

**IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
NGĀMOTU ROHE**

**CIV-2021-443-016
[2021] NZHC 3309**

BETWEEN FIRST GAS LIMITED
Plaintiff

AND RUSSELL VICTOR GIBBS
PARANI JOSEPHINE GIBBS
LEIGH JOSEPH HORTON
Defendants

Hearing: 22-27 September 2021

Appearances: L P Wallace and J Atkin for the Plaintiff
S J Grey for the Defendants
R V Gibbs in person (28 September 2021)

Judgment: 3 December 2021

JUDGMENT OF GRICE J

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Introduction

[1] First Gas, previously known as Vector Gas,¹ owns and operates the Maui gas pipeline, also known as the 400 pipeline. The high-pressure natural gas pipeline was completed in 1979 and supplies over 90 per cent of the natural gas used in the upper North Island. The supply is predominantly to substantial large industrial consumers including two methanol plants and the Huntly Power Plant, but also smaller commercial and domestic consumers. The pipeline runs for 299 kilometres roughly north from New Plymouth.

[2] The pipeline operates under statutory authorisations and two relevant Petroleum Easement Certificates (PECs) issued under the Petroleum Act 1937 (the Act). These authorisations and easements permit the pipeline to run through part of the defendants' farm.

[3] The defendants hold the land on trust.² The exact terms of the trust are not before the Court but the beneficiaries include the Gibbs family. The Gibbs family has farmed this property for over 100 years. Mr Victor Gibbs farmed the land when the pipeline was constructed. He was the father of Mr Russell and Ms Marie Gibbs, both of whom gave evidence for the Gibbs Trust in this matter. They are the fifth generation to live on the land and three generations follow them.

[4] During an inspection in 2018, a "buckle" was discovered in a five-metre portion of the pipeline on the Gibbs' farm. The buckle indicated that five kilometres of the pipeline was close to failure. The discovery had been the result of more intense monitoring by First Gas following a break in the pipeline in 2011, which had required the shutdown of the pipeline for the first time in its existence. The buckle is on the defendants' farm in an area known as Pariroa, about 45 kilometres north of New Plymouth. The pipeline in this area runs through geotechnically unstable land. The shifting ground had moved around the pipeline causing the buckle.

¹ The successor to Natural Gas Corporation for the purposes of these proceedings. A change in shareholding in Vector Gas led to it changing its name to First Gas, around April 2016. First Gas also took ownership of the Maui pipeline from Maui Developments Ltd in June of 2016. With the changes came new management and new governance.

² The defendants are the trustee owners of the land. The implication by Mr Gibbs was that it was held on a trust for the Gibbs family. I refer to the defendants as the Gibbs family/whānau or the Gibbs'.

[5] The buckle was a serious defect that required an urgent interim solution. This was achieved by First Gas in late 2018/early 2019. The interim solution was to construct an 800-metre bypass diversion. The bypass takes the pipeline above ground “tying in” with the permanent underground pipeline at the north and south ends of the bypass so circumventing the length of pipeline in which the buckle occurred. This bypass pipeline now takes the natural gas, diverting the gas from the pipeline containing the buckle. This emergency bypass operation was called Phase 1 of the Pariroa Project.

[6] The second phase of the Pariroa Project is now due to commence.³ The first phase of the project required the bypass pipeline to pass over a strip of land that was not subject to the existing authorities and easements. The use of this land was agreed with the Gibbs’, although compensation remains to be fully resolved. In addition, a special statutory authorisation was obtained by First Gas from the regulating authority for the construction and the use of the bypass for the conveyance of the natural gas. This authority expires in early 2023.

[7] The Gibbs family co-operated with First Gas to achieve the emergency bypass. Mr Russell and Ms Marie Gibbs, or their representatives, were on site for most of the time during which the works were carried out. In addition, they arranged for representatives of Poutama, an iwi with whom the Gibbs’ are affiliated and have been adopted into, to be present for cultural reasons. Mr Haumoana White, a rangatira of Poutama, gave evidence for the Gibbs’ at this hearing.

[8] In addition to compensation for the loss, injury or damage suffered by the landowner,⁴ the Gibbs’ and representatives of Poutama were paid for time spent on the project. This has led to some disagreements between the parties as First Gas says it has received unexpected bills for this involvement. The full amount of compensation for injurious affection of the land by the bypass has not yet been assessed. Regular payments, however, are being made by First Gas for the use of the land over which the bypass runs.

³ Following this hearing First Gas was granted a variation of earlier interim orders enabling it to commence repairs: *First Gas Ltd v Gibbs* [2021] NZHC 2794.

⁴ Petroleum Act 1937, s 77.

[9] First Gas says the repair work on the original pipeline now needs to be undertaken urgently to ensure repairs are completed. There is a window of time in which the repairs must be carried out to allow the recommissioning of the permanent pipeline and diversion of gas from the bypass. This will require closing down the whole pipeline. Auckland Anniversary Day, 29 January 2022, has been identified as the best time for that shutdown, after considering weather, gas demand, and other factors to cause the least disruption to the North Island gas supply. The repair itself will take an estimated 12 weeks assuming good weather and daylight.

[10] The pipeline has only been shut down once before following the gas leak in the pipeline in 2011. This led to considerable disruption for users and resulted in hundreds of millions of dollars of compensation claims from businesses who were affected by the shutdown.

[11] The Gibbs' have issued trespass notices to relevant staff and contractors preventing them from entering their land to carry out the repairs. The Gibbs' indicated they would respect a court order permitting access and that they had complied with an interim injunction⁵ and a variation of that already issued to allow First Gas to inspect and survey the damaged pipeline as well as to commence repairs.

[12] While the emergency pipeline bypass was outside the existing pipeline corridor and so required agreement between the parties, or the intervention of the court, First Gas say the planned repair of the pipeline in Phase 2 of the Pariroa Project is within its existing rights for work on the pipeline. Therefore, the authority to enter the site and the necessary incidental use of the Gibbs' property for the repairs is allowed under the present pipeline easement certificates, the relevant legislation, and the authority. It says no further agreement with the Gibbs' is needed.

[13] The Gibbs' disagree and say a new agreement is necessary and their consent is required. They say agreement will not be given without the imposition of terms and conditions. Therefore, First Gas cannot access or use the Gibbs' land outside the precise 12 metre strip delineated in the PECs along which the pipeline is laid without their agreement. They also say previous agreements or arrangements impose

⁵ *First Gas Ltd v Gibbs* [2021] NZHC 1722 [“Interim Injunction granted by Isac J”].

conditions on First Gas which means it must involve the Gibbs and Poutama generally in most aspects of the repair works including planning and must pay the costs of that involvement.

[14] The Gibbs also argue the PECs and authorisation are subject to additional considerations such as other legislation as well as their interests and obligations, together with those of Poutama, as kaitiaki of the land.

[15] An earlier options paper for remediation had referred to three options, including leaving the bypass in place, which was the least preferred option. The parties agree that the buckle needs to be remedied for the long term. The Gibbs' say they need to input into the option that is selected to remedy it.

Interim injunction

[16] An inspection and survey of the pipeline has been undertaken at the site of the buckle permitted by the terms of an interim injunction issued in July 2021. First Gas have determined that a small portion of the pipeline where the buckle occurred needs replacing. It now remains to repair the buckle, decommission the bypass and reroute the natural gas through the repaired pipeline.

[17] In order to inspect and survey the pipe which allowed First Gas to select its option for repair of the buckle, First Gas had to obtain an interim injunction. The interim injunction, it said, was necessary because the Gibbs' had refused First Gas entry to their land on 25 January 2021 in order to do the survey and inspection of the buckle. The Gibbs' say there was an arrangement or an agreement that had existed for some years, as well as a court ruling in 2009, which gave them the right to impose conditions on First Gas whenever it entered or used the land in connection with the pipeline.⁶

[18] The interim injunction prohibited the defendants from:⁷

⁶ *Gibbs v Vector Gas Ltd* HC Ngāmotu | New Plymouth CIV-2008-043-545, 27 April 2009 and Sealed Order of the Court in CIV-2009-443-126, 18 June 2009 [“Sealed Order of the Court 2009”].

⁷ Interim Injunction granted by Isac J, above n 5, at [78].

... restricting, obstructing or otherwise interfering with First Gas' rights under the pipeline authorisation or easement certificates, including rights to enter the defendants' land for the purpose of performing any action or operation necessary for the purpose of inspecting, maintaining, repairing, or operating the Maui pipeline.

[19] Well before seeking the interim injunction First Gas had notified the Gibbs' they would be entering to do the survey and inspection on 25 January. Emails were exchanged.

[20] First Gas attempted to enter on 25 January. There was no altercation but the Gibbs' blocked entry and made it clear there would be no entry without First Gas meeting certain conditions. The exact conditions remain unclear other than they involved a collaborative arrangement allowing the Gibbs' to have input into plans, design, and implementation of the repairs. Following the attempt to enter on 25 January First Gas made a number of attempts to meet the Gibbs' to discuss entry to the site. These were unsuccessful for various reasons which led to First Gas filing the proceedings for an interim injunction on 16 April 2021.

[21] On 12 July 2021, First Gas notified the Gibbs' that it had arranged for an archaeologist to attend the Gibbs' property on 26 July 2021 to undertake an archaeological survey and assessment. Two days later it gave notice that it intended to commence the investigatory excavation works planned for 28 July 2021 and that the work should take between five and 10 days. These visits were confirmed by text.

[22] Four First Gas personnel arrived at the property on 26 July 2021 and Mr Russell Gibbs issued trespass notices to each of the four personnel. On 28 July First Gas personnel arrived at the property at approximately 9.30 am with an excavator. Access was blocked by two vehicles occupied by Mr and Mrs Gibbs and a Mr Hunt, who was supporting the Gibbs'. The excavator was taken away to be cleaned at the Gibbs' request.

[23] First Gas personnel were eventually let into the property, but Mr Gibbs made it clear this was only because of the Court order. Mr Gibbs also served a trespass notice on Mr Lucas who was completing survey work for First Gas.

[24] When First Gas went to leave the property, the gate was locked. First Gas had to phone Mr Russell Gibbs to request he unlock the gate so they could leave. The investigatory excavation works were undertaken pursuant to the interim injunction and completed on 10 and 11 August 2021.

[25] Mr Gibbs made it clear in his evidence that the First Gas personnel had been allowed onto the Gibbs' land only because of the interim orders but the trespass notices for First Gas personnel remained in force otherwise. Mr Gibbs' position is based on his view of the limits on what First Gas are permitted to do under their authorisation as well as his understanding of the pre-existing agreement or arrangement with First Gas. He considers the Gibbs' are entitled to refuse entry unless First Gas meets the conditions they impose on its entry to the land.

[26] Mr Russell Gibbs says the Gibbs' must be involved in all the planning of the works including the choice to repair the pipeline, and to that end he requires access to all the plans including engineering drawings and details of the options for remediation as well as attending the planning meetings and being present on site for the works.

[27] There has been a history of disputes over the access to the Gibbs' land by First Gas and its predecessor owner/operators of the Maui pipeline. Similar issues have arisen relating to a smaller natural gas pipeline also running over the land, called the Kapuni pipeline (the 200 pipeline).

[28] The Gibbs' consider that their refusal of access to the property to First Gas unless First Gas meets the conditions proposed by the Gibbs', is supported by a High Court decision from 2009,⁸ as well as earlier arrangements between the parties. The case involved the Kapuni gas pipeline.

[29] First Gas claims in nuisance against the Gibbs for wrongful interference with its rights of entry. First Gas seeks declarations as to its rights as well as a permanent injunction allowing it access to and use of the land described in the PECs for the purposes of the repairs.

⁸ *Gibbs v Vector Gas Ltd*, above n 6.

Site visit

[30] At the request of the defendants and agreement of the plaintiffs I undertook a site visit on 27 September 2021.

[31] The purpose of the visit was to view the relevant area and, in general terms, look at the part of the pipeline that was in issue in these proceedings. Counsel and a representative from each party were present to point out the items of interest.

[32] The farmland surrounding the pipeline is picturesque, as well as having geotechnical and cultural features. It is understandable why the Gibbs whānau feel so passionately about it. The area is near cliffs that rise over the sea on one side where the erosion of the cliffs is apparent. The site visit was also of assistance in being able to see the contours of the land, the geotechnical issues, and the challenges faced in operating and maintaining the Maui pipeline across the relevant land.

The pleadings

[33] The cause of action against the Gibbs' is based in nuisance. It alleges they have interfered with, or obstructed, First Gas' access rights to, and use of, the Gibbs' land under the pipeline authorisation, the PECs, and the Petroleum Act.

[34] Relief sought is by way of declaration authorising First Gas to enter the land over which the PECs are registered "for the purpose of gaining access to the pipeline and to perform any action or operation necessary for the purpose of inspecting, maintaining, repairing or operating the Maui pipeline". Access is also sought enabling First Gas to enter the land as may be necessary to carry out those works and to deposit and store upon any land adjoining those works, machinery and material to be used in carrying out the works.

[35] First Gas also seeks a declaration that its access rights are not conditional upon First Gas providing "all project documentation to the defendants or holding project team meetings inclusive of the defendants' participation".

[36] A complementary permanent injunction is sought prohibiting the defendants from obstructing or otherwise interfering with the plaintiff's access rights and allowing or taking any action that restricts, obstructs, or interferes with the rights to enter for the purpose of inspecting, maintaining and repairing or operating the Maui pipeline.

[37] The statement of defence dated 31 August 2021 denies interference with, or obstruction of First Gas' easement rights and obligations, and says:⁹

First Gas is asking the Court to grant permanent, unlimited, uncontrolled access to occupy and carry out works on our land beyond the 12m wide easement. Works and projects such as these are properly addressed in accordance with Gibbs v Vector Gas 2009 decision and conditions (the collaborative process).

[38] The statement of defence further says:¹⁰

We requested First Gas provide all project documentation and reconvene the Pariroa Project Team, including meetings, so we could all understand what is proposed on our land and why, and that the proposed excavation be put on hold to enable this.

[39] And further:

The status quo is the collaborative process, including the exercise of kaitiakitanga, and provides for the remainder of the Pariroa Project to continue to progress. The collaborative process is consistent with Gibbs v Vector Gas 2009 decision and conditions. As we said above, the project and the entry were focussed on the Maui pipeline. There is no good reason for the Court to grant the injunction, and not preserve the status quo as confirmed by Williams J. Granting the injunction would cause unnecessary prejudice and damage.

[40] The statement of defence also says:

m) First Gas is asking the Court to grant or extend easement rights on our land beyond the existing 12m wide easement strip. This has far reaching implications and consequences for us, our land, and our kaitiakitanga, as well as all other landowners with pipeline easement strips.

30. The respondents rely on Gibbs v Vector Gas decision and conditions, meeting of the minds, previous conduct, continued occupation, and undertakings of First Gas in Pariroa phase one and two, and the principles of fairness and justice.

⁹ This was filed as a result of leave being granted to defend the proceedings: *First Gas Ltd v Gibbs* HC Ngāmotu | New Plymouth, 28 June 2021.

¹⁰ Footnote omitted.

31. As we said, the main intent and effect of the First Gas desire for a “reset” (and these proceedings), in comparison with *Gibbs v Vector*, is to exclude conditions relating to the exercise of Poutama and Te Ahuru kaitiakitanga, tikanga, and cultural protocols, and give effect to this “reset”.

Issues

[41] In simple terms, the issues that require determination are:

- (a) Is First Gas only permitted to use land within the 12 metre strip delineated on the PEC as the pipeline corridor¹¹ when it is repairing the pipeline (and carrying out other authorised works) and for entry and egress, storage and deposit of machinery and equipment and depositing spoil incidental to those works?
- (b) Is there an arrangement or agreement for a “collaborative process” or conditions for the use of land described in the PECs that binds First Gas for the purposes of undertaking the Pariroa Project Phase 2 repairs or other authorised works on or to the pipeline by virtue of:
 - (i) the 2009 Court decision in *Gibbs v Vector Gas Ltd*,¹² and/or
 - (ii) previous dealings and agreements?
- (c) Are there legislative and other requirements or interests including under the Resource Management Act 1991 (RMA) and health and safety legislation and/or rights and interests flowing from the Gibbs’/Poutama’s role as kaitiaki over the land, which affect First Gas’ rights of access and use of the land for the purposes repairing or carrying out other authorised works on the pipeline?

