

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a notice of requirement for a designation issued to **WAIKATO DISTRICT COUNCIL** by **WEL NETWORKS LTD** to authorise a corridor of land for a new electricity line and supporting structures connecting the WEL Te Uku Wind Park Substation and the WEL Te Kowhai Substation.

**DECISION OF WEL NETWORKS LIMITED PURSUANT TO SECTION 172
OF THE RESOURCE MANAGEMENT ACT 1991 – NOTICE OF REQUIREMENT 2**

1. INTRODUCTION

1.1 This is the decision by WEL Networks Limited (“WEL”), in its capacity as a requiring authority pursuant to section 172 of the Resource Management Act 1991 (“RMA”), on a recommendation made by an independent hearing commissioner (“Commissioner”) duly appointed by the Waikato District Council (“the Council”). This decision relates to a notice of requirement (“NOR 2”) for a designation for the establishment, construction and reconstruction, operation, maintenance and modification, replacement and repair of a sub transmission line corridor for an electricity line supported on poles that may carry two circuits at the voltages of either 11 kV, 33 kV, or 110 kV and an earth wire and fibre optic cable.

WEL decision

1.2 The Commissioner has recommended pursuant to section 171 of the RMA that NOR 2 be approved subject to conditions.

1.3 Section 172 of the RMA states that:

- “(1) Within 30 working days of the day on which it receives a territorial authority’s recommendation under section 171, a requiring authority shall advise the territorial authority whether the requiring authority accepts or rejects the recommendation in whole or in part.*
- (2) A requiring authority may modify the requirement if, and only if, that recommendation is recommended by the territorial authority and is not inconsistent with the requirement as notified.*
- (3) Where the requiring authority rejects the recommendation in whole or in part, or modifies the requirement, the requiring authority shall give reasons for the decision.”*

1.4 WEL's decision is:

- (a) That the recommendation by the Commissioner that the notice of requirement be confirmed subject to conditions is accepted in whole, subject to a minor modification to the conditions which more accurately describes the designation;
- (b) That the notice of requirement ("NOR 2") is confirmed subject to the conditions contained in **Appendix A** to this decision report;

- for the reasons set out in the Commissioner's recommendation dated 17 April 2009 and set out in section 4 below. The plans approved by the Commissioner have not been modified and are contained in **Appendix B** to this decision report.

Scope of decision report

1.5 Given that WEL's decision is to accept the decision of the Commissioner, it is not strictly necessary to set out reasons (beyond those enunciated by the Commissioner). Against that background, the purpose of this decision report is to set out:

- (a) The proposed work and procedural background (section 2)
- (b) The Commissioner's recommendation (section 3)
- (c) WEL's decision (section 4).

2. **PROPOSED WORK AND PROCEDURAL BACKGROUND**

2.1 On 25 November 2008 WEL issued a notice of requirement ("NOR 2") to the Council for a designation to provide for the establishment, construction and reconstruction, operation, maintenance and modification, replacement and repair of a sub transmission line corridor for an electricity line supported on poles that may carry two circuits at the voltages of either 11 kV, 33 kV, or 110 kV; and an earth wire and fibre optic cable (primarily for communication between the substations) under section 168 of the Resource Management Act 1991 ("RMA").

2.2 The relevant notice of requirement ("NOR") describes the work as follows:

"The proposed route connects the proposed Wind Park Substation on the Wharaurua 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. 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. 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. "

