

**IN THE ENVIRONMENT COURT  
AUCKLAND**

**ENV-2022-AKL-**

**I MUA I TE KOOTI TAIAO O AOTEAROA  
I TAMAKI MAKAUROA ROHE**

**IN THE MATTER** of the Resource Management Act 1991 ("**RMA**")

**AND**

**IN THE MATTER** of Clause 14(1) of Schedule 1 of the RMA

**BETWEEN**

**WEL NETWORKS LIMITED**

Applicant

**AND**

**WAIKATO DISTRICT COUNCIL**

Respondent

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISIONS ON  
THE PROPOSED WAIKATO DISTRICT PLAN**

**1 MARCH 2022**

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To: The Registrar  
The Environment Court  
AUCKLAND

**WEL NETWORKS LIMITED** ("**WEL**") appeals against parts of the decisions of the Waikato District Council ("**Council**") in respect of the Proposed Waikato District Plan ("**Proposed Plan**").

## **1. BACKGROUND AND DECISIONS APPEALED**

- 1.1 WEL made a submission on the Proposed Plan on 9 October 2018<sup>1</sup> and a further submission on 15 July 2019. WEL presented evidence on 29 September 2020 in support of its submission.
- 1.2 WEL received notice of the Council's decision on the Proposed Plan on 17 January 2022 ("**Decision**").
- 1.3 WEL is not a trade competitor for the purposes of section 308D of the RMA.
- 1.4 WEL is an electricity distributor operating under the Electricity Act 1992. It owns, operates and develops electricity distribution infrastructure in the Waikato Region to provide line function services to over 95,000 installation connection points. This includes the distribution of electricity to residences and businesses within Hamilton City.
- 1.5 WEL has the responsibility of providing a secure and efficient supply of electricity to the community within its distribution network area. WEL is a network utility operator and an approved requiring authority pursuant to section 167 of the RMA for its lines network functions.
- 1.6 WEL has an interest in ensuring that the Proposed Plan appropriately recognises and provides for the operation of its infrastructure, which is identified within the Waikato Regional Policy Statement as regionally significant infrastructure. The Waikato Regional Policy Statement recognises energy infrastructure as important to support the wellbeing of the regional community, as well as making a contribution to national electricity generation capacity and supply.

## **2. SCOPE OF APPEAL**

- 2.1 WEL appeals the parts of the Decision in respect of which WEL made a submission as follows:
  - (a) Proposed amendments to the policy relating to undergrounding new infrastructure;<sup>2</sup>

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<sup>1</sup> Submission number 692.

<sup>2</sup> Submission point 692.33.

- (b) Proposed amendments to the policy relating to network utility location;<sup>3</sup>
- (c) Proposed new rule applicable to the design and location of infrastructure services;<sup>4</sup>
- (d) Proposed amendments to the minor upgrading of existing infrastructure rule;<sup>5</sup>
- (e) Proposed amendments to the small-scale and community electricity generation rules;<sup>6</sup>
- (f) Proposed amendments to the research and exploratory-scale investigations for renewable electricity generation activities rule.<sup>7</sup>
- (g) Proposed amendments to the policy relating to existing infrastructure and utilities in all areas subject to natural hazards.<sup>8</sup>
- (h) Proposed new rule relating to large-scale solar farms.<sup>9</sup>

### **3. GENERAL REASONS FOR APPEAL**

#### **3.1 The Proposed Plan in its present form:**

- (a) will not promote the sustainable management of the natural and physical resources in the Waikato region, and is therefore contrary to or inconsistent with Part 2 and other provisions of the RMA;
- (b) is inconsistent with other relevant planning documents, including the Waikato Regional Policy Statement;
- (c) will not meet the reasonably foreseeable needs of future generations;
- (d) will not enable the social, economic and cultural wellbeing of the people of the Waikato region;
- (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment; and
- (f) is not the most appropriate way to achieve the objectives of the Proposed Plan in terms of section 32 of the RMA.

#### **3.2 In addition to the general reasons outlined above, WEL appeals the Decision for the specific reasons set out below.**

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3 Submission point 692.38.  
 4 Submission point 692.4.  
 5 Submission point 692.6.  
 6 Submission points 692.18 and 692.19.  
 7 Submission point 692.20.  
 8 Submission point 2106.2.  
 9 For example, submission point 692.54.

