

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a notice of requirement issued by **WEL NETWORKS LIMITED** pursuant to section 168(2) of the Act for designations (3) to authorise the implementation of the Western Network Upgrade Project

OUTLINE OF LEGAL SUBMISSIONS OF COUNSEL FOR WEL NETWORKS LIMITED

1. INTRODUCTION

- 1.1 This is the hearing of three notices of requirement (“NORs”) issued by WEL Networks Limited (“WEL”) to the Waikato District Council (“WDC”) pursuant to section 168(2) of the Resource Management Act 1991 (“RMA”) to authorise capital works required to upgrade and enhance the reliability of the western portion of WEL’s supply area – referred to in the NOR documents as the Western Network Upgrade Project (“WNUP”).

WEL Networks Limited

- 1.2 WEL Networks Limited (“WEL”) is the main lines company distributing power within the Central and Western Waikato and is owned by the ratepayers in WEL’s supply area. WEL manages, maintains and develops the physical network of lines, poles, cables, transformers and substations that deliver electricity in Hamilton City, Waikato District and a part of the Waipa District. As the commissioner is well aware, WEL has also just had the consents granted for a 28 turbine wind park at Te Uku, a factor which is highly relevant to the three notices of requirement (NORs) being considered in the hearing.
- 1.3 WEL has been approved pursuant to section 167 of the RMA as a requiring authority for its lines function - a status which is conferred on infrastructure operators in order to enable them to, in essence, get on with their business. The relevant order which authorises WEL’s functions in that regard states as follows¹:

“WEL Networks Limited is hereby approved as a requiring authority under section 167 of the Resource Management Act 1991, for its line function services.”

- 1.4 WEL’s functions and the company’s commitment to sound environmental objectives will be addressed further in WEL’s evidence.

¹ Resource Management (Approval of WEL Networks Limited as Requiring Authority) Notice 2004.

Western Network Upgrade Project

- 1.5 The WNUP comprises three distinct elements, each of which is reflected in one of the NORs. (Indeed, other elements of a broader Western Upgrade Project, e.g., upgrade of the Raglan Substation, will be implemented in due course but are not part of the WNUP.) These elements comprise:
- (a) A new substation directly adjacent to the existing Transpower grid exit point (“GXP”) at Te Kowhai (“NOR1”).
 - (b) An electricity line (including several different types of pole) over a 25 kilometre corridor between the new Te Kowhai substation and a new substation to be built at the Te Uku Wind Park (“NOR2”).
 - (c) A new substation at the recently consented Te Uku Wind Park, which will transform the power from the wind park and enable the transmission of that power to the Te Kowhai GXP (“NOR 3”).
- 1.6 It is appropriate for the purpose of assessing effects and issuing authorisations to consider NOR each separately but it is also necessary to bear in mind that they are closely related in an operational sense.
- 1.7 A useful summary of the project for present purposes was contained in the public notice. It stated:
- “The three designations make up the Western Network Upgrade Project consisting of an electricity line with substations at either end which will enable the transmission of electricity generated from the Te Uku Wind Park to the National Grid and around the local network.*
- The proposed work relating to the Te Kowhai Substation (NOR 1) and the Te Uku Wind Park Substation (NOR 3) will be all necessary works for the establishment, construction and reconstruction, operation, maintenance and modification, replacement and repair of a substation sites including parts of the electricity line that may carry two circuits at the voltages of either 11 kV 33 kV or 110 kV which will be supported on poles (concrete or steel) with a maximum height of 17 metres.*
- The proposed work relating to the electricity line (NOR 2) will involve the establishment, construction and reconstruction, operation, maintenance and modification, replacement and repair of electricity lines of up to 110 kV voltage and associated equipment. The 110 kV line may also carry additional circuits at 11 kV or 33 kV along certain sections of the line which will be supported on poles (concrete or steel) with a maximum height of 17 metres.”*
- 1.8 In accordance with normal commercial practice, WEL proposes to issue a contract for the construction of the WNUP and it will be for the contractor which undertakes the project to work out the detail of how the project is actually carried out with the parameters of the designation and conditions imposed.
- 1.9 Having said that, the manner in which the project will need to be implemented is fairly obvious in terms of conventional engineering wisdom and it is possible to predict the manner in which most aspects of the project will be implemented. The important point for present purposes is this it is a relatively straightforward project and there are no aspects in respect of which any potential adverse effect

or risk (e.g., from a geotechnical perspective) cannot be addressed by way of engineering design and conditions.

NOR documents

- 1.10 All aspects of the project are described in significant detail (especially in the context of a designated project) in the three NOR documents and a comprehensive suite of supporting documents, namely:
- (a) **Volume 1A** – this is a statutory assessment document which describes the project and considers it, having regard to the criteria in section 171 of the RMA against which NORs need to be assessed, including the relevant provisions of relevant planning instruments.
 - (b) **Volume 1B** – this is an A3 document which sets out all sections of the corridor route, and describes the conceptual line design, construction works and the associated works.
 - (c) **Volumes 2A and 2B** – contains the individual specialist reports which form the basis for the assessment in Volumes and 1A and 1B. These specialist reports have been prepared by the consultants who will be the independent witnesses in the case.
 - (d) **Volume 3** – which contains the consultation record (a chapter of Volume 1A is dedicated to summarising the consultation and outcomes).
- 1.11 Given the detail contained in the NOR documents, many of WEL's witnesses refer to those documents rather than produce new plans, etc. Where that is the case, it will be clearly signalled in the evidence.

Other consents

- 1.12 Consents from the Waikato Regional Council – Environment Waikato (“EW”) may be necessary for earthworks and other activities associated with the construction of the project if those activities do not meet the permitted activity requirements of the Waikato Regional Plan. EW has lodged a submission drawing this to WEL's attention.
- 1.13 WEL has had meetings with EW officers and is currently undertaking its planning on the basis that permitted activity performance standards will be achieved and that no resource consents (other than for greywater from the hand basins in the substation buildings) will be necessary. Either way, if any applications for resource consents transpire to be necessary, they will relate to routine activities with easily managed effects and will be made in due course once the construction contract is issued and the detailed construction methodology has been developed. Either way, any such applications are likely to be “sufficiently unrelated” to the issues arising in this hearing as to not warrant a joint hearing under section 102 of the RMA – both WDC and EW are well aware of the project and the issues arising.

Discussions with landowners on the line route

- 1.14 As will be made clear in WEL's evidence, a desire to locate the line on private land away from roads was WEL's basic starting point in considering the route for the line, which was itself a dynamic process. WEL representatives have been engaged in detailed discussions with landowners on the sub-transmission line route for over two years, the upshot of which is that agreement has been reached with landowners over the majority of the line route. In the context of that process, WEL has given significant consideration to alternatives. That will be

addressed in evidence to be given by Mr Mollekin and Mr Jackson. It is generally only where it has not been possible to get agreement with the owners of private land or for technical reasons that the line has been placed in roads.

Consultation

- 1.15 WEL consulted with other key stakeholders such as the Waikato District Council, Department of Conservation, Ngati Mahanga, Ngati Tamunaipo and the New Zealand Transport Agency and any issues raised by those groups and bodies have been addressed.
- 1.16 WEL also consulted with landowners in the vicinity of the corridor potentially affected by the lines and poles, both before and following the lodgement of submissions. WEL's consultation effort and outcomes is described by Chris Dawson.

