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| **IN THE MATTER** | of the Resource Management Act 1991 |
| **AND** | |
| **IN THE MATTER** | of applications to the **WAIKATO DISTRICT COUNCIL** and **WAIKATO REGIONAL COUNCIL** by **WEL NETWORKS LTD** for resource consents to authorise the establishment, operation and maintenance of 28 wind turbines for the generation of electricity and associated activities on the Whauraroa Plateau near Te Uku |

# OUTLINE OF LEGAL SUBMISSIONS OF COUNSEL FOR THE APPLICANT

## 1. INTRODUCTION AND PRELIMINARY MATTERS

1.1 This is the hearing of applications by WEL Networks Ltd ("WEL") to the Waikato District Council ("WDC") and the Waikato Regional Council (Environment Waikato) ("EW") for the resource consents WEL requires under the Resource Management Act 1991 ("RMA") to establish and operate a wind park comprising 28 wind turbines on a six kilometre long area on rural farm land on the Wharauroa Plateau, near Te Uku, a small rural settlement on the main road to Raglan.

### WEL Networks Limited

1.2 WEL is the main lines company distributing power within the Central Waikato (including to Hamilton, Huntly and Ngaruawahia) and is owned by the ratepayers in the supply area. WEL is owned 100% by a community trust called the WEL Energy Trust ("the Trust"), which holds the shares of WEL in trust for the community within the WEL area and ultimately the Hamilton City Council, the Waikato District Council and the Waipa District Council, who are the long term capital beneficiaries. WEL Networks 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.

1.3 Although lines companies were once precluded from undertaking any generation projects, renewable generation is now permissible following 2001 amendments to the Electricity Industry Reform Act 1988 (new section 46A – discussed later).

1.4 WEL considers that developing wind generation will enable it to meet its commitments in terms of providing a reliable power supply at a cost-efficient price and will assist the Waikato Region to take responsibility for producing the energy to meet regional growth and do so in an environmentally sustainable way.

1.5 The wind park will generate 84MW of power which will be "notionally embedded" for distribution within WEL's supply area, thus enabling renewable energy to be generated and enhancing efficiency by reducing transmission losses. The manner in which the electricity generated from this renewable source will benefit the local area and the WEL supply area will be explained in WEL's evidence, which will address a series of questions raised by the electricity industry consultant retained by WDC, Mr Goldthorpe.

**The WEL Wind Park (Te Hauhiko O Wharauroa) proposal**

1.6 It is proposed to construct a wind farm which consists of 28 wind turbines each of up to 3 megawatts individual capacity. The proposed location of the turbines is shown on Turbine Location Maps A and B in the booklet of plans. Each turbine is indicated by a yellow circle with a number inside it. While the numbers go up to turbine 29, there are only 28 turbines. These locations are indicative only, with the potential to move each turbine anywhere within a 150 metre radius.

1.7 The specific wind turbine generator design or manufacturer has not been selected as yet. To cover possible variations in design, WEL has applied for a consent for a maximum turbine height of up to 137 metres, which includes a tower height of up to 90 metres, and a rotor diameter of up to 100 metres.

1.8 The turbines will operate on a continuous 24-hour basis (depending upon the wind resource). The turbines may have an operational life cycle of up to 20 years, and may be replaced at any time with newer models that meet the terms of the consent.

1.9 The turbines will be painted using materials and finishes that minimise reflectivity. The tops of some turbine towers will be lit at night to comply with Civil Aviation Authority requirements, but because such illumination is aimed at aircraft it will be shielded or graduated to be unobtrusive from viewpoints below.

1.10 To minimise distraction to drivers on SH 23 and allow interested members of the public to view and learn about the wind farm it is proposed to install a viewing platform in Te Uku adjacent to the community hall.

1.11 The proposal also includes the following activities:

(a) Access roading from the Te Mata Quarry into the site, and between individual turbines to facilitate erection and ongoing maintenance;

(b) An associated operations and maintenance building;

(c) Internal electricity reticulation cables from wind turbines to a substation adjacent to the wind park but excluding the substation and transmission line which will be applied for separately by notice of requirement;

(d) Up to three meteorological masts; and

**Resource consents required**

1.12 The resource consent required for the project are accurately recorded in the WDC and EW officer's reports. WEL requires a land use consent from WDC for the following activities:

(a) The erection, operation and maintenance of the wind park and associated activities;

(b) The erection and operation of an Operation and Maintenance Building;

(c) Installation of underground cables to connect the wind farm to the transmission system;

(d) Erection, operation and maintenance of up to three meteorological masts;

(e) Excavation and use of basecourse material;

(f) Operation of a mobile crushing plant;

(g) Operation of a concrete batching plant at the Te Mata Quarry;

(h) Land disturbance for the purpose of:

(i) Access formation to turbine sites;

(ii) Establishing flat platforms at each turbine site;

(iii) Placement of fill;

(iv) Establishing platforms for temporary lay-down areas, an Operation and Maintenance building, and a substation;

(v) Trenching and placement of cables;

(i) Maintenance and replacement of all works, equipment and facilities as required during the life of the wind farm.

1.13 In order to maintain flexibility in choosing a final turbine design, WEL Networks has applied for a "Consent Envelope" for the wind farm. In that regard, the physical dimensions of turbines can be varied within set maximum parameters. For example, the consent is for 28 turbines with a height of up to 137 metres each.

1.14 WEL has indicated where turbines will be located, but in order to maintain flexibility, it has applied for the location of the turbines within a "turbine contingency zones", being 150m radius measured from the base of the turbine (except where that radius crosses a cadastral boundary) (Drawings 135250 SK1 to SK7 at Appendix D to the AEE).

1.15 WEL requires the following consents from EW:

(a) A land use consent for earthworks;

(b) A land use consent for earthworks in high risk erosion areas;

(c) Discharge permit for large scale disposal of overburden to ground; and

(d) Water permits for stream and stormwater diversion.

**Application documents and supporting technical data**

1.16 WEL's resource consent applications to WDC and EW were supported by a comprehensive assessment of environmental effects (AEE) in terms of the Fourth Schedule to the RMA. Following receipt of the initial applications, WDC and EW reviewed the AEE documents, which included reviews by independent experts. WDC issued a comprehensive request for further information. The responses to the section 92 request were incorporated into a revised AEE. It is that revised AEE which forms the basis of the applications before this hearing.

1.17 We have been advised by WDC officers that the hearing panel has received copies of the relevant documents, including the AEE and supporting technical reports. In many

cases, the authors of those reports are the witnesses who are presenting evidence before the Committee. Where that is the case, the reports will be taken as read – the evidence generally does not contain the kind of detailed analysis reflected in the primary report.

1.18 The key documents which are relevant to the WEL Network's application comprise:

(a) WEL Networks applications to EW and to WDC

(b) The accompanying AEE dated 14 July 2007. This version of the AEE incorporates information supplied in response to a comprehensive request for further information made by WDC pursuant to section 92 of the RMA.

(c) Expert reports which are included as schedules to the AEE.

1.19 Copies (or further copies) of these documents can be made available if necessary.

**Submissions lodged and issues raised**

1.20 A total of 207 submissions have been received. Eighty-six are in support of the proposal, 101 are opposed to the proposal, 13 are neutral and six oppose/support in part.

1.21 The issues raised by the submissions are (in no particular order) are:

(a) Landscape/visual/amenity issues, including Industrialisation of rural areas;

(b) Noise and vibration;

(c) Traffic, including access roads;

(d) Impact on property values;

(e) Erosion/land stability;

(f) Ecology, especially local streams, birds and bats;

(g) Proposed Te Uku Viewing platform;

(h) Electricity issues including where electricity will be used and lack of benefits, cost and efficiency;

(i) Decommissioning;

(j) General effects issues, including impact on community and cumulative effects; cultural effects;

(k) Health and safety issues;

(l) Transmission lines and substation;

(m) Impact on subdivision potential;

(n) Integrity of WEL networks;

(o) Further growth of wind farm – potential future effects;

(p) Impact on telecommunications;

(q) Planning issues - objectives and policies of ODP and PDP/Ridgeline policy; RMA;

(r) Alternative sites;

(s) Duration of consent;

(t) Impact on tourism;

(u) Cultural landscape;

(v) Inadequate consultation;

(w) Negative impact on business.

1.22 A number of these issues are beyond the scope of the RMA or of this hearing but are mentioned here for completeness as identifying the issues in contention for the purpose of section 113 of the RMA.

**Te Mata quarry and concrete batching plant**

1.23 The project will require a large amount of base course and concrete for the formation of roads and the foundations for the turbines. One of the features of this project is that there is a quarry located at the base of the site which will produce the required base course and concrete. Sourcing the base course and concrete from the quarry will reduce the need for those materials to be transported from further afield and thereby reduce the impact on the local road network, etc.

1.24 EW consents have been obtained for the expansion of operations at the quarry which will only be given effect to if the consents for the Te Uku project are granted.

Applications for the land use consents required were processed on a non-notified basis and are awaited.

**Local distribution network upgrade – authorisations to be sought**

1.25 WEL is responsible for the reliable supply of electricity to the Te Mata, Te Uku and Raglan area. WEL has already embarked upon a separate project to to strengthen the security of supply to the Raglan/West Waikato Region. That project requires:

(a) A new overhead sub transmission line from Te Kowhai (near Hamilton) to West Waikato; and

(b) New substations at either end of the line.upgrade

1.26 WEL intends to authorise the new lines and other infrastructure associated with that upgrade as a separate project via designation procedures of RMA (WEL has been approved as a requiring authority by the Minister for the Environment.)

1.27 Several options are currently being considered by WEL for the final configuration of the network in the event of consent being granted for the wind farm. Because those options include a separate substantial network upgrade and expansion (of which the connection through the wind farm would be but part), WEL has elected to have the whole of the lines project, including the wind farm connection, dealt with as a separate matter. It will be the subject of a notice of requirement and designation procedure once the outcome of the wind farm consent application is known.

**Council reports and proposed conditions**

1.28 WDC has had a comprehensive report undertaken by an independent planning consultant, supported by a range of reports obtained from independent technical experts (at WEL's expense). WEL endorses the report as a careful, thorough and robust analysis of all key issues relevant to the WEL proposal and one which integrates very effectively the technical advice received. It is a real credit to its principal author and to the Environmental Directorate at WDC.

1.29 EW has had a report prepared by a suitably qualified officer which is similarly comprehensive and detailed.

1.30 Each of the officers reports recommend that the resource consents applied for be granted, subject to a comprehensive suite of conditions designed to avoid, remedy or mitigate potential adverse effects. WEL accepts the philosophy and approach reflected in the recommended conditions, which approach is similar to the approach taken in the draft conditions which formed part of WEL's application documentation.

However, WEL does not accept all of the conditions as they are currently proposed by the Councils. The amendments the company seeks will be addressed in evidence.

1.31 A tracked version of these conditions has been produced in Word format so that suggested amendments can be made during the course of the hearing.

**Hearing arrangements**

***Site visit***

1.32 It is understood that the hearing Committee undertook a visit to the application site on 15 November 2007 and that a further site visit is proposed during the course of the hearing. ***Folders, CD and estimated timetable***

1.33 All of WEL's evidence will be handed in as it is presented for inclusion in the folder which has been handed in to you. However, we will check in with the Committee as to whether it may wish to receive evidence the afternoon before. That may create the opportunity for parts of the (more lengthy technical) evidence to be taken as read. That is obviously something for the Committee to decide and we are happy to provide as much guidance as possible as to the form and length of the evidence to be presented. In that regard, we have developed a spreadsheet giving our best estimate of the timing of the evidence – really as a guide to see how we are progressing against our time estimates and as a ready reference to the structure of WEL's case.

1.34 The evidence can also be placed on a disk at the end of the presentation of WEL's case as it may be easier for the Committee to carry that material via their laptops.

**Props and plans, etc**

1.35 The following plans (which are also attached to the AEE) have been produced to assist to illustrate the proposal and have been included in a separate folder for each of the Panel

(a) Site Location Overview Map

(b) Turbine Location Map A;

(c) Turbine Location Map B;

(d) Outstanding Natural Features and Landscapes;

(e) Topographical relief map;

(f) Land cover and use map;

(g) Zone of Visual Influence Map Full Extent;

(h) Zone of Visual Influence Map;

(i) Visibility of Aircraft Hazard Lighting;

(j) Cumulative Effects Map

(k) View Location Plan;

(l) Topographic Map;

(m) Photomontage Methodology Diagram

**Visual effects – computer programme**

1.36 WEL's visual /landscape assessment expert will be presenting detailed evidence as to numerous views to the wind farm from surrounding areas from which it will be visible. Mr Mansergh also has the capability to show views from particular locations should the Committee wish to assess visual effects in light of submitter concerns. However, it is not feasible to "dial these up" during the course of the hearing because the programme is very large and takes time to load, and further time to run the program to show the required viewpoint/s. .

1.37 If the Committee wants to have these perspectives, the most efficient way to do that is for a list of such viewpoints to be kept over the course of the submitters' cases. Mr Mansergh can then run the programme so that required images can be presented in one session in the hearing – perhaps after the submitters' case and prior to the presentation of the officers' reports.

**Road map – evidence to be presented and structure of WEL's case**

1.38 WEL is presenting evidence from 19 witnesses in support of its applications. Counsel is aware of this Committee's obligation to prepare a decision which complies with the requirements of section 113 of the Resource Management Act 1991 ("RMA"). Counsel has attempted to structure its case in a manner which most assists the Committee to identify and deal with the key issues which are in contention, to make relevant findings, followed by an overall evaluation in terms of Part 2 of the RMA.

1.39 WEL's evidence will be grouped into a series of tranches which tell "the story" of the WEL Networks proposal. The evidence will be handed out over the course of the hearing and there are tabs in your folders for the evidence and other key documents. Those tranches of evidence are as follows.

***Project rationale and history and electricity issues***

1.40 The first part of WEL's case (occupying Day 1) addresses.

(a) Project rationale and history,.

(b) The significance of the project in terms of electricity supply, both regionally and nationally, and

(c) How the electricity to be generated will be transmitted and distributed.

1.41 This involves evidence from four witnesses, namely:

(a) Dr Julian Elder - Chief Executive, WEL.

(b) Mike Underhill - immediate past Chief Executive of WEL.

(c) Russell Shaw - WEL's General Manager – Operations.

(d) Blair Walter - wind energy specialist.

1.42 It is this section of evidence, coupled with that to be presented later, that will deal with the issues raised by Mr Goldthorpe as to the benefits of the project.

***Consultation and outcomes***

1.43 The second part of WEL's case describes the consultation which was undertaken at the early stages of the project (and ongoingly) and how that influenced the project. That evidence will be presented by Chris Dawson, a planning consultant.

***Project description – construction operation***

1.44 The third part of WEL's case (occupying Day 2) involves a detailed description of the project - how the components of the Project will be developed from a construction perspective, how it will operate, and what it will look like. Included in this section is traffic engineering.

1.45 This part of the case involves four witnesses, namely:

(a) Roger Burchett – civil engineer and Project Manager.

(b) Mark Mitchell – geotechnical engineer.

(c) Tony Keyte – civil engineer.

(d) Mark Appeldoorn – traffic engineer.

***Noise and public health considerations***

1.46 In light of that detailed description and engineering evidence, and before turning to the rest of general effects it is proposed to focus noise and public health considerations, as being issues which may directly affect people's health rather than general environmental issues or matters which are more subjective in nature.

1.47 This part of the case involves two witnesses, namely:

(a) Nevil Hegley – acoustical engineer.

(b) Dr David Black – physician and public health specialist.

***Other potential effects associated with the proposed wind farm***

1.48 The next section of WEL's case address other potential effects associated with the proposed wind farm development in terms of visual effects, ecology, property values, and amenity values, impacts on tourism.

1.49 This part of the case involves seven technical witnesses, namely:

(a) David Mansergh, landscape architect – visual effects.

(b) Boyden Evans, landscape architect – peer review of landscape and visual assessment.

(c) Gordon Campbell, tourism consultant – tourism effects and benefits

(d) Gerry Kessels, scientist - ecological effects.

(e) Peter Curtis, engineer – telecommunications.

(f) Warren Gumbley, archaeologist - heritage issues.

(g) Doug Saunders, registered valuer – valuation effects.

***Wrap up – overall evaluation***

1.50 The final part of WEL's case involves the overall wrap up – evaluative planning evidence based on all the preceding company and technical evidence, to assess the project in terms of relevant planning instruments and Part 2 of the RMA. This will be presented by Mark Ashby, a planning consultant from Connell Wagner.

**Scope of legal submissions**

1.51 The purpose of these legal submissions is to put WEL's evidence into context by reference to the applicable provisions of the RMA and relevant planning instruments and the key contentious issues which arise. Having said that, the WDC and EW reports are so comprehensive as to avoid the need to repeat and review planning instruments, etc. The procedural background and issues raised by submissions are also very well covered in the WDC and EW officer reports and will not be repeated here.

1.52 These legal submissions will essentially follow the same order as WEL's evidence and will address the following:

(a) Section 2 – Relevant statutory and plan provisions;

(b) Section 3 - Background to, rationale for and benefits of the project and positive project benefits;

(c) Section 4 - Consultation and outcomes;

(d) Section 5 - Project Description and construction activities, including traffic;

(e) Section 6 – Public health, noise and vibration;

(f) Section 7– General remarks about other environmental effects;

(g) Section 8- Cultural and heritage issues;

(h) Section 9 – Landscape and visual effects;

(i) Section 10 – Impact on Tourism;

(j) Section 11 – Ecology;

(k) Section 12 – Telecommunications;

(l) Section 13 – Impact on Property Values;

(m) Section 14 – Part 2 matters – overall broad judgment.

## 2. STATUTORY AND PLAN CONTEXT

2.1 WEL Networks is applying for its resource consents under the RMA and the applications need to be determined in terms of that Act. The applications were lodged

in July 2007 so the provisions of the RMA as they were amended by the Resource Management Amendment Act 2005 apply.

2.2 The purpose of this section is to briefly address the statutory provisions relevant to the proposal.

**Activity status and section 104D**

2.3 The first point to consider is what the status of the activity is in terms of the RMA. The project is required to be assessed as a full discretionary activity under the Proposed Regional Plan (PRP), a non-complying activity under the Operative District Plan (ODP) and a full discretionary activity under the Proposed District Plan (PDP). On that basis, the overall activity status is:

(a) EW: discretionary.

(b) WDC: non-complying.

2.4 Non-complying activities must be considered in terms of section 104D. That section provides:

> *"(1) Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant resource consent for a non-complying activity only i8f it is satisfied that either –*
>
> *(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or*
>
> *(b) the application is for an activity on that will not be contrary to the objectives and policies of –*
>
> *(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
>
> *(ii) the relevant proposed plan, if there is a proposed plan in respect of the activity; or*

2.5 The tests set out in this section are commonly known as the "Gateway" or "Threshold" test. WEL's position on the gateway test under the ODP is that:

(a) Although most of the adverse effects of the proposed wind farm are minor WEL does not assert that all of the adverse effects are minor. In particular it accepts that the adverse visual affects may be more than minor.

(b) Taking an overall broad approach, the proposed activity is not contrary to the objectives and policies of the ODP. That is the position taken by Mr Ashby for WEL and I note that it also the position taken by the WDC reporting officer. The proposal therefore meets the second limb of the gateway test.

(c) If the Committee does not accept that the proposed activity is not contrary to the objectives and policies of the ODP, then there is a conflict between the ODP and the PDP which expressly does have objectives and policies contemplating wind generation. That conflict then raise the issue of weighting between the two plans. For reasons which I provide below, the PDP should be given significantly greater weight.

**Section 104 – relevant considerations**

2.6 The starting point for the Committee's consideration of these resource consent applications is section 104 of the RMA which sets out the matters to be considered in the context of resource consent applications. Section 104(1) states:

> *"When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –*
>
> *(a) any actual and potential effects on the environment of allowing the activity: and*
>
> *(b) 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*
>
> *(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application."*

2.7 In essence, section 104 requires the Committee to consider:

(a) The actual or potential effects of the activities.

(b) The provisions of any regional or district planning instruments, operative or proposed, which may be relevant to your decision.

(c) Whether there is any other factor or consideration which is relevant and should be taken in to account in making your decision.

(d) Part 2

2.8 The Hearing Committee's assessment of the applications 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 and against the key yardstick provided by the purpose of the RMA, being the "sustainable management of natural and physical resources" which although known Committee is included here for completeness is defined as. Section 5 states:

> *"(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."*

**Assessing effects**

2.9 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."*

2.10 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."*

2.11 The Committee is entitled to consider not only potential adverse effects of activities but also any positive effects (benefits) of allowing an activity and to have regard to broad issues relating to the benefits of electricity generation to people and communities,

2.12 A factor which is obviously relevant in the present circumstances is the benefit of generating electricity to address growing national concern about a potential electricity shortfall and also the benefits of generating that electricity from a renewable source – in that regard the Committee is specifically required by section 7(j) of the RMA (as amended by the Resource Management (Energy and Climate Change) Amendment Act 2004) to have "particular regard to…the benefits to be derived from the use and development of renewable energy".

2.13 In considering the effects on the "environment", note that term includes reference to "people and communities" – again one of the factors that needs to be considered are the benefits provided by electricity generation, particularly near its point of use.

**Addressing potential adverse effects - conditions**

2.14 Section 108 provides that the Council may impose appropriate conditions on resource consents. Section 108 says:

*(1) Except as expressly provide in this section and subject to any regulations, a resource consent may be granted on any condition of a kind referred to in subsection (2)."*

2.15 One of the fundamental tenets of the RMA is the need to appropriately "avoid, remedy or mitigate" the potential adverse effects of activities on the environment. The Committee is required to consider the measures that are available and proposed to address potential adverse effects. In that regard. WEL initially proposed a suite of conditions which addressed the potential effects of the proposal and these were used

as a starting point by WDC and EW officers. While WEL has some comments about the conditions, the vast majority are accepted and, in our submission, address any potential adverse effects of the proposal (other than visual effects of the turbines, if they are considered adverse).

**Relevant planning instruments**

2.16 In terms of the second major parameter raised by section 104, the planning instruments which are of most relevance in the present context are the:

(a) EW Regional Policy Statement ("RPS").

(b) EW Transitional Regional Plan ("TRP").

(c) EW Proposed Regional Plan ("PRP").

(d) WDC Operative District Plan ("ODP").

(e) WDC Proposed District Plan ("PDP").

2.17 In terms of the wind farm development, the primary focus is on the ODP and the PDP. These provisions will be addressed in the evidence of Mr Ashby. The key provisions are those that identify aspects of the district and classify them in different ways in terms of landscape values.

2.18 In very general terms, there is a policy difference between the ODP, on the one hand, and the PDP, on the other, in that the PDP specifically contemplates energy generation from wind whereas the ODP is silent on that possibility. That does not necessarily mean there is a conflict between the two plans.

2.19 Legal authorities are to the effect that where there is a conflict between plans, it is necessary to consider whether to grant consent under both. Issues of weight only really arise if the Committee is inclined to decline consent under one plan and grant it under the other.

2.20 In the event of the Committee coming to the preliminary conclusion that the consent may need to be declined under the ODP but granted under the PDP, it is WEL's submission that the PDP should now be accorded significantly greater weight than the ODP. If weighting is to be an issue then the cases are clear that the importance of the PDP would depend on a range of factors, including the extent to which it has proceeded through the submission and appeal process, whether it represents the latest word in terms of the RMA, etc - *Hanton v Auckland CC* [1994] NZRMA 289 and others.

2.21 In this case, the PDP is substantially into the appeal process. Insofar as the principal provisions pertaining to the wind farm application are concerned, the appeals are all but settled. To the extent that they are not settled, the relief sought is to make the provisions more permissive for wind farms. The PDP will therefore not be more restrictive than in its current form. In my submission the Committee is entitled to place significant weight on the PDP.

2.22 In that regard, it is worth noting the WEL had lodged an appeal in relation to some provisions of the PDP. Two of these are worth drawing to the Committee's attention.

2.23 It has been agreed by WDC that the definition of "wind turbines" In Appendix P should be replaced with "wind energy facility" and defined to mean:

> *"…buildings, turbines and structures used to generate electricity from the wind, and ancuillary structures. It does not include electricity transmission lines of 110kV or more."*

2.24 WDC has indicated that it accepts that relief and consent documentation is currently being finalised. It is therefore appropriate for the Committee to assume that that wording will be included in the PDP and can be treated as operative and in effect for the purpose of section 19(1) of the RMA, which states:

> *"A rule in a proposed plan is to be treated as operative and any previous rule is inoperative if the time for making submissions or lodging appeals on the rule has expired and-*
>
> *(a) no submissions in opposition have been made or appeals have been lodged; or*
>
> *(b) all submissions in opposition and appeals have been determined; or*
>
> *(c) all submissions in opposition and appeals have been withdrawn and all appeals withdrawn or dismissed."*

2.25 It has also been agreed that Policy 3.4.2(b) is too absolute in its terms and that the terms "significant" should be inserted, so it will read:

> *"Natural features and landscapes, including locally distinctive landforms and prominent ridgelines, and general visual amenity values should be protected from inappropriate subdivision, use and development, in particular by:*
>
> *…*
>
> *(b) ensuring that the visual effects of buildings can be absorbed without **significant** adverse effects on the landscape."*

2.26 As far regional planning is concerned in relation to earthworks, sediment control and stormwater management The evidence will be that:

(a) The proposal is positively in accordance with the RPS.

(b) The TRP is little more than a collection of documents which survived RMA. There is nothing in the TRP which has application to the current proposal.

(c) The PRP is the appropriate starting point for the Committee's Regional Council analysis. The proposed activities are consistent with the objectives and policies of the PRP.

2.27 All of these regional instruments are addressed in Mr Ashby's evidence. He is in general agreement with the reporting officer for EW.

**Other relevant considerations**

2.28 The third basic consideration in section 104 relates to anything else which the Committee considers to be relevant and reasonably necessary for determining the application. In that regard, there are a range of important documents and considerations beyond the regional and district planning instruments which are relevant to the determination of these applications. Many of those relate to energy efficiency and the benefits of generating electricity from a sustainable and renewable source. These include the:

(a) Energy Policy Framework (2000).

(b) Sustainable Development Programme of Action (2003).

(c) National Energy Efficiency and Conservation Strategy (2001).

(d) Government Policy Statement on Electricity Governance (2004);

(e) EW's Draft Regional Energy Strategy (released on 8 November 2007);

(f) New Zealand Energy Strategy (released October 2007);

2.29 These will be addressed in the evidence of Mark Ashby These other relevant considerations all tend to underpin the significant benefits of this project in a regional and national sense and the significant opportunity which the Project represents for this area and region.

**Section 104E**

2.30 Section 104E of the RMA states:

> *"104E. Applications relating to discharge of greenhouse gases –*
>
> *When considering an application for a discharge permit… to do something that would otherwise contravene section 15… relating to the discharge into air of greenhouse gases, a consent authority must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewal energy enables a reduction in the discharge into air of greenhouse gases, either –*
>
> *(a) In absolute terms; or*
>
> *(b) Relative to the use and development of non-renewable energy."*

2.31 In other words, the broader effects of discharges to air in terms of climate change are not to be considered in the context of applications for air discharge permits. However, it is appropriate to consider that WEL's applications entail the generation of electricity from a renewable energy resource which will enable a reduction in the discharge into air of greenhouse gases in absolute terms by avoiding the need to otherwise generate that electricity from non-renewable sources.

**Part 2 matters**

2.32 The assessment of all of the above is expressly "subject to Part 2" of the RMA and that is the ultimate yardstick which this Committee needs to apply. The determination of a resource consent application in terms of Part 2 is not a "tick the boxes" exercise. 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."*

2.33 Section 6 sets out matters of national importance which may or may not be relevant to the determination of any particular resource consent application but which, if relevant, the consent authority must "recognise and provide for" in making its decision. Aspects of section 6 which WEL submits which could be considered relevant in the present circumstances comprise:

(a) Section 6(a) – The preservation of the natural character of the coastal environment, etc. WEL submits that as a matter of fact and law the application site does not form part of the coastal environment (even though some turbines will be visible from the Tasman Sea). . WDC in its district planning has already defined an area as coastal zone within both its ODP and PDP. In so defining that area, WDC has itself delineated the area it considers is subject to section 6(a). That coastal zone does not extend to the subject site (by quite a distance). It is the submission of WEL that section 6 (a) is not relevant.

(b) Section 6(b) – The protection of outstanding natural features and landscapes from inappropriate use and development. This provision is relevant due to the visual effects of the proposal and existence of a number of significant natural features, e.g., Mt Pirongia, in the vicinity.

(c) Section 6(c) – The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. Effects on areas of bush or on habitat for animals are considered in the evidence, but it is submitted that the evidence demonstrates that these issues are not elevated into a section 6 consideration.

(d) Section 6(e), 7(a) ands 8 - The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, plus kaitiakitanga responsibilities and the principles of the Treaty of Waitangi can be considered as a package. WEL has consulted with iwi and measures have been adopted to address any issues which arise in that regard

2.34 Section 7 sets out other matters which, if relevant, the consent authority needs to "have particular regard to". Aspects of section 7 which are particularly relevant to the present applications comprise:

(a) Sections 7(a) and (aa) – Kaitiakitanga and the ethic of stewardship.

(b) Section 7 (b) - The efficient use and development of natural and physical resources;

(c) Section 7(ba) – The efficiency of the end use of energy;

(d) Section 7(c) – The maintenance and enhancement of amenity values;

(e) Section 7(d) – The intrinsic values of ecosystems;

(f) Section 7(f) – The maintenance and enhancement of the quality of the environment;

(g) Section 7(i) – The effects of climate change; and

(h) Section 7(j) The benefits to be derived from the use and development of renewable energy.

2.35 WEL evidence addresses each of these issues

2.36 Section 8 requires consent authorities to take into account "the principles of the Treaty of Waitangi". In this case WEL has undertaken consultation with local iwi who have undertaken cultural impact assessment which has been taken into account in the development of the proposal. No submissions by any iwi groups have been lodged.

**Relevant case law**

2.37 Case law which may be relevant to the specific issues arising will be addressed in the following sections. However, it is noted at the outset that very helpful guidance on the weighing balancing of Part 2 matters in the context of a wind farm project is provided in the Environment Court's decision on the Awhitu Wind Farm proposal in Franklin District – *Genesis Power Limited v. Franklin District Council* [2005] NZRMA 541. Other relevant cases comprise *Unison Networks Limited v. Hastings District Council* (W058/2006) and *Outstanding Natural Landscapes Protection Society Inc. v. Hastings District Council* (W024/07). All are included in your folders.

2.38 In the Awhitu case, the Court described its task (in paragraph 48) as being:

> *"…to broadly consider and determine:*
>
> *(i) First, as a matter of fact, the positive effects of the wind farm;and*
>
> *(ii) Secondly, as a matter of fact the negative effects of the wind farm;*
>
> *(iii) Evaluate and weigh our findings in (i) and (ii) above, guided by the statutory instruments and the provisions of the Act, particularly Part II."*

2.39 It is submitted that a similar approach would be valid and appropriate in the present case.

## 3. BACKGROUND TO, RATIONALE FOR AND BENEFITS OF THE PROJECT

3.1 This part of WEL's case focuses on the reasons why WEL, as a lines business decided to embark upon a generation proposal and what the benefits of that project are. This entails consideration of the manner in which the power generated by the

wind park will be transmitted/distributed to end consumers – that is an issue which WDC's electricity industry has focussed on very closely almost, it seems, to the "bigger picture" benefits (positive effects) which wind generated electricity has.

**Historical background and project rationale**

3.2 As noted, WEL is the main lines company distributing power within the Central Waikato (including to Hamilton, Huntly and Ngaruawahia) WEL Networks manages, maintains and develops the physical network of lines, poles, cables, transformers and substations required to supply that network.

3.3 **Julian Elder,** Chief Executive Officer of WEL Networks Limited will present evidence which will address 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 (including WEL renewable energy initiatives and recent acknowledgement/awards in relation to those initiatives). He will also comment on the business case/ viability of the proposal, making clear that as a risk averse community owned organisation, WEL will not embark upon the project unless it is commercially viable. This is an issue which has been raised by submitters. To the extent that it is even relevant under the RMA, this evidence addresses that point.

3.4 This aspect also explains WEL's desire to have a 10 year rather than 5 year lapsing provision for the project. In light of the volatility of the electricity market and also the international market for wind turbines (which are in very high demand), a longer period for giving effects to the project, should that be necessary, is justified.

3.5 **Mike Underhill** is the former CEO of WEL Networks and was the CEO at the time of conception of the Te Uku project. Mr Underhill's evidence will provide some historical context around the genesis of the project, including the initial public engagement in relation to the project which Mr Underhill led, alongside Chris Dawson.

3.6 The short point is that WEL Networks was keen to develop this wind farm as an opportunity to generate energy via a renewable resource for the purposes of strengthening supply to its customers and maintaining its commitment to providing electricity to the Hamilton, Waikato and Waipa districts in a cost effective and efficient manner. WEL saw (and still sees) the wind farm as an opportunity to diversify its business and to generate electricity for contribution both to the local area and to the national grid but which will be used predominantly (and at most times exclusively) in the WEL supply area. The wind park will also generate benefits by reducing transmission losses through generation closer to the Raglan load centre and north of the constraint at Whakamaru.

3.7 WEL had previously been precluded from being able to be involved in electricity generation as a result of section 17 of the Electricity Industry Reform Act 1998. The default position under that legislation was that is that people (or companies) involved in the electricity lines business cannot also be involved in the supply of electricity. Section 17 states:

> *"(1) No person involved in an electricity lines business may be involved in an electricity supply business.*
>
> *(2) No person involved in an electricity supply business may be involved in an electricity lines business."*

3.8 However, a new section 46A to that Act was enacted and came into force on 8 August 2001. The section enables companies involved in the electricity lines business to sell electricity or own assets used in connection with new generation if:

(a) The company is generating electricity from new generation (itself defined as generation not existing when the section came into force); and

(b) The electricity is generated using a new renewable energy source (one that occurs naturally, such as wind).

3.9 WEL's basic rationale was in line with its support for the Waikato economy – that there are benefits in generating electricity to support local industry and to generate local economic benefits in doing so. This message emerges very clearly from Mr Underhill's evidence. WEL also saw that the generation of electricity at this location will have a range of national and regional benefits by using a renewable energy resource close to the source of significant electricity demand, thus significantly reducing inefficiencies that would otherwise result from the transmission losses.

**Transmission /distribution of electricity generated and local/regional benefits**

3.10 The manner in which the electricity generated is transmitted from the wind farm and then to WEL's customers (and sometimes customers further afield), in the context of WEL's network operations, also needs to be addressed, particularly in light of a series of issues raised by WDC's electricity consultant, Mr Goldthorpe. He has taken a very forensic approach to testing whether the benefits of the project are what they are claimed to be. WEL has some reservations about the relevance and validity of some of the questions raised in terms of the RMA. However, we do not wish to take any further issue in relation to those matters and WEL's evidence will address all of these points, generally in the evidence of Russell Shaw and that of the Project Manager, Mr Burchett.

3.11 **Russell Shaw** is the General Manager Operations at WEL Networks. His evidence will address energy supply in the regional context, including:

(a) WEL's network and how it works.

(b) Demand levels in the WEL supply area.

(c) Where the energy generated will be utilised;

(d) The impact of diverse generation on transmission losses; and

(e) Feasibility of connection to national grid, etc.

**National benefits of wind generation**

3.12 It is worth addressing the broader benefits of wind generation in this context, having regard to national strategies which favour electricity generation from renewable sources. Four witnesses will present evidence relevant to the rationale for the Te Uku Wind Farm, its place in the regional and national electricity scene and the benefits it will generate.

3.13 **Blair Walter** is an engineer with experience in the electricity industry generally and particularly in relation to wind generation. Mr Walter's evidence will address the role of wind generation in the industry as a whole, including:

(a) A brief description of the basics of wind generation to assist the Committee with its understanding of some of the more technical evidence to follow.

(b) Overview of wind generation industry generally and a description of where wind generation sits in the wider national context, including carbon emissions scheme, etc;

(c) Elements contributing to the viability of wind farms; and

(d) Best practice design of wind farms.

3.14 A very useful summary of the positive environmental effects of wind generation is provided in the *Awhitu* case where these benefits were the subject of an agreed statement of facts. The benefits identified in that passage can all be validly claimed for the Te Uku project. The passage is so helpful in that regard that it is worth repeating *in extenso*, as follows:

*[64] We identify the positive as follows:*

(i) *Electricity is vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component.*

(ii) *New Zealand needs a more diverse electricity generation base, to avoid for example over-reliance on hydro which is susceptible to dry years, in any event new large hydro options are limited.*

(iii) *More thermal generation will have adverse effects, including contributing to climate change and depleting fossil fuels.*

(iv) *As a matter of national energy policy set in accordance with relevant legislation, New Zealand is pursuing options for renewable energy.*

(v) *Wind is a source of renewable energy which is plentiful but which is best able to be utilised only in certain locations.*

(vi) *Benefits of renewable energy including:*

(a) ***Security of Supply.*** *This is achieved through adding to and diversifying New Zealand's generating base. As we have noted a wind farm of the size of that proposed at Awhitu (18 turbines) with a capacity of 18 MW would generate 63 MWh annually, which is enough electricity to supply approximately 7,500 households per annum. This is equivalent to approximately 37% of the homes in the Franklin district. It will also contribute up to 0.18% towards New Zealand's annual electricity consumption.*

(b) ***Reduction in greenhouse gas emissions.*** *This is achieved through meeting New Zealand's need for electricity without emitting greenhouse gases during operation, that would otherwise be emitted through coal or gas generation, and thus directly assisting New Zealand's obligations under the Kyoto Protocol. According to the statement, a wind farm of the size of that proposed at Awhitu would avoid approximately 40,000 tonnes of $CO^2$ per annum that would have otherwise been produced by a coal fire power plant. Approximately 9,200 petrol cars would have to be taken off the road for one year to save this amount of $CO^2$.*

(c) ***Reduction in dependence on the national grid.*** *Wind energy farms may be installed relatively close to the source of electricity demand, thereby minimising load on the national grid and delaying the need for transmission upgrades. The location of the Awhitu wind farm makes this benefit particularly relevant, being located close to New Zealand's major load centre, Auckland.*

(d) ***Reduction of transmission losses.*** *The further the distance the greater the loss of electricity*

*through dissipation. The average loss is 5% rising to 15% at very high transmission rates through the Cook Strait Cable. The proposed Awhitu wind farm will reduce supply requirements from more distance resources thereby materially reducing transmission losses which are effectively wasted supply.*

*(e)* ***Reliability.*** *Wind is a relatively reliable resource, with a typical annual wind variation of 10% compared to double that for rainfall, and a relatively reliable economic resource. Once a wind farm is built, it has no ongoing fuel price issues, and the cost of producing electricity from the wind depends primarily on the average, annual wind speed.*

*(f)* ***Development benefits****. Wind energy initiatives result in industry development, profitable business opportunities and regional development. These include research, manufacturing, installation and distribution, and maintenance of facilities.*

*(g)* ***Contribution to the renewable energy target.*** *It is estimated in para 67 that the Awhitu wind farm will contribute about 0.24 PJ per year of 0.8% of the New Zealand renewable energy target.*

*[65] In summary, climate change and renewable electricity generation are key issues for New Zealand. This project, if approved, would provide clean and renewable energy to provide essential electricity and to prevent $CO^2$ emissions that would have been created by generating electricity through the burning of coal or gas.*

*[66] These are all matters which need to be considered and put into the crucible containing the evidential material to be weighed against the alleged and more site-specific potential effects. The agreed statement of fact also underlays some recent changes to legislation in New Zealand including the addition of the provisions of sections 7(i) and 7(j) to the Resource Management Act. The positive effects that would result from the proposal reflect many of the provisions in the statutory instruments, particularly the regional instruments, which promote the benefits of infrastructural development and renewable energy."*

3.15 Applying the same yardsticks to the Te Uku Project, the following is noted.

3.16 In terms of security of supply, Te Uku has a capacity of 84MW and could generate 259 GWh/yr. This is enough electricity to supply approximately 32,000 households per annum. This is more than the total number of homes in the WEL supply area (22,950) but in addition to those homes there are approximately 5000

commercial/industrial consumers. In addition substantial growth is forecast within the WEL area particularly in north Hamilton, Horotiu, and Raglan.

3.17 A wind farm of the size of Te Uku would displace approximately 168,000 tonnes per annum that would otherwise be produced by gas or coal. Approximately 39,000 petrol cars would have to be taken off the road for one year to save this amount of CO2. (These figures will be provided by Mr Burchett)

3.18 The *Awhitu case* makes clear that a wind park does not need to involve a major proposal in order for the benefits to be relevant in terms of sections 7(i) and (j). In the *Awhitu* case, the Court rejected a submission that the benefits were *de minimis*. This tends to put into perspective what WEL submits was an overly "forensic" approach which WDC's energy industry consultant took in putting WEL "to the proof" in terms of the benefits of the project. The author of the WDC report has correctly identified that section 7(j) calls for a broader view of the world. In any event, WEL's evidence – that of Mr Shaw and Mr Burchett in particular – exposes the flaws in the micro analysis too. WEL is a responsible community owned organisation – it does not embark on projects of this nature on a whim or without having done its homework. The benefits of the Te Uku project are real and tangible.

**Submission**

3.19 Overall, it is submitted on the basis of this section of WEL's evidence that it will be open for the Committee to make the following findings:

(a) That WEL is a community owned lines company which is committed achieving high environmental standards and to promoting the economic interests of the Waikato community.

(b) There is a high degree of confidence that the vast majority of the electricity generated will be used in WEL's supply network.

(c) The Te Uku project will assist in reinforcing electricity supply to the Te Uku /Raglan area and avoids the need to further consider distributed generation in that area to reinforce reliability.

(d) There would be very significant benefits (positive effects) of this project in terms of generating electricity from a renewable, pollution free source, which outweigh any potential adverse effects associated with the project.

## 4. CONSULTATION AND OUTCOMES

4.1 WEL is very conscious that the company is community owned and it is therefore part of the company's culture that it proactively shares information and consults with both the local and general community. Thus, although WEL is not required to carry out consultation in developing the proposal (section 36A of the RMA), the company consulted extensively with the local community and potentially affected parties at a very early stage in the development of the wind farm proposal. WEL's philosophy was to embrace a process which is comprehensive, proactive and which commenced at the beginning of the project – this is made clear in Mike Underhill's evidence.

4.2 A brief review of WEL's website (www.wel.co.nz) demonstrates the quality of the information that has been made available about the project.

4.3 **Chris Dawson**, Senior Planner at Bloxam Burnett Olliver ("BBO") will address consultation and key outcomes, in particular:

(a) The extensive consultation exercise in relation to the Te Uku wind farm, i.e., WEL Networks has used a range of methods to disseminate information, educate the public, stakeholders and potentially affected parties and to elicit their views.

(b) The outcomes of consultation, including proposed consent conditions, e.g., the MOUs with particular agencies and relevant conditions, e.g. the community liaison group.

4.4 This consultation process has included identifying key stakeholders and landowners and meeting with those parties at the beginning of the process. Approximately 5 public meetings have been held along with two Public Open Days. One to one consultation has also been undertaken with iwi and a range of agencies, organisations and individuals. The consultation process has also resulted in a number of Memoranda of Understanding with key agencies in order to ensure that their concerns are met.

**Submission**

4.5 It is submitted that this evidence will demonstrate that the company has a good appreciation of the issues and concerns raised by locals and key stakeholders and that, as far as practicable, they have been taken into account in developing the proposal and developing conditions of consent. Specific instances of this engagement will be touched upon in relation to specific topics below.

## 5. PROJECT DESCRIPTION – CONSTRUCTION AND OPERATION OF THE WIND PARK

5.1 The next aspect of WEL Networks' case will describes in detail the construction and operation of the wind park, including the suitability of the site for the project from a geotechnical perspective, in terms of the wind resource, and having regard to alternatives.

5.2 This section will also address in detail the construction methodology and programme as a basis for considering the effects of that aspect of the project and the adequacy of measures proposed to avoid, remedy or mitigate potential adverse effects. The evidence of four engineers will be presented.

**The proposed site – existing environment**

5.3 Mr Ashby's evidence contains an overview of the existing environment at the proposed wind farm site and in the general locality. The panel has now viewed the area itself.

**Project overview and project viability**

5.4 The "nuts and bolts" of the project has been well covered in the AEE documents – this evidence will draw on that material.

5.5 **Roger Burchett** is a civil engineer from Watershed Solutions Limited and Project Director with responsibility for managing the Te Uku Wind Park project as a whole. His evidence will provide an overview of the entire project, including:

(a) Background to the proposal in terms of site selection and suitability and the design process, including consideration of alternative designs.

(b) Key components of the wind farm, including the location and layout of the turbines and roads (including the "consent envelope" approach), including optimal layout for cost-benefit and other relevant features of the project, e.g., turbines, aviation lights, meteorological masts, the Te Mata Quarry and concrete batching plant, the Te Uku viewing platform, etc.);

(c) The construction phase, including loads, haulage routes and construction methods.

(d) Operation of the wind farm, including the features which will help to ensure a safe and reliable operation with a high level of generation ability.

(e) Project economics and the importance to the viability of the project that all turbines are able to be built.

5.6 Mr Burchett also has a great deal of experience in the New Zealand electricity scene and part of his evidence will address more general issues in terms of demand and supply, sources and diversity of supply and priority of generation; WEL Networks' role in addressing New Zealand's supply shortfall and reducing reliance on fossil fuel generation.

**Geotechnical suitability**

5.7 The Wharauroa Plateau where the wind turbines will be established and the areas to be used for haul roads, etc., comprise steep country which is known to be prone to erosion. Mr Mitchell will address geological issues relevant to the area and will confirm the suitability of the site for the project.

5.8 **Mark Mitchell**, a geotechnical consulting engineer will give evidence addressing geotechnical issues relevant to the project. That evidence will:

(a) Confirm the suitability of the land (in terms of stability) for the activities proposed in terms of the works required in respect of the roading infrastructure and foundations for turbines etc.

(b) Address issues raised by submitters, particularly concerns that the ground is unstable.

(c) Recommend conditions to avoid, remedy or mitigate adverse effects related to land stability, including in respect of construction and ongoing access post-commissioning.

**Civil engineering**

5.9 Alongside Mr Burchett, **Tony Keyte** from Bloxham Burnett and Olliver has been responsible for designing the construction phase of the project. He will address civil engineering issues, in particular:

(a) The civil works to be undertaken in relation to the roading infrastructure and development of the foundations for the turbines, including details of the extent of earthworks;

(b) The materials and equipment required and how many trucks will be required to transport material to and from the site;

(c) Erosion and silt/sediment control;

(d) Issues raised by submitters in relation to ground transmitted vibration.

5.10 His evidence will demonstrate that:

(a) Silt, sediment and erosion will be controlled in accordance with EW guidelines via a management plan approach;

(b) Any potential effects of stormwater runoff will be appropriately addressed;

(c) On-site concrete batching and sourcing of aggregate will minimise the number of truck movements on local roads and the state highway;

(d) All other matters relating to operation and maintenance of the wind park will be addressed via a comprehensive Environmental Management Plan; and

(e) Vibration issues that may have been present in older turbines have been eliminated by modern technology and advances in the design and construction of turbines.

**Traffic engineering and effects**

5.11 **Mark Appeldoorn**, a senior traffic engineer with Traffic Design Group will give evidence drawing upon the evidence of Mr Keyte, in relation to number of truck movements during the construction period, and Mr Burchett, in relation to the traffic generated by the ongoing operation of the wind farm and will go on to address traffic and transportation issues associated with the project, especially the construction phase. In particular, it will address:

(a) The existing traffic environment.

(b) Traffic matters relevant to the construction phase, the anticipated route for delivery vehicles, potential impact of the proposal on traffic safety, etc (e.g. by increased generation, existence of trucks on the road) and conditions to address.

(c) Predicted traffic associated with operation of the wind farm and associated activities (including interested observers – including viewing platform), appropriateness of traffic measures by reference to relevant standards and guidelines, conditions.

**Te Uku viewing platform**

5.12 Many people find wind farms interesting and attractive features in a landscape. Other wind parks throughout New Zealand have provided viewing platforms. In the present context, Transit New Zealand has made it a requirement of its support for the project that a viewing platform be provided at Te Uku in order to avoid the temptation for motorist ”impulse stopping” on the State Highway, thus causing potentially adverse impact in terms of traffic safety.

5.13 WEL accepts that requirement and initially proposed a condition which would require the establishment of a viewing platform. at the Te Uku Hall. The essential features of that facility will be explained in the evidence of Mr Dawson but essentially would involve a raised platform to enable views to the wind park adjacent to the Te Uku Hall. The viewing platform itself, although a “building” within the meaning of the District Plan, does not require consent from this Committee, because it would comply with all district planning controls as a permitted activity.

5.14 WEL’s arrangements with the relevant land owner, namely the Te Uku Hall Committee, have not been finally agreed and so the proposed conditions of consent contemplate the possibility of a viewing platform being developed at an alternative location to the satisfaction of Transit New Zealand. In that regard, WEL owns some other parcels of land at Te Uku which would be appropriate for use as a viewing platform. If any consents are required for viewing platforms at that location, they will be obtained in due course. The important point is that WEL accepts the requirement to establish a viewing platform in order to cater for the desires of the general public to be able to view the wind park and to prevent impulse stopping on the Sate Highway, and that valid and enforceable conditions of consent should be imposed ensuring that that occurs.

**Submission**

5.15 On the basis of this evidence, it is submitted that the Committee can make the following findings:

(a) That the wind resource at the Wharauroa Plateau site is highly suitable for development of wind generation.

(b) That there are no geotechnical issues which render the site unsuitable for the project.

(c) WEL accepts the Transit requirement to provide a viewing platform so that the Te Uku Wind Park can be viewed by the general public;

## 6. PUBLIC HEALTH, NOISE AND VIBRATION

6.1 The next aspect of WEL Networks' case will address any potential public health issues which could arise from the project, including noise effects and issues relating to subsonic noise, vibration, etc.

6.2 In that regard, there are a number of submissions that have alleged a range of potential adverse effects which would impact on peoples' health or enjoyment of life, including noise, vibro-acoustic disease, vibration, shadow flicker and blade glint. It appears that at least some of these issues have been raised as a result of submitters' review of the Internet. However, much of that material relates to experience with wind farms overseas that that bears little resemblance with the current proposal. Care obviously needs to be taken in that regard.

**Noise, vibration, etc.**

6.3 Noise is considered at Section 9.6 (pages 43-46) of the WDC report.

6.4 **Nevil Hegley** is acoustic engineer and director of Hegley of Acoustic Consultants. He is an expert in assessing noise issues associated with wind farms, his evidence having been accepted in the Awhitu case (see analysis at paragraphs 119-128 of the Awhitu decision)

6.5 Mr Hegley has carried out a comprehensive noise assessment which is summarised in the report attached to the AEE and has, as in Awhitu case, concluded that any noise effects beyond the site will be minimal for any resident in the area and acceptable provided the relevant New Zealand Standard (,i.e., Noise Standard 6808:1998 – the Assessment and Measurement of Sound from Wind Turbine Generators) is complied with. The WDC acoustic consultants have, with the concurrence of Mr Hegley developed a comprehensive suite of conditions (see 9.6.4 of WDC report) which will ensure that compliance with relevant standards is achieved.

6.6 Mr Hegley's evidence also addresses noise issues associated with construction activities.

6.7 Mr Hegley's evidence will address:

(a) The potential effects related to construction noise, operational noise and traffic noise with reference to the change in technology and corresponding improvements in relation noise from wind turbines.

(b) The potential for the wind farm to generate air transmitted vibration (subsonic noise). Dr Black will need to rely upon the evidence given by Mr Hegley in

relation to subsonic noise/air-transmitted vibration in order to address submissions relating to vibro-acoustic disease.

6.8 The key conclusions to be drawn from Mr Hegley's evidence are:

(a) During the construction of the wind farm the noise requirements of the construction standard (NZS 6803:1999 Acoustics – Construction Noise) will be achieved at all times with a good factor of safety.

(b) Once operational, the noise from the wind farm will comply at all times with the relevant standard NZS6808:1998 *Acoustics – The Assessment and Measurement of Sound from Wind Turbine Generators*. While the design level is the higher of 40dBA or the background sound plus 5dBA, the 40dBA criterion will be achieved at all times without having to rely on the background sound plus 5dBA.

(c) There is no evidence to suggest there will be any adverse effects from the proposed wind farm from low frequency noise.

6.9 **Dr David Black,** a highly qualified physician who specialises in occupational safety and health issues. Dr Black will address health issues asserted to be associated with wind farms, in particular:

(a) Noise issues

(b) Vibro-acoustic disease

(c) Shadow flicker and blade glint.

(d) Worker health and safety issues.

6.10 Dr Black cannot identify any actual or potential adverse effect on health or well being unless misunderstanding or misinformation causes unjustified fear or concern and sensitises individuals to the on going presence of the wind park. He therefore recommends provision of full and accurate information to communities. WEL is happy to do that.

**Submission**

6.11 WEL submits that this evidence will demonstrate that the proposed wind farm will not to result in any health issues for local residents and/or the general public and in particular that:

(a) The wind farm will only generate a low level of air-transmitted or ground-transmitted vibration, if at all;

(b) Any vibration generated will not result in any health effects/vibro-acoustic disease for the local residents or general public;

(c) There are likely to be no other health effects (e.g. as a result of shadow flicker, blade glint or noise generally) associated with the proposal; and

(d) Overall, there is no reason why the development should not proceed based on public health considerations and the Committee can be satisfied that there is no cause for concern in relation to these issues.

## 7. OTHER ENVIRONMENTAL EFFECTS – GENERAL REMARKS

7.1 The remainder of WEL Networks' case focuses on all of the other potential adverse effects associated with the construction and operation of the wind park. In that regard, WEL acknowledges the concerns of the many submitters who oppose the project. Consistent with WEL's philosophy, every effort has been made to properly consider and assess potential adverse effects and either to demonstrate that the concerns are unfounded or to develop measures that will address those effects. The potential effect that has drawn the most comment relates to the visual effect that is introduced to the rural scene.

7.2 Most of these submitters would, no doubt, thoroughly embrace the concept of non-polluting renewable energy, provided they do not need to experience the effects of providing that energy themselves. This is a natural reaction to change but as far as wind energy is concerned, it is clear that beauty is in the eye of the beholder and that communities in areas where wind farms have been established have thoroughly embraced the hardware associated with wind energy and see them as a positive addition to the rural landscape – Palmerston North City Council has re-branded itself entirely around the whole concept of wind generation.

7.3 Other potential adverse effects that have been raised and need to be considered comprise ecology, valuation effects, impacts on communications, etc.

7.4 Because of the significant national and regional benefits associated with wind farms, such benefits need generally to be considered as a direct contrast to actual or potential adverse local effects. The decisions of the Environment Court in relation to wind farms provide some assistance in how this weighing and balancing is carried out, but it is clear that the national benefits cannot dominate all other values such as landscape and Maori values of the particular areas in question – in other words, these

section 7 factors such as kaitiakitanga, preservation of landscape and visual amenity values, can outweigh section 7(i) (the effects of climate change) and (j)(the benefits to be derived from the use and development of renewable energy) - *Outstanding Natural Landscapes Protection Society Inc. v. Hastings District Council* (W024/07).

7.5 WEL has had independent experts thorough consider and assess any potential effects of the project (construction and operation) and submits that there are no potential adverse effects (other than visual landscape effects) which cannot be adequately addressed by way of conditions or which would otherwise warrant consent being withheld. As far as visual effects are concerned, WEL's submission is that, although there will be a significant change, it is not unacceptable and that, to the extent that this does comprise an adverse effect, it is outweighed by the benefits of the project.

7.6 Overall, WEL's submission is that the clear positive effects of the Te Uku project far outweigh potential adverse effects of the project - that is obviously a matter for the Committee to decide, and the following tranche of evidence focuses on potential adverse effects as a basis for weighing and balancing these alongside the positive effects already referred to.

7.7 As noted, the *Awhitu case* makes clear that a wind park does not need to involve a major proposal in order for the benefits to be relevant in terms of sections 7(i) and (j). While comparison is obviously difficult because each case needs to be considered on its merits, it is open for the Committee to take the view that the potential adverse effects in the Awhitu case were more pronounced than in this case (including alleged adverse effects on Maori cultural and spiritual values) with national benefits correspondingly less - and yet consent was warranted.

7.8 It is proposed to address each of these other effects (or sets of effects) in turn.

## 8. CULTURAL AND HERITAGE ISSUES

8.1 The Committee will have noted that there are no submissions in opposition to the Te Uku project from iwi interests. That is a reflection of the very effective consultation which WEL entered into with the recognised Tangata Whenua for the area, Ngati Mahanga. That consultation resulted in the development of a cultural and heritage assessment report ("CHAR") and an agreement as to appropriate conditions to address any potential adverse effects from Tangata Whenua's perspective. It is nevertheless important for the Committee to consider potential implications of the project on Tangata Whenua having regard, in particular, to any matters which may be relevant in terms of sections 6(e), 7(a) and 8 of the RMA.

8.2 The Committee will be well familiar with the provisions of the RMA which relate to the issues and to the legal principles which have developed around those provisions. For present purposes and given that this issue has not been raised directly, these are sufficiently summarised in the WDC officer's report and will not be recited here.

**Consultation with Ngati Mahanga and outcomes**

8.3 The consultation undertaken by WEL representatives with Ngati Mahanga is summarised in the evidence to be given by Chris Dawson. The evidence will demonstrate that WEL decided to engage with Ngati Mahanga at an early stage – indeed, prior to the initial public announcement of the project. This initial engagement involved a meeting between kaumatua and senior members of Ngati Mahanga with WEL's then Chief Executive, Mike Underhill, and other WEL representatives - kanohi a kanohi (or chief to chief) engagement. Part of this meeting focused on the manner in which Ngati Mahanga wished to engage with WEL and resulted in the agreement for the Nga Uri a Mahanga Trust preparing a cultural and heritage assessment report (CHAR), and also a commitment for WEL to assist with economic development initiatives of the tribe.

8.4 The CHAR is available to the members of the Hearing Committee as Appendix H of the AEE.

8.5 That exercise also included Mr Gumbley taking Ngati Mahanga representatives on a tour of the wind park site to identify areas which may be relevant from an archaeological perspective.

**Outcomes**

8.6 This engagement resulted in the development of a suite of conditions specifically designed to address potential iwi issues, including protocols for dealing with koiwi and for ongoing involvement, including arrangements for opening ceremonies, etc.

**Submission**

8.7 On the basis of what is available to the Committee (including the absence of iwi submissions), it is submitted that the following findings are appropriate:

(a) That WEL has taken appropriate measures to identify, recognise and provide for the relationship of Ngati Mahanga with their ancestral land, sites, waahi tapu and taonga, and that the preparation of the CHAR and the proposed conditions of consent represent appropriate recognition of Ngati Mahanga as kaitiaki of the wind park area and for their responsibilities in that regard.

(b) That the consultation undertaken and the measures adopted have respected and given effect to the relevant principles of the Treaty of Waitangi, which include active protection, consultation (including information sharing) and a spirit of partnership.

(c) That there is no basis in terms of sections 6(e), 7(a) and 8 of the RMA for withholding consent or imposing conditions or obligations over and above those already recommended.

## 9. LANDSCAPE AND VISUAL AMENITY

9.1 Given the nature of wind farm development, involving, as it must, the erection of large wind turbines at locations where they will be exposed to the most wind, the key issue which tends to arise in terms of environment effect are the visual effects of the turbine and their impact on landscape values. This proposal is no exception. A large number of submissions have raised concerns about the visual effect of the turbines and the change it will introduce to this tranquil rural area on the way to the tourist town of Raglan. It is an issue which WEL has taken very seriously in developing the wind farm proposal, including the removal from the project of one turbine (Turbine 22) which was particularly opposed by locals.

9.2 The proposed wind park lies within the heart of an important part of Waikato District, in the vicinity of Mt Pirongia and also within reasonable proximity (in a regional sense) from Kawhia Harbour, Aotea Harbour and Raglan Harbour. It is acknowledged that Mt Pirongia and Mt Karioi represent outstanding natural landscapes and that parts of the wider area retain a high degree of natural character. To that extent, it is appropriate for the Committee to "have regard to" section 6 (b) of the RMA:

> *"(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:"*

9.3 As noted, WEL submits that the application site does not form part of the coastal environment (even though some turbines will be visible from the Tasman Sea) so that section 6(a) is not relevant. WDC has already defined an area as coastal zone within the district plan and has therefore delineated the area it considers is subject to section 6(a). That coastal zone does not extend to the subject site (by quite a distance).

9.4 Also relevant in this context and values which the Committee should "have regard to" include the following subparagraph section 7 of the RMA:

> *"(c) The maintenance and enhancement of amenity values:*

*(f) Maintenance and enhancement of the quality of the environment:"*

9.5 A number of key objectives and policies of the ODP and PDP also need to be considered. These are fully analysed in the WDC report and in the evidence of Mr Ashby and will not be considered further here.

**Relevant legal principles**

9.6 There are a number of decisions in relation to wind farm proposals which assist the Committee to assess the submissions lodged and the evidence to be presented, bearing mind of course that the actual landscape and relevant planning instruments are central to this analysis.

9.7 As far as section 6(b) is concerned, the Environment Court's view is that outstanding landscape can only be assessed, in relation to a district plan, on a district-wide basis because the sum of the district's landscapes is the only immediate comparison that the council has. The tests which have been developed to guide consideration of these issues is from the case of *Wakatipu Environmental Society Inc. v. Queenstown-Lakes District Council* [2000] NZRMA 59, which adapted criteria earlier developed in a case called *Pigeon Bay Aquaculture Limited v Canterbury Regional Council* Decision NumberC179/03 and which have become known as the "amended Pigeon Bay criteria". The criteria are as follows:

*The criteria for assessing a landscape include:*

*(a) the natural science factors – the geological, topographical, ecological and dynamic components of the landscape;*

*(b) its aesthetic values including memorability and naturalness;*

*(c) its expressiveness (legibility), how obviously the landscape demonstrates the formative processes leading to it;*

*(d) transient values (occasional presence of wildlife; or its values at certain times of the day or of the year);*

*(e) whether the values are shared and recognised;*

*(f) its value to tangata whenua;*

*(g) its historical associations.*

**WEL assessment**

9.8 WEL has undertaken a comprehensive assessment of the landscape and visual effects of the wind park proposal. The principal assessor in that regard was **Dave Mansergh** of Mansergh Graham, landscape architects, who undertook a very comprehensive assessment of the proposal, having regard to the relevant provisions of the RMA and district planning instruments.

9.9 Mr Mansergh will present detailed evidence of his method of assessment and his findings, his essential conclusion being that while the wind park introduces a significant degree of change into the rural environment, the change is not unacceptable, having regard to the relevant provisions of the district planning instruments. In particular, the impact on outstanding landscapes or natural features is not such that consent to any part of the project should be withheld in order to appropriately "recognise and provide for" sections 6(a) or (b) of the RMA. Mr Mansergh's analysis of "strategic" section 6 matters per the "amended *Pigeon Bay* criteria" is included in a table in his report which concludes that the effects are acceptable.

9.10 There is no standard means of undertaking a landscape and visual assessment and each landscape architect may approach the matter in a slightly different way (and, therefore, have differences of opinion as to the most appropriate means of approaching the issue).

9.11 Given the importance of this issue, WEL had Mr Mansergh's work independently peer reviewed by **Boyden Evans,** an experienced Wellington landscape architect and Director of the national firm of Boffa Miskell. Mr Evans will also present evidence as to the review he undertook and his finding. The important point for the Committee to note is that Mr Evans considers the assessment to have been robust and the key conclusions - that the visual and landscape effects of the proposal are acceptable – were endorsed.

**WDC landscape assessment**

9.12 The visual assessment and landscape effects were also reviewed for WDC by Stephen Brown.

9.13 Mr Brown's review reveals that he considers Mr Mansergh's work to be thorough and detailed but was critical of one aspect of Mr Mansergh's analysis in that insufficient recognition had been given to "strategic" matters relevant to natural character and outstanding natural landscapes.

9.14 It is submitted that when Mr Mansergh's work is closely analysed, it is clear that a very significant degree of analysis was undertaken of the impacts of views of the wind farm from the various outstanding areas outlined above. If there are any shortcomings in Mr Mansergh's report, they are not so much to do with the analysis which was undertaken – which WEL submits was complete and robust – but rather with the manner in which it was expressed. In light of Mr Brown's comments, Mr Mansergh's evidence deals with section 6 matters in a more comprehensive way and confirms that the appropriate conclusion to reach is that a grant of consent is appropriate, having regard to the impact of the wind park on and from those locations.

9.15 The important point to note in that regard is that Mr Mansergh and Mr Brown both agree that while the there will be a significant change to the landscape, and while the wind park will be visible from various strategic vantage points, this does not preclude a grant of consent having regard to the provisions of the ODP and PDP and relevant parts of sections 6 and 7 of the RMA.

**Potential cumulative effects**

9.16 Two other wind farms have been granted consents within the geographical locale of the Wharauroa Plateau - Taharoa and Taumatatotara in Waitomo District. Although they have not been constructed, it is acknowledged that it is nevertheless appropriate for the Committee to consider the potential cumulative effect of these two consented proposals alongside the Te Uku proposal on the assumption that all three will be established.

9.17 However, it is submitted that it is not appropriate to consider the potential effects of the proposed wind park that Contact Energy has recently announced. That is because, as distinct from the consents which have been granted, the Contact proposal does not form part of the "existing environment" in terms of relevant legal authorities (*Contact Energy Limited v. Waikato Regional Council*). Indeed, while announced, it is not even the subject of a formal application as yet, so it has not even entered the starting blocks in terms of the legal principles which apply to consideration of competing applications – the foremost of which is set out in *Fleetwing Farms Ltd v Marlborough District Council* [1997] 3 NZLR 257

9.18 Thus, in the present case the Committee can consider the consented but unbuilt Taharoa and Taumatatotara wind farms but not the Contact proposal. If the cumulative visual effects of the Contact proposal in addition to Te Uku does transpire to be a problem, that is a problem for Contact, not WEL. It is therefore submitted that the Committee should disregard the comments made by Mr Brown in the addendum to his report along the lines that the Contact proposal may be a more efficient way to

generate power from wind, or such like, as simply irrelevant and beyond the scope of both his brief and his expertise.

9.19 Despite that, Mr Mansergh's analysis has extended not only to the two consented proposals but to what is publicly known about the Contact proposal, and concludes that the effects are not unacceptable.

**Potential precedent effect**

9.20 A related issue which has not been raised by submissions but which may be considered relevant in light of the announcement of the Contact proposal is whether a grant of consent for the Te Uku project will create a precedent for the grant of consent for similar activities. This does not fall within the concept of cumulative effects which is confined to the effect on the environment of the activity itself, not an influence the consent may have for future applications.

9.21 The relevant cases make clear that the granting of a resource consent has no precedent effect in a strict sense. While it is obviously necessary to deal with similar applications in a similar way, no two applications are likely to be exactly the same, even if they are similar. The extent of any influence of a grant of consent on a subsequent application will depend on the extent of the similarities – *Dye v. Auckland Regional Council* [2002] 1 NZLR 337.

9.22 It is submitted that there is no cause for concern in the present circumstances. The Contact proposal, such as is known, is entirely different to the WEL proposal in terms of scale (the Contact proposal is considerably larger) and location. In other words, consent authorities dealing with that application will be able to call on significant points of difference between the two proposals which effectively means that there is no realistic prospect of any precedent effect arising from a grant of consent for the Te Uku project.

**Submission**

9.23 In light of the evidence to be presented and having regard to the amended *Pigeon Bay* criteria and the provisions of the District Plans, WEL's key submissions in this regard and the findings it submits that it is appropriate for the Committee to make are as follows:

(a) That the methodology adopted by Mr Mansergh in assessing the visual and landscape effects and that the analysis was comprehensive, robust and in accordance with sound practice.

(b) That it is appropriate to apply the amended *Pigeon Bay* criteria to the Te Uku Wind Park proposal and that sections 6(b), 7(c) and 7(f) are all relevant in considering the wind park proposal, but the effects of the proposal (including potential cumulative or precedent effects) are not such as to preclude a grant of consent for the project as a whole or warrant the withholding of consent for any of the turbines.

(c) While the there will be a significant change to the landscape, and while the wind park will be visible from various strategic vantage points, this does not preclude a grant of consent having regard to the provisions of the ODP and PDP and relevant parts of sections 6 and 7 of the RMA.

(d) That no mitigation measures are available to address such potential adverse effect which may be considered to arise.

(e) That, considered overall, the proposal is not contrary to the objectives and policies of the PDP. In that regard, wind energy is not something which had been contemplated in the context of the ODP – the PDP clearly deserves greater weight in the context of this application.

## 10. TOURISM IMPACTS

10.1 Some submissions have raised issues in relation to potential effects of the wind farm on tourism in Raglan and the surrounding area. WEL's position is that the proposed wind farm will not have adverse effects on tourism in the long term. Indeed, to the contrary, independent research and analysis (including survey work) undertaken by **Gordon Campbell**, a specialist in tourism marketing, which clearly demonstrates that there will be a moderate positive short-term effect on Raglan's tourism, with an 11% increase in tourism as a direct result of the wind farm.

10.2 Mr Campbell will present evidence which is an excerpt from a much larger document that WEL commissioned to consider this issue in light of concerns expressed by submitters (and which is available to the Committee). His evidence will address:

(a) The demographics of visitors to Raglan, their origins and the view of respondents to Raglan as an eco-tourism destination.

(b) Analyses the views from tourism accommodation in Raglan, the vast majority of which, not surprisingly, face the sea and consider the specific effects on the Hidden Valley.

(c) Consider the impacts of wind farms of tourism internationally and the impacts on Raglan's tourism, including the results of their survey.

(d) Consider the impacts of Manawatu wind farms in this context.

10.3 Of the very few submissions which raised this issue, the most unique and specific was that from Mr Bellerby of Hidden Valley Retreat, who is not opposed to the wind farm in principle, but is concerned that the project may adversely impact his business. The good news for Mr Bellerby is that, far from generating adverse effects, the wind park represents a significant business opportunity:

> *"…one of the best views of a Raglan wind turbine will be from Hidden Valley. This will create business for Hidden Valley..Wind turbine 29 is a marketing opportunity for Hidden Valley."*

10.4 A broader aspect of Mr Campbell's evidence which is particularly relevant in considering the visual and landscape evidence – which necessarily involves aspects of "environmental psychology" and perception, is his surveys which reveal that the majority of respondents were either supportive of a wind farm at this location or neutral.

