

NOTICE OF MEETING

RESOURCE CONSENTS JOINT HEARING

IN CONJUNCTION WITH

KAIPARA DISTRICT COUNCIL

AND

WHANGAREI DISTRICT COUNCIL

TO: Commissioners Harry Bhana
 Les Simmons

A meeting of the Resource Consents Hearings Panel will take place in the Council Chamber, Rodney District Council, Centreway Road, Orewa on Friday, 15 February and Monday, 18 February 2008 commencing at 9.00 a.m. The hearing will continue on Tuesday, 19 February and Wednesday, 20 February 2008 in the Council Chamber, Whangarei District Council, Rust Ave, Whangarei commencing at 9.00 a.m.

Note: The agenda comprises two parts, Agenda A and Agenda B.

Agenda A contains the hearing reports of Rodney District Council and Kaipara District Council in relation to the application.

Agenda B contains the hearing report of Whangarei District Council in relation to the application.

Please note that the numbering in the Rodney District Council reports has been corrected for the agenda.

For: ACTING CHIEF EXECUTIVE OFFICER
Geoff Mears

OREWA
7 February 2008

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AGENDA A

ITEM NO: 1

APOLOGIES AND ANNOUNCEMENTS

ITEM NO: 2

REQUESTS FOR CONSIDERATION OF URGENT ITEMS

Urgent items not referred to on the main agenda can only be considered if the following requirements of the Local Government Official Information and Meetings Act 1987 are met:

- The Chairperson must explain at a time when the meeting is open to the public (even if the additional item is a confidential item)
 - the reason why the item is not on the agenda
 - the reason why the discussion of the item cannot be delayed until a subsequent meeting.
- The Council or Panel must resolve to consider the item.

Councillors or staff members who wish to raise urgent items for consideration need to brief the Panel Chairperson and the Committee Adviser prior to the meeting.

ITEM NO: 3

REPORT



TO Resource Consents Hearings Panel
ON 15 February 2008
FROM David Wren – Reporting Planner
SIGNATURE

A handwritten signature in black ink, appearing to be "D. Wren".

APPROVED FOR RELEASE BY Ian Dobson – Team Leader Resource Consents
SIGNATURE

A handwritten signature in black ink, appearing to be "I. Dobson".

SUBJECT **A NOTICE OF REQUIREMENT UNDER SECTIONS 168(1), (2) AND 181 OF THE RESOURCE MANAGEMENT ACT 1991**
NOTICE OF REQUIREMENT FOR AN EXISTING PETROLEUM FUEL PIPELINE THAT EXTENDS FROM THE MARSDEN POINT OIL REFINERY TO THE BULK STORAGE FACILITY AT WIRI IN SOUTH AUCKLAND. THIS SECTION OF THE PIPELINE INCLUDES EXISTING ISOLATION VALVES, CATHODIC PROTECTION TERMINALS, SURFACE MARKER POSTS AND WARNING SIGNAGE

Address: The Notice Of Requirement covers a large number of sites extending from the Northern District boundary approximately 2.5kms East of State Highway 1 to the Southern District boundary near Taupaki.

APPLICANT: THE NEW ZEALAND REFINING COMPANY LIMITED

FILE REF L51742
WARD Northern/Western

Having considered the proposal against all the relevant statutory criteria it is recommended by the reporting planner that the Notice of Requirement be modified. The reasons for this recommendation are set out in section 10.4 of this report.

Note: This report sets out the advice of the reporting planner. This report has yet to be considered by the Panel of Commissioners delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Commissioners have considered the application and heard the applicant and any submitters.

1.0 APPLICATION AND PROPERTY DETAILS

SITE ADDRESS: The Notice of Requirement covers a large number of sites extending from the Northern District boundary approximately 2.5kms east of SH1 to the Southern District boundary near Taupaki.

REQUIRING AUTHORITY: The New Zealand Refining Company Limited

LEGAL DESCRIPTION: Various

SITE AREA: N/A

DISTRICT PLAN

ZONING:

Operative Plan Change 55:	General Rural Inland Waters
Proposed District Plan 2000:	General Rural Inland Waters General
Other Notations:	Includes roads

SNA: The pipeline passes through two moderate SNAs on Planning Map 20 and Planning Map 30.

2.0 BACKGROUND

Notification

2.1 This application was notified in accordance with s168(5) of the Resource Management Act.

Relevant Planning History

2.2 The existing petroleum fuel pipeline was authorised under the Petroleum Act 1937 and was established in 1986 and is not designated or zoned for pipeline activities in the District Plan. The pipeline conveys refined fuels from the Marsden Point oil refinery to the bulk storage facility at Wiri. The pipeline is protected by easements applying to land through which it passes. The requiring authority has also issued Notices of Requirement to other councils along the pipeline route.

3.0 THE PROPOSAL AND REASONS FOR APPLICATION

3.1 The nature of the work is the existing fuel pipeline authorised under the Petroleum Act 1937 and established in 1986, conveying refined fuels from the Marsden Point oil refinery to the bulk storage facility (Wiri Oil Services Terminal) at Wiri, South Auckland. This section of the pipeline incorporates isolation valves, cathodic protection terminals, surface marker posts and warning signage.

3.2 The requirement notes that the restrictions that would apply to property owners along the route are made up of two groups. The first relates to land excluding roads while the second relates to land included within roads. These are described in the Notice of Requirement as follows.

3.3 Land excluding roads;

“That no person may erect any structure, or plant any tree or shrub, or disturb the soil below a depth of 0.375m within the area of the designation without the express written approval of the New Zealand Refining Company. For avoidance of doubt, such written approval shall not be required for ordinary cultivation, digging, excavating, tilling and working of soil to a depth of less than 0.375m. A minimum of 1m cover shall remain above the top of the pipe after any ordinary cultivation, digging or excavation has taken place.”

The NOR notes that the designation has a nominal width of 12m with the pipeline more or less in the centre of the corridor. Following the provision of further information this clause was altered by changing the depth of disturbance from 0.375m to 0.4m. This change is not considered significant.

3.4 Land in roads;

“That no person may undertake road opening, trenching, excavation or drilling (including micro drilling and directional drilling), or lay underground high voltage power lines >450v either in parallel with or tangentially to The New Zealand Refinery Company’s pipeline, without the express written approval of The New Zealand Refinery Company.”

The NOR notes that in roads the designation will be 4m in width.

In the additional information supplied this was altered by increasing the width of the designation in roads to 6m and by the inclusion of the following;

“However, the restrictions in 2.1 and 2.2 above do not apply, and NZRC’s consent is not required under section 176 of the Resource Management Act 1991 to the following activities, provided that a Road Opening Notice has been obtained from the Rodney District Council:

- *Any road widening or associated works in accordance with any existing road designation;*
- *Any repair, maintenance or upgrade to existing road surface in accordance with any existing road designation;*
- *Any repair, maintenance or upgrade to any existing network utility infrastructure.*

Provided in all cases that:

- *Soil is not disturbed below a depth of 0.4m from the surface and*
- *After works, the finished surface level is not reduced below the pre-existing surface datum.*

Where works in the above categories would exceed a depth of 0.4m from the surface and/or after completion of such works the finished surface level is proposed to be reduced below the pre-existing surface datum then application shall be made to NZRC for consent to do the works. NZRC will review each application with the applicant and work to achieve the most suitable outcome for all parties. NZRC may give its written consent subject to reasonable conditions, and agrees not to unreasonably withhold its consent.”

3.5 It is difficult to see how an increase in the width of the designation can be accommodated without further notification as it increases the width of the designation by 50%. The changes to the restrictions appear more lenient and are considered to be within the scope of the NOR as notified.

3.6 The technical details of the pipeline are shown of the following table: (Table 1)

Diameter	273mm Outside Diameter
Operating pressure	Max = 9.0 Mpa , Min 7.5 MPa
Design specifications	ASME B31.4 and AS NZS 2885.1
Typical depth of cover over pipes	1 metre minimum
Existing easement width	12 metres
Proposed designation width	12 metres (4metres in roads)

- 3.7** In the north the pipeline passes to the east of Wellsford passing through a pump station at Wayby Valley Road, crosses SH 1 and the Hotoe River and runs through the Dome Valley, Kaipara Flats passing to west of Warkworth to Kahikatea Flat. From this point the pipeline traverses Bald Hill, crosses SH 16 and passes through another pump station at Waimauku and via Taupaki into Waitakere City. A copy of the NOR, additional information and plans are attached in Appendix 1 of this report.
- 3.8** The assessment of effects attached to the Notice of Requirement states that the existing pipeline has existing use rights within the Rodney District and implies that the designation is necessary only in order to place restrictions on the use of the land within the designated corridor.
- 3.9** Following a request for clarification about the nature of the requirement the Requiring Authority advised that the requirement was for;

“The designation by the New Zealand Refining Company Limited (NZRC) is for the operation, maintenance, repair, upgrade and renewal of the existing petroleum transmission pipeline and all ancillary facilities as required for the transportation of refined fuel products and described as follows:

- (i) the existing 275 mm petroleum transmission pipeline*
- (ii) the existing isolation valves*
- (iii) cathodic protection terminals*
- (iv) surface marker posts and warning signage*

located between [the northern district boundary] at [] and [the southern district boundary] at [].

The designation is subject to the following limitations:

- Renewal shall be limited to works on the petroleum transmission pipeline and will be limited to the replacement of sections of the pipeline with sections having equivalent diameter, and no more than [50] lineal metres of pipeline will be excavated at any particular time.*
- Upgrade will be limited to adding or replacing above ground components, provided the relevant district plan permitted activity standards are complied with.*

- 3.10** It is considered that subject to some minor changes to the wording, (specifically that wording relating to the extent of upgrade and renewal) this description does not extend the NOR beyond what was notified and certainly clarifies the extent of the NOR. As the pipeline is in place there the designation will be implemented immediately if confirmed.

Reason for Notice of Requirement

- 3.11** The Notice of Requirement has been issued in accordance with sections 168 and 181 of the Resource Management Act 1991. The Act requires that any Notice for Requirement proceeds through a publicly notified process.

4.0 SITE DESCRIPTION

- 4.1** The route of the requirement passes through land zoned General Rural in the Proposed District Plan. The route largely avoids Significant Natural Areas (SMA) but does pass through two moderate SMAs on Maps 20 and 30. The land is largely in farmland. The proposed route also passes over or along the routes of some existing designations including road (TNZ) and rail (NZR) designations. It also passes over a number of deemed RDC road designations.

- 4.2** As stated above maps of the route of the pipeline are contained in Appendix 1 to this report.

5.0 NOTIFICATION AND SUBMISSIONS

Notification

- 5.1 The Notice of Requirement was notified on 17 July 2007 and submissions closed on 15 August 2007. A summary of the submissions is set out below. Full copies of the submissions are attached as Appendix 2.

Submissions

- 5.2 A total of 16 submissions were received by the close of the submission period. Of these 14 opposed the application and 2 supported the application. A summary of the submissions is contained on the following tables.

GROUPS

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Federated Farmers	PO Box 92066, Auckland	3, 12	3	Yes
Transpower NZ Ltd	C/- Burton Consultants, PO Box 33-817, Takapuna ATT Yana Bosseva	9	3	Yes
Telecom NZ Ltd	C/- Incite PO Box 25-289 Christchurch	11, 13	5	Yes
Vector Gas Ltd	Private Bag 2020 New Plymouth Att G Robertson	10	4	Yes

LOCAL RESIDENTS

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Benson-Cooper	927 Peak Rd	1	1	Yes
Vujcich M and V	PO Box 70, Warkworth (Kaipara Flats)	2	2	Yes
Jubilee Trust	939 Old North Rd, Waimauku	3, 4, 5, 6, 7, 8, 9	2,3	Yes
Wall M and J	RD 1 Kahikatea Flat Rd, Waitoki	2	2	No
Cozens L	C/- Sellars and Co, PO Box 126, Helensville	2	2	Yes
Thackray L	PO Box 272, Warkworth	2	2	Yes
Parker, KL and KS	92 Parkers Road, RD1, Warkworth	10	4	No
Ga nd J Cozens	Amreins Rd Taupaki Auckland	1, 2, 5	2	Not stated
SH 16 Ltd	C/- MacDonell Consulting Ltd, PO Box 35928, Browns Bay	2	2	Yes
Forest Habitats Ltd	C/- MacDonell Consulting Ltd, PO Box 35928, Browns Bay	2	2	Yes

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Tanekeroa Forest JV	C/- MacDonell Consulting Ltd, PO Box 35928, Browns Bay	2	2	Yes
Rauhori Forests Ltd	C/- MacDonell Consulting Ltd, PO Box 35928, Browns Bay	2	2	Yes

A total of (16) submissions have been received in respect of the Notice of Requirement raising some or all of the following concerns:

1. Effects on farming operations
2. Additional burden on landowners
3. Potential for upgrading and replacement of pipeline
4. Lack of clarity of works
5. Adverse effects on the environment
6. Effects of land in bush
7. Lack of consultation with Iwi
8. Details of designation in District Plan
9. Effects on Transpower assets
10. Supports Notice of Requirement
11. Effects on utilities in roads
12. Relationship with land access code
13. Contrary to Telecommunications Act 2001

Relief Sought

1. Not stated
2. Reject Notice of Requirement
3. Approve Notice of Requirement subject to conditions
4. Confirm Notice of Requirement
5. Reject Notice of Requirement in respect of land in roads.

Written Consents

No written consents have been received.

6.0 PRE HEARING MEETING

6.1 No pre hearing meeting has been held.

6.2 REPORTS FROM OTHER OFFICERS/DEPARTMENTS/CONSULTANTS

Reports and/or comments have been received from the persons with respect to this application:

- (1) Development Engineer's report from *Ross Green* (see **Appendix 3**)
- (2) Comments from Consultant Traffic Engineer *David Mitchell* (see **Appendix 3**)

7.0 STATUTORY ASSESSMENT

7.1 The Act requires for all requirements, that subject to Part 2 of the Act, the Council must consider the effects on the environment of allowing the requirement and have regard to the matters set out in section 171 of the Act.

7.2 Section 171 requires regard must be had to;

- (a) any relevant provisions of –
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional policy statement or proposed regional policy statement;
 - (iv) a plan or proposed plan; and

- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

- 7.3** The territorial authority may recommend to the Requiring Authority that it –
- (a) confirm the requirement:
 - (b) modify the requirement:
 - (c) impose conditions:
 - (d) withdraw the requirement.

8.0 SECTION 171 ASSESSMENT

Effects of the Activity

The Existing Environment

- 8.1.** The pipeline already exists and accordingly its effects on the environment are limited. The pipeline was legally established under the Petroleum Act 1937 which is now repealed. The Requiring Authority has stated in the Notice of Requirement that the pipeline relies on existing use rights pursuant to section 10 of the Resource Management Act.

Unimplemented Consents

- 8.2** There do not appear to be any relevant unimplemented consents.

Activities Permitted by the Plan

- 8.3** As stated above the Requiring Authority has claimed existing use rights in respect of the continued existence of the pipe line. In respect of the Council's planning control over utilities it is considered that s19 of the Act allows Chapter 19 - Utilities of the Proposed District Plan to be treated as operative as all appeals in respect of this have been resolved.
- 8.4** In the Proposed Plan, pipelines for the conveyance of gas at a pressure of less than 2Mpa are permitted activities but pipelines for petroleum products are not provided for. In this case the pipeline is a non-complying activity. In addition consents may be required for earthworks associated with pipelines.
- 8.5** Section 10 of the Act allows land to be used in a manner that contravenes a rule in a plan if the use was lawfully established before the rule became operative or the proposed plan was notified and the effects are the same as or similar in character, intensity, and scale to those which existed before the rule became operative or was notified.
- 8.6** The expected extent of environmental effects is as follows.

- (a) Environmental and landscape values

The existing pipeline is completely buried and accordingly does not have adverse effects on landscape values. There may be some adverse effects if pipeline maintenance involved earthworks for pipe replacement or repair. As the extent of earthworks at any one time is limited to 50m and total replacement of the pipeline is not permitted by designation, it is considered that the effects of the pipeline on overall environmental landscape values will be minor.

(b) Natural ecosystems

As the existing pipeline is buried where it crosses rivers and streams there is potential that the river beds could be adversely affected by any work despite the use of sediment control measures. It is considered that these specific effects could be avoided, remedied or mitigated by conditions. The requiring authority should provide evidence at the hearing concerning how such conditions could be imposed on the designation. It is noted that if such works are also likely to require a resource consent from the ARC.

(c) Vegetation removal

The route of the pipeline runs through a number of Significant Natural Areas. The requiring authority notes that the requirement will not result in the removal of vegetation as since the pipeline was created the area of the pipeline has been kept clear of vegetation. This is disputed by one submitter who states that trees have since grown on parts of the route. The aerial photographs attached to the NOR suggest that where the pipeline passes through an SNA it passes through an area with limited vegetation only. It is considered that unless further evidence is produced at the hearing that the designation is not likely to adversely affect vegetation.

(d) Character

The pipeline is located underground and only has limited above ground components. Given this the pipeline is consistent with the visual character of the areas which it runs through.

(e) Cultural Heritage

As the pipeline is already buried in a modified environment it is unlikely that any maintenance of the pipeline will have adverse effects on cultural heritage resources including any archaeological sites. It is also noted that if any archaeological site is discovered in the course of work on the pipeline, the requiring authority will be required to obtain the approval of the Historic Places Trust prior to further work proceeding

(f) Reverse sensitivity

The purpose of the designation is essentially to manage the reverse sensitivity effects that may be generated by the pipeline or activities nearby. These are managed to a certain extent by the existing easement but the notation of the pipeline on District Plan maps will further assist as will the location of the designation on roads.

(g) Amenity

The location of the pipeline under ground will not have any adverse amenity effects. There will be some limited dust, noise and similar types of effects in locations where pipeline replacement is occurring. It is understood that these will be relatively rare in occurrence and will be for only limited periods of time and may not be located where they will adversely affect people. Appropriate conditions concerning noise generation and the like may assist in avoiding, remedying or mitigating these effects.

Overall it is considered that the amenity effects likely to be generated by the proposal will be minor.

(h) Hazards

Any leakage of fuel from the pipeline has the potential to cause soil contamination in the area around any leak. It is understood that the requiring authority has a complex monitoring and maintenance programme that is aimed at preventing leaks and ensuring the integrity of the pipeline. The requiring authority notes that it is obliged to operate the pipelines in accordance with the requirements of AS2885: Pipelines – Gas and Petroleum Liquids, the Health and Safety in Employment (Pipelines) Regulations 1999 and in accordance with the authorisations issued for those facilities in terms of the Petroleum Act 1937.

It is considered that these have been adequate to manage the hazards effects of the pipeline since it was constructed and that there is little more that could be added through this process to further manage those potential effects.

Overall it is considered that the hazard effects resulting from the Notice of Requirement are minor and will be no more than the current situation.

(i) Transportation and traffic

The NOR has been assessed by David Mitchell of T2 Engineers who advises that from a traffic perspective the NOR should be confirmed with no conditions.

(j) Public Infrastructure

A number of public infrastructure providers have made submissions against the NOR.

Vector supports the NOR.

Transpower NZ is concerned that a number of conditions and advice notes are required to be imposed on the NOR in order to sufficiently avoid, remedy or mitigate the adverse effects on Transpower's assets (largely transmission lines). The conditions requested relate to the submission of a management plan prior to any works ensuring compliance with NZCEP 34:2001 (electrical safety), that access to transmission line towers is maintained during works, and that plant is kept at least 4m from all conductors. It is considered that these conditions are reasonable and necessary to ensure the adequate management of potential adverse effects on the transmission resource. Similar conditions and advice notes are contained in the additional information provided by the Requiring Authority.

The submission from Telecom NZ does not oppose that part of the NOR outside of roads but opposes that part of the NOR that seeks to designate land within the road for the following reasons:

- (a) The NOR is seeking to negate the rights of Telecom to construct and lay lines under any road conferred under the Telecommunications Act 2001.
- (b) The requirement to obtain NRC's approval to works will delay works and cause uncertainty.
- (c) There is a general presumption against designation of public roads by private bodies.
- (d) Telecom does not have an alternative to lines in the road.
- (e) The designation is not necessary due to the road opening notice procedures.

Section 135 of the Telecommunications Act 2001 allows Telecom (or any other network utility operator under that Act) to construct, place and maintain lines in, on, along, over, across or under any road. It is difficult to see how this right which is conferred by a statute can be overridden by a designation in a District Plan which only has the force of a regulation.

The NOR as requested also has the potential to affect Council's operation within its own road designation. Section 319 of the Local Government Act 1974 (saved under LGA 2002) gives councils a wide range of powers in respect of roads.

In the altered information provided by the Requiring Authority the alteration of a road by a council or the repair, maintenance or upgrading of any existing network utility operator within certain limits does not require approval from the Requiring Authority. While this would allow a range of activities it is questionable whether the Requiring Authority has any power under a designation to restrict activities that are specifically permitted by way of statute. As the NOR relates to a designation which in effect will be a second designation it has no power over activities permitted by the earlier designation.

In Rodney District roads are designated as are Transit NZ roads. Clause 15.1 (Chapter 15 – Designations) that:

Some roads are specifically designated, for example, Rodney District Council Roads. Main arterial routes and rail routes are explained as designations by way of the notation at the bottom of the Planning Maps which states "Existing roads and railways are not marked with the notations for identifying existing public works (red circle with designation number inside). They are nevertheless public works, and are designated for road and railway purposes. Unless otherwise specified, the underlying zoning of existing formed and unformed roads and railways is the same as that of adjoining land."

Section 177 of the Act sets out the situation where a second designation is applied to land that is already designated for another purpose. This section provides that:

- The Requiring Authority for the later designation requires the written consent of the authority responsible for the earlier designation to carry out any work.
- The authority responsible for the earlier designation may do anything that is in accordance with that designation and is not bound by the later designation.

It is considered that this effectively nullifies that part of the NOR as it relates to restricting activities within roads as the roading authorities may do anything in roads anyway. While it may be appropriate to designate the land for the pipeline it is considered that the proposed restrictions should not apply to land in roads.

The restrictions that are proposed to be applied in roads are legally doubtful (both in terms of the Telecommunications Act and the Resource Management Act) and are likely to result in adverse effects on the provision of roading and associated infrastructure. These matters have not been addressed in the NOR.

(k) Effects on farmers and other landowners.

The NOR as it runs through private land is to 12 m wide which is the same as the existing easement while the minimum depth of solid disturbance allowed has been increased from 0.375m to 0.4m.

A number of the submissions are concerned that the designation will result in unreasonable restrictions on activities on private land within the pipeline route. It is unclear what additional effect the designation would have on day to day operations apart from a notation in the District Plan that the pipeline exists.

One submission notes that the words in the NOR “ .. a minimum of 1m cover shall remain above the top of the pipe after any ordinary cultivation, digging or excavation has taken place” are additional to the wording in the existing easement. This would have the potential to increase the degree of restriction on landowners if the pipeline is physically less than 1.4m below the surface. The Requiring Authority should address this apparent discrepancy at the hearing and outline the level of effects likely. This should include an assessment of how deep the pipeline actually is.