Procedural background

- 1.17 WEL issued its NORs on 10 November 2008. The procedural history of the NORs in terms of notification, etc., are fully summarised in the WDC Officer's Report and need not be repeated here.
- 1.18 A total of 15 submissions were received on the NORs - 9 in opposition, 4 neutral and 2 in support. In no particular order, the issues raised by the submissions comprise (in no particular order):
 - (a) Traffic;
 - (b) Visual and landscape;
 - (c) Land stability and erosion and potential hazards;
 - (d) Ecological effects;
 - (e) Noise;
 - (f) Health concerns;
 - (g) Earthworks and other effects of construction;
 - (h) Adverse effect on property values and requests for compensation;
 - (i) Discharge of water;
 - (j) Consideration of alternatives including line/ pole location;
 - (k) Whether the designation is necessary;
 - (l) Procedural issues including the Notification process
- 1.19 WEL arranged for WDC to call an independently facilitated pre-hearing meeting with submitters on 13 February 2009. A number of WEL's expert witnesses attended to attempt to address concerns. Further meetings would have been held if they would have been worthwhile but it became clear that there would be little point. You have Dr Mitchell's report as part of your papers.
- 1.20 It is apparent that the submissions along the line route are concentrated in pockets, generally lodged by submitters who own or occupy land adjacent to roads, where it has not been possible to locate the line on private land with the

agreement of the relevant landowner. The people adjacent to the line route tend to take the view that WEL has not adequately considered alternative routes or methods (e.g., undergrounding) which would avoid or reduce the effect of the line on them. That is not correct, and the evidence will demonstrate that WEL considered no less than 56 options and combinations of options.

- 1.21 Despite the very detailed consideration of alternatives that WEL had already entered into, the lodging of submissions which raised issues about the location and effects of the line resulted in an even more forensic analysis of any options available in terms of alternative routes or options in the vicinity of submitters are available – WEL’s further consideration of these options merely serves to underpin that the route and equipment choices made are appropriate.

WDC report and proposed conditions

- 1.22 A comprehensive and well researched and reasoned report (“WDC report”) has been prepared in relation to the resource management and technical issues arising in the context of the WEL NORs. The report has been prepared by an independent consultant and is a credit to its author. The report recommends that WDC confirm the designations subject to conditions. In many cases, the conditions included in the report had already been developed by WEL alongside interested parties or submitters.
- 1.23 The short point is that WEL endorses that recommendation as entirely appropriate and also the philosophy and approach adopted in the recommended conditions. Minor amendments to the conditions are suggested and may well be amended further over the course of the hearing. For that purpose we will maintain a “working draft” and adapt them as may be necessary.

2. APPROACH TO WEL’S CASE AND EVIDENCE TO BE PRESENTED

- 2.1 WEL takes seriously not only its responsibilities as a network utility operator but also its community ownership. The company has therefore made every effort to ensure that all potential effects of the project are thoroughly considered and any practicable measures available taken to address any potential adverse effects.
- 2.2 WEL will present evidence from twelve witnesses in support of its three NORs, which explain the rationale for the project and address potential effects and how those effects will be addressed – that evidence will corroborate and support the conclusions in the WDC report. The evidence will be presented in a series of logical tranches, which tells “the story” of the project.

Project overview, project rationale and consideration of alternatives

- 2.3 The first part of WEL’s case sets out the reasons why WEL wishes to reinforce electricity supply in the western part of its supply area and includes consideration of alternatives along the corridor route, both in terms of location of the corridor and equipment and methods used.
- 2.4 In addressing the electricity line, it is obviously not feasible to present “chapter and verse” over all aspects of a 25 km corridor. WEL has approached its case in relation to the line on the basis that it will rely primarily on the NOR documents to support those parts of the line route which are not in dispute, and will present more detail on those areas where submitters are concerned about potential effects and/or are suggesting that viable alternatives exists which have not been adequately considered. This approach has been designed to enable you to have sufficient information to make your findings over the entire line route (much of which is in private land in respect of which agreement has been reached with the relevant landowners) while focussing on the “pinch points” and thus enabling

you to make specific findings in relation to the submissions that raise specific issues along the line route.

- 2.5 This part of the case involves evidence from three witnesses.
- 2.6 **Mr John van Brink** is WEL's General Manager Asset Investment and Growth; who has responsibility for network investment, maintenance planning, design and overall oversight of business development initiatives. Mr van Brink will address WEL's core business, corporate and environmental values and commitments in terms of the provision of electricity supply.
- 2.7 **Mr David Mollekin** is WEL's Network Asset Investment Advisor, who is responsible for long term network planning. Mr Mollekin's evidence will address:
- (a) The "big picture" in which the need for the WNUP project arises in the context of WEL's Western Area and the electricity system planning which lies behind the decision to proceed with this project, in this form.
 - (b) The relevance of generation from the Te Uku Wind Park.
 - (c) The rationale for establishing a new substation adjacent to the Transpower GXP and at the Te Uku Wind Park and any alternatives available in relation to achieving WEL's objectives, and the actual design of the substations, including safety features.
 - (d) The general considerations which applied in deciding the route for the 110kV transmission line (which will be addressed in more detail by Mr Jackson).
 - (e) The basis for the decisions which were taken in relation to the choice of equipment used and the economic considerations which resulted in a decision to proceed with the deployment of an overhead line rather than an underground cable.
- 2.8 **Mr Ron Jackson** is WEL's Network Assessor. Mr Jackson has been responsible for the detailed route selection having regard to environmental considerations, landowner issues and technical considerations. His evidence will address issues relevant to the line route focussing in particular on the options available to WEL and rationale for the choices made on those parts of the line route that are the subject of submissions. Consistent with the general approach to WEL's case, Mr Jackson's evidence will focus primarily on those parts of the line route in respect of which submitters have raised concerns about potential effects and/or are suggesting that viable alternatives exists which have not been adequately considered.

Project description – construction and operation

- 2.9 **Mr Tony Keyte**, a civil engineer and principal of Bloxham Burnett and Olliver. He will present evidence in relation to civil engineering aspects of the project, including geotechnical considerations (particularly those raised by submissions) and traffic issues associated with the construction programme.

Consultation and outcomes

- 2.10 Although WEL is not required to carry out consultation in relation to projects such as this, it has undertaken very comprehensive consultation. **Mr Chris Dawson**, a senior planner of Bloxham Burnett Oliver, will present evidence which outlines consultation undertaken and key outcomes, including proposed consent conditions, and the influence that consultation had on the corridor route

Public health, including noise

- 2.11 Before addressing general environmental effects, the next part of WEL's case deals with issues of individuals, in terms of the potential impacts on individuals – potential impacts in terms of health, including noise.
- 2.12 **Mr Tony Mitton** is an electrical engineer and Development Manager of Mitton Electronet Limited. Mr Mitton has calculated the electric and magnetic fields (EMFs) associated with the lines and substations and his evidence forms the basis for consideration of potential health effects in relation to EMFs.
- 2.13 **Dr David Black** is a medical physician who specialises in public health and safety issues. He has been involved in many cases involving electricity infrastructure, including substations and electricity lines and cables of every size and type. Dr Black's evidence assesses the potential effects of electric and magnetic fields associated with the substations having regard to relevant World Health Organisation Guidelines endorsed by New Zealand's Department of Health. His evidence will confirm that there is no cause for concern in terms of health and safety effects.
- 2.14 **Mr Nevil Hegley** is a well known acoustic consultant with vast experience and director of Hegley Acoustic Consultants. His evidence will address noise issues and will confirm that there is no basis for concern in that regard.

