

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**")

LEGAL SUBMISSIONS ON BEHALF OF WEL NETWORKS LIMITED

2 NOVEMBER 2023

**Russell
McAugh**

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

1. SUMMARY

- 1.1 WEL Networks Limited ("**WEL**") is an electricity distributor under the Electricity Act 1992, which owns, operates and develops electricity distribution infrastructure in Hamilton and the wider Waikato region to provide line function services to approximately 100,000 installation connection points. This includes the distribution of electricity to many residences and businesses within Hamilton.
- 1.2 WEL owns and manages utilities within the road reserve (both overhead and underground), owns sites which contain substations and/or switching stations and has utilities authorised under the Electricity Act or by easements within private land (usually overhead lines, underground cables and distribution transformers).
- 1.3 WEL as a network utility operator under the Resource Management Act 1991 has the responsibility of providing a secure and efficient supply of electricity to the communities within WEL's distribution network area.
- 1.4 WEL supports the intent of PC9 to protect areas and sites of archaeological significance. However, given the nature of WEL's operations and electricity generation lines and assets, WEL considers further amendments to PC9 are necessary to ensure that WEL is able to maintain, upgrade, and repair existing network utilities within transport corridors and private property, that are subject to archaeological overlays.
- 1.5 The reasons for those changes and the specific relief sought are further addressed in the evidence of Ms Brown and Mr Campbell.

2. SCOPE OF SUBMISSIONS

- 2.1 These legal submissions address:
 - (a) WEL's concerns relating to PC9;
 - (b) the relief sought by WEL in its submission; and
 - (c) the Council's approach to WEL's relief.

3. ARCHAEOLOGICAL OVERLAYS

WEL's concerns

- 3.1 Part of the proposed changes introduced through PC9 includes a new archaeological overlay within transport corridors. Those overlays apply in a range of areas, including the Hamilton CBD, Wairere Drive, River Road, and the eastern side of the Waikato River. All of these areas contain significant concentrations of network utility equipment. To a lesser extent, the new archaeological overlays also extend over private land which also contain some network utility equipment.
- 3.2 The implications of PC9 are significant, as it proposes new resource consenting rules for earthworks within the proposed archaeological overlays in the transport corridors and over private land. The new rules mean earthworks cannot occur within those areas without a resource consent, archaeological report, and comments from mana whenua.
- 3.3 The rules as currently proposed will, in addition to adding an extra layer of complexity and cost to WEL's works programme, inhibit WEL's ability to efficiently and effectively carry out required upgrade and maintenance works, as well as respond to emergency faults, within such areas of its network. To be clear, these are works proposed for existing infrastructure in land that has already been disturbed and developed. This is not greenfield land. WEL's will be restricted to carry out those routine maintenance and upgrade works efficiently and effectively will have significant implications for WEL's ability to deliver a secure supply of electricity within Hamilton City.
- 3.4 As set out the evidence of Ms Brown, the Hamilton City district has experienced significant intensification in existing residential areas, and intensification of those areas are expected to further increase through the National Policy Statement for Urban Development.¹ As a result, WEL has introduced a range of new projects to meet demand while maintaining security levels, including through upgrading and maintaining the existing network, to meet anticipated growth. WEL remains concerned that the archaeological overlay rules proposed through PC9 will restrict WEL's ability to ensure that new, intensified development will be supplied with electricity in a timely and cost-efficient manner.

¹ Statement of Evidence of Sara Brown dated 22 September 2023 at [4.4].

WEL's relief

- 3.5 To address WEL's concerns, WEL is not seeking that the new archaeological overlays are removed. Rather, WEL seeks the new rules be amended to adopt a more pragmatic and workable approach that enables essential maintenance, repair and replacement activities for existing network utilities. These provisions are not novel and have been adopted in the Tauranga District Plan.²

Council's approach to WEL's relief

- 3.6 Council rejected WEL's relief on the basis that there are a large number of archaeological sites located within the road corridor, and that the maintenance of network utilities may have the potential to damage those archaeological remains without prior opportunity for mana whenua to express their views on their cultural values of establishing and operating the existing network utility through those archaeological sites.
- 3.7 However, WEL's proposed amendments that enable earthworks for sites within the archaeological overlay are intended to apply to the maintenance and repair of *existing network utilities*. These sites have previously been excavated and are not untouched areas.
- 3.8 The risk of there being any damage to archaeological sites caused by the maintenance and upgrade of existing network utilities is just not present. As Mr Campbell sets out in his evidence, WEL's excavation works are typically for works in existing trenches, footings, or foundations.³ Those are not new excavations and will not disturb untouched archaeological sites. Mr Campbell's evidence clearly also sets out that should further excavations occur in existing cuts, those excavations will not damage archaeological sites.⁴
- 3.9 Council (and Heritage New Zealand Pouhere Taonga) are concerned there is a lack of a guarantee that new excavations will be limited to the portion of a site that has already been disturbed. However, WEL's evidence is that the risk of damage can be appropriately avoided. As described by Ms Brown, given the highly hazardous nature of electricity supply and generation infrastructure, WEL records the coordinates of its electricity infrastructure (even those located underground) on a network

² Statement of Evidence of Sara Brown dated 22 September 2023 at [5.2(b)].

³ Statement of Evidence of Matthew Campbell dated 22 September 2023 at [4.8].

⁴ Statement of Evidence of Matthew Campbell dated 22 September 2023 at [4.8].

register, and it is critical the coordinate data accurately reflects and aligns with what is where in, above, or underground. As such, there is a high degree of certainty and confidence that when undertaking maintenance or repair works on existing network utilities in or underground, WEL is able to work and excavate precisely within the dimensions of its infrastructure and any existing areas of cut and fill, without damaging or disturbing new or previously undisturbed land.⁵

3.10 Central issues for consideration of plan changes under section 32 of the Resource Management Act 1991 ("**RMA**") include costs, benefits, efficiency and effectiveness.

3.11 As set out in the evidence of Ms Brown, the archaeological overlay rules, in its current form will likely be unworkable for WEL (and other network utility operators), significantly impacting its ability to complete its infrastructure upgrade and maintenance programmes, resulting in the incursion of significant costs and an inefficient use of resources.⁶ The evidence of Mr Campbell is that the provisions are not needed for existing network utilities in the road reserve and will be ineffective. In our submission the PC9 provisions, without the amendments sought by WEL, are not the most appropriate way to achieve the purpose of the RMA.

4. CONCLUSION

4.1 As currently proposed, PC9 creates costly and onerous burden on network utility operators such as WEL who seek to carry out essential maintenance, repair and upgrade works to existing network utilities located within road reserve that is subject to the proposed archaeological overlay. The proposed rules do not reflect the most appropriate way of achieving the purpose of the RMA, have significant costs that outweigh any benefits and will cause inefficiencies in maintaining and upgrading essential infrastructure.

4.2 The relief sought by WEL will ensure a pragmatic and workable approach to applying the archaeological overlays can be achieved, and to ensure

⁵ Statement of Evidence of Sara Brown dated 22 September 2023 at [5.7].

⁶ Statement of Evidence of Sara Brown dated 22 September 2023 at [4.3].

Hamilton City's communities continue to receive safe, secure and efficient supply of electricity.

DATED: 2 November 2023

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