

**Before the Hearing Panel**

**IN THE MATTER**

of the Resource Management Act 1991 ("**RMA**")

**AND**

**IN THE MATTER**

of Variation 3 to the Proposed Waikato District Plan

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**LEGAL SUBMISSIONS ON BEHALF OF WEL NETWORKS LTD IN RELATION TO  
VARIATION 3 TO THE PROPOSED WAIKATO DISTRICT PLAN**

**21 JULY 2023**

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## 1. INTRODUCTION

- 1.1 WEL Networks Ltd ("**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 100,000 installation connection points.
- 1.2 WEL is responsible for 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 s167 of the RMA for its lines network functions.
- 1.3 WEL submitted on Variation 3 to the Proposed Waikato District Plan ("**Variation 3**") to ensure that Variation 3 appropriately recognises and provides for the operation of its infrastructure (identified within the Waikato Regional Policy Statement as regionally significant infrastructure). WEL's key concern is to ensure that development near the electrical corridor is appropriately managed to minimise adverse effects on health and safety.

## 2. WEL'S SUBMISSION

- 2.1 WEL seeks that Variation 3 is amended to ensure that subdivision, building and development activities adjacent to electricity distribution infrastructure comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances ("**NZEC34**").<sup>1</sup>
- 2.2 NZEC34 is an Electrical Code of Practice issued by WorkSafe under s36 of the Electricity Act 1992. It provides minimum safe distances between buildings (and other structures, including scaffolding) and electricity infrastructure. These minimum safe distances aim to ensure that persons and property are protected from electrical hazards.
- 2.3 Regulation 17 of the Electricity (Safety) Regulations 2010 requires that anyone who carries out construction, building, excavation, or other work on or near an electric line must maintain safe distances in accordance with NZEC34.

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<sup>1</sup> Submission by WEL Networks Limited on Proposed Variation 3 of the Proposed Waikato District Plan – Enabling Housing Supply. Statement of Evidence of Sara Brown dated 4 July 2023 at [4.1].

- 2.4 Compliance with NZECP34 is a legal obligation but one that it appears many developers are unaware of.<sup>2</sup> There seems to be a perception that if resource consent / building consent is granted that a developer is free to proceed without being aware of other requirements, such as NZECP34. Ms Brown's evidence details the very real health and safety risks to people where NZECP34 controls are not complied with, including risks to life and limb.<sup>3</sup> Risks associated with non-compliance with NZECP34 are not hypothetical risks, but ones that WEL deals with on a regular basis.<sup>4</sup>

### 3. LEGAL FRAMEWORK

- 3.1 Variation 3 is an intensification planning instrument ("IPI") required under s80F of the RMA. The IPI is required to incorporate the medium density residential standards ("MDRS") and to give effect to policies 3 and 4 of the National Policy Statement on Urban Development 2020 ("NPS-UD").
- 3.2 The RMA includes a list of qualifying matters that may make the MDRS, and the relevant requirements under policy 3 of the NPS-UD, less enabling of development in relation to an area in a relevant residential zone.<sup>5</sup>
- 3.3 The s42A Report Rebuttal evidence for Council acknowledges that breaches of NZECP34 can have serious consequences.<sup>6</sup> However, the s42A Report Rebuttal Authors consider that the relief sought by WEL may restrict the ability to achieve the MDRS, and could only be incorporated in the event that a qualifying matter is present.<sup>7</sup>
- 3.4 In our submission, the relief sought by WEL does not make the MDRS and the relevant requirements under policy 3 of the NPS-UD less enabling of development. The relief sought by WEL provides for the 1.5 metre front yard setback to be applied to a development, provided that the building or structure can comply with NZECP34.
- 3.5 Even with the MDRS being incorporated in the District Plan, developers are still required to comply with NZECP34, the RMA has not overridden the requirements of the Electricity (Safety) Regulations 2010. The relief sought by

<sup>2</sup> Statement of Evidence of Sara Brown dated 4 July 2023 at [3.11].

<sup>3</sup> Statement of Evidence of Sara Brown dated 4 July 2023 at [3.8] – [3.9].

<sup>4</sup> Statement of Evidence of Sara Brown dated 4 July 2023 at [3.8] and [3.11].

<sup>5</sup> RMA, s77I. Section 77O of the RMA provides that qualifying matters may modify the requirements of Policy 3 of the NPS-UD in an urban non-residential zone.

<sup>6</sup> Section 42A Rebuttal Evidence on behalf of Waikato District Council dated 19 July 2023 at [99].

<sup>7</sup> Section 42A Rebuttal Evidence on behalf of Waikato District Council dated 19 July 2023 at [95] – [98].

WEL simply seeks to align the District Plan requirements with an already *existing* regulatory obligation. Accordingly, the relief sought does not affect the density that would be enabled in practice by the MDRS.

