

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 9 to the Operative Hamilton
City District Plan

MEMORANDUM OF COUNSEL ON BEHALF OF HAMILTON CITY COUNCIL

Dated 8 March 2024

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MAY IT PLEASE THE HEARING PANEL

1. This memorandum is filed on behalf of Hamilton City Council (**HCC**) to address a procedural issue relating to a late further submission.

BACKGROUND

2. On 4 December 2023, WEL Networks Limited (**WEL**) submitted a late further submission on Plan Change 9 (**PC9**) relating to the Archaeological and Cultural Sites topic. The late submission is **attached** to this memorandum.
3. Although it refers to HCC's submission points 201.34 – 201.36, which broadly seek further research into and (where necessary) correction of, all Archaeological and Cultural site extents, it appears to respond to the primary evidence of Mr Cable dated 1 September 2023 in which he recommends that the extent of Archaeological Site A112 (Waiwherowhero/Borrow Pits) be modified to encompass a group of borrow pits visible in historic aerial photographs recorded as Archaeological Site S14/4¹.
4. The amendment proposed by Mr Cable means that A112 would include part of a WEL substation located at 57 Sandwich Road. Mr Cable also recommends that A112, a Group 2 (information only) site, be included in new Schedule 8CA. WEL's late 'further submission' requests the following decision:
 - a) Reject submission 201.34, 201.35 and 201.36; or
 - b) Exclude the substation located at 57 Sandwich Road, Saint Andrews from Schedule 8CA.

¹ Refer to Annexures 2, 8 and 9 to Mr Cable's primary evidence.

5. The late further submission also expresses a wish to be heard.
6. WEL's late further submission was provided to the Hearing Panel for consideration. Subsequently, the Hearing Panel asked HCC to advise its position concerning the late submission, including the relief sought by WEL.

HCC'S POSITION

Procedural issue – late further submission

7. WEL's further submission was submitted three weeks after the conclusion of the hearing of the Archaeological and Cultural Sites topic.
8. Despite Mr Cable's evidence being available before submitter evidence was due and prior to the hearing, WEL did not address the proposed amendment to A112 in its written evidence, nor its legal submissions, nor its presentation at the hearing.
9. No further hearing time is currently allocated to the Archaeological and Cultural Sites topic and as recorded in the Hearing Panel's Decision #2, an Interim Decision on the topic is now pending².
10. HCC notes that WEL has not formally sought leave from the Hearing Panel to file a further submission and be heard on it. Such a request would need to be supported by good grounds for accepting it at this very late stage in the process. No reasons have been provided in the present case.
11. HCC accepts that WEL's interest in the extended mapping of A112 was not known to it at the time it lodged its original submission or further submission, as it only arose in Mr Cable's evidence dated 1 September 2023. It was however known to WEL at the time of the hearing in

² Decision #2, page 2.

November 2023, when it presented its case. WEL should have presented any objection at that time.

12. Seeking to be heard on this issue after the hearing is completed (but noting it is not formally closed) is procedurally inefficient. WEL will need to address the Panel on how it wishes to be heard. HCC recommends it be on the papers.
13. On this basis, HCC does not oppose the filing of the late further submission. It does however oppose the relief sought.

Relief sought

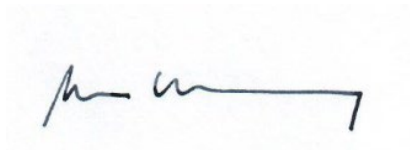
14. In terms of the relief sought, HCC supports the recommendations of its expert archaeologist with respect to A112. As explained in Annexures 2, 8 and 9 to Mr Cable's primary evidence, his recommendation to extend A112 over part of the WEL site is informed by further investigatory work which shows that a group of borrow pits are located in that area.
15. No expert evidence is before the Panel challenging Mr Cable's evidence. Further, both under the Hamilton Operative District Plan, PC9, and proposed Schedule 8CA, A112 has 'for information only' status. For these reasons, HCC opposes the relief sought by WEL.
16. At this stage HCC does not seek to present any further evidence to support its position on A112. It reserves its position to reply to any new material WEL may present in support of its late further submission.