[42] I first deal with the legal framework governing First Gas’ access to the pipeline.

¹¹ The rights and powers are set out in ss 70, 68 and 75 of the Petroleum Act 1937.

¹² *Gibbs v Vector Gas Ltd*, above n 6.

Legal framework

[43] First Gas operates the pipeline over the Gibbs' land pursuant to a statutory authorisation¹³ and the PECs,¹⁴ which are registered over the relevant land titles in favour of First Gas. Following the ministerial authorisation for the construction of the pipeline and once the pipeline was in place, the PECs were authorised pursuant to the provisions of the Petroleum Act.¹⁵

[44] The Act has been repealed, but the savings provisions in the Crown Minerals Act 1991 retained the former legislation's statutory framework for authorisations and pipeline easements already granted. The savings provisions provide that the holder of the relevant "privilege" (the authorisation) has the same statutory rights as it would have had if the repealing act and the RMA had not been enacted, unless "any consent in respect of the privilege would, but for this subclause, be required and need to be sought under the Resource Management Act 1991," in which case the RMA also applies.¹⁶

Pipeline authorisation

[45] Pipeline authorisation 4410–16 was issued by the Minister of Mines on 31 July 1975, for the Maui pipeline. The authority was issued for the construction and operation of the Maui natural gas pipeline "more particularly delineated on the plan annexed hereto". The pipeline so authorised passed through a number of properties, including the Gibbs' farm.

[46] At the time the pipeline was constructed in 1979, s 70A provided for the proclamation process once a pipeline authorisation had been issued. It said:

70A

- (1) Notwithstanding anything to the contrary in this Act, if the Governor-General on the advice of the Minister is satisfied that the construction of any pipeline in respect of which an authorisation has been granted is of national importance, the Governor-General may issue a Proclamation defining the middle line of that pipeline, or of any part

¹³ Pipeline authorisation 4410–16.

¹⁴ Pipeline easement certificates 269143 and 269148.

¹⁵ Petroleum Act 1937 (as amended by the Petroleum Amendment Act 1962 (No 127)).

¹⁶ Crown Minerals Act 1991, sch 1, cl 12.

thereof, and in any such case the provisions of section 216 of the Public Works Act 1928 shall, as far as they are applicable, and with the necessary modifications and except so far as they may be inconsistent with the provisions of this section, apply in respect of the construction of the pipeline in the same manner as if a railway were to be constructed, and as if references in that section to the Minister of Works and Development were references to the holder of the pipeline authorisation in respect of which the Proclamation was issued.

- (2) Every Proclamation under this section shall define, by reference either to the distance on each side of the middle line or to the more distant section boundaries, or by reference to both, such land within 100 metres from the middle line upon or in respect of which it is intended to exercise the powers conferred by this Act or any other Act in respect of the construction, maintenance, and use of the pipeline:

Provided that, in placing the pipeline in its final position, construction work (including the provision of access for vehicles and plant) shall be confined to a strip of land—

- (a) Not more than 30 metres wide; or
- (b) Of such greater width as the Secretary (after consultation, if practicable, with the occupier of the land) may allow in any particular case owing to special circumstances –

within the strip of land defined by the Proclamation.

- (3) The Minister shall cause a copy of every Proclamation under this section, and of every map and plan prepared in connection therewith, to be deposited without fee in the District Land Registry Office for each district in which is situated any land affected by the Proclamation.
- (4) The District Land Registrar shall register against the title of any such land a memorial of the Proclamation and of the accompanying maps and plans.
- (5) As soon as practicable after the publication of any such Proclamation, the Minister shall notify every owner and registered lessee of the land affected by the Proclamation, so far as they can be ascertained, that it is intended to take any part of the land for the pipeline, or that it is intended to construct the pipeline over, upon, under, or close to the land, or that the land will not be affected, as the case may be:

Provided that such notification shall be given in respect of Maori land only to such owners as have been nominated for the purpose, at the request of the Minister, by the Registrar of the Maori Land Court, who shall nominate all owners whose current addresses are known to him.

- (6) If any land is to be taken, the time for claiming compensation shall run from the date of the Proclamation taking the land; and, if the pipeline is to pass over, upon, under, or close to the land without any part of the land being taken, the time for claiming compensation for

any injurious effect thereto shall run as if the claim were a claim for damage under section 45 of the Public Works Act 1928.

- (7) At any time after a pipeline has been completed, or after the construction of a proposed pipeline has been abandoned, or after the Minister is satisfied that any pipeline referred to in a Proclamation under this section does not, or will not, pass over, upon, or under, or injuriously affect the land against which the Proclamation has been registered, or if for any other reason the Minister deems it expedient so to do, he may require the owner of the pipeline to deposit with him plans of and a description of or reference to all land in respect of which cancellation of the registration is desired.
- (8) The Minister, after being satisfied that such cancellation is in order, may cause to be deposited without fee in the appropriate District Land Registry Office a certificate signed by him or on his behalf authorising the cancellation of the registration of the Proclamation and setting forth a description of or reference to all land for which cancellation is required.
- (9) On the deposit of any certificate under subsection (8) of this section, the District Land Registrar shall take all necessary steps to discharge or cancel the memorials or entries made under this section in respect of all land referred to in the certificate.
- (10) As soon as practicable after construction of the pipeline is completed, the owner of the pipeline shall cause a survey to be made of the actual position of the pipeline, and also cause plans to be prepared showing the strip of land not exceeding 20 metres in width under, upon, or over which the pipeline passes.
- (11) On completion of the plans referred to in subsection (10) of this section, the owner of the pipeline shall submit them to the Minister who shall issue to that owner such pipeline easement certificates as may be necessary in the prescribed form.
- (12) Every pipeline easement certificate issued under subsection (11) of this section shall, for the purposes of this Act, be deemed to have been issued under section 70 of this Act.

[47] The PECs were then issued by the Minister under s 70 of the Act. It provides:

70 Pipeline easement certificates

- (1) If the Minister is satisfied that the holder of a pipeline authorisation, after making reasonable attempts to do so, has been unable to reach an agreement under section 69 of this Act to purchase or acquire an easement in respect of the land affected, the Minister shall, on the application of the holder, issue to the holder a pipeline easement certificate in the prescribed form under the hand of the Minister specifying, with respect to the land to which the certificate relates,—
 - (a) The land on, over, or through which the pipeline is authorised to pass:

- (b) Such matters as may be prescribed by regulations under this Act.
- (2) Every such certificate shall be accompanied by a diagram showing the actual line of the pipeline on the land to which the certificate relates.
 - (3) Every such certificate shall apply to a strip of land over, upon, or under which the pipeline is laid, not exceeding 20 metres in width:
Provided that:
 - (a) In no place shall the actual line of the pipeline be closer than 2 metres to an easement boundary as shown on any plan attached to an easement certificate:
 - (b) In the case of a pipeline laid in a road reserve, the easement certificate shall show the position of the centreline of the pipeline.
 - (4) Every such certificate shall be prepared at the cost of the holder of the authorisation and shall be authenticated in such manner as the Minister may require.
 - (5) A copy of every such certificate shall be forwarded by the holder to the owner and to the occupier of any land to which the certificate relates.
 - (6) The effect of every pipeline easement certificate shall be to give the holder of the authorisation or his authorised agent a right of entry on the land to which the certificate relates for the purpose of exercising the rights conferred on him by this Part of this Act and by his authorisation.

Pipeline easement certificates (PECs)

[48] The two relevant PECs are on virtually identical terms, except for the descriptions of the land. They were issued under s 70A of the Petroleum Act.

[49] The easement holders were, at the time of issue, the equitable owners of the pipeline, Maui Development Ltd (MDL) and the operator was Natural Gas Corporation of New Zealand Ltd. First Gas is the successor of both entities for the purposes of these proceedings.

[50] The PECs, both dated 28 March 1980, provide that the Minister of Energy certifies that the pipeline is authorised to:

... pass on, over or through the land described in the Schedule herein (in this certificate referred to as the said land) upon the following terms and conditions:

...

3. The pipeline has been placed along the line delineated on the plan annexed hereto marked ... Maui Pipeline.
4. Upon the issue of this certificate the easement holders shall have the right of entry on the said land pursuant to sub section (6) of section 70 of the Act for the purpose of exercising the rights conferred on them by the Act and any regulations made thereunder and by the pipeline authorisation.
5. For the purposes of subsection (11) of Section 70A of the Act, this certificate shall apply to the strip of land shown on the said plan and not exceeding 20 metres in width under, upon or over which the pipeline passes (in this certificate referred to as the said strip) and each of the easement holders shall have the right from time to time after the issue hereof to remove from the said strip all cultivated or natural vegetation including trees and shrubs.
6. The owner or occupier of the said land shall have the right to use it (except for such use as may be reasonably held to interfere with the enjoyment of the rights of any of the parties interested in the pipeline hereunder or under the Act or under the pipeline authorisation) but shall not erect any building, construction, or fence or plant any tree or shrub on the said strip, disturb the soil of the said strip below a depth of 0.4 metre from the surface or do, cause or permit anything to be done which would or could damage or endanger the pipeline without the consent of the operator of the pipeline being first obtained. Any such consent shall not be unreasonably withheld.
7. ...
8. Where the pipeline is below the surface of the ground, it is buried so that it will not interfere with the ordinary cultivation of the said land and in maintaining, repairing, renewing, changing or removing the pipeline the pipeline operator shall restore the surface of the said land, as nearly as possible, to its former condition or state.
9. Such of the rights, easements, or obligations hereinbefore recited or referred to which place a burden on the said land or on the owner or occupier of the said land shall be binding on him the said owner or occupier his or their successors, executors, administrators, and assigns and such of them as place a burden on any of the easement holders shall be binding on them, their successors, executors, administrators and assigns.

(Emphases added)

[51] The description of the land in the Schedule to PEC 269143 is as follows:

SCHEDULE

Description of Land	Certificate of Title	
	Vol	Folio
Passing through: MOHAKATINO PARININIHI 3D1 BLOCK	91	130
Passing through: MOHAKATINO PARININIHI 3C BLOCK.	100	107
Passing through: MOHAKATINO PARININIHI 3A & 3B BLOCKS (LAND FORMERLY CONTAINED IN C.T. 87/110)	E4	180
Passing through: PART LOT 5, DP.4866. All Taranaki Land Registry.	A3	403

[52] The description of the land in the Schedule PEC 269148 is as follows:

Description of Land	Certificate of Title	
	Vol	Folio
Passing through: PART LOT 4, DP.4866, BLOCK III, MIMI SURVEY DISTRICT.	113	136
Passing through: PART LOT 5 DP.4866, BLOCK III, MIMI SURVEY DISTRICT.	A3	403
Passing through: LOT 3, DP.4866, BLOCK III, MIMI SURVEY DISTRICT.	A3	484
Passing through: PART LOT 2, DP.4866, BLOCK III, MIMI SURVEY DISTRICT. All Taranaki Land Registry.	D4	113

[53] Attached to the PECs are drawings delineating the strip of land containing the relevant pipeline which is on the land described in the Survey Office (SO) plans, SO

11320 and SO 11042 respectively. The corridors of land over which the pipeline runs are indicated on the drawings as being 12 metres wide, six metres on each side of the pipe. The SO plans describe the land in each schedule as the "servient tenements". The PECs were registered on 21 July 1980.

[54] In the same year a written agreement dated 25 November 1980 was entered into between Mr Victor Gibbs and MDL, the pipeline owner. This recorded the offer of a grant of an easement to MDL across various pieces of land in return for MDL arranging maintenance for the access surfaces including grading twice a year plus any other work to maintain the track in its present state. That one-way track remains used by First Gas as well as the Gibbs' for access to remote parts of the farm and to the Maui pipeline.

[55] For the purposes of the 2018 emergency bypass pipeline installation an amendment to the pipeline authorisation 4410-16 (Pariroa bypass) was issued pursuant to ss 59 and 66 of the Petroleum Act. That amended the original pipeline authorisation to permit the use of the above ground bypass of the damaged section of buried pipeline at Pariroa until 30 April 2023.

[56] Section 70A of the Petroleum Act was enacted in 1974 and repealed in 1982. As it had already been repealed it was not one of the provisions preserved under the Crown Minerals Act savings provisions. A pipeline authorised under s 70A was deemed to be issued under s 70, which remains in force under the 1991 savings provisions.

[57] At the time the pipeline was constructed in 1979, s 70A provided for the proclamation process once a pipeline authorisation had been issued.¹⁷

¹⁷ See above at [46].

Rights of entry and work on the land

[58] Sections 68 and 75 also confer onto holders of authorities the rights of entry and the rights to repair and maintain the pipeline.¹⁸

[59] Section 68 of the Act provides for the “Powers of Holders” as follows:

68 Powers of holders

Notwithstanding the provisions of any other Act, regulation, bylaw, certificate of title, or other authority, any pipeline authorisation issued under this Part of this Act shall, subject to the provisions of this Part of this Act and of the authorisation, confer on the holder, while the authorisation remains in force, an absolute right–

- (a) To construct and lay pipelines on, over, or under any land referred to in the authorisation:
- (b) To construct and lay pipelines along, on, over, or under any road, railway, tramway, bridge, navigable waters, river, or stream referred to in the authorisation:
- (c) To alter, remove, repair, operate, inspect, renew, and maintain any pipeline constructed under the authority of the authorisation:
- (d) To do such other things as are necessarily incidental to the exercise of the powers and authorities of the holder under this Part of this Act.

[60] Section 75 then provides for the holder to enter land, store and deposit items, for the purpose of exercising rights as follows:

75 Entry on land for purpose of exercising rights in authorisation

- (1) For the purpose of exercising any right conferred on him by his authorisation or by this Part of this Act, the holder of the authorisation may enter upon such land as may be necessary for the exercise of any such right, with right of access to and egress from any such land with his servants, workmen, and agents, from time to time and at all times, with or without any suitable or available means of conveyance, and with all such equipment, articles, and materials as may be necessary for the carrying out of any works authorised by the authorisation or authorised by this Part of this Act to be carried out by the holder, and may also deposit and store from time to time upon any land adjoining any such works all such machinery and material of any kind as may be used in carrying out any such works.

¹⁸ These provisions were amended on a number of occasions. The relevant provisions are those which are contained in the Petroleum Amendment Act 1980 (No 2). All footnoted references to the Petroleum Act 1937 are to the Act as amended by that Amendment Act.

- (2) Entry shall not be made on any land under this section unless–
 - (a) ...
 - (b) The holder of the authorisation has in respect of the land either–
 - (i) ...
 - (ii) Obtained a pipeline easement certificate under section 70 of this Act.
- (3) Before entry under this section is made on any land to which [subsection (2) of this section does not apply | subsection 2(a) of this section applies],¹⁹ the holder shall where possible give 21 days' notice to the owner or occupier of the land, and to any local authority having the control or management of the land, of his intention to enter thereon.
- (4) Any holder of an authorisation who enters upon land for the purpose of exercising the rights conferred on him by his authorisation or this Part of this Act, without complying with the terms of subsection (2) or subsection (3) of this section, commits an offence, and shall be liable on summary conviction to a fine not exceeding \$1,000 for each day or part of a day the offence continues.

[61] Compensation provisions are separate from the exercise of entry to the land. Section 77 of the Act provides:

77 Compensation

- (1) Subject to section 74 (7) of this Act, every person having any right, title, estate, or interest in any land or property injuriously affected by the exercise from time to time of any powers conferred by this Part of this Act or by any authorisation shall be entitled to full compensation for all loss, injury, or damage suffered by him.
- (2) The provisions of subsections (2), (3), and (4) of section 39 of this Act shall, as far as they are applicable and with the necessary modifications, apply to claims for compensation under this section.
- (3) This section shall apply to claims on behalf of the Crown, as well as to claims by or on behalf of other persons.
- (4) Notwithstanding any enactment or rule of law, the exercise of any power conferred on the holder of an authorisation shall not be curtailed, suspended, or delayed by reason of the fact that any claim for compensation under this section has been made but not determined.