Environmental effects

- 2.15 The next aspect of the case will need to address all of the other environmental effects which can arise as a result of this type of project, including noise, cultural and heritage issues, landscape and visual amenity, heritage issues, ecology, electricity effects, impact on property values.
- 2.16 The following witnesses will be called to present evidence:
- (a) **Mr Gerry Kessels**, Kessels and Associates – who will provide a brief statement of evidence based on his report on ecology, i.e., investigations undertaken and findings; potential adverse effects; measures developed to address potential adverse effects.
 - (b) **Dr Matthew Campbell** will provide a brief statement evidence based on his report on archaeological and heritage issues – investigations undertaken and findings; potential adverse effects; measures developed to address potential adverse effects.
 - (c) **Mr Dave Mansergh** – is a highly qualified landscape architect and visual assessment specialist and a director of Mansergh Graham Landscape Architects Limited. His evidence will address the effects of the substations and, in particular, the line and, where appropriate to address the concerns raised by submitters, the landscaping treatment proposed.

Planning assessment under Part 2

- 2.17 The final brief of evidence will be a piece of evaluative planning evidence from **Mr Laurence Sherriff**. Mr Sherriff is a town planning/resource management consultant and Director of The Environmental Challenge Limited which was responsible for preparing the NOR documentation for the project. His evidence will consider all elements of the WNUP project in the context of the relevant provisions of the RMA and relevant Waikato Regional Council and Waikato District Council planning instruments in light of all of the foregoing evidence and the analysis in the WDC report and makes an overall broad judgement about the

project in the context of the section 171 criteria (including Part 2 of the RMA). This evidence will also need to address in some detail the question of conditions to be imposed on the designations when issued.

Site visit

- 2.18 It would clearly be of benefit for you to visit the site of the substation and to gain an appreciation of the sub-transmission line route. There are various vantage points which provide a useful basis for considering potential effects and to fully appreciate “big picture” issues in terms of route selection. I understand that a site visit has been arranged for Wednesday afternoon. WEL can arrange for access to relevant pieces of land and to make available a guide who is not involved in this hearing.

Scope of submissions

- 2.19 Against that background, the purpose of these submissions is to put WEL’s evidence into context in terms of the relevant provisions of the RMA, to assist you with the task of considering the evidence and deliberating on what the recommendation to WEL should be. It is proposed to address the following matters:
- (a) Outline relevant statutory provisions, including some key principles which have been developed by the Court in dealing with NORs, which have been a feature of planning legislation since well before the enactment of the RMA – very similar provisions were contained in the Town and Country Planning Act 1977 (Section 3).
 - (b) Issues arising in relation to each of the NORs having regard to relevant statutory requirements, submissions lodged and WEL’s evidence, as follows:
 - (i) Te Uku Wind Park substation (Section 4);
 - (ii) The Te Kowhai-Te Uku electricity line (Section 5);
 - (iii) Te Kowhai substation (Section 6);
 - (c) The final section sets out WEL’s principal submission (Section 7).

3. RELEVANT STATUTORY AND PLAN PROVISIONS - OVERVIEW

- 3.1 As noted, WEL has issued three NORs to the WDC under section 168 of the RMA in its capacity as a requiring authority approved by the Minister for the Environment to carry out line function services² under section 168 of that RMA. Section 168(2) states:

“(2) A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation –

- (a) For a project of work; or*
- (b) In respect of any land, water, subsoil, or air space where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.”*

² Resource Management (Approval of WEL Networks Limited as Requiring Authority) Notice 2004.

Section 171 - relevant considerations

3.2 The three NORs obviously relate to a project or work. WDC's (and therefore your role as duly delegated representative of WDC) is to consider WEL's NORs and to make recommendations to WEL, as requiring authority, as to whether the requirement should be confirmed (in which case the designation goes into the district plan as issued), modified or withdrawn.

3.3 The starting point for that analysis is section 171 which states:

*(1) When considering a requirement and any submissions received, the territorial authority must, **subject to Part II, consider the effects on the environment** of allowing the requirement, having particular regard to –*

*(a) **any relevant provisions of -***

(i) a national policy statement;

(ii) a New Zealand coastal policy statement;

(iii) a regional policy statement or proposed regional policy statement;

*(iv) **a plan or proposed plan;** and*

*(b) **whether adequate consideration has been given to alternative sites, routes, or methods of undertaking work if -***

(i) The requiring authority does not have an interest in the land sufficient for undertaking the work; or

(ii) It is likely that the work will have a significant adverse effect on the environment; and

*(c) **whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and***

*(d) **any other matter** the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

(2) The territorial authority may recommend to the requiring authority that it –

(a) confirm the requirement;

(b) modify the requirement;

(c) imposed conditions;

(d) withdraw the requirement.

(3) The territorial authority must give reasons for its recommendation under subsection (2)."

- 3.4 In short, section 171(1) requires you to consider the effects of the environment, having regard to:
- (a) The relevant planning instruments;
 - (b) Whether adequate consideration has been given to alternative sites or methods of undertaking the work;
 - (c) Whether the designation is reasonably necessary for achieving WEL's objectives;
 - (d) Any other matters which are considered to be relevant.
 - (e) Part 2 of the RMA.

Section 171(1) - effects on the environment

- 3.5 One of the fundamental elements of sustainable management is controlling the adverse effects on the environment, which is provided for by section 5(2)(c) – the key words being “avoid, remedy or mitigate”.
- 3.6 Both in having regard to sections 7(c) and (f) and in considering effects, it is important to bear in mind the very broad definition of both the terms “environment” and “effect” in the RMA. The term “environment” is defined as follows:

- “(a) Ecosystems and their constituent parts, including **people and communities**; and*
- (b) All natural and **physical resources**; and*
- (c) Amenity values; and*
- (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters.”*

- 3.7 The term “effect” (section 3) is defined as follows:

“In this Act, unless the context otherwise requires, the term effect... includes—

- (a) Any **positive** or adverse effect; and*
- (b) Any temporary or permanent effect; and*
- (c) Any past, present, or future effect; and*
- (d) Any cumulative effect which arises over time or in combination with other effects—*

regardless of the scale, intensity, duration, or frequency of the effect, and also includes—

- (e) Any potential effect of high probability; and*

- (f) *Any potential effect of low probability which has a high potential impact.*"

3.8 WDC is therefore entitled to consider not only potential adverse effects of activities but also any positive effects (benefits) of the proposed works and to have regard to broad issues relating to the benefits of such infrastructure in terms of ensuring security of electricity supply to the people of the Western Waikato area (and beyond) so that they can continue to provide for their "social and economic wellbeing" and their "health and safety", in terms of the sustainable management purpose in section 5 of the RMA.

3.9 In assessing the effects on the environment, it is submitted that it is appropriate for WDC to consider the "permitted baseline". The classic enunciation of the permitted baseline concept is that of the Court of Appeal in *Arrigato v Rodney District Council*³ where it held:

"... the permitted baseline... is the existing environment overlaid with such relevant activity (not being a fanciful activity) as is permitted by the plan. Thus, if the activity permitted by the plan will create some adverse effect on the environment, that adverse effect does not count... It is part of the permitted baseline in the sense that it is deemed to be already affecting the environment... it is not a relevant adverse effect. The consequence is that only other or further adverse effects emanating from the proposal under consideration are brought into account."

