

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under Clause 14 of the First Schedule of the Act
BETWEEN	WEL NETWORKS LIMITED (ENV-2020-AKL-000167) Appellant
AND	HAMILTON CITY COUNCIL Respondent

Environment Judge M Harland sitting alone under section 279 of the Act

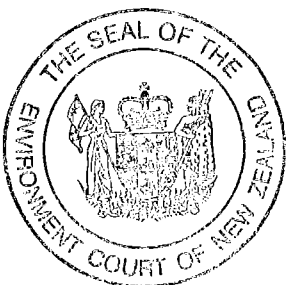
IN CHAMBERS at Auckland

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the agreed amendments to the Plan Change set out in Schedule 1; and
- (2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

[1] This consent order relates to the appeal by WEL Networks Limited (**WEL**) against the decision of Hamilton City Council on Plan Change 6 to the Hamilton City District Plan.

[2] The appeal relates to new Rule 25.2.4.1(g) (**the Rule**) which seeks to protect network utilities from earthworks.

[3] WEL made submissions in relation to the Rule, and subsequently appealed the Council decision.

[4] WEL explained in its notice of appeal that it supported the intent of the Rule, to protect network utilities from earthworks, but considered that it did not give specific guidance to how to achieve that. To protect WEL's equipment and the health and safety of the community, WEL also sought to include reference to the requirements of applicable regulations and codes such as the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34).

[5] There are no section 274 parties to the appeal.

Agreement reached

[6] Following direct discussion, the parties have reached agreement on a proposal to resolve this appeal.

[7] The proposed consent order amends Rule 25.2.4.1(g) to ensure that earthworks undertaken do not cause damage or malfunction to network utilities and provides specific guidance on how this is to be achieved. The proposed amendments also address NZECP34 in an advice note.

Consideration

[8] In making this order the Court has read and considered the Appeal and the joint memorandum of the parties dated 16 December 2020.



[9] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

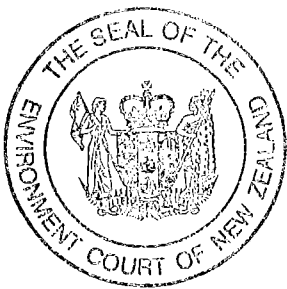
- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties agree that the agreed amendments to the Plan Change resolve the appeal in full; and
- (c) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

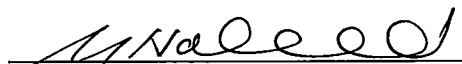
Order

[10] Therefore the Court orders, by consent, that:

- (a) The appeal is allowed, subject to the agreed amendments to the Plan Change set out in Schedule 1;
- (b) The appeal is otherwise dismissed; and
- (c) There is no order as to costs.

DATED at Auckland this ~~four~~ 17th day of December 2020





M Harland
Environment Judge

Schedule 1

Agreed Amendments to Plan Change 6 to the Hamilton City District Plan

Track changed version marked as "A"

Clean version marked as "B"



2. No person may destroy, damage, or modify an archaeological site without an authority from Heritage New Zealand. If items of archaeological significance are found when undertaking earthworks, authority must be obtained from Heritage New Zealand before proceeding with any further works which could potentially destroy, damage, or modify such items.
3. Activity status for earthworks relating to existing high voltage transmission lines as of 14 January 2010, identified on the District Plan Maps and forming part of the National Grid, is set out and determined within the Resource Management (National Environmental Standard for Electricity Transmission Activities) Regulations 2009.
4. The Resource Management (National Environmental Standard on Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 may alter the activity status of activities and additional standards, matters for assessment and criteria may apply. Refer to Chapter 25.1: City-wide – Development Suitability for relevant objectives (25.1.2.3) and policies (25.1.2.3a to 25.1.2.3c).
5. For any activity not identified above, see Section 1.1.8.1.