#### 4. SPECIFIC REASONS FOR APPEAL AND RELIEF SOUGHT

##### Underground new infrastructure – Policy AINF-P8

4.1 In its submission, WEL sought to amend policy AINF-P8, which encourages the undergrounding of new infrastructure, to appropriately recognise the operational, functional, technical, cultural, or economic reasons why infrastructure may need to be above ground, and to recognise that overhead infrastructure is permitted in the Rural Zone.

4.2 The Decision rejected the relevant changes sought to this policy, stating:<sup>10</sup>

We have not limited the application of this policy to any particular zones or environments as requested by submitters such as Counties Power, as the policy position is to “encourage” rather than any requirement to place new infrastructure underground

4.3 WEL considers that the Decision creates an inconsistency between policy AINF-P8 and other provisions of the Proposed Plan. The implications of the policy are to encourage infrastructure to be placed underground when it may not be necessary or warranted. In particular, overhead infrastructure is a permitted activity in the Rural Zone, while most distribution infrastructure such as distribution ring main units and transformers are permitted in all zones. Accordingly, other parts of the Proposed Plan clearly anticipate that above ground infrastructure will be implemented. Policy AINF-P8 is inconsistent with the activity status for this infrastructure. Despite the Commissioners considering that the policy does not require, but only encourages, undergrounding of new infrastructure, the use of the word “significant” in the policy wording means that the threshold for an exception is high.

##### *Relief sought*

4.4 WEL seeks:

(a) the following amendments to policy AINF-P8:

(a) Encourage new infrastructure to be placed underground unless:

(i) The adverse effects on the environment are greater than placing the infrastructure above ground;

(ii) A natural or physical feature or structure renders underground placement impractical or undesirable; or

(iii) There are ~~significant~~ operational, functional, technical, cultural, historic heritage or economic reasons that require the infrastructure to be above ground; or

(iv) the infrastructure is located within the Rural Zone.

<sup>10</sup>

Decision report 13, at [91(c)].

- (b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

### **Network utility location – Policy AINF-P33**

4.5 In its submission, WEL sought that the Council amend policy AINF-P33 as the policy as worded is open to interpretation which may result in excessive restrictions on infrastructure providers.

4.6 The Decision rejected WEL's submission because it did "not consider that the wording changes sought by WEL Networks will improve clarity of the policy".<sup>11</sup>

4.7 Policy AINF-P33, in its current form, reads:

Encourage the location of network utility infrastructure within transport corridors where the function, safety and efficiency of the transport network will not be compromised.

4.8 WEL is concerned that there is no general understanding of what might constitute "function, safety and efficiency" being "compromised". WEL considers that it is more appropriate to use the well understood resource management terminology of adverse effects. It is also important to clarify that effects on the transport network are able to be avoided, remedied or mitigated.

#### *Relief sought*

4.9 WEL seeks:

- (a) an amendment to policy AINF-P33, as follows:

Encourage the location of network utility infrastructure within transport corridors ~~where provided any adverse effect on the function, safety and efficiency of the transport network will not be compromised~~ is avoided, remedied or mitigated.

- (b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

### **AINF Rules applying to all infrastructure - Permitted Activities (Design and location of infrastructure services) rule proposal. AINF Discretionary Activities (Instances where activities cannot comply) rule**

4.10 In its submission, WEL sought the inclusion of a new rule relating to the design and location of infrastructure services, in particular, a rule providing that utilities corridors in the road reserves be free of tree plantings in accordance with Tables 14.12.5.14 and 14.12.5.15. WEL also sought to propose a new rule governing those instances where activities that cannot comply with the permitted activity status shall be treated as discretionary activities.

4.11 WEL's submission was rejected in the Decision because:<sup>12</sup>

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<sup>11</sup> Decision report 13, at [103(e)].

<sup>12</sup> Decision report 13, at [107].

While we understand the concerns of WEL Network wanting to have utility corridors in the road reserve free of tree plantings, it seems to us from Figure 14.12.5.16 that there is no intention for utility corridors to be completely free of trees. We therefore reject this submission point.

4.12 WEL is not opposing the provision of tree plantings in all sections of the road reserve. WEL is seeking a corridor for utilities that is free from tree plantings. Allowing adequate berm space for utilities that are free of tree plantings is necessary to ensure sufficient space is available for WEL to install its network utility equipment. The intention of WEL's submission is to ensure that, at the time of subdivision, a sufficient berm width is provided by the developer to ensure sufficient areas for utilities (WEL requires a minimum of 1.2 metres for electricity equipment and other services). A sufficient berm width will enable separate space for vegetation and utilities so that these can co-locate without damaging each other.