- 3.6 In this manner it aligns with the framing of the setback requirements of the MDRS being expressed as being a "minimum depth", ie, there is no obligation that every building must have a 1.5 metre setback but rather that is the minimum depth provided for. Many buildings or structures may be able to comply with NZECP34 within the 1.5 metre front yard setback with consideration of configuration and local conditions. WEL has advised that generally any consequence of any identified breach of NZECP34 is written approval from WEL, which may require an engineering study and potentially relocate the lines. However, in some circumstances compliance with the requirements of NZECP34 may mean that a building can only be built 1.8 metres from the front yard for example.
- 3.7 As above, this requirement would exist in any case, but including consideration of NZCEP34 in the rule ensures that developers are aware that the front yard setback needs to take into account the NZCEP34 requirements. These considerations are required to appropriately manage health and safety effects resulting from non-compliances with NZECP34. For the reasons set out in the evidence of Ms Brown, inclusion of reference to NZECP34 in an advice note (as proposed by the s42A Report) is not sufficient.<sup>8</sup>
- 3.8 The relief sought by WEL enables the Council to fulfil its obligations under Part 2 of the RMA. Territorial authorities must prepare and change district plans in accordance with the provisions of Part 2 of the RMA.<sup>9</sup> This includes changing district plans in accordance with the purpose of the RMA which provides for sustainable management of resources "in a way...which enables people and communities to provide for their social, economic, and cultural well-being, and for their health and safety..."<sup>10</sup>
- 3.9 The s42A Report states that "it is not appropriate for a District Plan to mandate compliance with other legislation".<sup>11</sup> In our submission, requiring compliance with NZECP34 is appropriate and necessary in a planning context. Health and safety issues are part of the stated purpose of sustainable management under the RMA.<sup>12</sup> These matters are required to be considered, and managed, in accordance with the RMA regardless of the existence of an overlapping

<sup>8</sup> Statement of Evidence of Sara Brown dated 4 July 2023 at [5.2].

<sup>9</sup> RMA, s74(1)(b).

<sup>10</sup> RMA, s5(1).

<sup>11</sup> Section 42A Report at [340].

<sup>12</sup> RMA, s5(2).

jurisdiction.<sup>13</sup> The obligation to consider health and safety issues in plan changes is not discharged because another jurisdiction (ie Electricity Regulations) may also address similar issues.

- 3.10 A District Plan framework that enables developments as permitted activities that cannot be built or maintained safely and lawfully is not in accordance with the purpose of the RMA to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety and is therefore not in line with Council's obligations under s 74(1)(b) of the RMA.
- 3.11 The above is especially true in the current context where Variation 3 has the potential to significantly increase breaches of NZECP34.<sup>14</sup> The intensification allowed by Variation 3, through incorporation of the MDRS and policy 3 of the NPS-UD, will permit development closer to existing overhead lines, both vertically (through increase in permitted building height) and horizontally (through decrease in front yard setbacks). It is therefore critical that the minimum safe distances provided in NZECP34 are considered at the planning stage.<sup>15</sup>
- 3.12 The s42A Report also states that:<sup>16</sup>
- In my view, the requirement for Council to assess compliance with the other legislation is unreasonable, particularly in relation to technical matters such as setbacks from electrical infrastructure.
- 3.13 This is surprising, given that Variation 3 already contains provisions which mandate compliance with NZECP34 with respect to activities in the National Grid Corridor.<sup>17</sup>
- 3.14 There is no basis for requiring compliance with NZECP34 in some contexts but not in others. From a safety perspective, there is no difference between the consequences of non-compliance with NZECP34 in relation to the National Grid Transmission Line, and non-compliance with NZECP34 in relation to other

<sup>13</sup> *Yachting New Zealand v Tasman District Council* [2004] NZRMA 373 (EnvC) at [33]-[34] citing *Dart River Safaris Ltd Kemp* [2001] NZRMA 433 (HC) at [34], [60-65].

<sup>14</sup> This is accepted by the reporting planner in the s42A Report for Variation 3 (15 June 2023) at [340].

<sup>15</sup> Statement of Evidence of Sara Brown dated 4 July 2023 at [3.11] which highlights the issue with developers unawareness of the setback requirements prescribed by NZECP 34:2001.

<sup>16</sup> Section 42A Report at [340].

<sup>17</sup> See Rule MRZ2-R10 which requires that all buildings or structures permitted by Rule GRZ2-R10(1)(a) must comply with NZECP 34:2001 under all National Grid transmission line operating conditions.

transmission and distribution lines. Unsafe distances from any electricity line are hazardous and has the potential to result in serious injury or death.<sup>18</sup>

#### **4. CONCLUSION**

- 4.1 There are significant health and safety issues arising from non-compliance with NZECP34. The relief sought by WEL is the most appropriate way to ensure that these matters are appropriately managed in accordance with Part 2 of the RMA.

**DATED:** 21 July 2023

**D J Minhinnick / K L Gunnell**  
Counsel for WEL Networks Ltd

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<sup>18</sup> Statement of Evidence of Sara Brown dated 4 July 2023 at [5.4].