¹⁹ The reference to subs (2)(a) was inserted by s 19 of the Petroleum Amendment Act 1982 (No 153) to replace the earlier reference to subs (2).

[62] Rights to compensation, to make objections and to appeal continue to apply as if the Act had not been repealed.²⁰

[63] In addition to the rights under the Petroleum Act, under the Gas Act 1992, First Gas as the owner of existing fittings,²¹ being the Maui pipeline, is entitled to “enter upon land for the purpose of gaining access to those fittings and may perform any Act or operation necessary for the purpose of... inspecting, maintaining, or operating the fittings”.²² This provision has not been the focus of this application, but is mentioned for completeness.

[64] Ms Grey, for the defendants, submits that s 70A, despite its repeal, assists in the interpretation of the authorisation, the PECs, and the entry and repair rights that the legislation provides for First Gas. She says that the only land to which First Gas has any right of entry or may use under the Act for the purposes of and incidental to the repair of the buckle, including storage of machinery and equipment and deposit of spoil, is limited to the strip of land upon which the pipeline lies. This is because the rights of First Gas extend only to the strip of land “shown on the said plan not exceeding 20 metres in width under, upon or over which the pipeline passes” as stated in s 70A.²³

[65] Ms Grey points to s 70(6) of the Act, which says “the effect of every pipeline easement certificate shall be to give the owner of a pipeline a right of entry on the land to which the certificate relates for the purpose of exercising the rights conferred on him by this Part of the Act and by his authorisation”. She then points to [5] of the easement certificate which says “... this certificate shall apply to the strip of land shown on the said plan and not exceeding 20 metres in width...”.

²⁰ Crown Minerals Act 1991, sch 1, cl 12(1)(f). See cls 13–15 for existing privileges the ministerial oversight and administration of the functions under the Act, including in relation to health and safety under the Employment Act 1992 and WorkSafe New Zealand Act 2013 and Health and Safety at Work Act 2015 are to be exercised by the appropriate authorities and in the case of the Resource Management Act 1991, the appropriate consent authority or enforcement officer.

²¹ Section 2 (interpretation) of the Gas Act 1992 provides for the definition of “fittings”: “everything used, or designed or intended for use, in or in connection with the supply, distribution, compression, or use of gas”.

²² Gas Act 1992, s 24(1)(a).

²³ See above at [46].

[66] In this case the width of the strip of land delineated on the SO diagrams to the PECs, and on which the pipeline sits, is 12 metres.

[67] Ms Grey says that s 70A provided a step by step process for creating and defining the land intended to be subject to a PEC. Section 70A(10) permitted an easement certificate for a strip of land no more than 20 metres wide. Once the pipeline has been built the SO diagram delineates the strip on the land which can be used for the exercise of all rights permitted by the Petroleum Act. The defendants argue that First Gas cannot then “reclaim rights under the authorisation” to use the wider area of land described by Block and Lot in the Schedule. It is only the strip of land, not the entire blocks of land described, which are subject to the rights of entry and necessarily incidental use for repair purposes. This, Ms Grey says, is reinforced by the words “passing through” preceding the full legal description of the land in the schedule to the PECs.²⁴

[68] In support of this argument Ms Grey says that compensation for the land taking under the easement was assessed at the time based only on the area of land subject to the easement.

[69] In summary, Ms Grey’s submission is that the rights conferred by the Act, by ss 68, 70 and 75, following the period of construction, including the rights of entry for the purposes of exercising rights under the authorisation, can only be exercised within the 12 metre corridor or “strip of land”.

Interpretation

[70] The authorisation refers to the land in the PECs being the land over which the pipeline passes.²⁵ In my view the legislation and the PECs allow the pipeline repairs and any such work authorised under the Petroleum Act on land not limited to the pipeline corridor. My reasons follow.

[71] The PECs differentiate between “*the said land*” (the whole of the land described) and the “*strip of land*” (being the easement corridor). For instance, the

²⁴ See above at [51]–[52].

²⁵ See above at [46] and [50].

PECs state that the strip of land shall be referred to as the “*said strip*”.²⁶ Clause 4 provides the easement holder with “... the right of entry on the *said land* pursuant to subs 6 of s 70 of the Act for the purpose of exercising the rights conferred on them by the Act and any regulations made thereunder and by the pipeline authorisation”. Clause 6 of the PEC prevents the erection by the landowners, without the holders’ consent, of buildings on the “*strip*”. Clause 5 gives the easement holder the right from time to time to remove vegetation from the *said strip*. Those prohibitions do not apply to the “*said land*” in its entirety.

[72] Section 70 also differentiates between *the land* “on, over, or through which the pipeline is authorised to pass”²⁷ and the “*strip of land* over, upon, or under which the pipeline is laid ...”.²⁸

[73] The right of entry is described as the whole of the land described, not just the strip as long as the entry is for the purpose of exercising the rights under the Act as follows:²⁹

- (6) the effect of every pipeline easement shall be to give the holder of the authorisation or his authorised agent a right of *entry on the land to which the certificate relates* for the purpose of exercising the rights conferred on him by this Part of the Act and by his authorisation.

[74] Sections 68 and 75 of the Act provide rights to repair and do things necessarily incidental³⁰ and for that purpose to enter, access and egress, store and deposit on “such land as may be necessary” to exercise those rights.³¹

[75] In particular, s 68 provides:

... while the authorisation remains in force, **an absolute right** –

- (a) To construct and lay pipelines on, over, or under any land referred to in the authorisation:

²⁶ At cl 5 of the Petroleum Easement Certificate: see above at [50].

²⁷ Petroleum Act 1937, s 70(1)(a).

²⁸ Section 70(6).

²⁹ Section 70.

³⁰ Section 68

³¹ Section 75(1).

- (b) To construct and lay pipelines along, on, over, or under any road, railway, tramway, bridge, navigable waters, river, or stream referred to in the authorisation:
- (c) *To alter, remove, repair, operate, inspect, renew, and maintain any pipeline constructed under the authority of the authorisation:*
- (d) To do such other things as *are necessarily incidental to the exercise of the powers and authorities* of the holder under this Part of this Act.

(Emphases added)

[76] Then s 75 empowers the holder of the authorisation to:³²

... enter upon such land as *may be necessary* for the exercise of any such right, with right of access to and egress from *any such land* with his servants, workmen, and agents, from time to time and at all times, with or without any suitable or available means of conveyance, and with all such equipment, articles and materials as may be necessary for the carrying out of any works authorised by ... by this Part of the Act to be carried out by the holder, and may also deposit and store from time to time upon any land adjoining any such works all such machinery and material of any kind as may be used in carrying out any such works.

(Emphasis added)

[77] As is apparent, the holder may use the land as “may be necessary”, not limited to the strip of land, for entry and storage to carry out pipeline repairs, as well as for “such other things as are necessarily incidental” to those works.³³

[78] Those rights of the holders to repair are notwithstanding any other “Act, regulation, bylaw, certificate of title or other authority” and confer on the holder “an absolute right” to carry out the works and do things necessarily incidental to that.³⁴

[79] The exercise by the holder of that “absolute right”³⁵ is not unlimited. It must be used for the purposes of the relevant repairs or works and that which is “necessarily incidental” to the relevant works.³⁶ Entry “is permitted as may be necessary for the exercise of any such right” as well as for the requisite storage rights.³⁷

³² Set out in full above at [60].

³³ Petroleum Act, s 68(c) and (d).

³⁴ Section 68.

³⁵ Section 68.

³⁶ Section 68(d).

³⁷ Section 75.

[80] Compensation is payable to the owner of any land or property “injuriously affected by the exercise from time to time of any powers conferred” by the Act.³⁸ The owner is entitled to full compensation for all “loss, injury, or damage suffered by him”.³⁹ If there is a failure to agree on compensation, the machinery under the Public Works Act applies: s 77(2) of the Act refers to s 39(2), (3) and (4) of the Act, which in turn referred to the Public Works Act. However, the compensation agreement or determination is a separate matter and cannot interfere with or delay the exercise of the power by the holder to enter the land and carry out the works required.⁴⁰

[81] The actual words of the legislation are the most important single factor in statutory interpretation. The natural and ordinary meaning of the words are taken from their context and should take into account their purpose.⁴¹

[82] The ordinary meaning of the words in the Petroleum Act lead me to the conclusion that ss 68 and 75 give First Gas the rights to go beyond the strip of land delineated on the PECs to enable it, subject to the provisions of the PEC and the legislation. This allows First Gas to access the land described in the PECs for repairs and for necessarily incidental purposes and to use land outside the strip but adjoining the works for the deposit and storage of machinery and material to be used in the carrying out of the repair works.

[83] Section 70A, upon which the Gibbs’ base their interpretation, was intended to ensure the line of the pipeline was properly delineated. It does not purport to limit the access and use rights under ss 68 and 75 to the delineated strip marked for the pipeline corridor. This interpretation is consistent with the reality that it would likely be impossible for a pipeline holder in most cases to carry out essential repairs to and inspection work on the pipeline without access to the land described in the PEC beyond the pipeline strip. The purpose of that part of the Act is to provide for the construction, repair and maintenance of fuel pipelines. The right to use land outside the strip where necessary to enable repairs is consistent with that purpose.

³⁸ Petroleum Act 1937, s 77.

³⁹ Section 77(1).

⁴⁰ Section 68(d).

⁴¹ Ross Carter *Burrows and Carter Statute Law in New Zealand* (6th ed, LexisNexis, Wellington, 2021) at 288.

Conclusion on issue (a): use of land or strip of land?

[84] I conclude as a matter of interpretation that the authorisation, the PECs and the relevant provisions of the Act provide statutory rights of entry, access and egress for repair and other listed works on the pipeline and permit the undertaking of things necessarily incidental on the land described by Block, Lot and Certificates of Title in the Schedules to the PECs.

[85] There is a distinction drawn between the use of the word “land” in general as opposed to the 12 metre “strip” (six metres on either side of the pipeline) shown in the survey office plan diagram in the PECs.

[86] First Gas, as holder of the authorisation and the PECs, has the rights conferred under ss 68, 70 and 75 of the Petroleum Act in relation to the land described in the Schedules to the PECs. Beyond the limits discussed above, the right to repair and do things necessarily incidental are absolute rights.⁴² The landowner cannot impose conditions on First Gas limiting its rights under those provisions. The holder may agree to conditions, however, at its highest that is a matter of contract which may bind First Gas personally. Whether such a contract could override the statutory rights is not for determination here in view of my findings below.

[87] In this case an express provision in the Crown Minerals Act refers to the application of the RMA. That requires First Gas to comply with RMA requirements if they are triggered. However, while First Gas must comply with those and other relevant legislation such as that relating to health and safety, and archaeological finds; it does not affect First Gas’ rights to undertake the authorised works and use the land where necessarily incidental to the works. Its absolute rights relating to repairs and work on the pipeline have not been overridden by any other Act, regulation, bylaw, or authority.

⁴² As discussed above at [79].

Issue (b): agreement or arrangements binding First Gas to a collaborative process or to other conditions of entry

[88] This relates to whether there was an agreement or other arrangement requiring First Gas to adhere to a collaborative process with the defendants in relation to the repairs or other works on, or related to, the pipeline.

[89] The present pipeline was constructed in the 1970s when Mr Russell Gibbs and Marie Gibbs' father, Mr Victor Gibbs, was running the farm. He dealt with the then owner of the pipeline, MDL and the operator, Natural Gas Corporation.

[90] In 2016 new shareholders bought the shares in Vector Gas which had earlier become the operator succeeding Natural Gas Corporation of New Zealand. First Gas also acquired ownership of the pipeline from MDL shortly after it acquired the shares in Vector Gas in about 2016. Vector Gas was renamed First Gas. With the changes came new management and new governance.

[91] Mr Gibbs argues that there was a collaborative arrangement with the Gibbs' which was a condition on access to the farmland for all the work First Gas (and its predecessors) did on the pipeline, including the present proposed entry for the repair of the Pairoa buckle and the decommissioning of the bypass pipeline (Pairoa Project Phase 2).

[92] In support of such a condition, Mr Gibbs referred to unspecified emails as evidencing the arrangements. However, there were only three main arrangements that he says were documented:

- (a) The 2009 court decision in *Gibbs v Vector Gas Ltd*:⁴³ Mr Gibbs also says this is binding on the parties and determined rights and conditions which are applicable to access and repairs carried out by Vector Gas, and now First Gas on both the Kapuni and Maui pipelines.

⁴³ *Gibbs v Vector Gas Ltd*, above n 6.

- (b) The White Cliffs Realignment Project Joint Project Governance Group (JPGG):⁴⁴ this related to a group convened to consider investigations by Vector Gas concerning the Maui pipeline in the vicinity of Maungapukatea (also known as Locked Gate), including inspection and proposed realignment or repairs. The group came into being following the 2009 decision.
- (c) The arrangements put in place during the Pariroa Phase 1 emergency bypass works with First Gas: these were largely undertaken in 2018/2019. Correspondence with the Chief Executive of First Gas, Mr Goodeve, following the completion of Phase 1, is also relied upon by the Gibbs’.

[93] White Cliffs is a general area of the pipeline work to which the 2009 court decision and the JPGG arrangements referred. Maungapukatea was particular area to which that decision and the JPGG arrangements applied. The Pariroa works are also in the vicinity of White Cliffs but are referred to as the Pariroa works. They are quite separate from the Maungapukatea project. The latter was a realignment project, which has not been implemented.

[94] An earlier agreement to carry out other works was entered into between Vector Gas and the Gibbs’ in about 2006. The Judge in the 2009 *Gibbs v Vector* judgment refers to part of the subject area of that agreement as Te Rua Taniwha. That was also in the White Cliffs area. That project has nothing to do with either the Maungapukatea works nor the present Pariroa Project works.

[95] The 2009 court decision related to the Kapuni pipeline and the Maungapukatea works. In that decision, the Judge pointed out that the earlier 2006 agreement (Te Rua Taniwha) had no ongoing effect, nor did it bind the parties in relation to the disputes before the Court in 2009. The Judge also pointed out that the 2006 agreement contained a dispute resolution clause and it was under that provision that any disputes concerning the earlier Te Rua Taniwha agreement should be determined.

⁴⁴ This was created in October 2010. The group comprised Mark Webb (Vector Gas), David Innes (Vector Gas), Russell Gibbs, Haumoana White (Poutama), and Derek Coombe (OSD Pipelines).

[96] I agree with the Judge’s conclusion about the relevance of the 2006 agreement. It is spent. Therefore, I limit my examination here to correspondence, documents and events dating from and including the 2009 court decision, which I now consider.

[97] In *Gibbs v Vector Gas Ltd*,⁴⁵ Hugh Williams J dismissed an appeal from the District Court against a determination that Vector Gas (now First Gas) had taken “all reasonable steps to negotiate an agreement for entry” onto the Gibbs’ land. The entry was for the purpose of undertaking investigations concerning the Kapuni pipeline at Maungapukatea with a view to realigning that part of the pipeline as coastal erosion was threatening its stability. The Kapuni pipeline runs in the vicinity of the Maui pipeline, and is operated by First Gas but, for the purposes of these proceedings, is entirely separate.

[98] That case was an appeal for a District Court determination under s 111A of the Public Works Act. The application had sought an order permitting Vector Gas to enter the property for the purposes of undertaking the requisite surveys and inspections because First Gas did not have an easement or any other rights it could rely upon for that purpose.⁴⁶

[99] The parties had agreed that the erosion on the coastline threatened (and continues to threaten) the continuing operation and viability of both pipelines, although the rate at which the threat would magnify was not known.⁴⁷ The Judge noted, as a preliminary comment:⁴⁸

[5] It therefore follows that the appeal concerns what are, for the present, opposing parties, being those who know the land best, and those who know the technical problems relating to any realignment of the pipelines best. The appeal also relates to persons or entities who are required to have an ongoing relationship well into the future.

[100] At first instance, the District Court had not imposed conditions on the access by Vector Gas when the Judge granted the access application at first instance. This was the ground of the appeal. The reasons for that failure were not clear in the face of

⁴⁵ *Gibbs v Vector Gas Ltd*, above n 6.

⁴⁶ At [6].

⁴⁷ At [4].

⁴⁸ At [5].

a draft order submitted to the District Court after delivery of the judgment, which had included conditions.⁴⁹

[101] Hugh Williams J found that the District Court Judge had correctly concluded that the Gibbs' family were raising irrelevant matters and so impeding the negotiations. Therefore "an 'impasse' had been reached and no amount of time or negotiation between the parties would secure resolution or agreement".⁵⁰

[102] While noting the Judge failed to include conditions when he should have, the High Court concluded that the appeal should be dismissed. His Honour nevertheless allowed the parties to go away to draft some agreed conditions. The parties were unable to agree on conditions; therefore, his Honour made a determination on the conditions incorporating those which had been agreed.⁵¹ In the minute in which he attached the conditions, Hugh Williams J noted:

[8] The Court accepted that the surveys and investigations covered by the present s 111A application *related only to the Kapuni natural gas pipeline. That did not cover any proposed realignment of the Maui natural gas pipeline.* It follows that, should Vector Gas wish to embark on a realignment project for the Maui natural gas pipeline, it will need to undertake the process undertaken to date in relation to the Locked Gate Kapuni natural gas pipeline project including if that matter cannot be agreed upon, a further application to the District Court under s 111A.

[9] That is not, however, to say that if Vector Gas proposes a realignment of the Maui natural gas pipeline it is debarred from utilizing information gained by it as a result of its survey and inspection relating to the Kapuni natural gas pipeline pursuant to the orders of the District Court and this Court. That information will be part of the body of information then held by Vector Gas which may be relevant to any Maui natural gas pipeline realignment project. That information would be utilizable by Vector Gas in relation to that project, much the same as the information and data it holds on engineering and other matters relevant to any Maui natural gas pipeline realignment project.

(Emphasis added)

[103] The orders made by Hugh Williams J granted the applicant the right to access the Gibbs' land to undertake the surveys in relation to the Maungapukatea

⁴⁹ *Gibbs v Vector Gas Ltd*, above n 6, at [13].

⁵⁰ At [11]; referring to the District Court decision.

⁵¹ *Gibbs v Vector Gas Ltd* HC Ngāmotu | New Plymouth CIV-2008-043-545, 5 June 2009, at [8]–[9].

(Locked Gate) alignment project for the Kapuni pipeline. The order allowed the Gibbs Family Trust, or its nominee, and a representative of local iwi to be present for the survey and inspection visits and to participate in “any discussions with the engineers during and concerning the survey and inspection visits”. The rate of remuneration for their participation in the survey and inspection visits was to be at a rate of \$100 per hour plus GST.⁵² The order also set out the following conditions:⁵³

6. In the event that k[ō]iwi, taonga, archaeological sites or any other waahi tapu are uncovered during the surveys, or in the event that the respondents have reason to believe that such will be uncovered or interfered with by any bore samples or any activity under this order, the Applicant will act in accordance with its obligations under the heritage protocol (attached as **Annexure 1**) which was used by the parties for works undertaken on another part of the Respondents' property. In the event that the heritage protocol does not provide for an incident arising under this clause, the procedure set out in part 3(a) of the heritage protocol concerning koiwi shall apply as far as possible.
7. The Applicant shall invite the Respondents to a briefing session at which the Respondents can convey the significance of the land, and can identify areas of particular concern or sensitivity, including any waahi tapu sites.
- ...
10. All surveys, inspections, investigations and any other work undertaken pursuant to this order shall be for the *realignment* of the Kapuni pipeline at Locked Gate only.

(Emphasis added)

[104] Mr Russell Gibbs said the directions given in *Gibbs v Vector Gas* applied to all the pipeline projects, including the present. He emphasised the comments by Hugh Williams J that the opposing parties “being those who know the land best, and those who know the technical problems relating to any realignment of the pipelines best. ... are required to have an ongoing relationship well into the future”.

[105] Mr Gibbs said that the Judge had given each of the parties a wakeup call or a “serve”, meaning they were both being inflexible and needed to be told what to do by the Court.

⁵² Sealed Order of the Court 2009, above n 6, at [5].

⁵³ At [6], [7] and [10].

[106] As a result of the judgment a collaborative relationship was proposed in the form of the JPGG. This was set up in October 2010 and included representatives of Vector Gas and its engineers, as well as Gibbs' representatives.

[107] While Hugh Williams J made some useful comments in the 2009 decision, that decision is of limited relevance. In particular, it does not bind First Gas to a process to be undertaken for all works by Vector Gas/First Gas. It does not apply to Phase 2 of the Pariroa Project. In summary, this is because of the differences as follows:

- (a) *Different pipelines*: in issue was the Kapuni pipeline not the Maui pipeline.
- (b) *Different issues*: the rights under the pipeline authorisation and PECs are in issue in the present case, as well as First Gas' rights and powers under the Petroleum Act. The 2009 decision related to an access order to the Gibbs' land under s 111A of the Public Works Act.
- (c) *Different works*: Vector Gas, in 2009, was not seeking access to carry out repairs or maintenance to the Kapuni pipeline, but to carry out a survey so the pipeline could be moved to a new location, outside the existing easement.
- (d) *Specific exclusion*: the conditions imposed in the 2009 case expressly do not extend beyond the matters dealt with in that proceeding.⁵⁴

[108] The realignment of the pipeline for which the surveys were undertaken under the 2009 court orders never eventuated. The excavation of the relevant section of pipeline undertaken for that project remains open and unfilled.

[109] The Gibbs' point to the JPGG as the process of collaboration which must be complied with for all works projects. First Gas says it was not a model or binding method for collaboration but merely dealt with the project then at hand, nor was it a satisfactory collaboration from Vector Gas' point of view.

⁵⁴ See above at [103].

[110] The objective and parties' responsibilities set out in that realignment project documentation are as follows:

Objective

The Joint Project Governance Group (JPGG) are responsible to communicate and govern the project process and delivery with respect to the environment and cultural impacts to achieve a successful project.

Responsibilities

- Working as a collective and respecting others beliefs, values and requirements;
- Resolve collectively escalated Project, Cultural, RMA, and Property Right issues and risks;
- Ensure the impact on the land is reinstated as is or if not better than before;
- Ensure on a day to day basis that the Project Objectives are brought alive;
- Understand the Vector/MDL corporate requirements;
- Reviewing and approval of key project process and documentation; and
- Provide support to the Project Manager;

[111] A whakataukī Māori (Māori proverb) was set out below the objectives and responsibilities as follows:⁵⁵

Nau tou rou rou Naku tou rou rou ka ora te iwi

Together We will be Successful

[112] The JPGG's documentation refers to the project concerned as the "coastal erosion at the location known as Maungapukatea...".

[113] There is nothing to suggest that the objectives, responsibilities or process detail applies to anything other than the Maungapukatea project. In any event, the objectives and responsibilities are very general. Mr Gibbs said it was the proverb which was the important part of the collaborative requirements.

[114] Correspondence produced relating to the JPGG Maungapukatea project indicates that Vector Gas was not happy with the extent of the involvement in the

⁵⁵ Also expressed as *nāu te rourou nāku te rourou ka ora ai te iwi*.

project by the Gibbs'. For instance, in a letter from Vector Gas to Russell and Parani Gibbs, dated 1 October 2012, Vector Gas says:

There is clearly a fundamental difference of opinion as to how the project should move forward, and this letter has attempted to explain why neither Vector nor MDL are prepared (and nor should they be expected) to adopt the approach you and Mr White are advocating (ie you and Mr White being integrally involved in the design and construction works themselves).

[115] In that letter Vector Gas said that it had intended to fill in the excavations but that it had been requested to leave the site and had done so. It also noted that an agreement had been drafted and sent to the Gibbs', entitled "Pipeline Realignment Project Works and Access Agreement", which included a memorandum on compensation. Vector Gas had received no response.

[116] I conclude that the White Cliffs Pipeline Realignment Project arrangements including the governance group related only to that realignment project. There is nothing to suggest the arrangements are applicable to the present Pariroa project. The Maungapukatea project was never completed and was abandoned.

[117] In conclusion, there is no obligation on First Gas to follow a collaborative process nor binding agreement to such effect as a result of the 2009 District Court decision, or the JPGG arrangements. Neither imposed binding conditions or govern First Gas' entry and repairs in relation to the present or future repair projects authorised under the Petroleum Act.

The Pariroa Project Phase 1

[118] The defendants also say the arrangements made for the emergency repairs in Phase 1 bind First Gas for Phase 2 of the project.

[119] Mr Stretton, First Gas' project manager and a qualified engineer who was involved in the Pariroa Project Phase 1 also leads Phase 2. He said that buried gas pipelines are susceptible to accumulated strain, bending and possible rupture from soil movement and other geo hazards, which in turn have the potential to lead to loss of containment with associated health and safety, loss of supply, environmental, reputational and cost impacts. He noted the common geo hazards that affect pipelines

included landslides/slope instability, settlement, erosion (stream and/or coastal) and fault movement.

[120] The buckle location is in an area of high level of geotechnical hazard risk. The Pariroa area is subject to landslides and coastal erosion risks. The scheduled frequency of in-line inspection increased in 2012 from 10-yearly to five-yearly.

[121] The stretch of pipeline where the Pariroa buckle occurred required constant monitoring and surveillance. This was undertaken by helicopter and in-line inspections at least every five years and line walks as required. The inspections had been undertaken with increased regularity and intensity since the break in the Maui pipeline in 2011. That had shut down the pipeline for the first time and had had significant consequences. An inspection in the Pariroa area was carried out in early 2018 and the next is due in early 2023.

[122] In-line inspection involves the insertion of a sophisticated sensor package into the pipeline in order to internally inspect the pipeline's structural integrity without interrupting the gas flow. It was during the in-line inspection in 2018 that the present buckle was identified in a five-metre section of the Maui pipeline. That defect was most likely caused by a nearby landslip which in turn subjected the pipeline to forces exceeding its designed capacity. The buckle presented a severe risk to the pipeline integrity. It was considered close to failure. That was when an extraordinary repair bypass project (Pariroa Project Phase 1) was executed through 2018. The 800-metre bypass was built around the existing pipeline to ensure uninterrupted gas supply. This involved the first planned shutdown of the Maui pipeline for approximately 20 years.

[123] Mr Stretton said it was unfortunate that before any meaningful negotiations with the Gibbs' could take place following the purchase by First Gas of Vector Gas in 2016, and the acquisition of the Maui pipeline from MDL, the buckle occurred.

[124] Mr Stretton acknowledged the co-operation of the Gibbs family, particularly Russell and Marie Gibbs, who were on the site for long hours during Phase 1 of the Pariroa project. However, he said it had been difficult working with the Gibbs family because of their intense involvement and ongoing requests. He said the bypass was

successfully completed only because First Gas had provided the Gibbs' with everything they requested. This included paying invoices for attendances, which had not been agreed upon nor authorised and undertaking project work that was not best practice but done at the behest of Russell Gibbs. Mr Stretton said that First Gas had to do whatever was requested rather than risk the Gibbs' banning First Gas' access to the site and jeopardising the repair/bypass. This was a constant threat hanging over First Gas.

[125] Mr Stretton said over the past two and a half years, First Gas had attempted to negotiate and agree on an arrangement with the Gibbs whānau for the Pariroa project. It had proposed access agreements, put forward memoranda of understanding and accidental discovery protocols (relating to artefacts discovered). However, he said the trustees had been unwilling to commit to any formal documented agreement or process.

[126] The bypass pipeline was not within the pipeline corridor shown on the PECs. So, First Gas could not rely on its existing easement rights. Therefore, to ensure timely repair it agreed to terms requested by the Gibbs to enable the construction of the pipeline along a different strip of land and for access to, and use of, that land. In the circumstances Mr Stretton said First Gas could not accommodate the inevitable delays in attempting to negotiate agreements with the Gibbs or go to court.

[127] The urgency of the bypass pipeline works and the criticality of the pipeline to the New Zealand economy necessitated rapid mobilisation of the bypass works and meant that First Gas just met the Gibbs' demands.

[128] Mr Stretton said there was no formal agreement that he was aware of which bound First Gas to any collaborative process nor imposed conditions on its access and repair rights. In fact, he said one of the difficulties was the lack of clarity as to exactly what the Gibbs' conditions were. Mr Stretton said First Gas elected to:

- (a) Pay all of the time claimed by the Gibbs' for their involvement in the bypass pipeline works. This was unusual and the scale of time

committed to the project by the Gibbs' representatives was not typical. The agreement on the rate per hour remained in dispute.

- (b) Pay compensation for injurious affection to the land as a result of the above-ground bypass pipeline. Mr Stretton said First Gas pays a fair and reasonable compensation for property rights using valuations by independent registered valuers and based on the principles of Part 5 on "Compensation" in the Public Works Act. The Gibbs' would not sign an agreement. He said despite that the money has been received and accepted by the Gibbs'.
- (c) Pay compensation for disruption to the wider farming operation as a result of the construction works for the entire duration of the bypass operation rather than just the actual period of construction.

[129] Mr Stretton said First Gas would not agree to a similar level of involvement by the Gibbs' nor compensation, for every piece of work carried out by it on the Gibbs' land. He considered the parties were at an impasse and the expectations and the demands of the trustees had become unreasonable and unworkable. That is why First Gas has resorted to seeking court orders to enable it first, to survey and inspect the pipeline and secondly, to repair it and complete Pariroa Phase 2.

[130] Mr Gibbs says there were outstanding invoices claimed by the Gibbs' dating back to Vector Gas' time before First Gas' new board and management took over in 2016. He said it is apparent from the correspondence that Vector and MDL had become frustrated with the landowners' financial expectations. The failure to pay had resulted in the Gibbs' cutting off access to the work on the White Cliffs Realignment Project (Maungapukatea). The parties were unable to resolve the dispute concerning the landowners' invoices.⁵⁶ The excavation remained unfilled despite First Gas' willingness to fill it.

[131] Mr Gibbs says there are reasons for leaving the excavation open. He says every time there is an excavation, the land is damaged. Therefore, it was wise to leave

⁵⁶ The excavation was observed during a site view on 27 September 2021.

things as they are to decide how to progress the Locked Gate project, which will likely need revisiting at some stage.

[132] Mr Stretton said his experience had been that when negotiating with Mr Gibbs unless the original demands of Mr Gibbs were met there would be no agreement. Mr Stretton said this was not a collaborative approach. He also said on multiple occasions invoices had been sent from the Gibbs' and associates (sometimes for sums of hundreds of thousands of dollars) despite the fact there had been no agreement that such amounts would be paid and there was no justification for the Gibbs' involvement, nor for the rates claimed.

[133] Mr Stretton said First Gas sought to build a positive working relationship with the Gibbs', but the demands made on First Gas had become unreasonable and impractical, resulting in ongoing delays, costs and increased risks. Mr Stretton also said that the trustees, in particular Mr Russell Gibbs, had "failed or refused to clearly articulate what those conditions are or to enter any agreement on how those conditions are to be achieved are implemented".

[134] Mr Stretton also noted that the defendants considered First Gas' easement rights were conditional on a range of other statutory, regulatory, and legal compliance obligations, including the Public Works Act, Health and Safety at Work Act, RMA and Property Law Act 2007. First Gas does not dispute that it has other compliance obligations under those and other pieces of legislation. The declaration that First Gas seeks, Mr Stretton says, will not affect First Gas' compliance with its statutory or other obligations.⁵⁷

[135] Mr Tokatumoana "Toka" Walden also gave evidence for First Gas. He has been the senior stakeholder engagement advisor for First Gas for some two years. Mr Walden has had extensive involvement with stakeholder management on various projects. Before his employment with First Gas in March 2019 he had been involved in leading and working on iwi treaty settlements and similar projects. He had worked for iwi for 21 years as well as for various other agencies, largely in stakeholder

⁵⁷ Crown Minerals Act 1991, sch 1. See above n 20, referencing cls 13–15 for existing privileges the ministerial oversight and administration of the functions under the Act.

management. Mr Walden was the Chair of Taranaki iwi and led it through to a treaty settlement in 2016. The Taranaki iwi did not include Poutama or Ngāti Tama who are both interested in the present dispute.

[136] A remedial options report on the Pairoa Project, dated March 2019, based on the initial geotechnical investigations had been provided to the Gibbs'. It was updated in May 2019 following consultation and a review with stakeholders including the Gibbs'.

[137] A meeting between the parties was held in June 2019 to which Mr Walden referred in an email to Russell and Parani Gibbs as "boding well for resetting our relationship moving forward". Mr Walden's notes refer to the discussion raising the fees being paid to the Gibbs'/Poutama for cultural monitoring and notes a disagreement on the hourly rate. First Gas agreed to paying a rate higher than it would usually pay for cultural monitoring and offered an hourly rate for if there was to be technical expertise which would add to the success of the project. At the meeting land valuation documents were also discussed, presumably in relation to compensation proposals and what the compensation might cover.

[138] In an email to the Gibbs' dated 21 May 2020, Mr Walden said that First Gas had been reviewing all their internal processes to ensure landowners, iwi and key stakeholders across the country were consistently treated "fair and reasonably". Mr Walden sought a face-to-face meeting with Gibbs' and Poutama representatives. That email also mentioned there were outstanding invoices and that First Gas would make no payment until both parties "sign off an agreement". Mr Walden says that the Gibbs' had never indicated the points of disagreement in the proposed agreement. He suggested an independent arbitrator be engaged to reach a conclusion. First Gas also invited the Gibbs' to a conference call to discuss the invoices and the valuation report.

[139] In June 2020, Mr Walden responded to an email from Mr Russell Gibbs setting a face-to-face meeting for 25 June 2020. On 14 July 2020, in feedback following that meeting, Mr Walden emailed Russell and Parani Gibbs, noting that First Gas was being "caught up in the iwi/hapū debate over who holds mana whenua rights". He mentioned that it was not for First Gas to recognise or give status to any group who

holds mana whenua or “who is an Iwi or not an Iwi/hapū”. Mr Walden noted First Gas would consult with all groups and record the nature of the engagement. In the event that an archaeological authority application or a resource consent was needed it would take advice and direction from the “respective agencies.” Mr Walden said that meant it would seek landowner, iwi and other stakeholder input into the process. Reference is made to the valuation and to seeking a signed agreement on that respect as well as to outstanding invoices sent to First Gas by the Gibbs’. Mr Walden said that in relation to routine work, such as monitoring, First Gas had access rights to undertake the work and would not pay compensation to the owner during routine operations. If the landowner accompanied the First Gas personnel doing the routine work, they would do so at their own cost.

[140] Mr Walden, in that email, made it clear that the Pariroa Project Phase 1 had caused First Gas internal concerns about the level of participation and involvement that Mr Gibbs had with the project. Mr Walden suggested that to “alleviate any misunderstanding about how we work together” a memorandum of understanding should be entered.

[141] Mr Walden suggested that the memorandum would outline the nature and scope of the Gibbs’/First Gas relationship, including the participation of iwi and other stakeholders, and compensation issues. Mr Walden said that for the compensation to be paid to “landowners and iwi/hapū”, First Gas required information and evidence of the hours and days worked, a brief description of the work, and the site manager’s sign-off that the work was required. Mr Walden suggested a process for this so that First Gas did not have to pay retrospectively, so preventing outstanding invoices.

[142] Mr Walden was pressed in cross-examination about First Gas wanting a change in the relationship and his use of the word “reset”. He used the word in a document entitled “The White Cliffs Management Strategy”, dated March 2020. The document acknowledged that the landowners and other stakeholders had allowed First Gas access to the land and provided relevant approvals to complete works. It said:

It is considered that the landowner/First Gas relationship be “re-set” and the expectations of both parties clearly understood. ...

[143] The Gibbs' complained they had no input into this document and had only seen it when discovered in these proceedings.

[144] Mr Walden in evidence said that First Gas was not happy with the relationship during Pariroa Phase 1. He said for instance there was disagreement about the fees charged by the Gibbs' family. First Gas was concerned about the time involved and stressful nature of communicating with the Gibbs' for that project.

[145] Mr Walden had reviewed the arrangements for the Pariroa Project Phase 1. He said he was required to review the First Gas internal policies and was seeking to ensure that landowners, iwi and key stakeholders across the country were dealt with consistently, fairly and reasonably by First Gas.

[146] Mr Walden was the primary author of another paper prepared for First Gas dated September 2020 entitled "Pariroa Phase 2 and 400 – Line Tie-Ins Stakeholder Management Plan 2022".

[147] The paper was written in consultation with various other managers, including Mr Stretton.⁵⁸ The Stakeholder Engagement Plan records that the Plan was "proprietary to First Gas Limited". It was for distribution only to employees. In summary, it provided an overview of the "background, objectives and scope of the Pariroa Phase 2 and Tie-In Works". The document said, "it explains the framework for addressing and identifying project stakeholders and provides more in-depth information in relation to the affected landowners and stakeholders".

[148] The Engagement Plan emphasised the importance of the project. It said:

The Pariroa Phase 2 and the 400-Line Tie Ins are projects that First Gas will be undertaking on behalf of all New Zealanders who rely on a consistent gas supply as commercial and residential users. The economic impact if these projects are delayed, derailed and or not completed can have huge ramifications and effects not only on First Gas but on all users of gas and the whole nation. The 2011 shutdown that was undertaken by First [G]as at Pukearuhe cost in the vicinity of \$250 to \$300 million for 4 days. The

⁵⁸ The engagement plan was dated September 2020. The revision version was recorded as revision 2.7 dated 23 September 2019. It is recorded as produced by Mr Walden and to be approved by Anthony Joines. Mr Joines authored the more general First Gas guideline entitled "External Stakeholder Engagement" revision 1 dated 10 June 2021. That document was also approved by Mr Stretton.

Government will hold First Gas to account for the projects to ensure First Gas manage and implement them successfully.

The Stakeholder Engagement Plan (the Plan) is a living document that provides a base for stakeholder management associated with the Pariroa Phase 2 and 400-Line Tie Ins projects. It shall be reviewed at regular intervals and project milestones, to ensure it continues to provide the most suitable approach to engagement for the project, as lessons are learned or the environment changes.

[149] The Engagement Plan also referred to related documents to be considered alongside it. They included, but were not limited to:

- First Gas White Cliffs Management Strategy
- Strategic Communications Approach (prepared by Senateshj)
- First Gas Stakeholder Engagement Plan dated October 2018
- First Gas Stakeholder Management Plan
- First Gas External Stakeholder Engagement Guide
- First Gas Transmission Heritage Protocols
- First Gas Standard Health and Safety Plan

[150] The Plan provided information on how the buckle would be repaired to ensure the security of the gas supply to consumers, what was required for site rehabilitation works and the condition the land would be left in post works. The document recorded that it was to ensure that “we communicate openly and transparently to all key stakeholders and minimise any potential risk to the business”.

[151] The Plan noted that it contained in-depth information in relation to directly affected landowners because of the “given complexities and the criticality of obtaining landowner agreement for the project and the potential influence of such agreement on the project programmes”.

[152] Relevant is the identification of the Gibbs’ as stakeholders and owners of the property directly affected. The Plan also identified, among others, the local authority (New Plymouth District Council), the Regional Council (Taranaki Regional Council), Department of Conservation and Heritage New Zealand, as well as the local Māori community as stakeholders. It listed Poutama as the local Māori community with a

strong cultural interest over the project area, Ngāti Tama as the recognised mandated iwi with kaitiaki rights over the project area and Maniapoto which had an active claim over the area of White Cliffs, which overlaps the Ngāti Tama claim area.

[153] The Engagement Plan noted that engagement was required with Poutama and that it should be provided with information on the project. It noted that members of Poutama included landowners, Russell and Parani Gibbs, and that Haumoana White, as the Poutama leader, was to be contacted, via Russell Gibbs.

[154] The Engagement Plan noted that engagement was needed with Ngāti Tama in relation to the cultural impacts of the proposed physical works on the site. It would be required to provide written approval for RMA purposes, if necessary, and support any archaeological application and agreement on heritage and land access protocols.

[155] The Plan identifies various risks that might delay the project, cause damage or impact on First Gas' reputation. These included delays, landowners not signing agreements and opposition to RMA processes. The possible risks flowed from various factors, including relationships with stakeholders.

[156] Mr Gibbs said that the Plan was a "reset" of the established collaborative relationship between First Gas and the Gibbs'/Poutama and saw it as a strategy to undermine Poutama's mana whenua. In that regard Mr Gibbs pointed to the strategy identified in the Plan for engagement with Ngāti Tama. He said this reinforced its role as mana whenua in the engagement strategy, and called for Ngāti Tama's input into its design, communications, site inspections and cultural impact assessments.

[157] The engagement with Poutama proposed in the Plan included continued engagement and dialogue, communication/reporting, regular informal updates. In relation to Maniapoto, the strategy for engagement was to establish lines of communication, and regular engagement to keep the Maniapoto Trust Board updated.

[158] The Plan noted a resource management process would be required for any work or construction within 50 metres of a wāhi taonga site. Archaeological authority would be required, and Heritage New Zealand would then be engaged. A

pre-lodgement meeting advising Heritage New Zealand of the application and getting feedback prior to lodging any application was proposed.

[159] The Plan was an internal document. The first time that the Gibbs' saw the Plan was in the discovery process for this proceeding. Mr Gibbs was particularly concerned that the Plan had not been shared with the Gibbs' or Poutama. He considered that not consulting them on the Plan was contrary to the collaborative relationship which he considered existed. Mr Gibbs says the whānau should have had input into the Plan and received an early copy of it.

[160] I do not agree. This was a document internal to First Gas. It was part of a wider external stakeholder engagement and planning process that First Gas had introduced. Such a process and preparation of a plan for use internally is a usual and proper way for a company to ensure risks, required engagement and plans are considered and articulated. There was no requirement that the Gibbs' have input to it, nor have a copy of it. As an internal document, it was up to First Gas whether it shared it and with whom.

[161] Mr Walden said that in late 2020/early 2021 the defendants became unresponsive and/or uncooperative in relation to the request to enter the land. Mr Walden was involved in the arrangements leading up to the proposed visit to the Pariroa project site on 25 January 2021.

[162] From the Gibbs' point of view, they say everything went quiet after the emergency Pariroa Phase 1 project, which led to the building of the bypass. They say they first heard of the intention to move into Phase 2 shortly after they had been commended by the Chief Executive of First Gas for the collaborative work done on Phase 1 of the Pariroa pipeline. They were therefore taken by surprise when First Gas wanted access but was unwilling to agree to the conditions stipulated by them.

Events leading to interim injunction

[163] On 1 December 2020, Mr Walden contacted Russell Gibbs by phone to explain the nature of the work that First Gas was wanting to undertake starting on 18 January 2021. Mr Walden said he requested a meeting date on site with the defendants to

discuss the works more fully and address any concerns or issues. Mr Gibbs said he would get back to them with a date for the site visit.

[164] Mr Walden did not hear back from Mr Gibbs. On about 11 December 2020, he sent a works notification letter to Mr Gibbs outlining in more detail the proposed investigatory excavation work and again suggesting an onsite meeting to address any issues that the Gibbs' may have with the proposed work.

[165] Mr Walden followed this up with a text on 14 December to Mr Gibbs and he received a text back from Mr Gibbs saying that that week was not suitable "however, I will get back to you in the next couple of days".

[166] By 18 December 2020, First Gas had not heard back from Mr Gibbs, so Mr Walden sent another text requesting an onsite meeting on 23 December 2020. A text was received from Mr Gibbs on 21 December saying that the onsite visit would need to be arranged after Christmas.

[167] Following that Mr Walden again emailed Mr Gibbs on 11 January, attaching a letter of 23 December outlining the attempts made by First Gas to engage and secure a date for a site visit and referring to the works notification letter of 11 December 2020, which explained the scope of works. The email said that First Gas assumed in the absence of arrangements for a site visit and no feedback or comments or concerns from the Gibbs', that it could proceed with the work as planned. It invited further comments.

[168] In response, on 17 January 2021 Mr Gibbs emailed Paul Goodeve, the Chief Executive Officer of First Gas and Mr Stretton, confirming he received the entry notice dated 9 December and the letter of 23 December. Mr Gibbs asserted these were the latest in a string of "contradictory, inconsistent and inaccurate emails" by a range of First Gas personnel. The trustees, he said, were either being excluded from project meetings or they were not being held and First Gas was withholding project documentation. Mr Gibbs requested that First Gas provide all project documentation and reconvene the Pariroa Project Team, including the meetings. He said that the proposed excavation planned for 25 January would need to be put on hold to allow

time for First Gas to provide all the proposed documentation and for the project team meetings to occur.

[169] Mr Walden responded on 20 January 2021 on behalf of Mr Goodeve, saying that the Gibbs' points raised by Mr Gibbs in his email had been considered and First Gas was comfortable with its approach. It intended to continue with the excavation work scheduled for 25 January. A text was sent by Mr Walden to Mr Gibbs on 21 January 2021 to say that First Gas representatives and contractors would wait at the cattle yards at 7.30 am prior to entering onto the Gibbs' property.

[170] On 24 January 2021 Mr Goodeve received an email from Mr Gibbs asking Mr Goodeve to intervene and put the routine excavation work scheduled for 25 January on hold. The same issues as had been raised in the previous correspondence were raised. Mr Goodeve responded by email on 24 January stating the continuation of the work around the Pariroa buckle was of high importance to First Gas, that he had been kept informed by the team, and was comfortable with the approach they had taken.

[171] The First Gas representatives and contractors went to the site on 25 January 2021 and were met by Russell and Parani Gibbs, Haumoana White and their supporters. The Gibbs' refused to let First Gas personnel onto the defendants' land to access the First Gas easement and pipeline.

[172] Russell and Parani Gibbs said they were blocking access because they and Poutama had been excluded from project meetings and were not receiving project documentation. They said this was a shift away from the collaborative approach that had been established during the bypass pipeline works (Pariroa Project Phase 1).

[173] Mr Walden said that he asked Mr Gibbs if he was denying First Gas personnel access to the defendants' land to commence the excavation works and Mr Gibbs responded "yes, we are denying you access". Mr Walden said that he told Mr Gibbs it would be beneficial if both parties could meet to discuss the nature of the relationship moving forward. First Gas staff and the contractors left.

[174] That day Mr Gibbs sent a further email to Paul Goodeve stating that they had been excluded from the project planning and meetings and that “the exclusion is a blunt attack on Poutama and Te Ahuru kaitiakitanga, cultural rights and interests by a foreign corporate monopoly”. Mr Gibbs invited Mr Goodeve and other relevant First Gas management to meet with the defendants. Following this the project manager for First Gas, Mr Ramesh Satrasala, phoned Mr Gibbs in the presence of Mr Walden asking why First Gas was denied access. Mr Gibbs responded, saying the key issue was that they considered the Gibbs’/Poutama had been excluded from the Pariroa Project team meetings and they were not receiving project documentation.

[175] First Gas again attempted to make arrangements to undertake the excavation work for the survey and inspection, suggesting 15 February 2021, by an email sent about 9 February. Due to the lack of response by Mr Gibbs, that entry did not occur.

[176] On 11 February 2021, Mr Walden emailed Mr Gibbs expressing First Gas’ concern that its employees and contractors had been videoed by the Gibbs’ without their permission when they were denied access. Mr Walden mentioned that the defendants had made social media posts with a photo of the contractors and Facebook messages directed at First Gas employees. Mr Walden therefore sought a meeting in a neutral or non-public venue and suggested the offices of Mr Horton, one of the trustees. No meeting place could be agreed upon.

[177] On about 12 February First Gas requested urgent confirmation by email that the Gibbs’ would not block First Gas’ access.

[178] On 24 February 2021, the defendants emailed saying access was available but subject to the existing collaborative relationship between Te Ahuru ngā hapū o Poutama and First Gas. It said that the proposed Pariroa excavation was on hold pending a meeting with First Gas management. First Gas responded on 12 March and said it did not agree to put the Maui pipeline repairs on hold and that it had been obstructed or access had been refused to its easement.

[179] Exchanges of emails followed in an attempt to set up a meeting. This was ultimately unsuccessful.

