

BEFORE THE INDEPENDENT COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

on Proposed Plan Change 9 ("**PC9**") to the Hamilton
City Operative District Plan ("**District Plan**")

MEMORANDUM OF COUNSEL ON BEHALF OF WEL NETWORKS LIMITED

22 MARCH 2024

**Russell
McAugh**

D J Minhinnick | K L Gunnell
P +64 9 367 8000
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

MAY IT PLEASE THE COMMISSIONERS

Introduction

1. This memorandum of counsel is filed on behalf of WEL Networks Limited ("**WEL**") to address:
 - (a) WEL's further submission on 4 December 2023; and
 - (b) the memorandum of counsel filed by counsel for Hamilton City Council ("**HCC**") on 8 March 2024.
2. By way of letter dated 20 November 2023¹ ("**November Letter**") HCC informed WEL that in response to HCC's submission, HCC's consultant archaeologist had recommended:
 - (a) including the site known as Site A112 in Schedule 8CA;
 - (b) modifying the extent of Site A112 so that it includes all or part of the properties owned by WEL at 57 Sandwich Road, St Andrews, Hamilton ("**Sandwich Road Substation**");²
 - (c) including Schedule 8CA for information purposes only, because it is unlikely that archaeological remains still exist on the applicable sites; and
 - (d) a new rule 19.3.3(f) to identify earthworks on a site listed in Schedule 8CA as a Permitted Activity, including an advice note requiring consultation with Heritage New Zealand Pouhere Taonga.

(together referred to as "**Subsequent Changes**").

Knowledge of the proposed changes

3. WEL was not made aware of Subsequent Changes until it received the letter on 20 November 2023. In counsel for HCC's memorandum of 8 March 2024, HCC contended that the Subsequent Changes were known to WEL after HCC's archaeologist, Nick Cable, submitted his evidence on 1 September 2023. WEL's evidence was focussed on the road reserve elements of Mr Cable's submission and WEL was not aware at the time

¹ Letter from Paul Ryan (Principal Planner of Hamilton City Council) to Sara Brown (WEL Networks Limited) regarding Plan Change 9 to the Hamilton City District Plan – Archaeological or Cultural Site A112 (20 November 2023).

² Lot 33 DPS 11797 and Lot 43 DPS 9102.

the implications of modifying Site A112 and its proposed inclusion in Schedule 8CA. This lack of knowledge was expressly acknowledged in the November Letter as follows:³

Recognising that you [WEL] and other property owners had not been advised that your properties were affected by the proposed mapped site extent, the Panel has adjourned the hearing to give you an opportunity to make a late further submission on PC9 and the inclusion of your property in Schedule 8CA and, if you wish, appear at the hearing ... Any late further submission should be provided to [the] Council by **4 December 2023**.

Further submission

4. As set out above, the November Letter specified that any further submission regarding the proposed inclusion of a property in Schedule 8CA should be submitted to HCC by 4 December 2023.
5. On 4 December 2023, WEL submitted a further submission on PC9 relating to the Subsequent Changes. The Panel accepted this submission on 11 March 2024.⁴
6. WEL rejects any implication arising from HCC's memorandum of counsel that WEL acted improperly in filing this submission.
7. WEL acted in accordance with HCC's instructions provided in the November Letter which:
 - (e) provided an opportunity to make a further submission and appear at the hearing; and
 - (f) prescribed the deadline of 4 December 2023.
8. As discussed above, HCC acknowledged that WEL was not previously advised of the Subsequent Changes and that, at the point in time WEL is being informed, "PC9 is well advanced through the plan change process".

WEL's key concerns

9. Putting aside the question of whether there is scope to increase the extent of Site A112, WEL welcomes the opportunity to provide further information regarding its concerns with the Subsequent Changes, in particular the late

³ Above n 1.

⁴ Hearing Panel Direction #23, 11 March 2024.

inclusion of the Sandwich Road Substation in Schedule 8CA. These concerns are further detailed in the **attached** report from Matthew Campbell.

10. The Sandwich Road Substation is an operational network utility site which provides critical electricity services to Hamilton City. The site was established in the 1950s and has undergone considerable earthworks over the past 60 – 70 years. It is therefore a highly modified site.
11. Further earthworks may be required at the site in the future to deliver necessary electricity supply to the community. Any rules that restrict or unnecessarily delay WEL's ability to undertake works has the potential to delay or impact the reliability of an ongoing electricity supply.
12. Inclusion of the Sandwich Road Substation in Schedule 8CA means that it is subject to additional, and unnecessary rules and information requirements. For example, inclusion in the schedule imposes an additional automatic requirement to consult with Heritage NZ Pouhere Taonga (above and beyond what may be required under the Heritage NZ Pouhere Taonga 2014), and the activity status of any alteration or addition to, or demolition of, the buildings on the site is not clear.
13. HCC's evidence acknowledges that the site, as a Group 3 site, is "deemed to have been destroyed or are of low archaeological significance, and any subdivision, use, or development of those sites is unlikely to be "inappropriate" in the context of section 6(f)".
14. There has been no justification provided for why Site A112 has been extended to the Sandwich Road Substation, including a lack of evidence on what environmental benefit there is from a section 32 perspective. Given the additional requirements imposed on WEL and the lack of any identified benefit, the inclusion of the Sandwich Road Substation in Site A112 is not efficient and effective and does not meet the requirements of section 32 of the RMA.

Conclusion

15. For the reasons set out above, WEL continues to oppose the extension of Site A112 to include the Sandwich Road Substation. WEL agrees that this

matter can be decided on the papers. WEL would also be happy to respond to any further questions the Panel may have.

DATED: 22 March 2024

A handwritten signature in blue ink, appearing to read 'K L Gunnell', is positioned above a horizontal line.

D J Minhinnick / K L Gunnell
Counsel for WEL Networks Limited

The Commissioners

22 March 2024

**Plan Change 9, Sandwich Road Substation
on behalf of WEL Networks**

In September 2023 I prepared evidence on the archaeological provisions of Plan Change 9 on behalf of WEL Networks, and in November 2023 I provided comment on the rebuttal evidence of Hamilton City Council (HCC) archaeologist Nick Cable.

On 9 November I spoke to my evidence before the commissioners via a Teams link.

The main points of my evidence that are relevant to this memo were:

- that the methodology used by Mr Cable to support the scheduling of archaeological sites was not robust and that I had no confidence that I or any other archaeologist would reach the same conclusions as Mr Cable;
- that any previous utilities trenches will have effectively destroyed any surviving archaeological evidence and that maintenance work in these trenches has no reasonable potential to further effect archaeology; and consequently
- that restricted discretionary or controlled activity status in these situations, requiring archaeological assessment and obtaining an archaeological authority from Heritage New Zealand Pouhere Taonga (HNZPT) were disproportionate and placed an unnecessarily onerous burden on any network utilities provider to no good purpose.

Since the hearing date, on 20 November 2023 HCC advised WEL Networks that, on the advice of Mr Cable, Site A112 had been extended further south to include the Sandwich Road Substation at 57 Sandwich Road, St Andrews.

It is my expectation that the ground beneath the substation will have been highly modified by foundations and by cable and other utilities trenches since it was first built in the 1950s.

There is, therefore, no reasonable cause to suspect that any archaeology will survive in this location, and my arguments regarding the archaeological provisions of Plan Change 9 in existing utilities trenches, summarised above, apply to the Sandwich Road Substation.

In my opinion there is no good archaeological reason to include the Sandwich Road Substation in the extent of A112 in Schedule 8CA of Plan Change 9.

A handwritten signature in black ink, appearing to read 'M.C. Campbell'.

Matthew Campbell
Director