- 2.3 The line corridor requiring the designation runs between and connects Te Kowhai Substation and Te Uku Wind Park Substation. The affected land parcels and corridors are listed in NOR 2, the Planning Officer's report, the Commissioner's recommendation and the conditions.
- 2.4 The Council publicly notified NOR 2 on 29 November 2008 and submissions closed on 16 January 2009. Thirteen submissions were received (on NOR 2): nine submissions were in opposition; and four submissions were neutral.
- 2.5 The key issues raised in the submissions were:
- (a) Areas of cultural significance (*submission withdrawn*);
 - (b) Vegetation clearance and operation of line in areas of indigenous vegetation that is habitat for native species;
 - (c) The suspension of the line across the Waipa River (*one submission withdrawn*);
 - (d) Health effects caused by electromagnetic fields or radiation;
 - (e) Landscape and visual effects from the line;
 - (f) Property devaluation caused by environmental effects;
 - (g) Earthworks, geotechnical hazards, land instability, erosion or sediment;
 - (h) Restrictions on farming activities;
 - (i) Limitation or devaluation of future subdivisions;
 - (j) The location of line and siting of support structures;
 - (k) Restrictions on road upgrading and widening;
 - (l) Inadequate consideration of alternative routes and methods;
 - (m) Te Uku Wind Park resource consent and generation method;
 - (n) Tribally owned land and property rights (*submission withdrawn*);
 - (o) Traffic hazards from the line on the road;

- (p) Damage to trees, fences and the road in road reserve; and
- (q) Bird and bat strike.

Planning officer's report

- 2.6 The Planning Officer's report, prepared by Ana Maria d'Aubert, outlined the proposal and planning process; and assessed the environmental effects and the relevant provisions of the RMA and district plan. The report considered the NOR and the issues raised in submissions. The report concluded that:
- (a) The designation would meet the requirements of section 171 of the RMA;
 - (b) Any adverse effects on the environment caused by the designation could be adequately avoided, remedied, or mitigated; and
 - (c) The purpose of the RMA would be served by the NOR being confirmed, and subject to a range of conditions intended to ensure that the adverse environmental effects of the line are avoided, remedied or mitigated as far as reasonably practical in an overall sense.
- 2.7 The planner's report recommended that NOR 2 be confirmed subject to a recommended set of conditions.

Hearing

- 2.8 A hearing was held at the Council offices in Ngaruawahia from 9 to 12 March 2009 and was presided over by an independent Commissioner, Mr. David Hill.

WEL case

- 2.9 WEL presented legal submissions, and called twelve expert witnesses to present evidence in support of NOR 2 and to address issues raised by submissions. The witnesses comprised:
- 2.10 Mr John van Brink, WEL's General Manager Asset Investment and Growth presented evidence which addressed WEL's core business, corporate values and commitment, environmentally and socially responsible practices, and the provision of electricity in an efficient and cost-effective manner.
- 2.11 Mr David Mollekin, WEL's Network Asset Investment Advisor, presented evidence which addressed:
- (a) The need for the WNUP project.
 - (b) The rationale for establishing a new substation adjacent to the Transpower GXP and at the Te Uku Wind Park and alternatives available in relation to achieving WEL's objectives, and the design of the substations, including safety features.
 - (c) The general considerations which applied in deciding the route for the 110kV transmission line (which were addressed in more detail by Mr Jackson).
 - (d) The basis for the decisions which were taken in relation to the choice of equipment used.

- 2.12 Mr Ron Jackson, WEL's Network Assessor presented evidence which addressed issues relevant to the line route focussing in particular on the options available to WEL and rationale for the choices made.
- 2.13 Mr Tony Keyte, a civil engineer and principal of Bloxham Burnett and Olliver, presented 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.
- 2.14 Mr Chris Dawson, a senior planner of Bloxham Burnett Oliver presented evidence which outlined consultation undertaken and key outcomes, including proposed consent conditions, and the influence that consultation had on the corridor route.
- 2.15 Mr Tony Mitton is an electrical engineer and Development Manager of Mitton Electronet Limited. Mr Mitton presented evidence as to the electric and magnetic fields (EMFs) associated with the lines and substations and formed the basis for consideration of potential health effects in relation to EMFs.
- 2.16 Dr David Black is a medical physician who specialises in public health and safety issues. His evidence addressed relevant issues in relation to the health effects of the substations and the line and confirmed that there is no cause for concern in terms of health and safety effects.
- 2.17 Mr Gerry Kessels, an expert ecologist provided evidence on ecology, i.e., investigations undertaken and findings; potential adverse effects; measures developed to address potential adverse effects.
- 2.18 Dr Matthew Campbell, archaeologist, presented evidence on archaeological and heritage issues – investigations undertaken and findings; potential adverse effects; measures developed to address potential adverse effects.
- 2.19 Mr Dave Mansergh, landscape architect, presented evidence which addressed the landscape and visual effects of the substations and the line and, where appropriate, the landscaping treatment proposed.
- 2.20 Mr Nevil Hegley, acoustical engineer, presented a brief of evidence on noise issues, including corona noise.
- 2.21 Mr Laurence Sherriff, resource management consultant, presented evaluative evidence which addressed 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 the evidence presented and made an overall broad judgement about the project in the context of the section 171 criteria (including Part 2 of the RMA). This evidence also addressed conditions.