DIRECTIONS SOUGHT

17. HCC seeks the following directions:
 - a) The late lodging of the further submission be accepted by the Panel;

- b) HCC's opposition to the relief sought is noted by the Panel;
- c) WEL provide any written material to support the late further submission by 22 March 2024;
- d) HCC provide any written material in response by 5 April 2024; and
- e) The Panel will then formally close the hearing on this PC9 topic.

Dated 8 March 2024

A handwritten signature in black ink, appearing to be 'L F Muldowney / S K Thomas', written on a light blue background.

L F Muldowney / S K Thomas

Counsel for Hamilton City Council



4 December 2023

Hamilton City Council
Private Bag 3010
Hamilton 3204

SENT BY EMAIL TO: DistrictPlan@hcc.govt.nz

Dear Sir/Madam,

RE: FURTHER SUBMISSION BY WEL NETWORKS LIMITED ON HAMILTON CITY COUNCIL PLAN CHANGE 9 – HISTORIC HERITAGE AND NATURAL ENVIRONMENT

Please find attached to this letter a further submission by WEL Networks Limited (WEL) on Hamilton City Council Plan Change 9 – Historic Heritage and Natural Environment (PC9). This further submission addresses Hamilton City Councils submission to include site A112 in Schedule 8CA in PC9 and modify the extent of site A112.

WEL still wishes to be heard in **support** of its submission, reference 133, and this further submission. If others make a similar submission, WEL would consider presenting a joint case at the hearing.

If you have any questions regarding this submission, please do not hesitate to contact me.

Yours sincerely,

Sara Brown
Senior Planner
WEL Networks Limited

Email: sara.brown@wel.co.nz



Name of Submitter	Submission Reference	Support or Oppose	Reason for WEL Support or Oppose	Decision Requested
Hamilton City Council	201.34, 201.35 and 201.36	Oppose	<p>The submission seeks to include archaeological site A112 in Schedule 8CA and modify the extent of site A112 so that it partially covers WEL's Sandwich Road substation, located at 57 Sandwich Road, Saint Andrews (Sandwich Road substation).</p> <p>In addition, Council is requesting the inclusion of new Rule 19.3.3(f) to identify earthworks on a site listed in Schedule 8CA as a Permitted Activity. A new advice note is also proposed below Rule 19.3.3(f) which states that Heritage NZ Pouhere Taonga (NZHPT) should be consulted about any proposed earthworks on a site in Schedule 8CA to determine whether an assessment is required.</p> <p>WEL opposes this submission and requests the Sandwich Road substation, be excluded from site A112 and inclusion in Schedule 8CA.</p> <p>The site is proposed to be included as a "Group 3" archaeological or cultural site where Council evidence acknowledges Group 3 sites "are 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)". There has been no justification provided for why site A112 has been</p>	<p>That Council:</p> <ul style="list-style-type: none"> • reject submission 201.34, 201.35 and 201.36; or • exclude the Sandwich Road Substation, located at 57 Sandwich Road, Saint Andrews, from Schedule 8CA.

			<p>extended to the Sandwich Road substation, including a lack of evidence on what environmental benefit there is from a section 32 perspective.</p> <p>The Sandwich Road substation was established in the 1950's and since that time has undergone considerable earthworks. These earthworks include foundations for above ground infrastructure, which includes a control building, transformers and switchgear. Earthworks also include three water services, a network of underground cables and earth grid that covers the entire site at a maximum depth of 2.5m. A copy of the Sandwich Road substation layout and location is included as Attachment 1.</p> <p>Any future works undertaken at the site are necessary to deliver electricity supply to the community, therefore rules that restrict WEL's ability to undertake works has the potential to delay or impact the reliability of an ongoing electricity supply.</p> <p>It is also not clear what the activity status of any alteration or addition to, or demolition of, the buildings on the site would be. Demolition, alterations, and additions to an existing building or structure constructed after 1900 on a Schedule 8C site that does not involve earthworks or Schedule 8A buildings or structures is permitted but there is no corresponding Permitted Activity status for Schedule 8CA sites.</p>	
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			<p>As discussed in WEL’s primary evidence, the demand for electricity infrastructure is only going to increase with more reliance on electricity (through electric vehicles and heating, for example). Extending the overlay over the substation has the potential to affect any future maintenance or upgrades and network development of the substation site to enable electrification.</p>	
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Attachment 1 – Sandwich Road Substation Layout and Location.