**Submission**

10.5 WEL submits that, on the basis of this evidence, it is open to the panel to find as a matter of that there will not be adverse effects on any existing tourism operators as a result of the establishment of the Te Uku wind park. On the contrary, that there will be positive effects for tourism in Raglan generally and at Hidden Valley in particular.

## 11. ECOLOGY

11.1 Both the construction and operational phases of Te Uku Wind Park project have the potential to impact on ecological values. The construction phase, unless properly managed, could result in the discharge of sediment and other contaminants to waterways. Two issues relevant to ecology are relevant and have been raised by submitters:

(a) Freshwater ecology, as a result of earthworks.

(b) Effect on animals, i.e., birds and bats.

11.2 The operation of the turbines themselves has been identified as having a potential adverse effect on birds (particularly New Zealand falcons) and native long tailed bat which live on the Wharauroa Plateau.

11.3 Again, these issues are taken very seriously by WEL who engaged Gerry Kessels of Kessels & Associates, ecological consultants, to assess any potential adverse effects. Mr Kessels will address the Committee on those investigations and key outcomes – again, drawing on the material which is already available to the Committee via Mr Kessels' original report.

11.4 Mr Kessels' evidence will demonstrate that the numbers of falcons and native bats living in that area is relatively low and that their habits are such that the likelihood of significant mortality rates is low.

11.5 It is also important to note that WEL held discussions with the Department of Conservation at an early stage. As a result of those discussions, WEL has entered into a Memorandum of Understanding ("MOU") with DOC as to the monitoring which needs to be undertaken in order to assess the ongoing effect of the wind park and, in particular, to confirm that the adverse effects in that regard are minor. This MOU also contemplates financial arrangements in terms of mitigation payments.

11.6 Mr Dawson will produce the MOU between WEL and DOC (minus those aspects which are commercially sensitive) as part of his evidence.

11.7 WDC has had Mr Kessels' report in relation to ecological matters reviewed by independent experts, Golder & Associates, who concur with Mr Kessels assessment. Their review raises a number of issues which are addressed in Mr Kessels' evidence.

11.8 The mitigation measures contained in the Golder & Associates report were substantially recommended in the proposed conditions of consent included in WEL's AEE and now form part of the suite of conditions recommended as part of the WDC Officers' report.

**Submission**

11.9 On the basis of Mr Kessels' evidence alongside the report by Kessels & Associates included in the AEE, the review of that report by Golder & Associates, the MOU between WEL and DOC, it is submitted that it is open for the Committee to find that:

(a) Any potential adverse ecological effects of the Te Uku Wind Park project will be minor and acceptable; and

(b) That there are no such effects which cannot be appropriately avoided, remedied or mitigated by way of the conditions and other mitigation measures proposed, including the measures reflected in the MOU between WEL and DOC.

## 12. RADIO COMMUNICATIONS

12.1 Some submissions have raised issues about the potential effects of the proposal on television and radio reception, etc. WEL's position is that any potential effects are likely to be small but that where any such effects are demonstrated, the company will adopt measures to address them. One witness will be called.

12.2 **Peter Curtis** of Kordia will address the potential effects on radio communications associated with the proposal. This evidence will:

(a) Provide an overview of the potential radio communication issues associated with wind farms;

(b) Assess the potential effects of the proposed wind park on specific radio communication services;

(c) Asses the radiation exposure levels from nearby radio facilities to persons involved in the construction and operation of the wind park;

(d) Address any specific concerns raised by submitters; comment on/recommend any relevant conditions.

12.3 This evidence demonstrates that, in general, there will not be significant adverse effects to radio communication services beyond a few hundreds of meters from the wind park, but that there may be some interference with television reception up to a few kilometres away which will manifest as "ghosting". This will not occur for digital satellite television reception.

12.4 WEL has volunteered conditions to the effect that any adverse effects on television reception at existing dwellings within a 6km radius will be rectified by WEL. The WDC officers report has suggested that these conditions should extend to new dwellings in that geographical area. WEL does not agree that it is appropriate to extend a condition to apply to dwellings that did not exist at the time the wind park is established.

**Submission**

12.5 It is submitted on the basis of Mr Curtis' evidence that the Committee is entitled to find that:

(a) The only potential adverse effect in relation to radio communications associated with the wind park relates to interference with television reception, but that this is only likely within a predicted area (6km radius of the park).

(b) WEL proposes conditions which would require WEL to rectify any issues arising in that regard (essentially by bearing the costs of connecting to digital satellite television) in the event that this is shown to occur.

(c) This requirement should only extend to existing dwellings, not to those established post the establishment of the wind park.

## 13. IMPACT ON PROPERTY VALUES

13.1 A number of submitters have raised issues about the wind farm reducing the value of their properties. This is a common ground for opposition to capital projects.

### Legal principles

13.2 The Environment Court has taken a firm and consistent position that property devaluation is not an adverse effect in itself but rather it 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.

13.3 The principles emerge from the following cases:

(a) In *Chen v Christchurch City* Decision C 102/97 (Judge Jackson presiding) 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* Decision W073/98 (Judge Kenderdine presiding) 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* Decision A92/2000 (Judge Sheppard presiding) (case referred to in the WDC planner's report), 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 preferred to rely on the evidence of a resource management planner about the potential effects themselves.

13.4 WEL relies on these Environment Court decisions in submitting that potential property devaluation is not of itself an adverse effect. The focus should be on the actual and potential effects. As a consequential issue, these effects may in turn, if sufficiently significant then affect property values.

13.5 Nevertheless, given that local landowners are concerned that the proposed wind park will have an adverse effect on property values, WEL has commissioned independent expert evidence on whether there is any basis for that concern.

**Evidence**

13.6 **Doug Saunders,** a registered valuer of Telfer Young, Hamilton has specifically considered the property market's response to the advent of wind farms and will present evidence. The purpose of Mr Saunders' evidence is to assess the potential impact of the proposed wind farm on property values. This evidence will address that issue and should provide some comfort to locals by confirming that:

(a) Research of market data in the Manawatu and Wairarapa shows no evidence of property values being impacted by the establishment and operation of wind farms in the Tararua Ranges.

(b) Telfer Young analysis of market activity in the Raglan/Te Uku locality since the February 2006 announcement of the proposed wind farm concluded that no impact has been measurable on market activity or values since the announcement.

(c) Telfer Young analysis and research of property values adjacent to "unpopular use" activities including the Martha Hill Goldmine and Hampton Downs Landfill and Prison have shown no measurable variation in values as a consequence of the activities being proposed and constructed to this point in time.

(d) Anecdotal evidence exists to suggest that some benefits arise from the establishment of a wind farm development in the form of tourism, local business opportunities and a strengthening of the local identity about a tangible landmark.

(e) Impact of the proposed wind farm on property values in the area will be insignificant.

**Submission**

13.7 On the basis of the above, it is submitted that it appropriate for the Committee to find/hold the following:

(a) That potential effects in terms of alleged adverse effects on property values has not been recognised as an effect in terms of the RMA. Rather any such effects are in effect a "proxy" for any adverse effects which might arise. In this

case, there are no site specific effects which would result in property devaluation.

(b) In any event, based on the only expert evidence available the impact of the proposed wind farm on property values in the area will be insignificant.

## 14. PART 2 – OVERALL BROAD JUDGEMENT

14.1 The final aspect of WEL's case will address that a fundamental aspect of the sustainable management purpose of the RMA can be met – namely that potential adverse effects can be avoided, remedied or mitigated and whether the sustainable management purpose of the RMA is better addressed by granting consent than by declining it.

### Conditions

14.2 WEL was well aware in developing the project what potential adverse effects might arise and consciously addressed this via a suite of proposed conditions that formed part of the AEE. WDC and EW officers used these as a base for developing the conditions recommended in their reports and, as a result, both reports appropriately consider the extent to which potential adverse effects can be addressed in reaching the conclusions that they do – that it is appropriate to grant consent subject to conditions. As noted at the outset, WEL accepts the conditions recommended with a few minor exceptions which are noted in evidence.

14.3 Each of WEL's witnesses will comment on the potential effects of the proposal from their perspective and, where appropriate, recommend conditions to avoid, remedy or mitigate those effects. proposed conditions insofar as they are relevant to their area of expertise. A broader review of conditions which require amendment are contained in the evidence of Mark Ashby

14.4 There is quite a strong focus on management plans in the conditions. It is submitted that these conditions are appropriate, valid and enforceable. I am happy to explore this issue further if the Panel would like to.

14.5 It is further submitted that all other conditions are valid as falling within the scope of section 108 and the tests for validity in the *Newbury DC* case. It is not proposed to recite chapter and verse in that regard, but if the Committee has any issues in that regard, I am happy to address them as they arise or in closing.

**Part 2 - sustainable management**

14.6 The final and overarching question is whether a grant of consent is warranted having regard to all the circumstances after considering and determining (to adopt the *Awhitu* template):

> *(i) First, as a matter of fact, the positive effects of the wind farm;and*
>
> *(ii) Secondly, as a matter of fact the negative effects of the wind farm;*
>
> *(iii) Evaluate and weigh our findings in (i) and (ii) above, guided by the statutory instruments and the provisions of the Act, particularly Part II."*

14.7 The factors which are relevant in that regard are addressed in evaluative evidence to be presented by Mark Ashby, planning consultant, Connell Wagner, based on all of the previous evidence and in doing so assess the proposal in terms of the relevant statutory considerations.

**WEL's submission in relation to the panel's Part 2 assessment**

14.8 Based on that evidence, and all of the evidence which is to be presented, it is WEL's fundamental submission that the sustainable management purpose of the RMA is addressed and promoted by granting consents for the proposed wind park subject to the conditions recommended by the WDC and EW Staff Reports (including minor amendments sought by WEL) particularly insofar as:

(a) The project will enable the wind resource in the Te Uku area to be utilised in a way that will enable people and communities in the Waikato Region (particularly those in WEL's supply area) to provide for the social and economic wellbeing because the wind farm will reinforce security of supply of electricity to the WEL network and the west Waikato and Raglan area in particular (section 5, 7(b)).

(b) Wind generation at Te Uku will produce benefits from distributed generation by:

(i) