

14 March 2020

Biodiversity Team  
Ministry for the Environment  
PO Box 10 362  
WELLINGTON

Emailed to: indigenousbiodiversity@mfe.govt.nz

Dear Biodiversity Team

## **Proposed National Policy Statement – Indigenous Biodiversity**

Firstgas Group Limited (Firstgas) welcomes the opportunity to submit on the Ministry for the Environment's (MfE) discussion document "He Kura Kōiora i hokia: A proposed National Policy Statement for Indigenous Biodiversity" released in November 2019.

Nothing in this submission is commercially sensitive and we are happy for this submission to be posted on MfE's website.

### **Submission summary**

Firstgas supports efforts to reverse declining trends in indigenous biodiversity and achieve better outcomes for our indigenous flora and fauna.

However, Firstgas is concerned the Proposed National Policy Statement on Indigenous Biodiversity (**Proposed NPS-IB**) is not targeting the right pressures on indigenous biodiversity and that it will prevent desirable and nationally significant infrastructure development.

Therefore, Firstgas wants to work with Government to ensure the Proposed NPS-IB provides for the continued use of existing Nationally Significant Infrastructure (**NSI**) and allows proposals for new NSI within Significant Natural Areas (**SNAs**) to be fully considered by decision-makers.

### **About Firstgas**

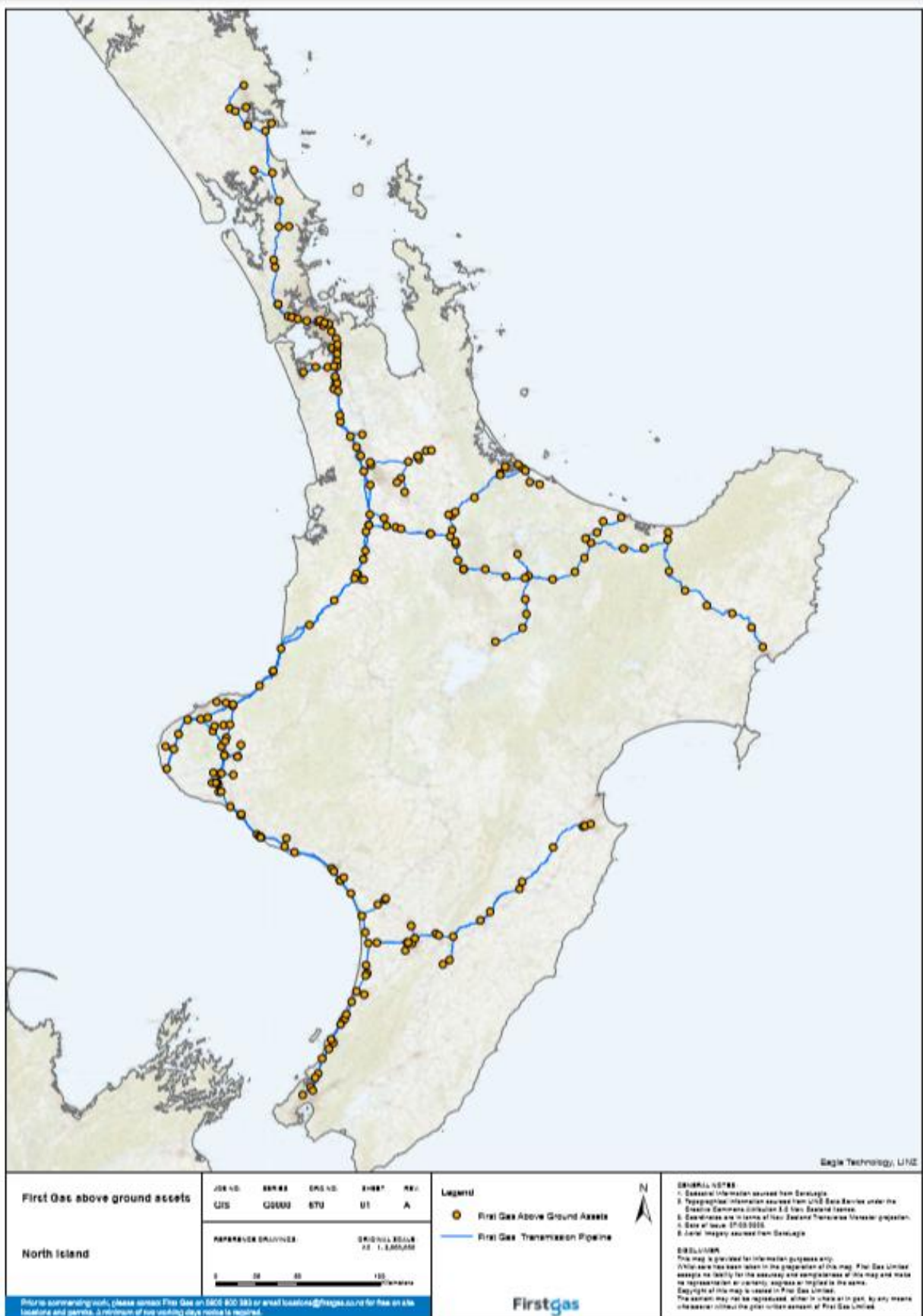
Firstgas owns and operates 2,500 kilometres of gas transmission pipelines. These pipelines transport around 20 percent of New Zealand's primary energy supply from Taranaki to industrial gas users, electricity generators, businesses and homes across the North Island. Firstgas' ownership includes the ancillary above and below ground infrastructure required to operate the gas network. Collectively, this system is known as the "Gas Transmission Network". Firstgas' transmission assets are illustrated in Figure 1 below.