3.10 The permitted baseline is codified in section 104 as regards the assessment of effects in the context of resource consent applications but is not referred to in section 171 of the RMA. However, that is not to say that this commonsense approach to assessing effects – which has been adopted for years before it was given that name – is not relevant in this context. The appropriate baseline for each element of the project, particularly as regards the line, has been addressed in the NOR documents and will be considered, where appropriate, in the planning evidence to be presented.

Addressing potential adverse effects – conditions

3.11 A fundamental tenet of the RMA is the need to appropriately "avoid, remedy or mitigate" the potential adverse effects of activities on the environment. WDC is required to consider the measures that are available and proposed to address potential adverse effects. In that regard, WEL endorses the conditions contained in the officer's report, subject to minor amendments which will be addressed by Mr Sherriff.

3.12 WDC's jurisdiction to impose conditions on the designation is derived from section 171(2)(c) of the RMA. It is submitted that all of the conditions recommended in the WDC report meet the tests for reasonableness, certainty and enforceability.

Section 171(1)(a) - Relevant planning instruments

3.13 Section 7 of Volume 1A of the NOR Report contains an overview of relevant RMA and the provisions of the Waikato Regional Council's Regional Plan, Waikato District Council's Operative Plan (WDC ODP) and Waikato District Council's Proposed Plan (WDC PDP).

3 [2002] 1 NZLR 323.

- 3.14 Both the Operative District Plan and the Proposed Plan are relevant to the consideration of WEL's NOR – see section 7.4 of the WDC report.
- 3.15 WEL endorses the conclusion in the WDC report that the substation proposal does not compromise any aspect of either the ODP or PDP provided that appropriate conditions are imposed. In these circumstances, no issues arise in relation to the relative weight to be accorded to each plan. WEL is happy to acknowledge that both apply.
- 3.16 The relevant objectives, policies and rules in these plans and the policy statement are addressed in the WDC report and the evidence of Mr Sherriff – it is sufficient to say here that both that report and the evidence to be presented demonstrate that there is nothing about this proposal which is inconsistent with the relevant planning instruments.

Section 171(1)(b) - Consideration of alternatives

- 3.17 The Courts have provided considerable guidance over the years in relation to the assessment as to whether there has been adequate consideration of alternatives, which is addressed below.
- 3.18 Under section 171(1)(b), WDC is only required to have regard to whether WEL has adequately considered alternatives where:
- (a) WEL does not have “an interest in the land sufficient for undertaking the own the land”; or
 - (b) The adverse effect of the proposal is likely to have a significant adverse effect on the environment.
- 3.19 The first factor is presumably because, where the requiring authority does not own the land, the requirement could result in the instigation of compulsory acquisition procedures. The subsection has only been in this form since 1 August 2003 following its amendment by the Resource Management Amendment Act 2003. Prior to that, a consideration of alternatives was necessary even if the requiring authority owned the land.
- 3.20 As far as ownership and property related issues are concerned, the following is noted.
- 3.21 The Te Kowhai substation site is owned by Transpower and WEL has suitable agreements in place for the establishment of the substation, namely an agreement with Transpower to grant a licence to occupy the land needed for the substation. It is submitted that this represents a sufficient interest in land
- 3.22 The Te Uku Wind Park substation site is owned by the Vanhoutte family. WEL has an agreement with the Vanhoutte family to execute easement arrangements (alongside similar arrangements for the turbines and access) sufficient to enable a substation to be constructed and operated.
- 3.23 Thus, although WEL does not own the substation sites, it has watertight arrangements in place to address issues of tenure and the establishment of the substations. Given that, it is submitted that, in terms of section 171(1)(b), there is a good basis for arguing that, in terms of the policy of the legislation, WEL is not required to consider alternative sites for the substations (there being no alternative method for achieving the purposes of the substations).

- 3.24 Even if it is not accepted that WEL has a sufficient interest to carry out the work to trigger section 171(1)(b)(i), that consideration of alternatives is arguably somewhat of a technicality.
- 3.25 The second subparagraph of section 171(1)(b) reflects that it is really only necessary to look hard at alternatives where significant adverse effects are likely. WEL's evidence is that any potential adverse effects at either location are no more than minor.
- 3.26 The line corridor is 25km long and crosses a variety of sites and corridors owned or managed by 24 owners or authorities. The requirement for WEL to consider alternatives needs to be considered in light of guidance provided by the Courts. There are a number of cases which are helpful in addressing the extent of consideration that needs to be given to alternatives in order for the requirements of the RMA to be met, which were decided both under the current RMA provisions or the predecessor to section 171, i.e., section 118(8) of the Town and Country Planning Act 1977. Those authorities make clear that:
- (a) The territorial authority only needs to be satisfied that the requiring authority has not acted arbitrarily or given only cursory consideration to alternatives - *Waimairi DC v Christchurch City Council*⁴.
 - (b) It is not necessary to eliminate the possibility of other sites, only to demonstrate that the chosen site is suitable - *Ravlich v Auckland Education Board*⁵.
 - (c) It is not necessary to eliminate speculative alternatives - *Environmental Defence Society v Mangonui County Council*.⁶
 - (d) The territorial authority is not required to assess the relative merits of available alternatives and to make a choice as to the preferable alternative - *Transit NZ v Auckland Regional Council*.⁷
 - (e) The provision does not require that the best alternative be chosen - *Estate of P A Moran*.⁸
 - (f) "Adequate" does not mean "meticulous" or "exhaustive" but means "sufficient" or "satisfactory". A requiring authority is not required to go to unreasonable lengths to support a chosen route or site - *Ati Awa ki Whakarongotai v Kapiti District Council*.⁹

4 C030/82.

5 A108/80.

6 High Court, Auckland, M101/81 per Speight J.

7 A100/00.

8 W55/99.

9 W023/02.

3.27 A useful summary of the authorities is also provided by the *Minhinnick*¹⁰ case:

[234] *Parliament has restricted the role of the Environment Court with respect to selection of sites the subject of designation requirements. **The Court is required to have regard to whether adequate consideration has been given to alternative sites. This requires the Court to consider whether the requiring authority has acted arbitrarily, or given only cursory consideration to alternatives; or has carried out sufficient investigations as to the alternatives to satisfy itself as to the site put forward. It does not require the Court to eliminate speculative or suppositious options; nor to assess the relative merits of each alternative and itself make a choice as to the preferable alternative; nor to test each alternative against Part II.***

...

[277] *We have also considered the part of the selection process where the pool of possible sites was examined, some were eliminated, and others chosen for closer investigation and consideration. **We reiterate our understanding that the Court is concerned with the adequacy of the process not with the decisions to discard or advance particular sites. The rejection of particular sites for relative remoteness, or proximity with housing, or ready availability, were all matters of judgment. They are not indications of an inadequate process...***

- 3.28 In other words, WDC is not required to consider potential substation sites or line routes identified by WEL or submitters and select the site that it considers preferable (or even the best) - that is WEL's job as the requiring authority which knows its own business. It is for WDC to consider the adequacy of the assessment of alternatives as per the guidance provided by the above cases, and within the confines of section 171(1)(b).
- 3.29 As noted, many submitters have argued that inadequate consideration has been given to alternatives because the line will be on the road within the vicinity of their properties – some suggest that WEL should use compulsory acquisition powers to acquire interests in land that will enable poles in roads to be avoided.
- 3.30 As requiring authority, WEL is able to acquire land for its network utility works by compulsory acquisition. Indeed, it is using such powers to acquire easements in the context of this very project. However, before reaching that point, WEL must exhaust the option of purchasing the land required on a “willing buyer, willing seller” basis. In that regard, the *Minhinnick* case establishes that it is appropriate for a requiring authority to make a business / policy decision to exclude from consideration sites which would need to be compulsorily acquired.
- 3.31 As Mr Mollekin will explain, as far as the line route is concerned, WEL considered a number of line routes based on a range of criteria, focusing first on technical requirements and constraints, but also taking account of potential environmental effects and district plan provisions. WEL's philosophical starting point was to attempt to locate as much of the line as possible on private land (to

10 *Minhinnick v Minister of Corrections* (A043/2004).

keep the line off the roads), but to avoid private land (with the almost inevitable consequence that the line will be located in roads) where agreement with relevant landowners cannot be achieved – an approach which is entirely consistent with the *Minhinnick* case.