[180] First Gas applied to this Court for an interim injunction to enable it to obtain entry to the land to inspect, survey, and repair the pipeline.

Entry following the issue of the interim injunction

[181] On First Gas' application an interim injunction was granted on 9 July 2021.⁵⁹ It prohibited the defendants from "restricting, obstructing, or otherwise interfering with First Gas' rights under the pipeline authorisation or easement certificates, including rights to enter the defendants' land for the purpose of performing any action or operation necessary for the purpose of inspecting, maintaining, or operating the Maui pipeline".⁶⁰ Various conditions applied.⁶¹

[182] Mr Phipps, the First Gas transmission and operations manager, visited the Gibbs' property to oversee the investigatory excavation works for Phase 2 of the Pariroa Project in the period between July 2021 and August 2021. He gave evidence in relation to the attempts to access the site following the decision granting the interim injunction.

[183] On 12 July First Gas sent a letter to the Gibbs' notifying them that it had arranged for an archaeologist to attend the property on 26 July to undertake an archaeological assessment. On 14 July First Gas again wrote to the Gibbs' notifying them that it intended to commence the investigatory excavation works on 28 July and it anticipated the works would take between five and 10 days. A text message was sent to Mr Gibbs on 23 July confirming the planned archaeologist's visit. A further text confirming the planned works was sent on 27 July by First Gas to Mr Gibbs.

[184] On 26 July, four First Gas personnel arrived at the cattle yards at about 10.00 am. Mr Gibbs handed trespass notices to each of those personnel. On 28 July First Gas personnel again arrived at the cattle yard at about 9.30 am with an excavator. Access was blocked. On 29 July the First Gas personnel again returned to the cattle yards and access was blocked.

⁵⁹ Interim Injunction granted by Isac J, above n 5.

⁶⁰ At [78].

⁶¹ At [79].

[185] In the meantime the Gibbs' sought a rescission of the sealed order by email dated 29 July 2021, which First Gas had had sealed following judgment.⁶² The basis for that application was that the terms of the sealed order had not been provided to, nor consented to, by the Gibbs'. It contained additions and changes to the orders made in the judgment. The words commencing "for the avoidance of ..." in italics below had been added to the sealed orders (and were not in the order in the interim injunction judgment) as follows:⁶³

[5] ...

- a) An interim injunction prohibiting the Respondents, or any other party, from:
 - (i) restricting, obstructing or otherwise interfering with First Gas' rights under its Pipeline Authorisation and Pipeline Easement Certificates registered over the Respondents' land, including rights to enter the Respondents' land for performing any action or operation necessary for the purpose of inspecting, maintaining, repairing or operating the Maui pipeline, provided:
 1. all such activities are carried out in accordance with the terms of Pipeline Easement Certificates 269143 and 269148, Pipeline Authorisation 4410-16 and the relevant provisions of the Petroleum Act 1937;
 2. any physical works associated with the excavation, maintenance or repair of the Maui Pipeline buckle at Pariroa, including the temporary deposition of spoil and storage of equipment and machinery, are confined to the easement corridors. (*For the avoidance of doubt, physical works does not include entry onto, or passing over or across the Respondents' land with or without vehicles, equipment or machinery; or geological, geophysical, land or archaeological surveying, aerial surveying, or taking samples by hand or hand held methods*); and
 3. the conditions set out in Appendix 1 attached to this order are complied with.

⁶² *First Gas Ltd v Gibbs* HC Ngāmotu | New Plymouth CIV-2021-443-16, 6 August 2021 (Minute No 2) ["Minute No 2 of Isac J"] at [5].

⁶³ At [5].

[186] His Honour, in a minute, determined that there could be no doubt what was permitted by the injunction, including the right to enter set out in italics. The Gibbs Family Trust was required to comply with the terms of the injunction set out above.⁶⁴

[187] On 26 July 2021, Mr Phipps gave Mr Gibbs a copy of the High Court sealed order. After about 40 minutes Mr Gibbs agreed to move the cars and let the First Gas vehicles move toward the locked gate. The Gibbs' insisted that First Gas personnel were only authorised to walk within the easement corridor, and no-one was to step off the corridor onto their land. The gate was unlocked by Mr Gibbs and First Gas went up to the area of the Maui pipeline repair works. Mr Gibbs followed.

[188] On 28 July 2021, the First Gas project team arrived with a contractor surveyor. They were again blocked from accessing the property. Mr Phipps asked Mr Gibbs, whether he intended to obstruct the First Gas access to the property. Mr Gibbs said that he was not but sought details on where the personnel were going, and the extent of the works intended. Mr Gibbs unlocked the gate. He and four other people remained during the works, filming First Gas personnel throughout the day. While the surveyor, Mr Josh Lucas, was on site putting in survey points, Mr Gibbs served a trespass notice on him. When First Gas personnel went to leave the property on 28 July the access gate was locked, and it required a phone call to Mr Gibbs to come and unlock the gate while the personnel waited.

[189] First Gas' access was again blocked on 29 July 2021. The Gibbs' were asked to either leave the gate open or provide First Gas with a set of keys so personnel could leave the property. This request was refused, and Mr Gibbs shadowed the First Gas personnel interviewing them, questioning them about the works, taking photos of them and filming the works.

[190] Access had been granted but Mr Gibbs says this was only because of the court order. The investigatory excavation was undertaken between 30 July 2021 and 11 August 2021.

⁶⁴ Minute No 2 of Isac J, above n 62, at [22]–[23].

[191] On each of the days that the First Gas personnel arrived to enter the Pariroa project area, their access was blocked with one or two vehicles. Mr Phipps said they were generally met by Russell and Marie Gibbs who would ask questions about the purpose of the visit and who was coming onto the property and what each person's role was. Ms Gibbs filmed all the discussions. Mr Phipps commented that the constant questioning and filming was stressful, unsettling and intimidating for First Gas personnel.

[192] The trespass notices had also caused concern among the personnel working on the exploratory excavation. They were worried that Mr or Ms Gibbs may try to take action against them at some point in the future. There was also an incident described by Mr Phipps where one of the field technicians, who had a whakapapa connection to Ngāti Tama, recited a karakia and was questioned about it by Ms Gibbs. Ms Gibbs filmed this incident and says he was not interrupted but she considered it was inappropriate that a karakia was said on the land given that Poutama was mana whenua.

[193] The staff members named in the served Trespass Notices included Mr Phipps and other managers, as well as the surveyor and the archaeologist and Mr Walden. The Notices purporting to be under the Trespass Act 1980 warned the recipient of the Notice to "stay off the place known as Tongapōrutu, White Cliff Station". The Notices were signed by Mr Russell Gibbs as the person authorised by the occupier.

[194] Following the difficulty with access for inspection, First Gas then sought that the substantive proceedings be heard as a matter of urgency to enable the repairs to be carried out having settled on the preferred repair option.

The Gibbs' and the land

[195] Mr Gibbs, Ms Marie Gibbs, and the Gibbs whānau are passionate about their stewardship and their obligations as kaitiaki. They are conscious of their responsibilities toward the land and the history and values that it represents. While Mr Gibbs and his generation are Pākehā, some of his grandchildren whakapapa to Poutama.

[196] The Gibbs' consider their kaitiakitanga obligations stem not only from Poutama's mana whenua, but also to the connection they, as fifth generation owners, have with the land. Mr Gibbs pointed out the description by Hugh Williams J in the 2009 *Vector Gas* decision as describing the Gibbs' family affinity with the land as follows:⁶⁵

[1] The appellants, the Gibbs Family Trust, own a farm at Tongaporutu. It has been in their family for well over a century. Their marae is on the land. There is a urupa on the land as well containing family ancestors. The land contains a number of waahi tapu and, as Mr Gibbs, one of the trustees, puts it:

7. Our atua, our mana and our mauri are here. We have an eternal connection to this land. We are the kaitiaki (guardians) of the land. We have an obligation to the tupuna (ancestors), Hapu and Iwi to associate with this land, and to our tamariki and mokopuna, to preserve and protect the sacred nature of this land and in particular the many Waahi Tapu located on it.
8. Acting as Kaitiaki of such an important taonga is a heavy burden and is one that we do not take lightly. We must ensure that the special significance of the land and the Waahi Tapu are preserved, protected and enhanced. We must also ensure that the proper protocols are followed at all times in relation to any activities on the land.

[197] Russell and Marie Gibbs⁶⁶ take their association with the Poutama iwi seriously. They support it in its efforts to achieve and protect its recognition as mana whenua and kaitiaki status. To that end the Gibbs' have been closely involved with Mr Haumoana White, who is a rangatira of Poutama. Mr Gibbs indicated that he deferred to Mr White but from time to time Mr Gibbs also had authority to speak on behalf of Poutama. Mr Gibbs continues to manage the farm but said that others in the family actually do the farm work while he spends his time involved in various tasks to protect the land. This includes the management of the relationship with First Gas and its work on the pipeline and involvement in works including involvement in these and other proceedings.⁶⁷

⁶⁵ *Gibbs v Vector Gas Ltd*, above n 6, at [1].

⁶⁶ Ms Parani Gibbs is Māori but does not whakapapa to Poutama.

⁶⁷ Russell and Marie Gibbs also act as advocates for Poutama. See for instance *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159, (2020) 22 ELRNZ 202 (leave to appeal was declined by the Supreme Court in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2021] NZSC 87, 124, and 153).

[198] Mr Russell Gibbs said that the cultural interests in the land went beyond the Poutama interests as mana whenua and included the connections of his whānau and hapū to the land. Mr Gibbs indicated that he considered bodies such as the New Zealand Archaeological Association (NZAA) not up to the task. Its Wāhi Tapu Site Register was not a reliable indication of the wāhi tapu sites. The sites on this particular land had not been reported to NZAA since 2005, the archaeologist had indicated.

[199] In response to questioning about whether he had refused access to First Gas personnel to investigate the Pariroa buckle in January, Mr Gibbs said:

... so I think the pitch, if you like, or the assertion that we're denying access per se is untrue. I think the correct position is as was done for a long time is that access is available but there are conditions around it. ...

[200] He went on to say:

Subject to conditions and conditions say, for example, that are laid out in that *Gibbs v Vector*, ... as part of that decision, those conditions there because that during and concerning those discussions, just that, for example, enables us to the largest extent that we can subject to works, ... we can protect our rights and interests, values.

[201] Mr Gibbs enumerated those values as including farming, but the stronger values were cultural values and the protection of the mauri of the land. He said:

... if we look at that *Gibbs v Vector* High Court decision, it's not only reasonable but it's an expectation. The law's laid out, the Public Works Act to protect these values.

[202] Mr Gibbs also went on to say that the rights of First Gas to do repair works to the pipeline were subject to other "rights and interests and values and obligations...". For instance, he mentioned health and safety legislation and the responsibility imposed on landowners for dangers caused by things erected on the land.

[203] Mr Gibbs emphasised that his view was that legally the right to repair and enter the land and any incidental land use by First Gas was confined to the 12-metre pipeline corridor. However, he said that in his experience the repair and related works had "never been within the easement".

[204] Mr Gibbs also made it clear in cross-examination that he expected “the ability of some informed consent” on the selection of the option chosen for repair of the pipeline. He said in order to exercise that right he needed all project documentation and to be involved in the project team meetings, as well as in all decisions.

[205] Mr Gibbs confirmed that the trespass notices he had issued remained in place. But noted he had respected the court interim injunction and so, he said, had allowed the First Gas personnel and contractors onto the site.

[206] Mr Haumoana White gave evidence on behalf of Poutama. He is a rangatira and kaitiaki for Ngāti Wai Hapū and ngā hapū o Poutama. He is a co-claimant of the ngā hapū o Poutama claim WAI1747 and WAI529. Mr White explained the background to Poutama’s exercise of kaitiakitanga and mana whenua over the land and pointed to historic material in support of those rights. Mr White viewed the “laying of a karakia across the site” by a First Gas staff member as an act of “hostile aggression and violation by First Gas against Poutama”. This referred to the saying of a karakia by the First Gas surveyor referred to above.⁶⁸

[207] Mr White acknowledged he was the author of recent social media posts accusing Mr Walden of being a “kūpapa”.⁶⁹ The post also referred to First Gas as “the enemy”. On 26 July he posted “First Gas are moving in today under a court decision led by kūpapa Toka Walden” and “boots and saddles, boys mount up, the enemy is on the way”.

[208] Mr White says that offence has been caused by First Gas to Poutama. He feels strongly about the position and indicated he holds a high level of animosity toward First Gas.

Involvement by the Gibbs’ in plans and meetings

[209] Mr Gibbs is of the view that he and other family members need to be involved in the detailed planning and implementation of the proposed repair works. He does

⁶⁸ See above at [192].

⁶⁹ The social media post produced defines kūpapa as “some one who puts his or their allegiance behind the invading force for personal gain, mana, privilege and power”.

not consider that the health and safety legislation or the RMA provisions, or other legislative protections and First Gas' archaeologist's advice relating to archaeological issues, will effectively protect the land without his in-depth involvement and the support of Poutama.

[210] First Gas points to its statutory authorities, the PECs, and the provisions under the Petroleum Act. It says it has been entrusted with the operation of the pipeline, which is infrastructure of national importance and it has absolute rights to enter and carry out the repairs on the land as long as the requirements of the Petroleum Act are met. It says it has the expertise to undertake the repairs and that the involvement of the Gibbs' at the level of detail sought has delayed, and will continue to delay, the repairs. Mr Gibbs does not have engineering expertise.

Analysis

[211] First Gas says the right to compensation for any property or land injuriously affected by the exercise of those powers of entry and incidental and other things as are necessarily incidental to the exercise of the powers and authorities⁷⁰. The landowner is entitled to "full compensation for all loss, injury, or damage suffered by him".⁷¹ However, that right to compensation involves a separate process,⁷² and cannot curtail, suspend or delay the exercise of the powers by the holder of the authority.⁷³

[212] The wording of the legislation is unambiguous. It provides an "absolute right" to the holder of the authorisation to do the stipulated work and anything incidental on land not limited to the easement corridor. That absolute right should not be read down in the circumstances of this case, despite Ms Grey's submission that things have changed since the authorisation was issued. For instance, there had been the introduction of the Health and Safety at Work Act, wider obligations under the RMA, and better recognition of mana whenua and kaitiakitanga.

⁷⁰ Petroleum Act 1937, s 68(d).

⁷¹ Section 77(1).

⁷² Section 77(2).

⁷³ Section 77(4).

[213] Despite those changes, the Act is clear. The legislative changes do not directly affect the absolute right conferred on the authorisation-holder to enter the land and carry out things incidental on the land in order to carry out the repairs contemplated in the Pariroa Project Phase 2 and the exercise of its powers under ss 68 and 75 of the Petroleum Act.⁷⁴

[214] First Gas has confirmed that it will honour its obligations under other relevant legislation and other obligations. Those obligations do not affect, nor do they derogate First Gas' rights and powers flowing from its authorisation.

[215] While noting the courts' growing recognition of tikanga Māori,⁷⁵ issues of mana whenua, kaitiakitanga and the respective roles and rights of Ngāti Tama and Poutama are outside the ambit of these proceedings. Neither Poutama nor Ngāti Tama are parties in any event. Those matters have been considered in other contexts including most recently a judgment of the Environment Court dismissing an appeal by the Gibbs' from a decision of Heritage New Zealand to grant First Gas an archaeological authority concerning works on Kapuni pipeline on the Gibbs' land. That judgment was delivered after this hearing and a copy was filed in subsequent submissions by First Gas concerning its application to vary interim orders to enable it to commence the repairs the subject of this case.⁷⁶ I did not hear arguments related to that case but note it is a different pipeline and, while in the vicinity of the Pariroa project repairs, not in the same location. Therefore, I do not propose to consider the findings in that judgment here.

[216] The Gibbs' say that the history of pipeline works agreements and collaboration with First Gas (and its predecessors) dates back 40 years. Ms Grey argued that they gave rise to an agreement or arrangement that binds First Gas into a collaborative

⁷⁴ Under s 80 of the Petroleum Act 1937, no person may “plant any tree or shrub, erect any building or construction, dig or break up the land, or carry out any work within the **area of land** described by any pipeline easement certificate ... without the written consent of the holder of the authorisation...”.