### **Role under the Resource Management Act 1991**

Firstgas is a Requiring Authority under the Resource Management Act 1991 ('RMA').

In RMA context, Firstgas' assets and operations deliver significant benefits to the wider North Island. The transmission and distribution of natural gas provides for economic growth, enables communities, business and industry to function and provides for people and communities' social well-being and their health and safety. The Gas Transmission Network is both regionally and nationally significant.

Figure 0: Firstgas' pipelines and above-ground assets across the North Island



## **Our interest in the proposed National Policy Statement on Indigenous Biodiversity (Proposed NPS – IB)**

Prior to purchasing the Gas Transmission Network in 2016, former owners and operators relied on the legal gas easement to both enable the operation, maintenance and upgrade of the network and protect the asset from others' activities. Reliance on this land instrument, as opposed to planning instruments, has not always secured good outcomes for Firstgas. For example, there have been many recent instances where:

- Legal and / or physical vehicular access has been compromised through subdivision and land use development.
- Activities that are sensitive to the Gas Transmission Network have been authorised to establish and operate in too close a proximity to the network, thereby creating reverse sensitivity effects.

### **General approach to RMA processes**

Consequently, since purchasing the Gas Transmission Network, Firstgas has become active in RMA processes through submissions. The outcomes sought have generally been to:

- Enable the operation, maintenance, upgrade development and/ or removal of its assets and operations, including vehicular access and
- Protect its assets and operations from others' land-use and subdivision activities (including through legal and physical vehicular access).

To assist this, Firstgas has worked on a suite of 'model provisions' specific to the Gas Transmission Network which are sought for inclusion within district plans, the objective being to achieve North Island wide consistency and fulfill its own operating obligations under AS2885 (Australian Standard AS 2885 Pipelines – Gas and Liquid Petroleum).

### **Operation, maintenance, replacement, upgrade, removal and development**

Firstgas' gas network is regionally and nationally significant infrastructure in that it delivers significant benefits to people and communities social and economic well-being, as well as provide for their health and safety. In light of the benefits provided by the network, the safe, efficient and effective operation, maintenance, replacement, upgrade, removal and/ or development of the network needs to be provided for in land use planning frameworks, while ensuring adverse effects generated by those activities and operations are appropriately managed. This is sought to be delivered through enabling objective and policy frameworks and enabling rules and activity statuses.