4.13 It is critically important that new land use activities do not compromise the functioning of essential infrastructure, such as electricity transmission. The Waikato Regional Policy Statement directs that:

Local authorities should ensure that appropriate measures are implemented to avoid adverse effects of development of the built environment on the safe, efficient and effective operation of regionally significant infrastructure. With respect to electricity transmission corridors, development of the built environment should also take into account National Policy Statements, National Environmental Standards and Transmission Corridor Guidelines as relevant to the circumstances.<sup>13</sup>

4.14 The new rule proposed by WEL enables the Council to meet its obligations under the Waikato Regional Policy Statement.

*Relief sought*

4.15 WEL seeks:

(a) the inclusion of new rule into the AINF provisions as follows:

[XX] Design and location of infrastructure services

Within all Zones new subdivision and development shall provide utilities corridors in the road reserve free of tree plantings and in accordance with Tables 14.12.5.14 and 14.12.5.15.

(b) the inclusion of a new discretionary activity into the AINF provisions as follows:

[XXX] Any infrastructure development that cannot comply with rule [XX]

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<sup>13</sup>

Waikato Regional Policy Statement, Method 6.6.5.

- (c) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

#### **AINF-R6 Minor upgrading of existing infrastructure**

- 4.16 In its submission, WEL sought several amendments to this rule, as in its current form, it will negatively impact the continuity of small-scale day-to-day activities for infrastructure providers.
- 4.17 The Commissioners made several changes to rule 14.3.1.1 which WEL supports (now rule AINF-R6). However, the Decision rejected WEL's proposed change to (what is now) AINF-R6.1(a)(i) to increase the distance to meet the permitted standard from 5 metres to 10 metres; and to delete standard (what is now) AINF-R6.1(a)(iv) which requires that any increase the diameter of any existing above- ground pipe to be no more than 15%. The Decision replaced 15% with 300mm.
- 4.18 The changes sought by WEL reflect the day-to-day practicalities of electricity infrastructure operations. A significant number of relocations will be more than 5 metres outside the existing alignment or location particularly in residential locations where space is limited. The 5 metre standard means that WEL will be required to obtain a restricted discretionary consent for relocations above this distance. This will create unnecessary delays and costs that will impact WEL's ability to undertake its day-to-day operations.
- 4.19 A standard requiring that any increase the diameter of any existing above-ground pipe to be no more than 300mm is also impractical. WEL and other utilities may occasionally run cables up poles where underground infrastructure meets overhead. Any increase in capacity triggered by development may require increased cables sizes.
- 4.20 The rule as it is currently proposed is also not consistent with the Waikato Regional Policy Statement which recognises the technical and operational constraints of the electricity transmission network and electricity generation activities.<sup>14</sup> It is also not consistent with AINF P14-2 which aims to "Protect the effectiveness and efficiency of existing and planned regionally significant infrastructure".

#### *Relief sought*

- 4.21 WEL seeks:
- (a) amendments to rule AINF-R6 as follows:
- (1) The realignment, configuration, relocation or replacement of infrastructure and associated structures that meet all of the following standards:
- (a) Are within 105m of the existing alignment or location;

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<sup>14</sup>

Waikato Regional Policy Statement, objective 3.5(h).

(b) Do not increase the height of any existing pole or support structure by more than 40% to a maximum height of 20m in all zones except the GRUZ – General Rural Zone, GIZ – General Industrial Zone, HIZ - Heavy Industrial Zone and MSRZ - Motor Sport and Recreation Zone;

(c) Do not increase the diameter (width) of any existing pole or support structure by more than 50%, or 100% increase in the case of a double pole, in all zones;

~~(d) Do not increase the diameter of any existing above-ground pipe by more than 300mm; and~~

(e) Do not increase the area of any existing above-ground structure by more than 25%

(b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

### **All Zones – Small-scale electricity generation – EGEN-R1**

4.22 In its submission WEL sought that standard 14.6.1.1(a)(b), which restricted small-scale and community-scale generation from establishing on road reserve and unformed road, be deleted. WEL also sought that the electricity output standard in 14.6.1.1(a)(c) also be deleted. The Commissioners accepted these submissions, with the exception that the restriction on unformed road remains. The Decision also amended standard 14.6.1.1(a)(j) (now EGEN-R1(1)(a)(ix)) as follows:

Solar panels on the roof of a building must not exceed 1.5m in height above the existing roof; or attached to a ground mounted frame.