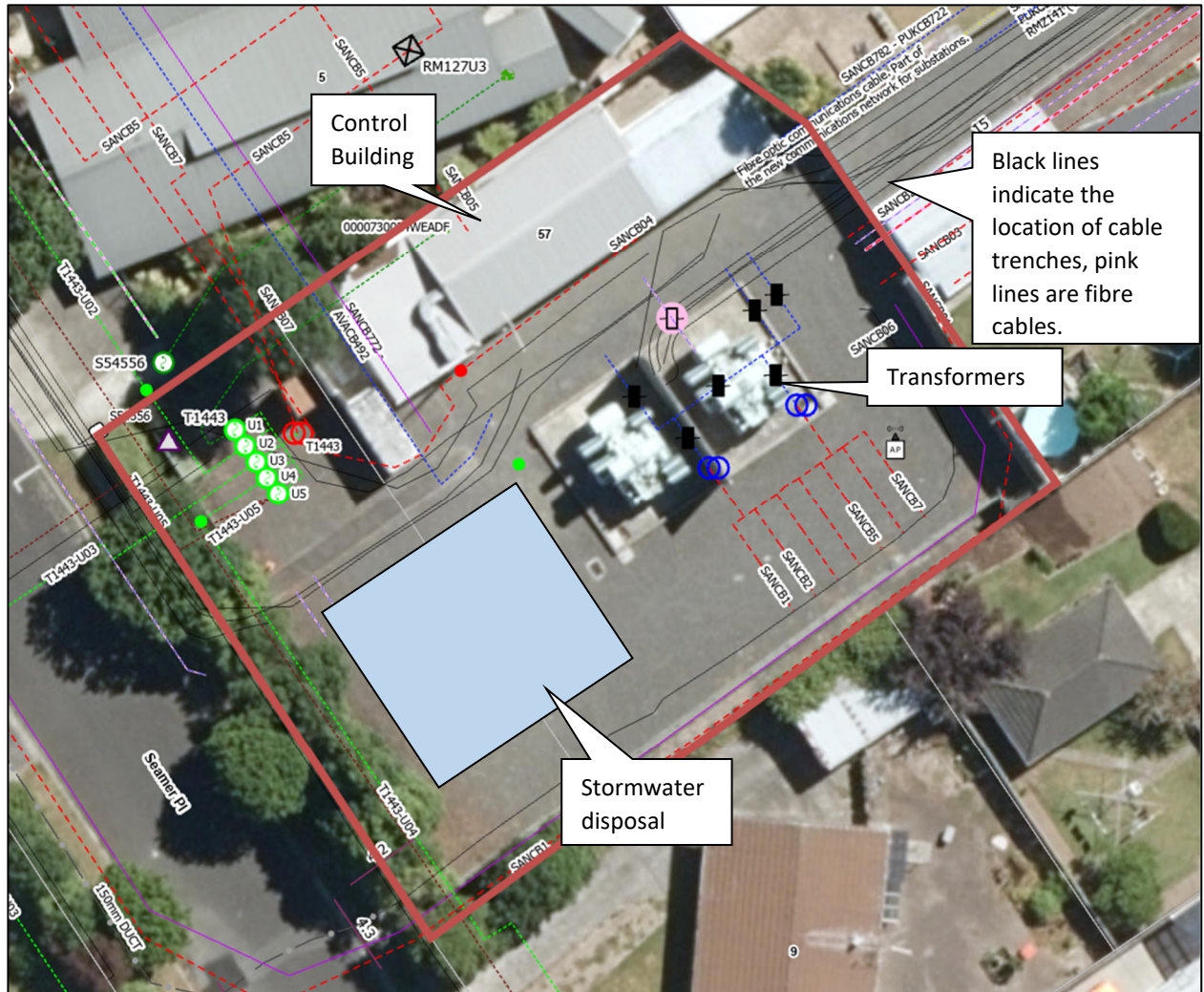


Figure 1: Sandwich Road Substation Layout (within red line).

Attachment 1 – Sandwich Road Substation Layout and Location.



Figure 2: Location of Sandwich Road substation within A112. Source: Plan included in letter received from Hamilton City Council regarding PC9 on the 24 November 2023.