a Coal Mining Area:
 - (vi) 100m from a site in the Tamahere Commercial Areas A and B;
 - (vii) 300m from the boundary of buildings or outdoor enclosures used for an intensive farming activity. This setback does not apply to sensitive activities located on the same site as the intensive farming activity;
 - (viii) 300m from oxidation ponds that are part of a municipal wastewater treatment facility on another site;
 - (ix) 30m from a municipal wastewater treatment facility

(2) Activity status where compliance not achieved: RDIS

Council's discretion is restricted to the following matters:

- (a) Road network safety and efficiency;
- (b) On-site amenity values;
- (c) Odour, dust and noise levels received at
- (d) the notional boundary of the building;
- (e) Mitigation measures; and
- (f) Potential for reverse sensitivity effects; and
- (g) The safe, effective, and efficient operation, maintenance and upgrade of the gas network.

where	the	treatment	process			
is fully enclosed;						

- (x) Not to be located within the Te
 Uku wind farm setback shown
 on the planning maps; and-
- (xi) 6m from the Gas network setback shown on the planning maps.

Appendix 2















































































































