4.23 The section 42A report recommended that the following wording be included "Solar panels may be attached to a ground mounted frame".<sup>15</sup> WEL considers that this wording is confusing as to what is permitted and what height standard may apply to ground mounted frames. WEL is concerned that the text in the Decision version and the proposal from the section 42A report create unnecessary confusion around ground mounted frames for solar. The provision is a standard applying to small-scale and community scale infrastructure, rather than providing whether or not ground mounted frames are permitted.

#### *Relief sought*

4.24 WEL seeks that:

(a) The standard be amended to make it clear that the height limit of 1.5 metres solely relates to solar panels that are affixed to the roof of the building.

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<sup>15</sup>

Section 42A Hearing report, Infrastructure Section D6, p 7.



- (b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

**Research and exploratory-scale investigations for renewable electricity generation activities – EGEN-R3**

- 4.25 In its submission WEL requested the deletion of a condition associated with what is now EGEN-R3 which provides for research and exploratory-scale investigations for renewable electricity generation activities. Specifically, WEL requested the deletion of a condition which would require resource consent for all research and exploratory-scale investigations for renewable electricity generation activities within a road, or unformed road.
- 4.26 It is unclear why the Proposed Plan is proposing to restrict research and exploratory-scale investigations for renewable electricity generation within road reserve and unformed roads. The Corridor Access Request process would ensure that any safety effects of the proposal are considered. The other conditions imposed would restrict the size of any structures installed. Research and exploratory investigations will become even more increasingly necessary to secure New Zealand's energy future. It is unnecessarily restrictive to limit their potential in road reserve which provides increasing opportunities to locate energy infrastructure. The amendment proposed by WEL to this rule is consistent with the Waikato Regional Policy Statement objectives that:
- (a) recognise the contribution of existing and future electricity transmission and electricity generation activities to regional and national energy needs and security of supply;<sup>16</sup>
  - (b) provide for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation.<sup>17</sup>
- 4.27 The policies of the Proposed Plan specifically provide for "the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation activities".<sup>18</sup>
- 4.28 It is also inconsistent with the amendment made by the Commissioners to remove "road" from the corresponding standard for small-scale and community electricity generation activities. The Decision does not comment on the reason that the same amendment was rejected for the research and exploratory-scale investigations.

*Relief sought*

- 4.29 WEL seeks:
- (a) an amendment to rule EGEN-R3(1)(a)(vi) as follows:

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<sup>16</sup> Waikato Regional Policy Statement, objective 3.5(i).

<sup>17</sup> Waikato Regional Policy Statement, objective 3.12(i).

<sup>18</sup> Proposed Plan, AINF-P22.

Research and exploratory-scale investigations for renewable electricity generation activities that comply with all of the following:

- (i) The noise limits that are applicable to the zone;
  - (ii) The height of any equipment must not exceed the building height limit of the zone in which they are located by more than 3m, or within the GRUZ – General Rural Zone must not exceed 20m total height measured from the natural ground level immediately below the structure,;
  - (iii) The size and location of any equipment must not exceed height in relation to boundary relevant to the zone in which it is located; and
  - (iv) Setbacks relevant to the zone in which it is located;
  - (v) Is not located within an identified area; ~~and~~
  - (vi) Is not located on ~~a road, or~~ unformed road
- (b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

**NH-P6- Existing infrastructure and utilities in all areas subject to natural hazards**

- 4.30 Policy NH-P6 currently provides for "the operation, maintenance and minor upgrading of existing infrastructure and utilities in all areas subject to natural hazards". In its submission WEL sought that the policy be amended to provide for upgrading of existing infrastructure and utilities rather than "minor upgrading". This was not accepted in the Decision, and there was no explanation included of the reasoning behind the Commissioners' decision.
- 4.31 WEL recognises that the location of any infrastructure and utilities in areas subject to natural hazard is a higher risk. However, it is also the practical reality that there is existing infrastructure and utilities in areas subject to natural hazards, with those infrastructure and utilities providing essential services to the surrounding population. A policy that only provides for "minor upgrading" of such infrastructure and utilities runs the risk that essential upgrades that are more than minor are not able to be carried out. This would result in a failed asset and disruption in services, as well as the potential for the asset to result in adverse effects on the environment.
- 4.32 WEL submits that this policy is not consistent with:
- (a) the promotion of the sustainable management of the natural and physical resources in the Waikato region;
  - (b) reasonably foreseeable needs of future generations;
  - (c) enabling the social, economic and cultural wellbeing of the people of the Waikato region; and

- (d) avoiding, remedying or mitigating actual and potential adverse effects on the environment.