A number of submitters are concerned about access over land to the pipeline. There is nothing in the NOR that would allow the Requiring Authority to travel over land not subject to the specific corridor identified in the NOR. It is understood that this is the same as currently exists under the easement. It is therefore considered that the effects of access will not change.

Section 176A of the Act provides for an outline plan of any works to be submitted to the Council prior to any works being undertaken. It is considered that the use of the outline plan will assist in managing the adverse effects of maintenance and renewal activity.

Another issue raised in respect of the use of the designation process is the ability of the Requiring Authority to compulsorily purchase the land under the designation. If this occurred the operations of farms and other land could be significantly affected. Section 186 of the Act allows the Requiring Authority to apply to the Minister of Lands to have land required for a project or work acquired or taken under the Public Works Act. While the Requiring Authority has not indicated that it will seek to do this, it is considered that a condition could not be imposed on the designation that would prevent this occurring as the Act provides for this. This situation could be clarified if the NOR was specifically modified by the Requiring Authority stating that land would not be acquired and this statement was subsequently included within any designation.

Overall it is considered that the NOR has the potential to have moderate effects on landowners and there are a number of apparent discrepancies that exist in respect of the NOR and some submissions. However provided that certain clarifications and modifications outlined above are satisfactorily resolved it is considered that these effects may be minor.

Conclusion in Respect of Environmental Effects

- 8.7 Overall it is considered that the proposal is likely to have adverse effects on the provision of other infrastructure within roads unless the NOR is sufficiently modified to remove restrictions on that infrastructure. It is also considered that a number of clarifications and conditions are required in order to adequately address the likely effects of the NOR on landowners, vegetation removal and the crossing of streams and rivers.

Section 171(a) Relevant Plan Provisions.

- 8.8 It is considered that there are no National Policy Statements that are relevant to the consideration of this Notice of Requirement as the line of the pipeline does not affect the coast or the coastal environment within Rodney District.
- 8.9 The relevant Regional Policy Statement is the Auckland Regional Policy Statement (ARPS). There are a number of objectives and policies within the ARPS relevant to the consideration of this NOR. It should be noted that the ARPS (as modified by PC6) includes a definition of Regionally Significant Infrastructure which includes:

Wiri Oil Supply Terminal and its associated bulk fuel supply infrastructure

- 8.10 Strategic Policy 2.6.14 relates to infrastructure. These include the following:

1. *The operation of existing regionally significant infrastructure and the provision of necessary new or upgraded regionally significant infrastructure shall:*
 - (a) *be consistent with the Strategic Direction of the Regional Policy Statement; and*
 - (b) *support and reinforce the Regional Growth Strategy as detailed in the strategic policies of the RPS and the proposed outcomes of that strategy;*
 - (c) *ensure that any adverse effects of those activities on the environment (including human health) are avoided, remedied or mitigated in a manner consistent with the relevant provisions of this RPS.*
2. *Provision is to be made to enable the safe and efficient operation, maintenance and development of existing regionally significant infrastructure which is necessary for the social and economic wellbeing of the region's people;*

In the operation of existing regionally significant infrastructure and the provision of new infrastructure consideration and appropriate provision is to be made for the following matters; [287/1 ARC 3]

- (a) *The avoidance of significant adverse effects (including cumulative adverse effects) on:*
 - *the environmental values protected by defined limits to metropolitan Auckland and defined limits of rural or coastal settlements;*
 - *Significant and outstanding coastal and natural landscapes, vegetation and fauna areas;*
 - *amenity values throughout the whole of the region and the rural character of rural areas in the Region;*
 - *human health.*

Where significant adverse effects cannot be avoided they shall be remedied or mitigated;

- (b) *Avoiding prematurely foreclosing, or compromising options for future urban and rural and coastal town growth including areas identified in Schedule 1;*
- (c) *Consideration of alternative locations (including locations in urban areas) for utility service facilities which give rise to significant adverse effects on the environment;*
- (d) *Environmental enhancement and/or remediation opportunities.*

- 8.11** It is considered that the NOR is consistent with this policy as far as it is relevant. The policy requires that provision be made for the safe and efficient operation of regionally significant infrastructure. The NOR is aimed at achieving this. The fuel pipeline in this area does not overtly affect the Strategic Direction of the RPS or the Growth Strategy as the pipeline itself does not influence how the region grows or how the growth is accommodated. It is noted however that the products transported through the pipeline are necessary for the continued operation of the urban area (i.e. use by cars, buses and trucks etc) and for the operation of other regional important infrastructure such as the airport.
- 8.12** The Policy also requires that certain adverse environmental effects are avoided and where they cannot be avoided they shall be remedied or mitigated. The environmental effects of the NOR have been discussed earlier in this report (para 9.6(j)).
- 8.13** The submission from Transpower is concerned that work on the pipeline has the potential to adversely affect Transpower's assets which are also regionally significant infrastructure. It is considered that these concerns can be largely met through appropriate conditions being applied to the designation. The submission from Telecom NZ opposes that part of the NOR that relates to roads on the basis that it would unnecessarily disrupt its operations and is not necessary given the road opening notice procedures. It should be noted that within Rodney District the pipeline largely crosses roads and does not generally run along roads. Accordingly the instances where there may be conflict between the pipeline and Telecom infrastructure will be small compared with the length of the pipeline.
- 8.14** It is considered that the potential conflicts between the two sets of infrastructure can be resolved through the use of appropriate modifications to the NOR that clearly set out the rights of the existing infrastructure.
- 8.15** Objective 5.3.2 relating to Energy is:
- To avoid, remedy or mitigate any adverse effects of development proposals relating to the production, distribution and use of energy.*
- 8.16** Policy 5.4.4.1 states;
- Assessment of environmental effects for energy generating and transmission proposals shall where necessary be carried out in accordance with the requirements of the Fourth Schedule of the RM Act.*
- 8.17** The environmental effects of the NOR have been discussed above.
- 8.18** Chapter 16 of the RPS concerns hazardous substances. Objective 16.3 concerns preventing or mitigating the risks of hazardous substances and the relevant associated policies concern details of how proposals should be considered and are concerned that the use of utilities in proximity to existing hazardous facilities should be controlled to prevent risks to health and safety and to prevent new activities imposing limitations on those facilities. It is considered that the monitoring programme being undertaken by the Requiring Authority is such that the risks associated with the pipeline are adequately managed and designation itself is consistent with the policy concerning protection of hazardous facilities.
- 8.19** Overall, and subject to modifications concerning the effects of the proposal, it is considered that the NOR is generally consistent with the RPS.
- 8.20** The Provisions of the Rodney District Plan relating to utilities are contained largely within Chapter 19 – Utilities. The relevant objectives are as follows:
- Objective 19.3.1*
To ensure that utilities are designed, located, constructed, operated, maintained and upgraded in a way that avoids remedies or mitigates any adverse effects on:
- (a) the natural and physical environment including both land and water; and*
- (b) amenity values and on the health, safety and wellbeing of people and communities; and*
- (c) sites, buildings, places or areas of heritage and of archaeological value.*

Objective 19.3.2

To ensure that the design and location of activities does not adversely affect the operation and options for future use of existing utilities wherever possible.

8.21 The relevant policies are as follows:

Policy 19.4.1 Utility purpose, efficiency and compatibility

Utilities should be designed and located so that they achieve their intended purpose in an efficient way, are compatible with existing networks where this is technically feasible and have an appropriate design life, to ensure adverse effects are avoided, remedied or mitigated in the long term.

Policy 19.4.2 Natural environment

Utilities should be designed, located, operated and maintained in such a way that adverse effects on the natural environment are minimised, including:

- (a) minimising discharges to natural water during construction and operation, and ensuring that systems are designed so that discharges have no more than minor adverse effects on the natural environment including all receiving environments;*
- (b) minimising disturbance to highly valued natural resources (such as areas of native bush and wetlands and other landforms), significant natural areas and landscapes as far as practicable, through design and other measures, and restoring areas which have to be modified.*

Policy 19.4.3 Health, safety and amenity values

Utilities should be designed, located, operated and maintained and upgraded in such a way that adverse effects on health and safety, and amenity values of surrounding sites are minimised, including minimising effects on the following:

- (a) the safety of people as a result of emissions from telecommunications networks or electromagnetic fields associated with electricity transmission;*
- (b) the health and safety of people as a result of the possibility of electrocution from structures supporting electricity lines, and of stormwater channels, culverts and outfalls posing risks of drowning;*
- (c) the health and wellbeing of people as a result of noise levels and vibration;*
- (d) the health or enjoyment of people as a result of odour generation;*
- (e) the safety and efficiency of traffic movement (including pedestrians) on roads and streets as a result of disruption caused by maintenance of utilities;*
- (f) the enjoyment of people as a result of loss of visual privacy;*
- (g) sites, buildings, places or areas of heritage and archaeological value;*
- (h) the health and safety effects from waste water discharge (both controlled and uncontrolled) and acute chronic health effects from stormwater discharges.*

Policy 19.4.4 Roads and traffic

Utilities should be designed, located, operated and maintained in such a way that they do not unduly impede the ability of roads to be used for conveying traffic or pedestrians to use footpaths safely and do not reduce the amenity values of land within roads.

Policy 19.4.5 Reverse sensitivity

Activities to be located in close proximity to existing utilities should be designed and constructed so that people using the activity are protected from any adverse effects generated by that utility.

- 8.22** It is considered that the NOR is generally consistent with these objectives and for the following reasons. The pipeline is already in existence and is suitable for its intended use. It is considered that, subject to the discussion outlined above in paragraph 8.6, the pipeline may have minor effects on the environment, amenity values and on places of heritage or archaeological values (obj 19.3.1). As the pipeline is also in a location largely away from roads and other infrastructure it is unlikely to adversely affect the options for the future use of other utilities (obj 19.3.2). The exception to this is where the pipeline crosses roads or other infrastructure. As discussed in 8.6 it is considered appropriate that the NOR where it relates to roads be modified to remove restrictions on other infrastructure.
- 8.23** In respect of the policies, the pipeline has been designed for its intended purpose and the operator has a monitoring and maintenance programme that has and will ensure the pipeline has a long design life. The effects of the pipeline on the natural environment have been discussed in paragraph 8.6. It is considered that as long as the pipeline is well marked and maintained it will have little effect on human safety and health. The restrictions proposed to be applied in the designation will assist in ensuring these types of effects are minimised. Subject to appropriate conditions that recognise the rights of other utility operators and the Council in respect of roads it is considered that the proposal will not impede the ability of roads to be used for conveying traffic. The purpose of the NOR is consistent with Policy 19.4.5 which concerns reverse sensitivity.
- 8.24** Overall it is considered that the NOR is consistent with the provisions of the Rodney District Plan.

Section 171 (b) alternative sites, routes, or methods

- 8.25** Given that the pipeline the subject of this NOR already exists and that the Requiring Authority has an interest in and through the existing easement it is considered that an assessment of alternative sites, routes and methods is not appropriate and is not required.
- 8.26** The requiring authority has undertaken an assessment of the a number of alternatives including;
- Do nothing.
 - To construct, designate and operate a new second pipeline on a different route.
 - Increase coastal tanker transport.
 - Increase road tanker transport.

This concludes that the designation of the existing route is the most prudent and practicable option with respect to avoiding effects on the environment. It is considered that this is a sound conclusion. Doing nothing may not result in the additional level of explicit protection of the pipeline sought by the Requiring Authority and the other options have the potential for additional adverse environmental effects and do not recognise the sustainable option of utilising the existing pipeline resource.