Submitters' cases

- 2.22 The following submitters were heard at the hearing (in relation to NOR 2):

Mr Wilson

- 2.23 Mr Wilson presented a summary of his submission as contained in the agenda, expressing general concerns about the environmental effects of the WNUP and requesting conditions requiring the planting of 200,000 native trees to mitigate or compensate for the effects of the project.

Ms Fletcher

- 2.24 Ms Fletcher presented written evidence in support of her submission opposing the project. Her evidence addressed matters relating to road safety, choice of route, concerns about electric and magnetic fields and visual effects, including the proposed removal of trees and the need for property boundaries to be defined by survey.

Mr Hope

- 2.25 Mr Hope presented written evidence in support of his submission, and outlined his concern with the location of poles immediately adjacent to his property's boundary with SH 23 and concerns with the stability of the bank where the poles were to be erected and outlined issues that had arisen with the bank when the state highway was realigned.

Mr Cox

- 2.26 Mr Cox presented written evidence in support of his submission. He highlighted his view that the wind farm itself was unnecessary, and that therefore the transmission line was also unnecessary. He believed that there were alternative renewable power generation methods that were more efficient and reliable in New Zealand conditions.

WEL reply

- 2.27 WEL addressed the issues raised by the submitters in an oral reply at the conclusion of the hearing and a written copy of that reply was forwarded to the Commissioner.

3. COMMISSIONER'S RECOMMENDATION REPORT

Relevant statutory provisions

- 3.1 The Commissioner identified section 171 of the RMA as containing the relevant statutory tests. That section states:

"(1) When considering a requirement and any submissions received, the territorial authority must, subject to Part 2, 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) *impose conditions;*
 - (d) *withdraw the requirement.*
- (3) *The territorial authority must give reasons for its recommendation under subsection (2)."*

3.2 The assessment of notices of requirement in section 171 is "subject to Part 2" of the RMA (sections 5 to 8). Part 2 commences with the purpose of the RMA, 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 reasonably 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."*

3.3 WEL presented comprehensive evidence addressing each aspect of section 171 and Part 2 matters.

3.4 The Commissioner considered all of the issues raised in a comprehensive recommendation report, under the following headings:

- (a) Effect of allowing the requirements – section 171(1) – The Te Kowhai and Te Uku Wind Park substations - Sub-transmission lines / route;
- (b) Effects identified at the hearing;
 - (i) Setback;
 - (ii) Environmental compensation;
 - (iii) Traffic safety on Karakariki Road;
 - (iv) Loss of street trees;
 - (v) Undergrounding of lines;
 - (vi) Instability consequences on adjacent land;
 - (vii) Alternative generation modalities;
- (c) Relevant requirements – section 171(1)(a);
- (d) Alternatives – section 171(1)(b) – Substation alternatives – Sub-transmission lines / route alternatives;
- (e) Reasonable necessity – section 171(1)(c) - The objectives;
- (f) Other matters – section 171(1)(d);
- (g) Lapse period; and
- (h) Part 2 RMA.