⁷⁵ The Supreme Court has now noted on several occasions, and has recently received submissions that tikanga Māori is a part of New Zealand's common law: *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733; and *Ellis v R* [2020] NZSC 89.

⁷⁶ *Poutama Kaitiaki Trust v Heritage New Zealand & First Gas Ltd* [2021] NZEnvC 165 (22 October 2021).

arrangement on the conditions set out in various documentation relating to previous works.

[217] That submission cannot succeed. I have reviewed the documentation and the *Vector Gas* case. My findings are set out above. Each project on the pipeline has been separate. The arrangements for works on the Kapuni pipeline do not affect works on the Maui pipeline. Any conditions or collaborative arrangements applied only to the specific project at hand. The JPPG arrangements that were put in place following the 2009 *Vector Gas* decision were specifically limited to the Maungapukatea project. Not only the JPPG documentation itself, but the decision of Hugh Williams J limited the application of the conditions to the project at hand.

[218] An earlier 2006 written agreement was limited to the work concerning the Kapuni pipeline referred to in that agreement and work around the Te Rua Taniwha Seawater Intake Project. That agreement is at an end. The easements contemplated in that agreement were apparently never put in place.

[219] While there has been ongoing work done on the pipeline over the years, including inspections, there is no evidence of any agreement having been reached as to the terms under which work on the pipeline generally would be carried out.

[220] The most recent large-scale work was the 2018 Pāroa Phase 1 (emergency) bypass installation. Despite proposals by First Gas in the course of that project and afterwards there was no agreement reached with the Gibbs' which now applies to the Pāroa Project Phase 2, or other works.

[221] First Gas has pointed to its requests to the Gibbs' to enter into an agreement or memorandum of understanding with them. The Gibbs' have either not responded or responded that the "collaborative" arrangements apply. It is not clear exactly what those collaborative arrangements entail. The documentation that has been produced does not support a finding that there is any agreement or binding "collaborative arrangement" which applies to the present proposed works for Phase 2 of the Pāroa Project.

[222] Mr Gibbs, on behalf of the family, says that the collaborative arrangement was reinforced by the letters and actions of Mr Goodeve, the Chief Executive of First Gas. Mr Gibbs points to a letter from Mr Goodeve dated 13 December 2018 thanking ngā hapū o Poutama and the Gibbs' whānau for the support provided to First Gas during the Pariroa Phase 1 and saying that the next stage would kick off over the next month or so and "I look forward to us continuing to work together".

[223] In addition, Mr Gibbs points to a dinner held in Auckland where the Gibbs whānau were guests at the Deloitte Energy Industry Awards 2019, which recognised the Poutama and Te Ahuru (Gibbs family) contributions to the successful Pariroa Phase 1 project. It was Mr Goodeve that Mr Gibbs emailed in response to Mr Walden's notification of works proposed for January 2021.

[224] However, Mr Goodeve responded to Mr Gibbs saying that the project was to continue as First Gas staff had notified the Gibbs'. There is no evidence of any agreement between Mr Goodeve and the Gibbs'.

[225] Ms Grey characterised the approach of First Gas in Phase 2 of the Pariroa Project as a "reset" of the Gibbs'/First Gas' relationship. She said First Gas sought to "unilaterally reduce the future input of the Gibbs' whānau and Poutama". In particular, she referred to the papers prepared by Mr Walden on the management titled "White Cliffs Management Strategy (March 2020)" and the Stakeholder Engagement paper. She referred to these as "secret" arrangements and that the Gibbs' had had no opportunity to provide input to these papers or the strategy.

[226] As I have earlier indicated there was no obligation on First Gas to share with the Gibbs' its internal strategy documents nor indeed any of its documents or plans concerning the Pariroa Project Phase 2, except to the extent it wished to do so. It is usual for a corporate to prepare such documents to properly equip the appropriate persons in the organisation with information about a project.

[227] First Gas, over a period of time, has indicated to the Gibbs' that it would like an agreement concerning access and conditions relating to the work it must undertake on the Maui pipeline. While project-based arrangements have been in place in the

past, Mr Stretton explained that in relation to Pariroa Phase 1, First Gas felt it had no choice when under time pressure but to accede to the Gibbs whānau's requirements. However, Mr Stretton said that he did not consider the extent of the Gibbs' family involvement, particularly that of Mr Russell Gibbs in planning and implementation of works, was of great assistance nor was it appropriate.

[228] While it may seem to the Gibbs' family that they had achieved a "status quo", all the objective evidence suggests that there was no agreement and no "status quo" in the nature of a "collaborative arrangement" which applied to all works including Phase 2 of the Pariroa Project.

Entry by First Gas in 2021 for the Pariroa Project Phase 2

[229] The purpose of the entry to the land sought by First Gas on 25 January 2021 was to inspect and do such things as were necessarily incidental to the exercise of its rights under the Act. I agree with the findings of Isac J in relation to the acts leading up to the grant of the interim injunction permitting First Gas to enter the property in July/August 2021. I am satisfied that the Gibbs' denied First Gas staff and/or contractors, in breach of First Gas' rights of entry under its authorisation, easement certificates and, in particular, ss 68 and 75 of the Petroleum Act.

[230] Mr Gibbs made it clear that First Gas were allowed to enter in July/August 2021 only because of the terms of the interim injunction obtained in June 2021. Mr Gibbs confirmed in evidence that he would, without an order of the Court, enforce those trespass notices.

[231] There were many hours of video clips taken by Marie Gibbs of the entry of First Gas personnel. She selected the most relevant parts to play at the hearing. I have not watched the full video footage. Most of the video is irrelevant. It is difficult to understand what was going on. I have watched the selected excerpts. They are of little assistance.

[232] The segments of the video presented by Ms Gibbs of the entry and inspection of the pipeline by First Gas personnel indicate the representatives were courteous, as were the Gibbs'. However, at the end of the day there is no dispute about the fact that

First Gas were prevented, unless they agreed to terms unilaterally imposed, by the Gibbs, from accessing the property.

Nuisance

[233] First Gas' only cause of action is in nuisance. The grounds are that the defendants have substantially and unreasonably interfered with its rights under the PECs, the Pipeline Authorisation, and the Petroleum Act.

[234] In order to succeed in a claim in nuisance the plaintiff must prove, on the balance of probabilities, that the defendants have substantially and unreasonably interfered with its rights.

[235] In *Wu v Body Corporate 366611* the acts of the respondent (the Body Corporate) in denying Mr Wu an electronic access card following a dispute with the Body Corporate, prevented Mr Wu from entering common areas of the building and therefore, his unit.⁷⁷ The Supreme Court noted that there is an implied and fundamental right to access one's unit and that this right can arguably have been seen as a "natural right" and an incident of unit ownership, similar to frontager rights.⁷⁸ The Court noted that such interference gave rise to a right to bring a claim in nuisance and in the circumstances of that case it would have succeeded.

[236] To similar effect was the Court of Appeal decision in *Breslin v Lyons*.⁷⁹ In that case there was a dispute about encroachment and obstruction of a right of way. The parties owned adjoining residential property. Vehicular access to both properties was down a long, shared driveway on rights of way granted reciprocally over the titles to each of the properties. The High Court noted that any action relating to interfering with an easement is usually founded in nuisance. It will succeed only if the grantor's action involved "unreasonable interference" with the rights to the grantee.

[237] The Court of Appeal confirmed in that case parking a vehicle permanently on the right of way obstructed the Lyons' rights and hindered their use of the area for

⁷⁷ *Wu v Body Corporate 366611* [2014] NZSC 137, [2015] 1 NZLR 215.

⁷⁸ At [119]–[131].

⁷⁹ *Breslin v Lyons* [2013] NZCA 161, (2013) 14 NZCPR 144.

access to their property. This constituted a substantial and unlawful interference with the right of freedom and ease of passage conferred by the grant of easement in that case. It was therefore a derogation from it.

[238] By analogy, the wide “absolute right” conferred on the pipeline authority holder in this case provides it with rights which if interfered with by the landowner amount to a derogation from the pipeline authority holders’ rights under the authority, the PECs and the statutory provisions.

[239] As will be apparent I have concluded that First Gas has an absolute right to enter the land described in the PECs, for the purpose of gaining access to the Maui pipeline and performing any action or operation necessary for the inspecting, maintaining, repairing or operating of the pipeline. It may enter onto the defendant’s land in the manner set out in s 68 and may deposit and store from time to time on any land adjoining the works or such machinery and material as may be used in carrying out the works and deposit of spoil.

[240] The rights of entry and use of land are not limited to the 12-metre strip of land of the pipeline corridor. Nor are the rights subject to any condition or collaboration with the Gibbs whānau or Poutama.

[241] While unlawful interference will not always amount to unreasonable interference, in this case the obstruction of access and the actions by the Gibbs’ amounted to a denial of that access in circumstances where the defendants’ conduct was unreasonable.⁸⁰

[242] As is the case of easements for the purposes of rights of way,⁸¹ whether or not interference with access, repair, and incidental work on and related to the pipeline is unlawful is a question of fact. It is to be determined on examination of the authorising provisions (including the PECs), the land over which it exists, and the general circumstances of the case.

⁸⁰ *Wu v Body Corporate 366611*, above n 77, at [131].

⁸¹ *Shoemith v Byerly* (1873) 28 LT 553.

[243] To be unlawful the interference with the right of way must be substantial and operate to the prejudice of the grantee.⁸²

[244] First Gas staff have expressed to their managers that they have been intimidated by the Gibbs' actions. Mr Walden expressed his concern over the offensive material about him posted by Mr White on social media. The material was, on its face, offensive and threatening. Actions by the Gibbs' and their supporters have intimidated First Gas personnel. This intimidation is intended to prevent First Gas from exercising its access rights unless it meets the Gibbs whānau's conditions for access. This amounts to wrongful breach of the rights of First Gas to enter the land by its staff in order to undertake the repairs (and necessarily incidental work) to the pipeline.

[245] The interference in practical terms has manifested itself in:

- (a) The locked gate.
- (b) The interference with First Gas personnel and contractors going about their business by:
 - (i) constant videoing of staff and workmen employed or contracted by First Gas.
 - (ii) constant requests as to what the staff/contractors are doing.
 - (iii) social media posts made by Mr White, a person invited to be part of the process by the defendants, concerning First Gas staff which are intended to be inflammatory and unfairly denigrate staff.
 - (iv) presentation of trespass notices to First Gas personnel.

⁸² *McKellar v Guthrie* [1920] NZLR 729 (SC) at 731.

- (c) Persistent requests for detailed plans and drawings and input in planning for the repairs at the level sought by the Gibbs' involving selection of options, design, and implementation of the repairs.
- (d) Access only being permitted if First Gas agreed to conditions.

[246] The defendants' actions in preventing, or allowing access subject to conditions on 25 January as well as the blocking of First Gas' free access to the land in July/August 2021 when it attempted to enter pursuant to the interim injunction orders, resulted in an appreciable diminution of First Gas' enjoyment of its rights. The interference by the Gibbs', including by the issue of the trespass notices, delayed First Gas' access to the site, intimidated staff and prevented their attending to the required works.

[247] The actions by the Gibbs' and their supporters did not create mere nominal injury or a trifling obstruction. The effect on First Gas was substantial and prevented it attending to its inspection and repair of the pipeline in a timely fashion. It has obligations to maintain the safety and operation of the pipeline and it was obstructed in its attempts to carry out the works it considered necessary, so it met its obligations.

[248] I conclude there was an unreasonable interference with the rights of First Gas to entry to the land to carry out first, the inspection and survey in January 2021 and secondly, to commence the repairs in July/August 2021. In this case there were physical obstructions and conditions imposed by the defendant before access would be granted. This amounted to a denial of access. Access was finally granted under the interim injunction order. That did not remedy the earlier failures to grant access. Future denial of access, or access subject to conditions, has been threatened by Mr Gibbs.

Urgency

[249] Mr Gibbs suggested that the bypass pipeline could stay in place for a longer period of time in order to provide time with the Gibbs' involvement in the investigation of other options. He suggested that the present amendment to the authorisation might be extended beyond the date in 2023 to gain that time.

[250] Mr Stretton explained that First Gas, having confirmed the most appropriate option for repairing the buckle is by replacement of a length of pipeline, has prepared a schedule of works to be completed before January 2022. He said:

53. As a result of the information and data obtained, First Gas has now been able to confirm the most appropriate option for repairing the buckle. The recommendation of First Gas' engineering experts is to replace the buckle section in accordance with Option 2 in the Remedial Options Report (Exhibit F). The works recommended for the buckle section replacement which need to be completed before January 2022 are as follows:
- a) Excavation to relieve the strain - it is estimated that exposing the pipeline for about 50-60 metres should be sufficient to remove the soil load causing strain on the pipeline. The pipeline will be exposed gradually and progressively under the supervision of pipeline engineer until the pipe movement observations are nil and/or acceptable to the pipeline engineer;
 - b) Continuous surveying of pipeline prior, during and after the pipeline is strain relieved;
 - c) Finalisation of design drawings utilising actual survey data post strain relief;
 - d) Removal of the damaged section and replacement of the section with new pipe and a new spool piece;
 - e) Surveying of the excavated trench for future monitoring; and
 - f) Installation of groundwater drainage as far as practicable within the pipeline easement during the excavation works.

[251] Mr Stretton says an online inspection of the Maui pipeline will need to be carried out by May 2023. Without that inspection the entire section of the 400 pipeline of approximately 70 kilometres would be at increased risk of integrity failure. The inspection operations take up to nine months and involve precleaning operations which could take up to six months. The inspection works require a three-month window. The cleaning operation cannot be carried out until the repaired section is reinstated due to the nature of the pipeline bypass. This is because the cleaning and inspection tools are 750 millimetre in diameter and the current bypass pipeline is only 300 millimetres in diameter. Therefore, the damaged section, or “buckle”, of the Maui pipeline must be reinstated and recommissioned by no later than August 2022.

[252] Mr Stretton gave evidence as to the requirements as follows:

- 61 Reinstatement of the repaired section requires interruption and depressurisation (shut-down) of a 30km section of the Maui pipeline to allow pipeline cut and welding to take place. Gas supply can be maintained to the majority of users during the shut-down through the parallel Kapuni 200-Pipeline (20%), demand reduction (50%) and storage in the system downstream (30%). To achieve the necessary demand reduction, the shutdown must be targeted at a low-flow weekend period and coordinated with major users such as the Huntly power station who will also need to shutdown or use alternative fuels.
62. First Gas have modelled the gas flows and determined that the optimal time for the pipeline shutdown works is Auckland Anniversary 2022. Flows after end of January and before beginning of December are too high to sustain supply without the Maui pipeline. Therefore the latest opportunity to carry out the shutdown works is late January 2022. A public holiday weekend reduces demand further and therefore risk to consumers. The shutdown work will be carried out over a 24-hour period to minimise the supply risk and involve approximately 100 persons working throughout the First Gas network.
63. The Maui Pipeline Repair Works need to be completed at least 1 month before the pipeline shutdown to prepare customers and reconfigure the gas network.

[253] The repair works will require work over between eight to 12 weeks, in daylight, Mr Stretton said.

[254] Mr Stretton confirmed the archaeological investigation had been carried out and had confirmed that the accidental discovery protocol was sufficient for the repair works in relation to the discovery of any archaeological items. He said the works at the two tie-in locations (where the bypass meets the main pipeline) may require an archaeological authority to be obtained. As soon as sufficient information was available First Gas would lodge an application for that as a preliminary step. Mr Stretton said that a supervising archaeologist would be overseeing the work to ensure archaeology and accidental discoveries are protected.

[255] Other required pipeline maintenance works will be done at the time of the shutdown of the Maui pipeline to minimise the shutdown impacts. No other pipeline shutdowns were planned in the five-year planning horizon.⁸³ The area was one of high coastal erosion so those works could not be delayed beyond January 2022.

⁸³ The primary coincident project that required a shutdown was the Gilbert Stream realignment at Pukearuhe.