Section 171 (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority

- 8.27** The stated objectives of the requiring authority in respect of this NOR are as follows:
- To assist in ensuring the safety of current and future land owners by recording the RAP corridor in the District Plan;
 - To enhance and ensure protection of the pipeline and its corridor from potentially conflicting activities; and
 - To provide sufficient corridor width to allow for both safe separation from potentially conflicting activities, and for uninterrupted continuation of operation, maintenance and inspection activities.
- 8.28** Aspects of the designation will assist in respect of some of these objectives. The notation of the pipeline designation in the District Plan will assist in letting future landowners and others know where the pipeline is and will assist in the planning of works on private land and roads in the vicinity of the pipeline. This is consistent with the first objective.

8.29 It is considered that the existing easement is legally able to protect the pipe line in land not in roads and to provide appropriate separation distances in this land. To this extent the designation may not be necessary to achieve the 2nd and 3rd objectives. However as the existing easements do not apply to roads the designation may be necessary to achieving these objectives in respect of land in roads.

8.30 Overall it is considered that the designation is reasonably necessary to achieving the objectives of the Requiring Authority.

8.31 Any other Matter

Relevant Council Documents

8.32 Vision Rodney is the strategy for the District's future. This is made up of six aspects as follows:

- We will keep our country look and feel.
- We will not let our towns and villages sprawl.
- We will maintain our lifestyle and look after the environment.
- We will take care of ourselves while working with other others.
- We will be able to make our living in Rodney.
- We will determine the future of our District.

8.33 It is considered that the NOR is not inconsistent with any of these aspects.

Other Legislation

8.34 As outlined earlier in this report it is considered that certain aspects of the NOR as it relates to roads is in conflict with the Telecommunications Act 2001 and the Local Government Act.

Section 171 Assessment Conclusions

8.35 Overall it is considered that having regard to all the relevant section 171 matters that the Council should recommend to the Requiring Authority that the requirement be modified and be made subject to a number of conditions.

PART II ASSESSMENT

9.0 The purpose of the Act is to promote the sustainable management of natural and physical resources. In terms of section 5 of the Act it is considered that this application does promote sustainable management because it provides for the continued use and protection of an existing physical resource and the use of the fuel transported by the pipeline is necessary for people and communities to provide for their wellbeing.

9.1 The following matter of national importance (s6) is relevant to this application.

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

The route of the pipeline passes through two SNAs. Subject to conformation that the areas affected are generally free of vegetation it is considered that the proposal is provides sufficiently for the protection of those SNAs.

9.2 The following other matters (s7) are relevant to this application.

- (b) the efficient use and development of natural and physical resources:**
- (c) the maintenance and enhancement of amenity values:**
- (d) intrinsic values of ecosystems:**
- (f) maintenance and enhancement of the quality of the environment:**
- (g) any finite characteristics of natural and physical resources:**

It is considered that the proposal has regard to the efficient use and development of physical resources in that it acts to protect an existing physical resource that is important to the nation. It is also, subject to modifications and conditions, likely to result in the maintenance and enhancement of amenity values and will not adversely affect ecosystems and the quality of the overall environment. Overall it is concluded that the proposal **has given particular regard to these matters.**

9.3 There are no section 8 Treaty of Waitangi matters relevant to this application.

9.4 Overall it is considered this application is consistent with Part 2 matters.

RECOMMENDATION

That, pursuant to Section 171 of the Resource Management Act 1991, the Council recommend that the Notice of Requirement from the New Zealand Refinery Company for a designation of the existing petroleum fuel pipeline as set out in the Notice of Requirement dated November 2006 be modified and made subject to conditions.

REASONS FOR THE RECOMMENDATION

Pursuant to Section 171(3) of the Resource Management Act 1991, the reasons for this recommendation are as follows:

- (a) It is necessary to recommend conditions and modifications to ensure that the effects of the designation on the environment are adequately avoided, remedied or mitigated. These include the adverse effects of work on the pipe line on people and the physical environment and adverse effects on other infrastructure.**
- (b) It is necessary to recommend conditions and modifications as the designation would otherwise unduly restrict other infrastructure and designations and would be contrary to section 177 of the Resource Management Act and to other legislation including the Local Government Act and the Telecommunications Act 2001.**
- (c) Subject to the recommended conditions and modifications it is considered that the requirement is consistent with the relevant provisions of the Auckland Regional Policy Statement and the Rodney District Plan. There are no national policy statements relevant to this consideration.**
- (d) The designation is reasonably necessary to achieving the objectives of the requiring authority.**
- (e) It is considered that the Requiring Authority has given adequate consideration to alternative sites, routes and methods of undertaking the work.**
- (f) The designation is consistent with the provisions of Vision Rodney.**
- (g) The designation promotes the sustainable management of natural and physical resources by making continued use of an existing physical resource and in doing so avoids the adverse effects on the environment associated with the construction of a new pipeline. The fuel transported by the pipeline is necessary for the economic and social wellbeing of New Zealand.**

RECOMMENDED MODIFICATIONS

Pursuant to Section 171(2)(b) of the Resource Management Act 1991, it is recommended that the requirement be modified as follows:

- 1. That the width of the designation within road be 4 metres.**
- 2. That clauses 2.2 and 2.3 of the altered notice of requirement (and the restrictions applying to land in roads in the original notice of requirement) be deleted.**
- 3. That the designation specifically exclude the possibility of land acquisition pursuant to s186 of the Act.**

RECOMMENDED CONDITIONS

Pursuant to Section 171(2)(c) of the Resource Management Act 1991, it is recommended that the requirement be subject to the following conditions:

1. (General) Subject to these conditions, all works shall be undertaken in general accordance with the plans and information submitted by the requiring authority in the documents entitled "*Proposed Designation Relating to the Refinery to Auckland Pipeline*" and additional information received 20 December 2007 entitled *NZRC Pipeline Designation DRAFT – Rodney District Council (version 1: December 2007)*.
2. (Designation width) The maximum width of the designation shall be as follows:
 - For land, not including roads and rail corridor 12 metres.
 - For land comprising roads and rail corridor under which the pipeline crosses, or is contained within, 4 metres.
3. (Restrictions on land) For land not within roads or within another earlier designation the following restriction shall apply. No person shall:
 - erect any structure, or
 - plant any tree or shrub, or
 - disturb the soil below a depth of 0.4m from the surface, or
 - do anything on or to the land which would or could damage or endanger the pipeline

within the designated corridor without first obtaining the written consent of NZRC.

For the avoidance of doubt, such written consent shall not be required for ordinary cultivation, digging, excavating, tiling and working soil to a depth of less than 0.4m. A minimum of 1m cover shall remain above the top of the pipe after any ordinary cultivation, digging or excavation has taken place.

Landowners and/or developers can apply to NZRC for consent to do any work on the land within the designation corridor. NZRC will review each application with the landowner and/or developer and work to achieve the most suitable outcome for all parties. NZRC may give its written consent subject to reasonable conditions including the power to revoke the consent in specified circumstances.

NZRC agrees to not unreasonably withhold its consent.

Works or activities that would or could damage or endanger the pipeline include, for example, the use of heavy compaction or vibration machinery and equipment, pile-driving machinery and equipment, trenching, excavation or drilling (including micro drilling and directional drilling).

4. (Outline Plan) An outline plan of works shall be submitted and approved for any works other than those provided for as a permitted activity in the Rodney District Plan and Proposed Plan.
5. (Engineering standards) All works within the designation shall be carried out in accordance with the requirements of the Council's then current Standards for Engineering Design and Construction.
6. (Road Opening) Any maintenance, repair, upgrade or renewal works associated with the pipeline within public roads within the designation shall be carried out in accordance with the document "*Working in the Roads Requirements*" and a Road Opening Notice obtained from the Road Controlling Authority prior to the works commencing.
7. (Pipeline maintenance) All pipeline maintenance, repair, upgrade and renewal activities outside road reserves that involve excavation shall be in accordance with the Guide to Land Access for the Oil and gas industry and Landowners.
8. (Public services) Any public services within the designation shall be protected from the adverse effects of maintenance and construction activities.

9. (Overland flow paths) Existing overland flow paths shall not be impeded by any maintenance or construction works carried out within the designation.
10. (Earthworks) Where maintenance, repair, upgrade and renewal activities involving excavation are undertaken pursuant to the designation, appropriate sediment and erosion measures shall be employed, in accordance with Rules 19.9.2 and 19.9.7 the Rodney District Plan. Prior to any earthworks within the designation the appropriate sediment control devices as per Auckland regional Council Technical Publication No. 90 "Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region" shall be installed.
11. (Hours of maintenance) Scheduled maintenance, repair, upgrade or renewal work and associated activities shall be limited to between the hours of 7am and 7pm, Monday to Saturday (excluding public holidays) unless the prior approval of the Council has been obtained.
12. (Management Plan) Prior to the commencement of any maintenance, upgrade or replacement activity within the designated corridor, within 20 metres of any high voltage transmission line, the Requiring Authority shall submit a Management Plan for the approval of the Manager: Resource Consents. In particular the Management Plan shall:
 - Specify measures to ensure that transmission line support structures are protected from excavation activities within the designated area, and that compliance with the NZECP 34:2001 will be achieved;
 - Ensure that existing access arrangements to transmission line towers are maintained. Where the Requiring Authority requires or causes a change in access arrangements, then alternative arrangements should be made to continue to provide safe 4-wheel drive, 24 hour access to tower bases (including during any construction period).
13. (Machinery and Mobile Plant) All machinery and mobile plant operated during maintenance, upgrade or replacement activities along the designation corridor must maintain a minimum clearance distance of 4 metres from all voltage transmission line conductors at all times.
14. (Noise) The noise from maintenance works, repair, upgrade and renewal activities shall be measured, assessed and controlled in accordance with the procedures and limits set out NZS 6803:1999 Acoustics — Construction Noise.
15. (Lighting and Welding and Dust and Smoke) maintenance works, repair, upgrade and renewal activities shall comply with Rules 16.6 –Exterior Lighting and Welding and 16.7 Dust or Smoke of the Proposed District Plan 2000.
16. (Consents from ARC) Where any maintenance works, repair, upgrade and renewal activities affect any stream or river or where earth works are undertaken the requiring authority shall obtain any necessary consents from the Auckland Regional Council prior to the works commencing.
17. (development contributions) Any development within the designation shall be subject to the then current Council financial contributions regime.
18. (Limitations on designation) For the purposes of these conditions the designation is subject to the following limitations;
 - Renewal shall be limited to works on the petroleum transmission pipeline and will be limited to the replacement of sections of the pipeline, that are damaged, decayed or unserviceable, with sections having equivalent diameter, and no more than [50] lineal metres of pipeline will be excavated at any particular time.
 - Upgrade will be limited to adding or replacing above ground components, provided the relevant district plan permitted activity standards are complied with.