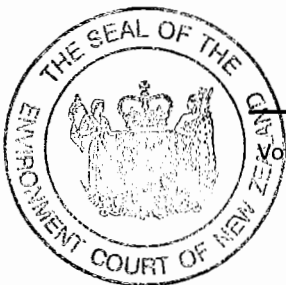
25.2.4 Rules – General Standards

25.2.4.1 Earthworks in All Zones

- a) Where fill material is used it is required to be clean fill.
- b) All earthworks or areas of bare earth not being worked for three months or more shall be stabilised and sown with ground cover.
- c) All earthworks shall retain sediment on site through implementation and maintenance of sediment controls. This standard does not apply to the transportation of material off site.
- d) All earthworks activities shall be managed to avoid material deposits on public roads from any vehicles operating on site.
- e) Earthworks shall not obstruct or divert any stormwater overland flow path or result in changed stormwater drainage patterns on adjacent land in different ownership.
 - i. Rule 25.2.4.1 e) does not apply within the Transport Corridor Zone
- f) Earthworks must not result in any instability of land or structures at or beyond the boundary of the site where the land disturbance occurs.
- g) ~~Earthworks must not cause malfunction or result in damage to network utilities, or change the cover over network utilities so as to create the potential for damage or malfunction.~~

Earthworks must not:

 - i. cause malfunction or result in damage to network utilities;
 - ii. create an unstable batter that will affect a support structure for any network utility; or
 - iii. change the cover over network utilities or raise the level of the ground under or near overhead network utilities so as to create the potential for damage or malfunction.
- h) Earthworks volumes must not exceed the following maximums in any single activity or cumulative activities in any calendar year following commencement of earthworks activities:



Activity	Rototuna North East Character Zone and Special Natural Zone	All Residential and Special Character Zones	Other and All Other Zones
Earthworks associated with any activity requiring building consent (including associated site works)	500m ³	500m ³	Unlimited
Earthworks associated with subdivision	500m ³	500m ³	1000m ³
All other earthworks	40m ³	100m ³	1000m ³

Note

1. The above volume standards do not apply to:
 - (a) Transport Corridor Zone
 - (b) Activities authorised by a consent for a concept plan for a Major Facility prepared under Chapter 17
 - (c) A Concept Plan Consent for a Precinct prepared under Chapter 8
2. Refer to Chapter 22 regarding earthworks in Natural Hazard Areas.
3. Refer to *Erosion & Sediment Control: Guidelines for Soil Disturbing Activities*, which is available on the Waikato Regional Council website: www.waikatoregion.govt.nz
4. Consultation with the relevant network utility operator is advised when undertaking any earthworks that may affect network utilities. Such network utility operators are likely to be affected parties for any earthworks not meeting the standards in Rule 25.2.4.1(g). Persons undertaking earthworks near a network utility should also refer to, and comply with, any applicable regulation or code (such as NZECP34) to ensure earthworks do not compromise health and safety, do not damage network utilities or encroach safe separation distances of network utilities.

25.2.4.2 Earthworks Within any National Grid Yard

- a) Earthworks within a National Grid Yard shall:
 - i. Be no deeper than 300mm within 2.2m of a transmission pole support structure or stay wire.
 - ii. Be no deeper than 750mm between 2.2m and 5m from a transmission pole support structure or stay wire.
 - iii. Be no deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure.
 - iv. Be no deeper than 3m between 6m and 12m from the outer visible edge of a transmission tower support structure.
 - v. Not create an unstable batter that will affect a transmission support structure.



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- iii. Be no deeper than 300mm within 6m of the outer visible edge of a transmission tower support structure.
- iv. Be no deeper than 3m between 6m and 12m from the outer visible edge of a transmission tower support structure.
- v. Not create an unstable batter that will affect a transmission support structure.
- vi. Not result in a reduction in the ground to conductor clearance distances as required by NZECP.

Provided that:

- vii. Earthworks undertaken by a Network Utility Operator are exempt from i to iv above.