[256] In response to cross-examination about some proposed drains that he had suggested would run from the replacement length of pipeline, Mr Stretton said that any drainage work that might extend outside the strip of the pipeline easement would not be done at the present time but might be further considered in two years' time when First Gas had better information on land settlement. Drains placed outside the easement corridor were not part of the planned work at present.

[257] Mr Stretton is an experienced engineer familiar with the Maui gas pipeline and the surrounding efficiency and safety requirements, as well as the commercial implications of the closure of the pipeline. I accept his evidence that that there is urgency surrounding the Pariroa Project Phase 2 repairs in order to enable one shutdown to occur on 29 January 2022 (or thereabouts). I accept the required work needs to be commenced this year in order to do that. The variation to the interim injunction allowed the repairs to commence.

[258] I am satisfied that the defendants have unreasonably intruded upon and interfered with First Gas' legal and property rights. First Gas is entitled to relief.

[259] My conclusions on the issues are:

- (a) Is First Gas only permitted to use land within the 12-metre strip delineated on the PEC as the pipeline corridor⁸⁴ when it is repairing the pipeline (and carrying out other authorised works) and for entry and egress, storage and deposit of machinery and equipment and depositing spoil incidental to those works?

- (i) **Answer**

First Gas is entitled to access and use the land legally described in the schedules to the PECs for the purposes specified under the Petroleum Act, including the repair of the pipeline, access to achieve that repair and incidental actions, as well as storage and deposit of spoil. Those rights are not limited to the 12-metre

⁸⁴ The rights and powers are set out in ss 70, 68 and 75 of the Petroleum Act 1937.

strip of the pipeline corridors delineated in the diagrams attached to the PECs.

(b) Is there an arrangement or agreement for a “collaborative process” or conditions for the use of land described in the PECs that binds First Gas for the purposes of undertaking the Pariroa Project Phase 2 repairs or other authorised works on or to the pipeline by virtue of:

a. The 2009 Court decision in *Gibbs v Vector Gas*⁸⁵ and/or

b. Previous dealings and agreements?

(i) **Answer**

There is no arrangement or agreement applying to future works including the Pariroa Project Phase 2, by virtue of the 2009 court decision, nor as a result of previous dealings and agreements between the Gibbs’ and First Gas (or its predecessors).

(ii) **Answer**

First Gas’ rights and powers are not conditional on its working with, or in consultation with, the landowners.

(c) Are there legislative and other requirements or interests including under the RMA and health and safety legislation and/or rights and interests flowing from the Gibbs’/Poutama’s kaitiakitanga over the land which affect First Gas’ rights of access and use of the land for the purposes repairing or carrying out other authorised works on the pipeline?

(i) **Answer**

First Gas has the absolute right to carry out the repairs and other authorised works on the pipeline and for that purpose has the power to enter and use the land.

⁸⁵ *Gibbs v Vector Gas Ltd*, above n 6.

- (ii) Separately, First Gas must observe any statutory obligations affecting their work on the pipeline and incidental to it, including the RMA and health and safety legislation and requirements concerning artefacts and cultural requirements. Those obligations are separate from and do not affect the rights and powers set out above.
- (iii) The issues relating to the Gibbs’/Poutama’s kaitiakitanga over the land and Poutama’s claim to mana whenua do not affect the issues under consideration in this proceeding as outlined above.

Unlawful interference

[260] I am satisfied that there has been unlawful interference with First Gas’ right to access and egress for the purpose of inspection, survey, and repair of the pipeline in Phase 2 of the Pariroa Project. I am satisfied that interference is likely to continue.

[261] The locked gate prevented the exercise of that right of access. First Gas is entitled to a key to the gate, or suitable arrangements must be made to ensure its personnel and contractors always have unobstructed access and egress to land from the pipeline.

[262] There is nothing to prevent the Gibbs’ being present and watching the work. However, in the circumstances that should be done in a way that does not interfere with the ability of First Gas’ staff and contractors to get the works done effectively and in a timely manner.

Declaration

[263] Mr Gibbs has made it clear that he will not willingly grant First Gas access, nor allow it to exercise its statutory rights, without a court order. In those circumstances, justice requires a declaration.

[264] In order to issue a declaration, First Gas must have a sufficient interest in the proceedings, the issue cannot be moot and I must be satisfied that it is appropriate in

circumstances where an infringement of the plaintiff's rights in the future is threatened.⁸⁶ I am satisfied on those points.

[265] In view of the national significance of the pipeline and the importance of ensuring that it is properly maintained and operated there are also strong public policy grounds to ensure that First Gas' lawful rights as set out in this judgment, are not effectively defeated or derogated from in the future.

[266] The declarations sought by the plaintiff will be granted. The plaintiff's access rights are not conditional upon First Gas providing all project documentation to the defendants or holding project meetings inclusive of the defendants' participation.

Permanent injunction

[267] The law relating to the grant of permanent injunctions is summarised as follows:

6.2 *Gale on Easements*⁸⁷ summarises the position as follows:

Perpetual injunctions

14.63 Before a perpetual injunction can be granted to restrain a private nuisance or the disturbance of an easement, the Court as a general rule requires the party to establish his legal right and the fact of its violation. But when these things have been established, then, unless there be something special in the case, the party is prima facie entitled to an injunction to prevent the recurrence of that violation. An easement is a legal right. The remedy by injunction is in aid of that legal right.

[268] The Gibbs' argue that First Gas is manufacturing the urgency as they could have started Phase 2 earlier and involved the Gibbs'. In addition, they say delay is inevitable as other consents are required such as the archaeological authorities recommended by the archaeologist. Whether or not the repair work is urgent is not directly relevant to the granting of the remedies sought. However, I accept First Gas' evidence as to the urgency of the repair work for reasons set out above.

⁸⁶ *Gazeley v Attorney-General* [1996] 10 PRNZ 47 (CA); citing Lord Diplock in *Gouriet v Union of Post Office Workers* [1978] AC 435, 438, 501 (HL).

⁸⁷ Jonathan Gaunt and Paul Morgan *Gale on Easements* (20th ed, Sweet & Maxwell, Mytholmroyd, 2016) at [14.63].

[269] In addition, third parties, being consumers and downstream services, may well be impacted if the orders are not granted and there are continued denials of access to carry out the repairs.

[270] Damages would not be an adequate remedy in this case, as was pointed out by Isac J in the interim injunction judgment. The damages would be significant and difficult if not impossible to calculate.

[271] For similar reasons to those given in support of the declaration,⁸⁸ I consider an injunction is the appropriate remedy given nuisance has been established.

[272] There is nothing in the conduct of First Gas that would disentitle it to the relief it seeks. I am satisfied from the correspondence that it has made attempts to work collaboratively with the defendants. This has not been successful. The relationship between the parties has broken down. There has been a breach by the Gibbs' of First Gas' rights in relation to access and repair of the pipeline.

[273] To similar effect, in *Grey District Council v Graham*,⁸⁹ the Court granted a permanent injunction on the basis that it found that there was real risk that Mr Graham might excavate relevant areas in the future. That risk required the protection offered by an injunction in view of the possibility that interruption of electricity would be greatly disrupt users and have severe implications.

[274] In summary, an impasse has arisen that needs resolution. As Hugh Williams J observed in the 2009 *Vector Gas* case both parties have important roles to play in relation to the future maintenance of the gas supply. However, in relation to the matters in issue in these proceedings, it has been necessary to spell out First Gas' rights to ensure that they are observed in the future.

⁸⁸ See above at [263]–[265].

⁸⁹ *Grey District Council v Graham* (2007) 9 NZCPR 32 (HC).

Conditions of order

[275] First Gas suggested a number of conditions to be imposed. Those conditions were included as conditions in the interim injunction and variation.⁹⁰ The temporary nature of the interim injunction variation required additional conditions. However, I can see no reason for the conditions related to access as proposed in the plaintiff's submissions not be adopted generally in the final orders.

[276] This hearing was not to determine compensation. I note that condition (j) of the proposed conditions deals with compensation. Any compensation should be assessed under the relevant provisions of the Public Works Act and take into account the compensation provided for in these conditions but is not limited by that.

[277] As to the rate proposed of \$100 per hour for a Gibbs' representative, evidence was given that the rate paid to landowners in similar situations was usually \$60 to \$80. On that evidence I consider \$100 is appropriate. The defendants sought higher rates on the basis the monitoring and input by landowners and their representatives required expertise. However, the remuneration prescribed is for non-technical work. I am satisfied \$100 per hour is appropriate for that. Any other type of assistance by the Gibbs, including cultural input by Poutama would need the express agreement of First Gas including as to remuneration before being undertaken.

Orders

[278] The following relief is granted:

*A. The following declarations:*⁹¹

- a. That PEC 269143, PEC 269148, Pipeline Authorisation 4410-16 and the Petroleum Act 1937 authorise the Plaintiff to:
 - i. enter onto the Defendants' land over which PEC 269143 and PEC 269148 are registered for the purpose of gaining access to the Maui Pipeline and to perform any action or operation necessary for the purpose of inspecting, maintaining, repairing or operating the Maui Pipeline;

⁹⁰ *First Gas Ltd v Gibbs* [2021] NZHC 2794 at [45].

⁹¹ Statement of Claim 15 April 2021, page 9, 'Relief Sought'.

- ii. enter onto the Defendants' land with or without servants, workmen and agents and with all such equipment, machinery and materials as may be necessary for the carrying out of any inspection, maintenance, repair or operational works;
 - iii. deposit and store from time to time upon any land adjoining any such inspection, maintenance, repair or operational works all such machinery and material of any kind as may be used in carrying out any such works; and
- b. The Plaintiffs access rights are not conditional upon First Gas providing all project documentation to the Defendants or holding project team meetings inclusive of the Defendants' participation.

B. A permanent injunction prohibiting the Defendants, together with their successors, administrators, assigns and agents, from:

- a. restricting, obstructing or otherwise interfering with the Plaintiffs access rights under PEC 269143, PEC 269148, Pipeline Authorisation 4410-16 and the Petroleum Act 1937; and/or
- b. allowing or taking any action that restricts, obstructs or interferes with the Plaintiffs rights to enter onto the Defendants' Land for the purpose of inspecting, maintaining, repairing or operating the Maui Pipeline.

[279] The above declarations and orders are subject to the conditions attached.

Costs

[280] These proceedings are categorised on a 2B costs basis. That appears appropriate in the circumstances. Given the extent of the documentation and the need to prepare the common bundle within a short timeframe I also consider the assistance of second counsel would be justified. There appears no reason why costs should not follow the event. However, if the parties are unable to agree on costs an application for costs, together with supporting submissions, should be filed within seven days of the date of this judgment, any response within a further seven days, and any reply within a further three days.

[281] I note that memoranda have been filed in relation to the application for variation of the interim injunction. The defendants sought that the costs determination in that matter be adjourned pending the final decision. That is the practical result as it is appropriate to deal with both sets of costs at the same time. Therefore, the defendants should include in their memorandum as to costs in this matter submissions

on the variation costs application and memorandum filed by First Gas dated 28 October 2021.

Further proposed conditions: variation of interim injunction and further evidence

[282] Following the hearing of the substantive proceedings First Gas filed a without notice application for a variation of the interim injunction to enable it to commence the repairs. The without notice application was directed to be served and dealt with on a Pickwick basis.⁹² The variation sought was to enable the repairs to be started and in order to do that, to use land, outside its purpose corridor, to store machinery and equipment and deposit spoil. The without notice variation was sought due to the urgency that First Gas saw in starting the repairs. The variation was granted on 19 October 2021 following a teleconference involving all parties. Prior to the teleconference, Mr Gibbs had filed an unsworn affidavit and following the teleconference Mr Gibbs filed a further unsworn affidavit.

[283] The reasons for the grant of the interim orders varying the interim injunction were consistent with the reasons for the granting of the declaration and permanent injunction given in this judgment.

[284] Following the delivery of the interim variation judgment First Gas replied to Mr Gibbs' two unsworn affidavits with an affidavit of Mr Stretton, also unsworn but dated 22 October 2021. Mr Stretton said that he was concerned that various allegations that Mr Gibbs had made in the two unsworn affidavits filed in relation to the without notice interim application for variation, went unanswered.

[285] I do not consider it appropriate to deal with either Mr Gibbs' allegations in his affidavits nor Mr Stretton's affidavit in reply in detail here. I have considered all matters raised and they were largely within the variation decision or have been dealt with in this judgment. The matters traversed have largely been overtaken by my

⁹² Such an application is served at the time of filing so that the defendant can be represented in court when the application without notice is heard. See *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd* [1972] 1 WLR 1213 (Ch).

findings in the substantive judgment. No leave was granted for further evidence to be given in the substantive matter in any event.

[286] However, Mr Stretton went into some detail responding to Mr Gibbs' requirements in terms of conditions. The conditions proposed by First Gas were attached to its submissions filed for the substantive hearing. The Gibbs' said the conditions were inadequate. Following the delivery of the variation judgment, Mr Stretton, in his affidavit, proposed additional further detailed replaced conditions [a] to [c] of the draft conditions submitted at the hearing. These are in general terms consistent with the conditions already proposed but add detail.

[287] The substantive hearing was conducted on the basis of the conditions attached to First Gas' submissions. It is not appropriate to adopt new conditions without the opportunity for the Gibbs' to make submissions on those conditions. In view of the need for a timely decision I do not consider it appropriate to further delay the judgment.

Grice J

Solicitors:
Govett Quilliam, Ngāmotu | New Plymouth for the Plaintiff.

Attachment 1 – Draft Conditions

In exercising its rights under PEC 269143, PEC 269148 and Pipeline Authorisation 4410-16 and when accessing or undertaking works on the Gibbs Family Trust’s (the “Landowner”) Land, First Gas will (at its sole cost):

- a) use its best endeavours to avoid disruption to any of the Landowner’s farming activities on the Land, including ensuring all gates remain closed at all times, provided that gates may be opened and immediately closed for access purposes;
- b) undertake all routine works and activities, as far as possible, during week days;
- c) except in the case of an emergency or where agreed otherwise in writing with the Landowner, provide at least two weeks’ notice to the Landowner and any Lessees of any activities First Gas or its contractors plans to undertake on the Land;
- d) keep the Landowner and any Lessees informed of any minor changes to planned site activities or timing due to weather or equipment or contractor availability as soon as practicable and use all reasonable endeavours to minimise disruption to the Landowner’s Activities on the Land;
- e) as soon as practicable make good any damage or disruption caused to the Land;
- f) on completion of any works, remove all its equipment and other property from the Land and make good any damage or disruption caused to the Land by the installation or removal of that equipment or property, except to the extent such equipment or property is to be retained of affixed on the Land under the Pipeline Easement Certificates;
- g) invite one representative of the Landowner to be present during any excavation works⁹³ carried out by FG on the Land in relation to the Maui Pipeline. The representative shall be entitled to be remunerated at a rate of \$100/hour;
- h) comply with all laws, regulations and orders (including the Heritage New Zealand Pouhere Taonga Act 2014, the Building Act 2004, Resource Management Act 1991 and Health and Safety at Work Act 2015) and undertake consultation as and when required by law or as directed by the relevant statutory bodies (i.e. New Plymouth District Council and Heritage New Zealand Pouhere Taonga);
- i) comply with an Accidental Discovery Protocol in the event that koiwi, taonga, archaeological sites or any other waahi tapu are uncovered during any surveys, inspections or works on the Land. The Accidental Discovery Protocol shall as a minimum require First Gas to notify the Landowners, mana whenua and Heritage New Zealand Pouhere Taonga of the accidental discovery and to take immediate steps to secure the site to ensure it remains undisturbed and that the site is safe in terms of health and safety requirements; and
- j) where any works exceed 1 week in duration or where the rehabilitation of an area lasts more than 1 month pay the Landowner or Lessee land disruption compensation, calculated by a registered valuer using International Valuation Standards 2017, Australia and New Zealand Valuation Guidance Notes and Technical Information Papers based on the principle of “highest and best use”. Except where disruption has already been compensated (i.e. overlapping areas).

⁹³ For the purpose of these conditions, excavation works means the alteration or disturbance of land by removing, blading, cutting, contouring, filling or excavating earth; but excludes disturbances of land for the installation of fence posts, taking core samples, digging test pits or probing the pipeline.