- 3.32 The current line route and choice of equipment was ultimately arrived at because:
- (a) WEL was able to reach agreement with the private landowners over most of the line route (although Public Works Act procedures to acquire the necessary easements have been commenced in relation to the Gibbs and Williamson properties). Where the line is located on private land, it is technically feasible to build it there and it meets WEL's technical requirements.
 - (b) Where the line is not located in private land, it will be located in the road reserve – all feasible options in this regard were considered and WEL is satisfied that it is technically feasible to establish the poles in the proposed locations, that the potential effects are acceptable and that all alternatives have been considered.
 - (c) Undergrounding is an incredibly expensive option for a route of this nature. Undergrounding of portions of the route is even more expensive and carries significant visual effects due to the nature of the structures which are necessary at either end of any undergrounded section.
 - (d) Choices of equipment in terms of pole types, etc., are indicative but reflect conventional wisdom and are typical of the type of equipment we are used to routinely seeing in the countryside.
- 3.33 WEL's evidence addresses these issues in some detail, especially along the sub-transmission line route.

Section 171(1)(c) - Whether the designation is reasonably necessary to achieve WEL's objectives

- 3.34 This criteria essentially focuses on whether the work is necessary from a technical and operational perspective. (This provision was once interpreted as requiring consideration of whether a designation is to be preferred to some other planning mechanism, but the RMA has been amended to make clear that it is the operational need for the proposed work that needs to be considered.)
- 3.35 Mr Mollekin will explain the overall need for the WNUP Project in the context of the supply of electricity to the Western part of WEL's supply area. The short point is that the substations and the line are needed to manage and transmit the power being generated by the Te Uku Wind Park and will result in the acceleration of a significant upgrading of the electricity network which will improve the reliability of electricity supply to the Raglan area to achieve an N-1 reliability standard. It goes without saying that, as a responsible lines company, WEL does not undertake such works unless they are necessary – and certainly before failures occur that other transmission and lines companies have been so severely criticised for.
- 3.36 At this juncture, it is noted that the fact that the project is needed to cope with power generated by the Te Uku Project does not mean that it is appropriate to raise via submissions and debate in this hearing the merits of wind power or the Te Uku Project, as Mr Cox seems determined to do. The issues that Mr Cox's submission raises do not relate to the issues raised by section 171 but rather issues relevant to the merits of the Te Uku Wind Park – in respect of which

Mr Cox withdrew his appeal. These NORs are not the arena in which to revive that fruitless debate.

Section 171(1)(d) – Any other matters which should be considered

- 3.37 The final factor is whether there is any factor not relating to relevant planning instruments, alternatives or the need for the substation that needs to be considered. Examples of relevant matters in the context of this case are:
- (a) The ICNIRP Guidelines – relevant to considering EML and ELF. These are specifically recognised in the Electricity Transmission National Policy Statement.
 - (b) The Electricity Transmission NPS – it is acknowledged that this NPS is primarily focussed on Transpower’s network, it nevertheless contains a number of important provisions in relation to the importance of efficient and effective of electricity – bearing in mind that the line we are dealing with here is not just a local distribution line, but a sub-transmission line which carries electricity generated at the Te Uku Wind Park on to the National Grid.
 - (c) NZECP 34:2001 - New Zealand Electrical Code of Practice for Electrical Safe Distances.
 - (d) Guide to Safety Management of Power Line Waterway Crossings: A Safety Management Regime for Overhead and Underground Power Line Crossings of Navigable Waterways and Slipways.
 - (e) Electricity (Hazards from Trees) Regulations 2003.
 - (f) The proposed Renewable Energy NPS – relevant insofar as the Wind Park substation transforms electricity generated from a renewable source and the line transmits that renewable energy for use.

Part 2

- 3.38 The assessment of notices of requirement in section 171 is expressed to be “subject to Part 2” of the RMA. Part 2 commences with the purpose of the Act, which is set out in section 5. Section 5 states that:

- “(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, “sustainable management” means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –*
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonable foreseeable needs of future generations; and*
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

- 3.39 WDC's assessment of the NORs involves a pragmatic weighing and balancing of the evidence to be presented and the issues raised by submitters, in light of matters which are relevant in terms of the RMA. The Courts have taken account of the "deliberate openness" of the language used in the RMA and have said that Part 2 allows for an "overall broad judgement" to be made having regard to various competing considerations which might arise in any given set of circumstances. The classic enunciation of that proposition is contained in *Auckland Regional Council v North Shore City Council* [1997] NZRMA 59:

"The method of applying section 5 ... involves an overall broad judgment of whether a proposal would promote the sustainable management of natural and physical resources. This recognises that the Act has a single purpose. Such an approach allows for the comparison of conflicting considerations and the scale and degree of them, and also their relative importance or proportion in the final outcome."

- 3.40 As has already been submitted, the implementation of the WNUP Project is directly relevant to one of the fundamental elements of section 5 – it will enable people and communities in the Western part of WEL's supply area to provide for their economic and social wellbeing and their health and safety – WEL would not be undertaking the project if it was not necessary to enable power generated by the Te Uku Wind Park to be managed and to ensure an ongoing reliable supply of electricity to that area.
- 3.41 And it does so in a way that appropriately addresses potential adverse effects – ergo, all elements of the sustainable management purpose are satisfied.
- 3.42 Section 6 sets out matters of national importance which may or may not be relevant to the determination of the notices of requirement, if relevant, the consent authority must "recognise and provide for" in making its decision. It is submitted that there are no matters raised by this proposal that need to be "recognised and provided for" by WDC (aside from section 6(e), noted below).
- 3.43 Section 7 sets out other matters which the consent authority needs to "have particular regard to", where relevant. It is submitted that the only section 7 matters that need to be recognised and provided for by the Committee are:
- (a) Section 7(a) (alongside section 6(e) and 8) relating to iwi issues – discussions have taken place with all iwi holding mana whenua over the sub-transmission corridor route and the substation sites have been the subject of close scrutiny. The proposed conditions contain requirements in relation to the discovery of koiwi, etc. There are no iwi submitters. It is submitted that WDC can be satisfied that no issues arise in terms of sections 6(e), 7(a) and 8 of the RMA
 - (b) Section 7(c) and (f) – The maintenance and enhancement of amenity values and the quality of the environment. The evidence is directed towards addressing environmental quality (especially as regards visual effects).

4. **TE UKU WIND PARK SUBSTATION**

- 4.1 The Te Uku Wind Park substation will be established on the Te Uku Wind Park site to enable the electricity which is generated at the wind park to be transformed to a manageable load and transmitted (as DC power) to Te Kowhai, where it will be distributed to WEL's network placed on the National Grid.