*Relief sought*

4.33 WEL seeks:

- (a) an amendment to policy NH-P6 as follows:

Provide for the operation, maintenance and minor upgrading and upgrading of existing infrastructure and utilities in all areas subject to natural hazards.

- (b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

**Activity status of large-scale solar**

4.34 WEL made submissions in support of a number of objectives and policies in the Proposed Plan that recognised and encouraged the use of renewable energy. WEL also made submissions on the rules relating to renewable energy in what is now the RGEN chapter of the Proposed Plan.

4.35 In its Decision, the Commissioners stated in response to a number of submissions that requested the Proposed Plan "actively enables energy efficiency initiatives and the implementation of solar power" that:<sup>19</sup>

the PDP already addresses this by virtue of the objectives and policies in Section 6.3 and the rules in section 14.6.1. We consider this approach gives effect to the NPS-REG and the relevant RPS provisions, such that no specific initiatives are required.

4.36 The RGEN rules provide for small-scale, community-scale and research and exploratory-scale investigations for renewable electricity generation activities, which will encompass solar power. For large-scale renewable electricity generation activities, the RGEN rules only provide for large-scale wind farms (as a discretionary activity in the General rural zone, and a non-complying activity in other zones). There is no provision for large-scale solar farms. As currently drafted there is the risk that solar farms could be classified as a non-complying activity, even in the General rural zone.

4.37 This classification is directly contrary to the objectives and policies of the Waikato Regional Policy Statement and the Proposed Plan, which encourage the use of renewable energy. In particular Objective AINF-O5 which requires "Energy efficient design and an increase in renewable electricity generation" and Policy AINF-P21, which provides:

Enable the investigation, development, operation, maintenance and upgrading of renewable electricity generation activities, including domestic and community scale distributed renewable

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<sup>19</sup> Decision report 13, at [74].

electricity generation, provided that adverse effects are avoided, remedied or mitigated.

- 4.38 Solar power will become increasingly important to New Zealand's future. It is renewable, one of the cheapest forms of renewable energy, and has advantages over wind in terms of construction times and the potential for adverse effects. It is critical that the Proposed Plan makes provision for large-scale solar farms in appropriate sites. The General rural zone is particularly suitable for such sites as it minimises the potential for adverse effects while also enabling complementary rural activities, such as sheep and cattle grazing, to continue.
- 4.39 WEL considers that, as the potential effects of a solar farm are well understood, restricted discretionary status is appropriate for large-scale solar farms in the Rural Zone.

*Relief sought*

- 4.40 WEL seeks that:
- (a) the Proposed Plan be amended so that large-scale solar farms have restricted discretionary status in the GRUZ – General rural zone, with appropriate matters of discretion.
  - (b) Such further or other relief or other consequential or other amendments to these or other provisions as considered appropriate and necessary to address WEL's concerns.

**5. ATTACHMENTS**

- 5.1 The following documents are attached to this notice:
- (a) A copy of the relevant parts of the Decision.
  - (b) A copy of WEL's submissions.
  - (c) A list of the relevant names and addresses of persons who lodged submissions who are to be served with a copy of this notice.

**WEL NETWORKS LIMITED** by its solicitors and authorised agents Russell McVeagh:



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**Signature:** D J Minhinnick / K L Gunnell

**Date:** 1 March 2022

**Address for Service:** C/- Kristen Gunnell  
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TO: The Registrar of the Environment Court at Auckland.

AND TO: The Waikato District Council.

AND TO: The relevant submitters on the provisions appealed.

## **Advice to recipients of copy of notice of appeal**

### *How to become a party to proceedings*

1. You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.
2. To become a party to the appeal, you must:
  - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
  - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.
4. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

**APPENDIX A – RELEVANT SECTIONS OF THE DECISION**

**APPENDIX B – WEL'S ORIGINAL SUBMISSIONS AND FURTHER  
SUBMISSIONS**



## **APPENDIX C – RELEVANT NAMES AND ADDRESSES OF SUBMITTERS**