Commissioner's recommendation

3.5 Having considered all of the submissions and evidence, the Commissioner, in his conclusion and decision, stated that he broadly agreed with the reasons given in WEL's reply for confirming the three NORs, namely that :

- (a) The designation is reasonably necessary for achieving the objectives of the public work for which the designation is sought;
- (b) Alternative sites and methods have been adequately considered;
- (c) Given the nature of the public work (and the above two conclusions), it would be unreasonable to expect the requiring authority to use an alternative site or modify the designation;
- (d) The new substations will be of significant benefit to local and regional communities by providing a facility where generated electricity is distributed into local electricity networks and into the national grid;
- (e) The new electricity line will be of significant benefit to local and regional communities by distributing generated electricity into local networks and the national grid, and providing security of electricity supply to the western area network into the future;

- (f) Any adverse effects on the environment caused by the substations and connecting electricity line can be adequately avoided, remedied, or mitigated; and
- (g) The purpose of the RMA would be served by the NORs being confirmed, and subject to a range of conditions intended to ensure that the adverse environmental effects of the substations and electricity lines are avoided, remedied or mitigated as far as reasonably practical in an overall sense.

3.6 On 17 April 2009, the Commissioner on behalf of the Council pursuant to section 171(2) of the RMA recommended that NOR 2 issued by WEL Networks Ltd be confirmed subject to conditions.

4. WEL DECISION AND REASONS

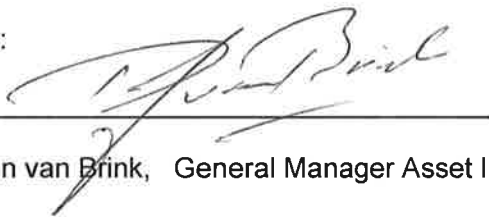
4.1 Having regard to the above, WEL's decision is that the recommendation by the Commissioner on behalf of the council that NOR 2 be confirmed subject to conditions (as per Appendix A), is accepted in whole for the reasons outlined in the Commissioner's report, subject to a minor modification to the conditions, addressed below.

4.2 In that regard, WEL has modified Condition B to clarify that the poles which carry the electricity line may also carry an earth wire and a fibre optic cable. The reason for the modification to Condition B is to ensure that the description of the designation is accurate. The information provided in support of the NORs identified that the poles may carry an earth wire and a fibre optic cable and the modification is consistent with the requirement as notified.

DATED this 1st May 2009

WEL NETWORKS LIMITED:

Per:



John van Brink, General Manager Asset Investment and Growth

APPENDIX A
ELECTRICITY LINE (NOR 2)
WEL NETWORKS LIMITED: ELECTRICITY LINE
CONDITIONS OF DESIGNATION: DES0001/09

DESCRIPTION OF WORKS

- A. The designation applies to the area of land contained within the following lots:
- (a) LOT 3 DP 309860
 - (b) ALLOT 122 WHAINGAROA PSH, PT ALLOT 24 WHAINGAROA PSH
 - (c) LOT 3 DPS 37736, LOT 4 DPS37735
 - (d) SEC 1 SO 59266
 - (e) PT ALLOT 203 KARAMU PSH, PT ALLOT 204 KARAMU PSH
 - (f) LOT 1 DPS 7188
 - (g) LOT 1 DP 400334, LOT 3 DP 400334
 - (h) LOT 1 DPS 91350
 - (i) LOT 4 DPS 65272
 - (j) PT LOT 3 DPS 65272
 - (k) SEC 2 SO 59624, SEC 1 SO 59624, ALLOT 45 KARAMU PSH SO 18481, ALLOT 43 KARAMU PSH SO 18481, ALLOT 44 KARAMU PSH SO 18481
 - (l) PT LOT 1 DP 23224, LOT 2 DPS 53824
 - (m) LOT 2 DP 23224
 - (n) ALLOT 327 WAIPA PSH SO 36894
 - (o) LOT 2 DPS 30291, LOT 2 DP 337077
 - (p) LOT 4 DPS 85856
 - (q) PT LOT I DPS 31055
 - (r) LOT 3 DPS 73023
 - (s) State Highway 23 (New Zealand Transport Agency)
 - (t) Paper Road (Waikato District Council)
 - (u) Cogswell Road (Waikato District Council)
 - (v) Karakariki Road (Waikato District Council)
 - (w) Waitetuna River (Crown Land)
 - (x) Maungaokahu Stream (Crown Land)
 - (y) Karakariki Stream (Crown Land)
 - (z) Waipa River (Crown Land)

as illustrated on the following plan:

Designation Plan: Western Network Upgrade: Conceptual Description: Maps I - 30, Version F, dated 6/11/2008.