4.2 The relevant NOR describes the work as follows:

“The substation will adjoin the operation and maintenance building that will be constructed to service the Te Uku Wind Park. This building has already been granted resource consent as a part of the Wind Park. The location of the substation is shown in Figure 5.3. The substation will be established on a site measuring approximately 50 metres long by 30 metres wide, with a total area of approximately 1500 m². The entire area will be securely fenced and will contain a sealed car parking area. Much of the substation will be located outdoors, but there will be a building which contains a control room and switchgear room.

The total area (which includes the operations and maintenance building for the Wind Park, which has already been consented) contains the following—

- *A security fence of 120 m²;*
- *A sealed area of 690 m²;*
- *A yard area of 225 m²; and*
- *A building area of 465 m².*

The substation equipment will include—

- *Control room and incinerating toilet;*
- *A 110 kV gantry structure;*
- *110 kV and 33 kV protection (current transformers, voltage transformers, circuit breaker);*
- *A 110 kV/ 33 kV transformer;*
- *Incoming conductors; and*
- *A termination support structure.*

This equipment will be located outdoors with the exception of the circuit breakers which will be housed in the building itself. “

4.3 The Te Uku Wind Park substation site is owned by the Vanhoutte family. WEL has suitable arrangements in place with the Vanhouttes to enable a substation to be built.

Need for the work

4.4 The Te Uku Wind Park substation is needed to transform the electricity generated by the Wind Park to a voltage that can be conveyed to WEL's connection at Te Kowhai and the 33kV local Te Uku/Raglan network. This will enhance the security of supply both locally and on a national level.

Consideration of alternatives

4.5 Given that the potential adverse effects of the substation are barely discernible, the issues raised by this aspect of section 171 is almost moot. The short point is that the Te Uku Wind Park substation is required to be located close to the Wind Park itself therefore there is little room for alternatives. The substation location was determined in consultation with the landowners and, from WEL's perspective, satisfies its technical requirements.

Environmental effects

4.6 The important point to note about the substation – and something that is easy to forget unless one is standing on the proposed substation site – is that it is in the “middle of nowhere”. Potential environmental effects associated with this substation have nevertheless been considered and are addressed in WEL's evidence.

Landscape and visual effects

- 4.7 In terms of visual effects, Mr Mansergh concludes that the Wind Park substation will be barely discernable to the public given that it is located within a depression on top of the Plateau.

Health effects and noise

- 4.8 Mr Mitton concludes that, although EMFs will be higher at the Wind Park substation than anywhere else on the project site, they will be well below the ICNIRP levels. Based on that, Dr Black's view is that there are no health issues that arise in relation to EMFs.
- 4.9 Mr Hegley harbours no concerns in relation to noise effects particularly given that the submission is located far from any existing dwellings such that noise will not be discernable from existing background sound.

Archaeological issues

- 4.10 Two archaeological sites have previously been identified on the Wind Park site during that process. Dr Campbell will confirm that the proposed substation is not near those sites and will not affect them in any way.

Ecological effects

- 4.11 The ecological context at the Te Uku substation site has been considered by Mr Kessels, both in the context of this project and in relation to the Te Uku Wind Park applications.

Construction and traffic effects

- 4.12 Mr Keyte's evidence is that no traffic safety issues arise – in particular access issues were addressed in the Wind Park process. The substation will generate minimal additional traffic over and above the Wind Park traffic which has been assessed and will be comprehensively controlled by consent conditions.

Ongoing maintenance and management

- 4.13 Ongoing management and maintenance issues, including measures to ensure compliance with requirements as to the appropriate storage and management of hazardous substances, etc., are addressed in evidence, particularly that of Mr Mollekin.

Relevant plan provisions

- 4.14 The relevant planning provisions will be addressed in Mr Sherriff's evidence. It is sufficient to say here that there is nothing in the provisions of either district plan that suggest that this development is not appropriate and a number of policies in favour of renewable energy that underpin the importance of this substation to enable the transmission of the electricity generated at the Te Uku Wind Park.

Other relevant considerations

- 4.15 The obvious relevant point in this regard is that the Te Uku Wind Park has been consented and it is necessary to transform the power generated by that renewable energy source to enable it to be transmitted off the site and to the local network and the National Grid. That is not to say that this need should "trump" any local adverse effects – the short point: that no such adverse effects arise.

5. TE KOWHAI – TE UKU SUB-TRANSMISSION LINE

- 5.1 A new distribution line 25km in length from a new substation to be established on the Te Uku Wind Park site to the new WEL substation at Te Kowhai. The relevant NOR describes the work as follows:

“The proposed route connects the proposed Wind Park Substation on the Whararua Plateau near Te Uku to the existing Te Kowhai Substation. The total length of the route is approximately 25 kilometres and will cross over 25 sites owned and/ or managed by 24 landowners/ authorities. The line will consist of approximately 240 poles. As noted above, pole locations and the conceptual pole designs are shown in the A3 plans in Volume 1B. These plans also include a detailed description on these aspects. The proposed line will carry a single 110 kV electricity circuit supported on steel or concrete poles (Figure 5.4). Each pole will support three conductors which make up the 110 kV sub-transmission circuit, as well as an earth wire and a fibre optic cable (primarily for communication between the substations).

In some places the poles will also be strung with local 11 kV or 33 kV lines on the arms further down the poles, which are already part of the local 11 / 33 kV network.

The proposed line will not include towers (or pylons), but instead will be supported on poles. The poles will be generally 17 metres high. Heavier poles will be required where the line deviates at an angle of more than 15 degrees (referred to as “angle poles”). This is to provide sufficient space to enable the conductors to be re-orientated safely. Angle poles will differ visually from the typical poles illustrated in Figure 5.4. The conductors between the angle poles and the adjacent typical poles will be in non-standard configurations (as illustrated in Figure 5.5). These structures have the potential to be more visually conspicuous due to their “irregular” appearance. For this reason, it is desirable to design a line route which is as straight as possible. There are topographic features along the route where taller poles will be required. Heavier poles or more complex structures may also be required on some sections of the route where the line crosses gullies. The proposed pole and line design will be consistent with other existing overhead poles and lines in the surrounding area. “

Need for the work

- 5.2 The installation and operation of the transmission line will increase the security of electricity supply for the local distribution network and the National Grid. It will link the Te Uku Substation to the Te Kowhai Substation, connecting the Te Uku Wind Park to enable the renewable energy it produces to be used both locally and nationally.
- 5.3 This line enables the transmission of power generated at the Te Uku Wind Park to the Te Kowhai GXP and is also part of a broader network upgrade project which will enhance the security of electricity supply to WEL’s western area, thus achieving an N-1 security standard which will significantly reduce the incidence of power interruptions in the area.

Consideration of alternatives

- 5.4 As noted, WEL has undertaken a very comprehensive consideration of alternatives. WEL engaged experts early on in the process in order to identify constraints and then identify a number of possible alternatives before consulting with landowners, stakeholders and affected parties over a two year period.
- 5.5 In all, 56 different combinations of possible routes were considered and WEL ultimately selected a route that was technically feasible (although not the cheapest or the best) but that satisfied, for the most part, the needs and wishes of the community. In that regard, WEL has placed great weight on finding a route that would be acceptable to key stakeholders, landowners and affected parties and, for the most part, has succeeded in achieving that.
- 5.6 The only two areas of the line route in relation to which issues are specifically raised are in the vicinity of Cogswell Road/ State Highway 23 (including where it traverses the Williamson and Gibbs properties) and Karakariki Road. The rationale for the route selection in those areas, including the alternatives considered, will be addressed by Mr Mollekin and Mr Jackson.