Advice Notes

1. Access to overhead electricity transmission lines, poles or supporting structures shall be maintained at all times in accordance with the Electricity Act 1992.
2. All land use activities within the designation corridor must comply with the New Zealand Code of Practice for Electrical Safety Distances (NZECP) 34:2001.
3. Any structures within the designation shall be subject to a Building Consent where applicable.
4. With respect to Condition 12, the relevant Local Authority will consult with Transpower New Zealand Limited in order to confirm that adequate access and protection is provided for transmission line towers located in close proximity to proposed excavations.
5. NZRC has confirmed that it will consult with land owners and occupiers who may be affected by maintenance works, repair, upgrade and renewal activities to reach fair and reasonable arrangements for entry, and to address any matters regarding effects of maintenance, repair, upgrade and renewal activities, including restoring the surface of the land following maintenance, in accordance with its relevant obligations under the pipeline easement.
6. This designation traverses earlier Rodney District roading, Railway and Transit New Zealand designations that are protected pursuant to sections 176 and 177 of the Resource Management Act 1991, and State Highways which are protected pursuant to sections 51 and 52 of the Transit New Zealand Act 1989. Where that occurs, the Requiring Authority may only carry out its activities with the written consent of the earlier requiring authorities.
7. The Requiring Authority is obliged to operate the pipelines and ancillary facilities in accordance with the requirements of AS2885: Pipelines — Gas and Petroleum Liquids, the Health and Safety in Employment (Pipelines) Regulations 1999 and in accordance with the authorisations issued for those facilities in terms of the Petroleum Act 1937.
8. Emergency works may be performed in line with the Vector advice booklet by excavation to 0.4m depth and thereafter the use of hand tools only. Emergency operations should be notified immediately to Vector Gas Ltd or their agent who provide an on-call service outside of normal working hours.
9. An authority may need to be obtained from the New Zealand Historic Places Trust to destroy, damage or modify an archaeological site in accordance with the Historic Places Act 1993.

APPENDICES

Appendix 1 – Notice of Requirement, Plans and Additional Information

Appendix 2 – Submissions

Appendix 3 – Council Reports

Appendix 1 – Notice of Requirement, Plans and Additional Information

Appendix 2 – Submissions

Appendix 3 – Council Reports

REPORT



TO Resource Consents Hearings Panel
ON 15 February 2008
FROM Steve Seager – Reporting Planner
SIGNATURE

A handwritten signature in black ink, appearing to be "S. Seager", written in a cursive style.

APPROVED FOR Ian Dobson – Team Leader Resource Consents
RELEASE BY
SIGNATURE

A handwritten signature in black ink, appearing to be "I. Dobson", written in a cursive style.

SUBJECT **A NOTICE OF REQUIREMENT UNDER SECTIONS 168 OF THE
RESOURCE MANAGEMENT ACT 1991**

**NOTICE OF REQUIREMENT FOR AN EXISTING GAS PIPELINE THAT
EXTENDS FROM THE WAITAKERE CITY BOUNDARY AT AMREINS
ROAD, TAUPAKI TO THE KAIPARA DISTRICT BOUNDARY NEAR
VIPOND ROAD, WELLSFORD. THIS SECTION OF THE PIPELINE
INCLUDES THE MAIN 75KM PIPELINE, A 10KM LATERAL PIPELINE
FROM KAIPARA FLATS TO WARKWORTH, THE HENDERSON VALLEY
COMPRESSOR STATION, AND DELIVERY POINTS AT WAIMAUKU,
WAITOKI, WARKWORTH AND WELLSFORD**

Address: The Notice of Requirement covers a large number of sites
Extending from the Southern District boundary to the Northern District
boundary.

APPLICANT: VECTOR GAS LIMITED

FILE REF L52664
WARD Northern/Western

Having considered the proposal against all the relevant statutory criteria it is recommended by the reporting planner that the Notice of Requirement be modified. The reasons for this recommendation are set out at the end of this report.

Note: This report sets out the advice of the reporting planner. This report has yet to be considered by the Panel of Commissioners delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Commissioners have considered the application and heard the applicant and any submitters.

1.0 APPLICATION AND PROPERTY DETAILS

SITE ADDRESS: The Notice of Requirement covers a large number of sites extending from the Southern District boundary to the Northern District boundary.

REQUIRING AUTHORITY: Vector Gas Limited

LEGAL DESCRIPTION: Various

SITE AREA: N/A

DISTRICT PLAN

ZONING:

Operative District Plan:	Various
Plan Change 26/55:	Various
Proposed District Plan 2000:	Various
Other Notations:	Includes roads

SNA: The pipeline passes through two moderate SNAs on Planning Map 20 and Planning Map 30.

2.0 BACKGROUND

Notification

2.1 This application was notified in accordance with s168(5) of the Resource Management Act.

Relevant Planning History

2.2 The existing pipeline and ancillary facilities were provided for under the Petroleum Act 1937 and constructed in 1982/1983. They are not designated or zoned for pipeline activities in the District Plan. The pipeline commences from Vector's Waiouru Mainline Valve (MLV) on the Tamaki Estuary and ends at the Kauri Delivery Point. The pipeline is protected by easements applying to land through which it passes. The easements were created at the time the pipeline was laid. The Requiring Authority has also issued Notices of Requirement to other Councils along the pipeline route.

3.0 THE PROPOSAL AND REASONS FOR APPLICATION

3.1 The nature of the work is the existing gas pipeline and ancillary facilities authorised under the Petroleum Act 1937 and established prior to 1991, conveying natural gas from the Vector Waiouru Mainline Valve on the Tamaki Estuary to the Kauri Delivery Point. This section of the pipeline incorporates the main 75km pipeline, a lateral pipeline from Kaipara Flats to Warkworth, the Henderson Valley Compressor Station, delivery points at Waimauku, Waitoki, Warkworth and Wellsford, and the Kanohi Main Line Valve.

3.2 The proposed designation corridor is generally 12m wide and the Requiring Authority has advised that the designation would allow operation, maintenance, repair, upgrade, and renewal of the existing gas transmission pipeline as required for the transportation of gas. The designation would overlay Vectors existing easements on the sites concerned and the requirement states that the proposed designation conditions would be consistent with these easements.

3.3 The requirement states the maximum width of the designation in the following circumstances:

Within Road Reserve (along road/state highways)	6 metres
Within Road Reserve (across road/state highways)	8 metres
Within Rail Reserve (across railway corridors)	8 metres
Non Road or Rail Reserve (land zoned other than rural)	12 metres (other than those area where the existing easement width is less than 12 metres wide)
Non Road or Rail Reserve (land zoned Rural)	12 metres

3.4 Throughout this section of the pipeline a trench is shared with New Zealand Refinery Company's 250mm nominal diameter Marsden-Wiri refined petroleum products pipeline. The pipelines share a common easement that is managed by Vector.

3.5 Plans attached in Attachment B of this report show the route of the pipeline.

3.6 The assessment of effects attached to the Notice of Requirement states that the existing pipeline has existing use rights within the Rodney District and also states that the designation is necessary to place restrictions on the use of the land within the designated corridor, to clearly identify the use of the land within the District Plan, and signal the location of the gas pipeline to members of the public.

3.7 The requirement also states that if Vector were to construct an additional pipeline in this part of its network in future it would lodge a further Notice of Requirement in respect of any designations required for that additional pipeline.

3.8 The following is further information that Vector has supplied to clarify what the requirement is for and its limitations:

The designation by Vector Gas Limited (Vector) is for the operation, maintenance and repair, upgrade and renewal of the existing gas transmission pipeline and ancillary facilities as required for the transportation of gas and described as follows:

- (i) *The existing 200 mm gas transmission pipeline between the Waitakere City boundary near Waitakere Road and the Henderson Valley Compressor Station at Amreins Road;*
- (ii) *The existing 150mm gas transmission pipeline between the Henderson Valley Compressor Station and the Kaipara District Council boundary near Vipond Road;*
- (iii) *The existing 50mm lateral pipeline to Warkworth;*
- (iv) *The Henderson Valley Compressor Station;*
- (v) *The Delivery Points at Waimauku, Waitoki, Warkworth and Wellsford;*
- (vi) *The Main Line Valve station at Kanohi;*

Subject to the following limitations:

- *Renewal shall be limited to works on the gas transmission pipeline and will be limited to replacement with sections having equivalent diameter and maximum allowable operating pressure, and no more than [50] lineal metres of pipeline will be excavated at any particular time.*
- *Upgrade will be limited to adding or replacing above ground components provided the district plan relevant permitted activity standards are complied with.*

The designation affects land legally described in Appendix 2 "Schedule of Affected Land" of Volume 3 of the Notice of Requirement as submitted to the Rodney District Council (the Council).

3.9 It is considered that this description does not extend the NOR beyond what was notified and certainly clarifies the extent of the NOR. As the pipeline is in place the designation will be implemented immediately if confirmed.

Reason for Notice of Requirement

3.10 The Notice of Requirement has been issued in accordance with sections 168 and 181 of the Resource Management Act 1991. The Act requires that any Notice for Requirement proceeds through a publicly notified process.

4.0 SITE DESCRIPTION

4.1 The route of the requirement passes mainly through land zoned General Rural in the Proposed District Plan. The route largely avoids Significant Natural Areas (SNA) but does pass through two moderate SNAs on Maps 20 and 30. The land is largely in farmland. The proposed route also passes over or along the routes of some existing designations including road (TNZ) and rail (NZR) designations. It also passes over a number of deemed RDC road designations.

4.2 The route of the main pipeline crosses eight rivers, and the Warkworth lateral pipeline crosses three.

4.3 The lateral pipeline passes through Kaipara Flats to the Warkworth Delivery Point, which supplies gas to the Warkworth Township.

4.4 The Henderson Valley Compressor station at Taupaki comprises a 4891m² site within the General Rural zone. The site has a right of way access on to Amreins Road. The right of way also serves two lifestyle blocks. The site contains piping and support structures, pipeline valves, cleaning systems, and other ancillary systems.

4.5 The Waimauku Delivery Point is owned by Vector and is located in a rural area on a 634m² site, and is contained within a fenced compound screened by landscaping.

4.6 The Waitoki Delivery Point is on a 570m² site located in a rural area, and is contained within a fenced compound screened by landscaping.

4.7 The Kanohi Mainline Valve is located on a 59m² site in a rural farming area, and is enclosed in a fenced compound.

4.8 The route of the pipeline is contained in **Attachment B** to this report.

5.0 NOTIFICATION AND SUBMISSIONS

Notification

5.1 The notice of requirement was notified on 28 August 2007 and submissions closed on 26 September 2007. A summary of the submissions is set out below. A late submission has been received from Transpower New Zealand Limited which simply confirms that they are satisfied that the requirement will address their concerns provided that certain conditions are applied. Full copies of the submissions are shown as **Attachment C**.

Submissions

5.2 A total of 11 submissions were received by the close of the submission period. Of these 9 opposed the application and 2 supported the application. A summary of the submissions is contained on the following tables.

GROUPS

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Federated Farmers	PO Box 92066, Auckland	3, 9	3	Yes
Telecom NZ Ltd	C/- Incite PO Box 25-289 Christchurch	8, 10	5	Yes
New Zealand Refinery Company Limited	Petroleum Refiners, Marsden Point, Private Bag 9024, Whangarei, New Zealand	7	4	Yes

LOCAL RESIDENTS

Name	Address	Main Concerns	Relief Sought	Wish to be heard
Cozens L	C/- Sellars and Co, PO Box 126, Helensville	11	2	Yes
PJ Hernon and RJ Taylor	C/- Russell Bartlett, Shortland Chambers, PO Box 4338	1, 2, 4	2	Yes
KB Jones and CJ Jones	101 Guy Road, Kaipara Flats, Warkworth	1	2	No
Parker J	270 Tawa Road, RD1, Kumeu 1250	1, 2, 12, 13	1	Not stated
SH 16 Ltd	C/- MacDonnell Consulting Ltd, PO Box 35928, Browns Bay	1	2	Yes
Forest Habitats Ltd	C/- MacDonnell Consulting Ltd, PO Box 35928, Browns Bay	1	2	Yes
Tahekeroa Forest JV	C/- MacDonnell Consulting Ltd, PO Box 35928, Browns Bay	1	2	Yes
Rauhori Forests Ltd	C/- MacDonnell Consulting Ltd, PO Box 35928, Browns Bay	1	2	Yes

A total of (11) submissions have been received in respect of the Notice of Requirement raising some or all of the following concerns:

1. Additional burden on landowners
2. Will affect the ability of landowner to develop the site in the future
3. Potential for upgrading and replacement of pipeline
4. Lack of clarity of works
5. Adverse effects on the environment
6. Details of designation in District Plan
7. Supports Notice of Requirement
8. Effects on utilities in roads
9. Relationship with land access code
10. Contrary to Telecommunications Act 2001
11. The existing station at Henderson Valley omits noxious odour
12. Increasing the easement will allow more pipelines to be included from other companies
13. Effect on a vulnerable fault-line

Relief Sought

1. Not stated
2. Reject Notice of Requirement
3. Approve Notice of Requirement subject to conditions
4. Confirm Notice of Requirement
5. Reject Notice of Requirement in respect of land in roads.

Written Consents

No written consents have been received.

6.0 PRE HEARING MEETING

6.1 No pre hearing meeting has been held.

6.2 REPORTS FROM OTHER OFFICERS/DEPARTMENTS/CONSULTANTS

Reports and/or comments have been received from the persons with respect to this application:

(1) Comments from Consultant Traffic Engineer *David Mitchell* (see **Attachment D**).

7.0 STATUTORY ASSESSMENT

7.1 The Act requires for all requirements, that subject to Part 2 of the Act, the Council must consider the effects on the environment of allowing the requirement and have regard to the matters set out in section 171 of the Act.

7.2 Section 171 requires regard must be had to;

- (a) any relevant provisions of –
 - (i) a national policy statement;
 - (ii) a New Zealand coastal policy statement;
 - (iii) a regional policy statement or proposed regional policy statement;
 - (iv) a plan or proposed plan; and
- (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if –
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and
- (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

7.3 The territorial authority may recommend to the requiring authority that it –

- (a) confirm the requirement;
- (b) modify the requirement;
- (c) impose conditions;
- (d) withdraw the requirement.

8.0 SECTION 171 ASSESSMENT

Effects of the Activity

The Existing Environment

8.1. The pipeline and ancillary facilities already exist and therefore the effects on the environment are limited. The pipeline was legally established under the Petroleum Act 1937 which is now repealed. The requiring authority has stated in the Notice of Requirement that the pipeline relies on existing use rights pursuant to section 10 of the Resource Management Act.

Unimplemented Consents

8.2 There do not appear to be any relevant unimplemented consents in this instance.

Activities Permitted by the Plan

8.3 As stated above the Requiring Authority has claimed existing use rights in respect of the continued existence of the pipe line. In respect of the Council's planning control over utilities it is considered that s19 of the Act allows Chapter 19 - Utilities of the Proposed District Plan to be treated as operative as all appeals in respect of this have been resolved.

8.4 In the Proposed Plan, pipelines for the conveyance of gas at a pressure of less than 2Mpa are permitted activities. In this case the pipeline is a Discretionary activity, as the requirement states that the maximum gauge pressure is 8600Mpa, and consent is also required as a Discretionary activity for incidental equipment including compressor stations. In addition consents may be required for earthworks associated with pipelines.

8.5 Section 10 of the Act allows land to be used in a manner that contravenes a rule in a plan if the use was lawfully established before the rule became operative or the proposed plan was notified and the effects are the same as or similar in character, intensity, and scale to those which existed before the rule became operative or was notified.

8.6 The expected extent of environmental effects is as follows.

(a) Environmental and landscape values

The existing pipeline is completely buried and accordingly does not have adverse effects on landscape values. There may be some adverse effects if pipeline maintenance involved earthworks for pipe replacement or repair. As the extent of earthworks at any one time is limited to 50m in length and total replacement of the pipeline is not permitted by designation, it is considered that the effects of the pipeline on overall environmental landscape values will be minor.

(b) Natural ecosystems

As the existing pipeline is buried where it crosses rivers and streams there is potential that the river beds could be adversely affected by any work despite the use of sediment control measures. It is considered that these specific effects could be avoided, remedied or mitigated by conditions. The Requiring Authority should provide evidence at the hearing concerning how such conditions could be imposed on the designation. It is noted that such works are also likely to require a resource consent from the ARC.

(c) Vegetation removal

The route of the pipe line runs through two Significant Natural Areas. The requiring authority notes that the requirement will not result in the removal of vegetation as since the pipeline was created the area of the pipeline has been kept clear of vegetation. The aerial photographs attached to the NOR suggest that where the pipeline passes through an SNA it passes through an area with limited vegetation only. It is considered that unless further evidence is produced at the hearing that the designation is not likely to adversely affect vegetation.

(d) Character

The pipeline is located underground and only has limited above ground components. Given this, the pipeline is consistent with the visual character of the areas which it runs through.

(e) Cultural Heritage

As the pipeline is already buried in a modified environment it is unlikely that any maintenance of the pipeline will have adverse effects on cultural heritage resources including any archaeological sites. It is also noted that if any archaeological site is discovered in the course of work on the pipeline, the Requiring Authority will be required to obtain the approval of the Historic Places Trust prior to further work proceeding.

(f) Reverse sensitivity

The purpose of the designation is essentially to manage the reverse sensitivity effects that may be generated by the pipeline or activities nearby. These are managed to a certain extent by the existing easement but the notation of the pipeline on District Plan maps will further assist as will the location of the designation on roads.

(g) Amenity

The location of the pipeline under ground will not have any adverse amenity effects. There will be some limited dust, noise and similar types of effects in locations where pipeline replacement is occurring. It is understood that these will be relatively rare in occurrence and will be for only limited periods of time and may not be located where they will adversely affect people. Appropriate conditions concerning noise generation and the like may assist in avoiding, remedying or mitigating these effects.

Overall it is considered that the amenity effects likely to be generated by the proposal will be minor.

(h) Discharges/Air Quality

Minor quantities of gas are vented from the pipeline at the delivery points and compressor stations during maintenance and testing of facilities. The requirement states that the gas quickly dissipates into the air and adjacent land owners are not usually affected.

The Henderson Valley Compressor Station has emissions from exhaust discharges during the engine operation, and venting equipment. A submitter has expressed concern about the odour currently generated by the station and the effect that this has on their property.

The discharges are stated as being well within the permitted activity limits specified by the Proposed Auckland Regional Plan permitted activity limits. No discharge permits or consents were required for this operation.

As such it is considered that the effects of the discharges from the pipeline and associated facilities will be no more than minor.

(i) Hazards

Any leakage of fuel from the pipeline has the potential to cause soil contamination in the area around any leak. It is understood that the Requiring Authority has a complex monitoring and maintenance programme that is aimed at preventing leaks and ensuring the integrity of the pipeline. All the facilities are stated as being designed and operated to all relevant statutory codes and regulations. The Requiring Authority notes that it is obliged to operate the pipelines in accordance with the requirements of AS2885: Pipelines – Gas and Petroleum Liquids, the Health and Safety in Employment (Pipelines) Regulations 1999 and in accordance with the authorisations issued for those facilities in terms of the Petroleum Act 1937.

It is considered that these have been adequate to manage the hazards effects of the pipeline since it was constructed and that there is little more that could be added through this process to further manage those potential effects.

Overall it is considered that the hazard effects resulting from the notice of requirement are minor and will be no more than the current situation.

(j) Transportation and traffic

The NOR has been assessed by David Mitchell of T2 Engineers who advises that from a traffic perspective the NOR should be confirmed with no conditions.

(h) Public Infrastructure

A number of public infrastructure providers have made submissions against the NOR.

New Zealand Refining Company Limited supports the NOR.

The submission from Telecom NZ does not oppose that part of the NOR outside of roads but opposes that part of the NOR that seeks to designate land within the road for the following reasons:

- a. The NOR is seeking to negate the rights of Telecom to construct and lay lines under any road conferred under the Telecommunications Act 2001.
- b. The requirement to obtain Vector's approval to works will delay works and cause uncertainty.
- c. There is a general presumption against designation of public roads by private bodies.
- d. Telecom does not have an alternative to lines in the road.
- e. The designation is not necessary due to the road opening notice procedures.

Section 135 of the Telecommunications Act 2001 allows Telecom (or any other network utility operator under that Act) to construct, place and maintain lines in, on, along, over, across or under any road. It is difficult to see how this right which is conferred by a statute can be overridden by a designation in a District Plan which only has the force of a regulation.

The NOR as requested also has the potential to affect Council's operation within its own road designation. Section 319 of the Local Government Act 1974 (saved under LGA 2002) gives councils a wide range of powers in respect of roads.

In Rodney District roads are designated as are Transit NZ roads. Clause 15.1 (Chapter 15 – Designations) that:

Some roads are specifically designated, for example, Rodney District Council Roads. Main arterial routes and rail routes are explained as designations by way of the notation at the bottom of the Planning Maps which states "Existing roads and railways are not marked with the notations for identifying existing public works (red circle with designation number inside). They are nevertheless public works, and are designated for road and railway purposes. Unless otherwise specified, the underlying zoning of existing formed and unformed roads and railways is the same as that of adjoining land.

Vector has offered the following provisions in the restrictions of the designation in relation to these concerns:

However, the restrictions in 2.1 and 2.2 above do not apply, and Vector's consent is not required under section 176 of the Resource Management Act 1991 to the following activities, provided that a Road Opening Notice has been received from the Rodney District Council:

- *Any road widening or associated works in accordance with any existing road designation;*
- *Any repair, maintenance or upgrade to existing road surface;*
- *Any repair, maintenance or upgrade to any existing network utility infrastructure.*

Provided in all cases that:

- *Soil is not disturbed below a depth of 0.4m from the surface; and*
- *After works, the finished surface level is not reduced below the pre-existing surface datum.*

Where works in the above categories would exceed 0.4m in depth from the surface and/or after completion of such works the finished surface level is proposed to be reduced below the pre-existing surface datum then application shall be made to Vector Gas for consent to do the works. Vector Gas will review each application with the applicant and work to achieve the most suitable outcome for all parties. Vector Gas may give its written consent subject to reasonable conditions, and agrees to not unreasonably withhold its consent.

In the information provided above by the Requiring Authority the alteration of a road by a Council or the repair, maintenance or upgrading of any existing network utility operator within certain limits does not require approval from the requiring authority. While this would allow a

range of activities it is questionable whether the Requiring Authority has any power under a designation to restrict activities that are specifically permitted by way of statute. As the NOR relates to a designation which in effect will be a second designation it has no power over activities permitted by the earlier designation.

Section 177 of the Act sets out the situation where a second designation is applied to land that is already designated for another purpose. This section provides that:

- The Requiring Authority for the later designation requires the written consent of the authority responsible for the earlier designation to carry out any work.
- The authority responsible for the earlier designation may do anything that is in accordance with that designation and is not bound by the later designation.

It is considered that this effectively nullifies that part of the NOR as it relates to restricting activities within roads as the roading authorities may do anything in roads anyway. While it may be appropriate to designate the land for the pipeline it is considered that the proposed restrictions should not apply to land in roads.

The restrictions that are proposed to be applied in roads are legally doubtful (both in terms of the Telecommunications Act and the Resource Management Act) and are likely to result in adverse effects on the provision of roading and associated infrastructure. These matters have not been addressed in the NOR.

(i) Effects on farmers and other landowners.

The NOR as it runs through private land is to 12m wide which is the same as the existing easement while the minimum depth of solid disturbance allowed is 0.4m.

A number of the submissions are concerned that the designation will result in unreasonable restrictions on activities on private land within the pipeline route. It is unclear what additional effect the designation would have on day to day operations apart from a notation in the District Plan that the pipeline exists.

A number of submitters are concerned about access over land to the pipeline. There is nothing in the NOR that would allow the requiring authority to travel over land not subject to the specific corridor identified in the NOR. It is understood that this is the same as currently exists under the easement. It is therefore considered that the effects of access will not change.

Section 176A of the Act provides for an outline plan of any works to be submitted to the Council prior to any works being undertaken. It is considered that the use of the outline plan will assist in managing the adverse effects of maintenance and renewal activity.

Another issue raised in respect of the use of the designation process is the ability of the requiring authority to compulsorily purchase the land under the designation. If this occurred the operations of farms and other land could be significantly affected. Section 186 of the Act allows the Requiring Authority to apply to the Minister of Lands to have land required for a project or work acquired or taken under the Public Works Act. Vector has stated in its assessment of effects that it will not seek to do this as it is merely seeking to designate existing facilities.

Overall it is considered that the NOR has the potential to have moderate effects on landowners. However it is considered that overall these effects may be minor.

Conclusion in Respect of Environmental Effects

- 8.7** Overall it is considered that the proposal will have adverse effects on the provision of other infrastructure provided within roads unless the NOR is appropriately modified to remove restrictions on infrastructure. It is also considered that a number of conditions are required in order to adequately address the likely effects of the NOR on land owners, vegetation removal and the crossing of streams and rivers.

Section 171(a) Relevant Plan Provisions.

8.8 It is considered that there are no National Policy Statements that are relevant to the consideration of this notice of requirement as the line of the pipeline does not affect the coast or the coastal environment within Rodney District.

8.9 The relevant Regional Policy Statement is the Auckland Regional Policy Statement (ARPS). There are a number of objectives and policies within the ARPS relevant to the consideration of this NOR. It should be noted that the ARPS includes a definition of Infrastructure which includes 'energy generation and transmission'.

Policy 2.5.2.6

Provision is to be made to enable the safe and efficient operation of existing regional infrastructure which is necessary for the social, and economic wellbeing of the region's people, and for the development of regional infrastructure (including transport and energy facilities and services) in a manner which is consistent with this strategic direction and which avoids, remedies or mitigates any adverse effects of those activities on the environment.

8.10 Policy 2.6.14

1. The operation of existing regionally significant infrastructure and the provision of necessary new or upgraded regionally significant infrastructure shall:
(a) be consistent with the Strategic Direction of the Regional Policy Statement; and
(b) support and reinforce the Regional Growth Strategy as detailed in the strategic policies of the RPS and the proposed outcomes of that strategy;
(c) ensure that any adverse effects of those activities on the environment (including human health) are avoided, remedied or mitigated in a manner consistent with the relevant provisions of this RPS.

2. Provision is to be made to enable the safe and efficient operation, maintenance and development of existing regionally significant infrastructure which is necessary for the social and economic wellbeing of the region's people;

In the operation of existing regionally significant infrastructure and the provision of new infrastructure consideration and appropriate provision is to be made for the following matters; [287/1 ARC 3]

(a) The avoidance of significant adverse effects (including cumulative adverse effects) on:

- *the environmental values protected by defined limits to metropolitan Auckland and defined limits of rural or coastal settlements;*
- *Significant and outstanding coastal and natural landscapes, vegetation and fauna areas;*
- *amenity values throughout the whole of the region and the rural character of rural areas in the Region;*
- *human health*

Where significant adverse effects cannot be avoided they shall be remedied or mitigated;

- (b) Avoiding prematurely foreclosing, or compromising options for future urban and rural and coastal town growth including areas identified in Schedule 1;*
- (c) Consideration of alternative locations (including locations in urban areas) for utility service facilities which give rise to significant adverse effects on the environment;*
- (d) Environmental enhancement and/or remediation opportunities.*

8.11 It is considered that the NOR is consistent with this policy as far as it is relevant. The policy requires that provision be made for the safe and efficient operation of regionally significant infrastructure. The NOR is aimed at achieving this. The gas pipeline in this area does not overtly affect the Strategic Direction of the RPS or the Growth Strategy as the pipeline itself does not influence how the region grows or how the growth is accommodated.

8.12 The Policy also requires that certain adverse environmental effects are avoided and where they cannot be avoided they shall be remedied or mitigated. The environmental effects of the NOR have been discussed earlier in this report (Para 8.6).

8.13 The submission from Transpower is concerned that work on the pipeline has the potential to adversely affect Transpower's assets which are also regionally significant infrastructure. It is considered that these concerns can be largely met through appropriate conditions being applied to the designation. The submission from Telecom NZ opposes that part of the NOR that relates to roads on the basis that it would unnecessarily disrupt its operations and is not necessary given the road opening notice procedures. It should be noted that within Rodney District the pipeline largely crosses roads and does not generally run along roads. Accordingly the instances where there may be conflict between the pipeline and Telecom infrastructure will be small compared with the length of the pipeline. It is considered that such conflicts can be resolved by modifications to the NOR that clearly sets out the rights of existing infrastructure.

8.14 Objective 5.3.2 relating to Energy is:

To avoid, remedy or mitigate any adverse effects of development proposals relating to the production, distribution and use of energy.

8.15 Policy 5.4.4.1 states;

Assessment of environmental effects for energy generating and transmission proposals shall where necessary be carried out in accordance with the requirements of the Fourth Schedule of the RM Act.

8.16 The environmental effects of the NOR have been discussed above.

8.17 Overall, and subject to modifications concerning the effects of the proposal, it is considered that the NOR is generally consistent with the RPS.

8.18 The Provisions of the Rodney District Plan relating to utilities are contained largely within Chapter 19 – Utilities. The relevant objectives are as follows:

Objective 19.3.1

To ensure that utilities are designed, located, constructed, operated, maintained and upgraded in a way that avoids remedies or mitigates any adverse effects on:

(a) the natural and physical environment including both land and water; and

(b) amenity values and on the health, safety and wellbeing of people and communities; and

(c) sites, buildings, places or areas of heritage and of archaeological value.

Objective 19.3.2

To ensure that the design and location of activities does not adversely affect the operation and options for future use of existing utilities wherever possible.

8.19 The relevant policies are as follows:

Policy 19.4.1 Utility purpose, efficiency and compatibility

Utilities should be designed and located so that they achieve their intended purpose in an efficient way, are compatible with existing networks where this is technically feasible and have an appropriate design life, to ensure adverse effects are avoided, remedied or mitigated in the long term.

Policy 19.4.2 Natural environment

Utilities should be designed, located, operated and maintained in such a way that adverse effects on the natural environment are minimised, including:

(a) minimising discharges to natural water during construction and operation, and ensuring that systems are designed so that discharges have no more than minor adverse effects on the natural environment including all receiving environments;

- (b) *minimising disturbance to highly valued natural resources (such as areas of native bush and wetlands and other landforms), significant natural areas and landscapes as far as practicable, through design and other measures, and restoring areas which have to be modified.*

Policy 19.4.3 Health, safety and amenity values

Utilities should be designed, located, operated and maintained and upgraded in such a way that adverse effects on health and safety, and amenity values of surrounding sites are minimised, including minimising effects on the following:

- (a) *the safety of people as a result of emissions from telecommunications networks or electromagnetic fields associated with electricity transmission;*
- (b) *the health and safety of people as a result of the possibility of electrocution from structures supporting electricity lines, and of stormwater channels, culverts and outfalls posing risks of drowning;*
- (c) *the health and wellbeing of people as a result of noise levels and vibration;*
- (d) *the health or enjoyment of people as a result of odour generation;*
- (e) *the safety and efficiency of traffic movement (including pedestrians) on roads and streets as a result of disruption caused by maintenance of utilities;*
- (f) *the enjoyment of people as a result of loss of visual privacy;*
- (g) *sites, buildings, places or areas of heritage and archaeological value;*
- (h) *the health and safety effects from waste water discharge (both controlled and uncontrolled) and acute chronic health effects from stormwater discharges.*

Policy 19.4.4 Roads and traffic

Utilities should be designed, located, operated and maintained in such a way that they do not unduly impede the ability of roads to be used for conveying traffic or pedestrians to use footpaths safely and do not reduce the amenity values of land within roads.

Policy 19.4.5 Reverse sensitivity

Activities to be located in close proximity to existing utilities should be designed and constructed so that people using the activity are protected from any adverse effects generated by that utility.

- 8.20** It is considered that the NOR is generally consistent with these objectives for the following reasons. The pipeline and ancillary facilities are already in existence and are suitable for their intended use. It is considered that, subject to the discussion outlined above in paragraph 9.6, the pipeline may have minor effects on the environment, amenity values and on places of heritage or archaeological values (obj 19.3.1). As the pipeline is also in a location largely away from roads and other infrastructure it is unlikely to adversely affect the options for the future use of other utilities (obj 19.3.2). The exception to this is where the pipeline crosses roads or other infrastructure. It is considered appropriate that where the NOR relates to roads the restrictions should be modified to remove restrictions on other infrastructure.
- 8.21** In respect of the policies, the pipeline and ancillary facilities have been designed for its intended purpose and the operator has a monitoring and maintenance programme that has and will ensure the pipeline has a long design life. The effects of the pipeline on the natural environment have been discussed in paragraph 9.6. The restrictions proposed to be applied in the designation will assist in ensuring these types of effects are minimised. Subject to appropriate conditions that recognise the rights of other utility operators and the Council in respect of roads it is considered that the proposal will not impede the ability of roads to be used for conveying traffic. The purpose of the NOR is consistent with Policy 19.4.5 which concerns reverse sensitivity.
- 8.22** Overall it is considered that the NOR is consistent with the provisions of the Rodney District Plan.

Section 171 (b) alternative sites, routes, or methods

8.23 Given that the pipeline the subject of this NOR already exists and that the Requiring Authority has an interest in the land through the existing easement it is considered that an assessment of alternative sites, routes and methods is not appropriate and is not required.

8.24 The assessment states that the existing pipeline route was selected in the early 1980's following extensive investigations of a number of alternative routes, and the operation of the existing pipeline over the past 27 years has had minimal impact on the environment.

Section 171 (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority

8.25 The stated objectives of the requiring authority in respect of this NOR are as follows:

- To ensure the continued supply of natural gas to the Auckland and Northland Regions
- To minimise the risk to the public, landowners, and other stakeholders by ensuring that information on the location of the above pipelines and facilities is available in accessible public documents such as the District Plans
- To ensure that the integrity of the pipeline is protected from potentially conflicting activities such as changing land uses
- To make appropriate provisions for the operation, maintenance, repair, upgrading and renewal of:
 - The existing gas transmission pipeline between Waiouru MLV in Highbrook Drive
 - Lateral pipelines at Otahuhu, Warkworth, Maungaturoto, Ruakaka, and Whangarei
 - The existing ancillary facilities along the pipeline route

8.26 Aspects of the designation will assist in respect of these objectives. The notation of the pipeline designation in the District Plan will assist in letting future landowners and others know where the pipeline is and will assist in the planning of works on private land and roads in the vicinity of the pipeline. This is consistent with the first objective.

8.27 It is considered that the existing easement is legally able to protect the pipeline in land not in roads and to provide appropriate separation distances in this land. To this extent the designation may not be necessary to achieve the third objective. However as the existing easements do not apply to roads the designation may be necessary to achieving these objectives in respect of land in roads.

8.28 Overall it is considered that the designation is reasonably necessary to achieving the objectives of the Requiring Authority.

8.29 Any other Matter

Relevant Council Documents

8.30 Vision Rodney is the strategy for the District's future. This is made up of 6 aspects as follows:

- We will keep our country look and feel.
- We will not let our towns and villages sprawl.
- We will maintain our lifestyle and look after the environment.
- We will take care of ourselves while working with other others.
- We will be able to make our living in Rodney.
- We will determine the future of our District.

8.31 It is considered that the NOR not inconsistent with any of these aspects.

Other Legislation

8.32 As outlined earlier in this report, it is considered that certain aspects of the NOR as it relates to roads is in conflict with the Telecommunications Act 2001 and the Local Government Act.

Section 171 Assessment Conclusions

8.33 **Overall it is considered that having regard to all the relevant section 171 matters that the Council should recommend to the Requiring Authority that the requirement be confirmed and be made subject to a number of conditions.**

PART II ASSESSMENT

9.0 The purpose of the Act is to promote the sustainable management of natural and physical resources. In terms of section 5 of the Act it is considered that this application does promote sustainable management because it provides for the continued use and protection of an existing physical resource and the use of the gas transported by the pipeline is necessary for people and communities to provide for their wellbeing.

9.1 The following matter of national importance (s6) is relevant to this application.

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

The route of the pipeline passes through two SNAs. Subject to conformation that the areas affected are generally free of vegetation it is considered that the proposal provides sufficiently for the protection of those SNAs.

9.2 The following other matters (s7) are relevant to this application.

**(b) the efficient use and development of natural and physical resources:
(c) the maintenance and enhancement of amenity values:
(d) intrinsic values of ecosystems:
(f) maintenance and enhancement of the quality of the environment:
(g) any finite characteristics of natural and physical resources:**

It is considered that the proposal has regard to the efficient use and development of physical resources in that it acts to protect an existing physical resource that is important to the nation. It is also, subject to modifications and conditions, likely to result in the maintenance and enhancement of amenity values and will not adversely effect ecosystems and the quality of the overall environment. Overall it is concluded that the proposal **has given particular regard to these matters.**

9.3 There are no section 8 Treaty of Waitangi matters relevant to this application.

9.4 Overall it is considered this application is consistent with Part 2 matters.

RECOMMENDATION

That pursuant to the provisions of section 37 of the Act that the late submission from Transpower New Zealand Limited be accepted as it raises no significant issues that have not already been addressed previously

RECOMMENDATION

That, pursuant to Section 171 of the Resource Management Act 1991, the Council recommend that the Notice of Requirement from the Vector Gas Limited for a designation of the existing gas transmission pipeline and ancillary facilities as set out in the Notice of Requirement dated June 2007 be modified and made subject to conditions.

REASONS FOR THE RECOMMENDATION

Pursuant to Section 171(3) of the Resource Management Act 1991, the reasons for this recommendation are as follows:

- (a) It is necessary to recommend conditions and modifications to ensure that the effects of the designation on the environment are adequately avoided, remedied or mitigated. These include the adverse effects of work on the pipe line and ancillary facilities on people and the physical environment and adverse effects on other infrastructure.
- (b) It is necessary to recommend conditions and modifications as the designation would otherwise unduly restrict other infrastructure and designations and would be contrary to section 177 of the Resource Management Act and to other legislation including the Local Government Act and the Telecommunications Act 2001.
- (c) Subject to the recommended conditions and modifications it is considered that the requirement is consistent with the relevant provisions of the Auckland Regional Policy Statement and the Rodney District Plan. There are no national policy statements relevant to this consideration.
- (d) The designation is reasonably necessary to achieving the objectives of the requiring authority.
- (e) It is considered that the requiring authority has given adequate consideration to alternative sites, routes and methods of undertaking the work.
- (f) The designation is consistent with the provisions of Vision Rodney.
- (g) The designation promotes the sustainable management of natural and physical resources by making continued use of an existing physical resource and in doing so avoids the adverse effects on the environment associated with the construction of a new pipeline. The gas transported by the pipeline is necessary for the economic and social wellbeing of New Zealand.

RECOMMENDED MODIFICATIONS

Pursuant to Section 171(2)(b) of the Resource Management Act 1991, it is recommended that the requirement be modified as follows:

4. That clauses 2.2 and 2.3 of the altered notice of requirement (and the restrictions applying to land in roads in the original notice of requirement) be deleted.

RECOMMENDED CONDITIONS

Pursuant to Section 171(2)(c) of the Resource Management Act 1991, it is recommended that the requirement be subject to the following conditions:

1. (General) Subject to these conditions, all works shall be undertaken in general accordance with the plans and information submitted by the Vector Gas Limited (Vector) in the documents entitled "*Manukau to Whangarei Gas Pipelines – Notice of Requirement for a Designation*" (Volumes 1, 2 and 3)
2. (Designation width) The maximum width of the designation shall be as follows:
 - For land within road reserve (along road reserve/state highway) - 6 metres
 - For land within road reserve (across road reserve/state highway) -8 metres
 - Non road reserve - 12 metres (other than those areas where the existing easement width is less than 12 metres wide – in such circumstances the designation shall be the width of the easement)
 - Within Rail reserve - 8 metres

3. (Restrictions on land) For land not within roads or within another earlier designation the following restriction shall apply. No person shall:
- Erect any building or construction on the designated corridor;
 - Erect any fence or other improvement or plant any tree or shrub;
 - Disturb the soil below a depth of 0.4 metres from the surface; or
 - Do anything on or to the land within the designated corridor which would or could damage or endanger the pipelines;

within the designated corridor without first obtaining the written consent of Vector.

Landowners and/or developers can apply to Vector for consent to do any work on the land within the designation corridor. Vector will review each application with the landowner/developer and work to achieve the most suitable outcome for all parties. Vector may give its written consent subject to reasonable conditions including the power to revoke the consent in specified circumstances.

Vector agrees to not unreasonably withhold its consent

Works or activities that would or could damage or endanger the Pipelines include, for example, the use of heavy compaction or vibration machinery or equipment, pile driving machinery and equipment, trenching, excavation or drilling (including micro drilling and directional drilling).

4. (Outline Plan) An outline plan of works shall be submitted and approved for any works other than those provided for as a permitted activity in the Rodney District Plan and Proposed Plan.
5. (Engineering standards) All works within the designation shall be carried out in accordance with the requirements of the Council's then current "Standards for Engineering Design and Construction".
6. (Road Opening) All pipeline maintenance, repair, upgrade or renewal activities within road reserves that involve excavation shall be subject to the Road Opening Notice requirements of Rodney District Council and carried out in accordance with the Requirements of the *Code of Practice for Working in the Road – Auckland Utility Operators Group*.
7. (Pipeline maintenance) All pipeline maintenance, repair, upgrade or renewal activities outside road reserves that involve excavation shall be in accordance with the Guide to Land Access for the Oil and Gas Industry and Landowners.
8. (Public services) Any public services within the designation shall be protected from the adverse effects of maintenance and construction activities.
9. (Overland flow paths) Existing overland flow paths shall not be impeded by any maintenance or construction works carried out within the designation.
10. (Earthworks) Where maintenance, repair, upgrade and renewal activities involving excavation are undertaken pursuant to the designation, appropriate sediment and erosion measures shall be employed, in accordance with Rules 19.9.2 and 19.9.7 the Rodney District Plan. Prior to any earthworks within the designation the appropriate sediment control devices as per Auckland regional Council Technical Publication No. 90 "Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region" shall be installed.
11. (Hours of maintenance) Scheduled maintenance, repair, upgrade or renewal work and associated activities shall be limited to between the hours of 7am and 7pm, Monday to Saturday (excluding public holidays) unless the prior approval of the Council has been obtained.

12. (Management Plan) Prior to the commencement of any maintenance, upgrade or replacement activity within the designated corridor, within 20 metres of any high voltage transmission line, the Requiring Authority shall submit a Management Plan for the approval of the Manager: Resource Consents. In particular the Management Plan shall:
 - Specify measures to ensure that transmission line support structures are protected from excavation activities within the designated area, and that compliance with the NZECP 34:2001 will be achieved;
 - Ensure that existing access arrangements to transmission line towers are maintained. Where the Requiring Authority requires or causes a change in access arrangements, then alternative arrangements should be made to continue to provide safe 4-wheel drive, 24 hour access to tower bases (including during any construction period).
13. (Machinery and Mobile Plant) All machinery and mobile plant operated during maintenance, upgrade or replacement activities along the designation corridor must maintain a minimum clearance distance of 4 metres from all voltage transmission line conductors at all times.
14. (Noise) The noise from maintenance works, repair, upgrade and renewal activities shall be measured, assessed and controlled in accordance with the procedures and limits set out NZS 6803:1999 Acoustics — Construction Noise.
15. (Lighting and Welding and Dust and Smoke) maintenance works, repair, upgrade and renewal activities shall comply with Rules 16.6 –Exterior Lighting and Welding and 16.7 Dust or Smoke of the Proposed District Plan 2000.
16. (Consents from ARC) Where any maintenance works, repair, upgrade and renewal activities affect any stream or river or where earth works are undertaken the requiring authority shall obtain any necessary consents from the Auckland Regional Council prior to the works commencing.
17. (Limitations on designation) For the purposes of these conditions the designation is subject to the following limitations;
 - Renewal shall be limited to works on the gas transmission pipeline and will be limited to the replacement of sections of the pipeline with sections having equivalent diameter and maximum allowable operating pressure, and no more than [50] lineal metres of pipeline will be excavated at any particular time.
 - Upgrade will be limited to adding or replacing above ground components, provided the relevant district plan permitted activity standards are complied with.

Advice Notes

1. Access to overhead electricity transmission lines, poles or supporting structures shall be maintained at all times in accordance with the Electricity Act 1992.
2. All land use activities within the designation corridor must comply with the New Zealand Code of Practice for Electrical Safety Distances (NZECP) 34:2001.
3. Any structures within the designation shall be subject to a Building Consent where applicable.
4. With respect to Condition 12, the relevant Local Authority will consult with Transpower New Zealand Limited in order to confirm that adequate access and protection is provided for transmission line towers located in close proximity to proposed excavations.
5. Vector has confirmed that it will consult with land owners and occupiers who may be affected by maintenance works, repair, upgrade and renewal activities to reach fair and reasonable arrangements for entry, and to address any matters regarding effects of maintenance, repair, upgrade and renewal activities, including restoring the surface of the land following maintenance, in accordance with its relevant obligations under the pipeline easement.

6. This designation traverses earlier Rodney District roading , Railway and Transit New Zealand designations that are protected pursuant to sections 176 and 177 of the Resource Management Act 1991, and State Highways which are protected pursuant to sections 51 and 52 of the Transit New Zealand Act 1989. Where that occurs, the Requiring Authority may only carry out its activities with the written consent of the earlier requiring authorities.
7. The Requiring Authority is obliged to operate the pipelines and ancillary facilities in accordance with the requirements of AS2885: Pipelines — Gas and Petroleum Liquids, the Health and Safety in Employment (Pipelines) Regulations 1999 and in accordance with the authorisations issued for those facilities in terms of the Petroleum Act 1937.
8. Emergency works may be performed in line with the Vector advice booklet by excavation to 0.4m depth and thereafter the use of hand tools only. Emergency operations should be notified immediately to Vector Gas Ltd or their agent who provide an on-call service outside of normal working hours.
9. An authority may need to be obtained from the New Zealand Historic Places Trust to destroy, damage, or modify an archaeological site in accordance with the Historic Places Act 1993.

Attachments

- Attachment A – Notice of requirement with additional information**
- Attachment B – Route of the pipeline and site plans**
- Attachment C – Submissions**
- Attachment D – Council reports**

AGENDA B