### **Protection from third party works**

Firstgas is required to ensure the protection and integrity of the pipeline is maintained to ensure the safety of the public, property and the environment. Pipelines are required to meet the safety and operational requirements of *the Health and Safety in Employment (Pipelines) Regulations 1999* and the operating code *Standard AS2885 Pipelines – Gas and Liquid Petroleum (AS2885)*.

### **Consistent outcomes sought through submission processes**

Firstgas works proactively with both local and central government authorities through planning review processes to seek to embed both enabling and protective provisions in planning documents. In this context we are grateful for the opportunity to provide comments through the Proposed NPS-IB process.

## **General response to discussion document**

### *Lack of consenting pathway for Nationally Significant Infrastructure*

Expert ecologists advise that most areas of indigenous vegetation, and also exotic vegetation that provides habitat for at-risk species will qualify as "significant natural areas" (SNAs). Most SNAs will be rated as "high" value under the current proposal. The proposed NPS-IB directs that effects on such areas must be avoided. The consenting pathway for NSI only applies if the SNA is rated as "medium".

The Supreme Court King Salmon decision that "avoid" means "not allowing" or "preventing the occurrence of" is likely to mean effects on "high" value SNAs will be a prohibited activity and it will not

be possible to apply for resource consents. At best they will be non-complying and face unacceptable consenting risk. In reality, the Proposed NPS-IB only provides a consenting pathway for NSI in medium SNAs.

In summary, the threshold for qualifying as an SNA is too low and the threshold for protecting an SNA is too high.

#### *Creation of a “no effects” regime*

The Proposed NPS-IB includes what is in practice a “no effects” management hierarchy. The first step is that adverse effects are avoided “where possible”. It will always be possible to avoid the adverse effect by declining the project or including constraints or specific requirements that would render the project uneconomic (or if it is economic then additional costs for the end users of that infrastructure, which raises affordability concerns). A “where practicable” test enables a decision maker to consider economic and other practical considerations.

The effects management hierarchy purportedly provides the ability to “offset” or where offsetting is not demonstrably achievable to “compensate” for any residual adverse effects on biodiversity attributes for “medium” value SNAs only.

Firstgas already recognises and provides for offsetting and compensation where and when appropriate. However, we are concerned the proposed offsetting and compensation criteria (set out in Appendices 3 and 4) are unworkable. For example, it is often very difficult to achieve “like for like” in the same ecological district.

Another significant concern arises from the way the maintenance of indigenous biodiversity has been described. It requires at least no reduction in a number of matters such as the size of populations of indigenous species. Technically this means the death of one individual is not permissible as it will lead to the reduction of the size of the population.

### **Key amendments sort by Firstgas**

The following table sets out the critical amendments sought by Firstgas.

**Table A: Key amendments sought**

Proposed amendment	Amendment wording
Firstgas proposes the following policy in the Proposed NPS-IB:	The operation, maintenance, and minor upgrading of nationally important infrastructure is enabled within SNAs and all other areas of indigenous biodiversity.
The Infrastructure Group proposes the following consenting pathway for new NSI within SNAs based on the Biodiversity Collaborative Group version) and to be included as a policy in the Proposed NPS-IB:	<p>The adverse effects of the subdivision, use and development within a significant natural area are to be avoided, remedied, mitigated, offset or compensated where:</p> <p>the subdivision, use and development is associated with either:</p> <ul style="list-style-type: none"> <li>i. nationally important infrastructure;</li> <li>ii. [any other activities the Government considers appropriate to include]; and</li> </ul> <p>the activity is locationally constrained because it has a functional or operational need to operate in a particular location and there are no practicable alternative locations for the activity that would provide for its functional or operational needs to be met.</p>

**Contact details**

If you have any questions regarding this, please contact me on (06) 769 8247 or via email at [zane.wood@firstgas.co.nz](mailto:zane.wood@firstgas.co.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Zane Wood', with a stylized flourish at the end.

**Zane Wood**  
Senior Land & Planning Advisor