Potential environmental effects

- 5.7 The line corridor is 25km long and crosses a variety of sites and corridors owned or managed by 24 owners or authorities. WEL representatives have been negotiating with landowners along the corridor route for over two years, and agreements have been reached with the vast majority of landowners on the corridor. These discussions are relevant to your consideration of the effects of the electricity line, to the extent that, in essence, the submissions which have been lodged have by and large been lodged by submitters who own or occupy land adjacent to roads, where it has not been possible to locate the line on private land with the agreement of the relevant landowner.
- 5.8 The potential environmental effects associated with the transmission lines are:
- (a) Landscape and visual effects;
 - (b) Health effects;
 - (c) Archaeological issues.
 - (d) Ecological effects;
 - (e) Noise effects; and
 - (f) Traffic effects.
 - (g) Adverse effects on property values.

Landscape and visual effects

- 5.9 The visual effects of the lines corridor are addressed in the evidence of Dave Mansergh. In many cases there is no incremental effect at all, given the fact many of the poles will simply be replacing poles that already exist.
- 5.10 Mr Mansergh's evidence considers the entire sub-transmission line route but, for the purpose of this hearing focuses on the "pinch points" – i.e., the areas where local submitters are concerned about the visual effects of poles.

Health effects and noise

- 5.11 Tony Mitton's evidence is that the EMFs generated by the lines will be well below the ICNIRP guidelines. David Black's evidence concludes that there will be no health effects from the upgrade proposal.
- 5.12 Mr Hegley concludes that any potential noise effects will be minor, particularly because the majority of the lines route is located away from any dwellings. The only potential effects in relation to operation of the line relates to corona noise; insulator noise and wind – noise from those sources will comply with the district plan provisions. He recommends compliance with the Construction Noise Standard during the construction period, and that helicopters fly in accordance with the Fly Neighborly guidelines.

Archaeological issues

- 5.13 Dr Campbell identified two archaeological sites in the vicinity of the lines corridor. He has assessed them both and concludes that the line route will have no impact upon either site.

Ecological effects

- 5.14 Gerry Kessels concludes that the sub-transmission lines do pass through some ecologically sensitive areas but that the only effects that require mitigation are the removal of a very small area of indigenous vegetation and the potential for bird strike near the Waipa River. Mr Kessels evidence is that provided WEL complies with the mitigation measures there will be no ecological effects arising from the proposal along the line route.

Potential effect on property values

- 5.15 A number of submissions raise concerns about the effect of the proposed substation on property values in the neighbouring area. The planner's report notes that the potential effects on property values are not a relevant consideration that the Committee is required to take into account under the provisions of the RMA and that opinion is endorsed.
- 5.16 The Environment Court has consistently adopted a position that property devaluation is not an adverse effect in itself but rather may come about if there are other demonstrable adverse effects which will have such an impact – in other words, valuation issues are only a proxy for other effects. That approach is evident in the following cases:
- (a) In *Chen v Christchurch City*¹¹, the Court referred to the possibility of "double weighting" if devaluation was taken to be an effect in itself.
 - (b) In *Foot v Wellington City Council*¹², the Court held that effects on property values are not a relevant consideration as the diminution in property values is simply another measure of adverse effects on amenity values.
 - (c) In *Giles v Christchurch City Council*¹³, the Court noted that a consent authority is required to have regard directly to the effects on the environment and an assessment of how those effects might impact on land values would duplicate the consent authority's function. The Court

¹¹ C 102/97 (Judge Jackson presiding).

¹² W073/98 (Judge Kenderdine presiding).

¹³ A92/2000 (Judge Sheppard presiding).

preferred to rely on the evidence of a resource management planner about the potential effects themselves.

- 5.17 In *Land Air Water Association v Waikato Regional Council*,¹⁴ relating to the Hampton Downs landfill, the Environment Court acknowledged that effects on property values could be considered an adverse economic effect on “people and communities” and “natural and physical resources”, but that the weight to be given to valuation evidence depends on the facts and circumstances of each case. Based on the evidence in that case, the Court found that:

“... while property prices may well fall for a short while, this will not be sustained and that such a fall will be of temporary nature only. We find that their effects will be minor.”

- 5.18 This line of authority was specifically endorsed in *Rototuna Lands Limited v Hamilton City Council*¹⁵-which involved an appeal against a consent to establish and operate a dairy attached to a single dwelling in a developing new urban area towards the northern end of Hamilton City. Judge Newhook noted that:

*“...the valuation witnesses... expressed differing views as to the possible extent and nature of future development of certain lots in the subdivision. We found much of that evidence speculative and inconclusive, and consider that we are better to concentrate on the potential physical effects on the environment. We hold that we should concentrate on making our decision primarily based on those matters, and regard the valuation issue as a secondary matter. We are strengthened in our view of this by decisions referred to us by counsel, including *Bunnik v Waikato District Council*, *Chan v Christchurch City Council*, and *Giles v Christchurch City Council*, and *Foot v Wellington City Council*. We also note that there is a very recent statement of this Court to similar effect in *Land Air Water Association & Ors v Waikato Regional & Ors*.” (Paragraph 71)*

- 5.19 Similarly, in *North Canterbury Gas Limited v Waimakariri District Council*¹⁶, Judge Newhook noted that

“The Courts have held in cases involving disputes as to valuation effects that the evidence is often speculative and unhelpful, and that physical effects on the environment are usually of more importance to the case.”

- 5.20 A number of submitters have raised effects in terms of property values along parts of the line route. WEL carefully considered whether it would present specialist valuation evidence (as it did for Te Uku) and decided, in light of this consistent line of authority that it would not and would, instead, rely on the detailed assessment it has undertaken as to the primary physical effects. That evidence demonstrates that any primary environmental effects which could have an adverse effect (e.g., primarily visual effects) were so confined as to not warrant specific evidence on the derivative or secondary effects, particularly as:

- (a) The RMA does not confer power on WDC to award compensation to persons who consider they are affected by the line.¹⁷

¹⁴ A11/01 (Judge Whiting presiding).

¹⁵ A 46/02 (Judge Newhook presiding)

¹⁶ A 217/02, para 86.

(b) Any valuation effects are likely to be minor and of a temporary nature.

- 5.21 We specifically exclude from these comments any impacts on land value on Messrs Williamson and Gibbs, being the only landowners on the line route who have lodged submissions. WEL has initiated procedures under the Public Works Act 1981 to acquire a sufficient interest in land to install the line – it is acknowledged that the line will have an impact on the value of their land, but their appropriate remedy is not the RMA but the compensation provisions of the PWA.

Construction and traffic effects, including geotechnical issues

- 5.22 The evidence of both Mr Jackson and Mr Keyte is relevant in considering the effects of construction, including construction traffic. While the precise details of the construction programme cannot be known until the contract is issued, the evidence will at least demonstrate that the construction of the poles in their various locations is feasible using conventional and well-tested engineering techniques. In that regard, WEL has carefully considered issues raised by submitters in relation to stability, etc., and is completely confident that any issues along the entire line route (at a micro level) can be addressed.
- 5.23 WEL has accepted a recommended condition in relation to the reinstatement of roads, and also one requiring the adoption of certain protocols in relation to helicopter movements. A Construction Management Plan (alongside a Traffic Management Plan) is contemplated to control ongoing effects, including silt management, etc.

Relevant plan provisions

- 5.24 The relevant planning provisions will be addressed in Mr Sherriff's evidence. This addresses the zonings through which the sub-transmission line passes and the context in which the effects of the line should be considered, including the provisions that could be regarded as setting the "permitted baseline". Where the lines cross Ridgeline Protection Areas they will be viewed from a great distance.

Other relevant considerations

- 5.25 A number of general factors which may be considered relevant were noted at the outset, including the ICNIRP Guidelines as a basis for assessing the effects of EMFs associated with the line, and the policy support for renewable electricity generation and for properly considered lines of this nature (this being a sub-transmission line) in order to continue to meet the needs of the people.

6. TE KOWHAI SUBSTATION

- 6.1 A new substation is proposed at Te Kowhai directly adjacent to the existing Transpower GXP. The Te Kowhai substation site is owned by Transpower and WEL has suitable agreements in place for the establishment of the substation.

- 6.2 The relevant NOR describes the work as follows:

"The proposed substation at Te Kowhai will be located next to an existing Transpower substation. The site is legally described as Lot 2 Deposited Plan 343406 held in CT 178070 (South Auckland Registry). The total additional area is approximately 1,200 m² (i.e., approximately 60 metres by 20 metres). The proposed substation will constitute an addition to the south-

¹⁷ Colonial Homes Ltd v. Queenstown-Lakes DC (W104/95), page 5.

western side of the existing Transpower switchyard. The location of the substation is shown in Figure 5.2 on the following page. The component parts of the proposed substation will be the same or similar to the existing 220 kV based equipment at the Transpower substation and will include -

- A control room and incinerating toilet;
- 220 kV bus extensions;
- 110 kV and 220 kV protection (current transformers, voltage transformers, circuit breakers);
- 110kV/ 220kV transformer;
- A gantry;
- Incoming conductors; and
- A termination support structure.”

Need for the work

- 6.3 The Te Kowhai substation is required to enable power generated at WEL’s Te Uku Wind Park to be distributed to WEL’s network, with any surplus to be placed on the National Grid, as described in the NOR:

“The installation and operation of the Te Kowhai Substation will transform and convey electricity from the wind farm turbines. This electricity will supply the local supply network where it will address capacity constraints, meet planning policy and maintain best practice industry security standards. The electricity will also benefit the National Grid.”

Consideration of alternatives

- 6.4 WEL considered a limited number of alternative options / sites for this substation. The short point is that the required infrastructure already exists at Te Kowhai and locating the substation elsewhere would be duplicating that infrastructure. This is addressed by Mr Mollekin.

Environmental effects

- 6.5 The key environmental effects requiring consideration are addressed in WEL’s evidence are as follows.

Landscape and visual effects

- 6.6 Mr Mansergh concludes that the visual effects of the Te Kowhai substation are inconsiderable, particularly as the substation will be an extension to the existing substation and largely screened from view so that the new substation is unlikely to change public views of the surrounding area.

Health effects and noise

- 6.7 Based on the estimated levels of EMFs predicted by Mr Mitton, Dr Black concludes that the EMFs present at the Te Kowhai Substation will be well within the ICNIRP guidelines and will not give rise to any health effects. Dr Black also concludes that there will not be any other biological or health concerns in relation to this substation.

Ecological effects

- 6.8 The substation site is in Te Kowhai Village, adjacent to an existing Transpower substation. Potential ecological effects need to be seen in this perspective. Mr Kessels has nevertheless considered the site and the outcome of his investigations are addressed in his evidence.

Noise

- 6.9 Nevil Hegley addresses potential noise effects, particularly cumulative effects that arise in relation to the existing substation. He concludes that the cumulative noise effects of the substation will comply with the proposed condition.

Archaeological issues

- 6.10 As noted above, Dr Campbell identified two archaeological sites in the vicinity of the lines corridor, but Te Kowhai substation will not have any effect on those or any other archaeological sites.

Construction and traffic effects

- 6.11 Tony Keyte concludes that there are no traffic safety issues arising that cannot be addressed by a Traffic Management Plan and that effects on the local road network will be minimal.
- 6.12 An adjacent occupier, Mr Hodge, has lodged a submission because, although he does not oppose the project, he is concerned that construction traffic may miss the substation site and turn around on his land. WEL understands the issue and has agreed to the provision of appropriate signage to reduce the likelihood of this occurring, which is reflected in the conditions proposed.

Ongoing maintenance and management

- 6.13 Ongoing management and maintenance issues, including measures to ensure compliance with requirements as to the appropriate storage and management of hazardous substances, etc., are addressed in evidence, particularly that of Mr Mollekin.

Relevant plan provisions

- 6.14 The relevant planning provisions will be outlined in detail by Mr Sherriff. It is sufficient to say that the substation will comply with the relevant noise standards.

Other relevant considerations

- 6.15 The obvious relevant point in this regard is that the Transpower GXP already exists, which means that this is the most appropriate location to locate the new WEL substation. The use of this location enables the most efficient use of the existing "physical resource" and avoids the need to duplicate a function which the new substation will provide - locating elsewhere would result in the need to establish two bus stations rather than one.

7. PRINCIPAL SUBMISSION

- 7.1 WEL's submission is that the evidence will demonstrate that WDC can recommend confirmation of the designation subject to conditions knowing that this is an important piece of infrastructure, with a high degree of confidence that any potential adverse effects can be appropriately addressed and that the sustainable management purpose of the RMA, insofar as it will enable WEL to continue to provide a reliable supply of electricity thus enabling those people and communities to provide for their economic and social wellbeing and their health and safety while appropriately avoiding, remedying or mitigating potential adverse effects.
- 7.2 To conclude, it is submitted that the following key conclusions can be drawn and findings made:
- (a) The proposed substations and line are required to fulfil WEL's objective to ensure the secure supply of electricity to its western supply area. The secure and efficient supply of electricity is essential to the economic and social wellbeing and the health and safety of the people in the relevant communities. To that extent, the project overall fulfils the sustainable management purpose of the RMA.
 - (b) The proposal will have significant positive effects insofar as it will enable renewable energy to be used locally (with excess being used regionally or nationally) and will strengthen supply to the Te Uku/Raglan area which currently experiences interruptions to supply.
 - (c) The proposal is consistent with the objectives, policies or rules in the relevant planning instruments and there is nothing in those instruments which indicate that the notice of requirement should not be confirmed.
 - (d) Adequate consideration has been given to alternative sites, routes and methods and WEL is justified in preferring the site for each of the substations and the line route.
 - (e) The proposed Te Kowhai substation represents the efficient use of the proposed site in terms of section 7(b).
 - (f) The proposed substations will maintain and enhance amenity values (including noise and visual) in terms of section 7(c), particularly as they are located away from houses and screened from public view.
 - (g) The proposal will maintain and enhance the quality of the environment in terms of section 7(f).
 - (h) WEL has had independent experts carefully consider the effects of the proposed substation and these experts have concluded that any potential adverse effects of the proposal are minor and can be adequately addressed by way of the measures proposed and conditions on the designations. Based on those conclusions, WDC is justified in making findings to that effect.

7.3 Overall, when all relevant considerations are weighed and balanced it is submitted that the sustainable management purpose of the RMA is better addressed by recommending that the notices of requirement be confirmed with the minor modifications now proposed, and subject to conditions, than by recommending that it be withdrawn.

DATED March 2009

S J Berry

J L Vella

Counsel for WEL Networks Limited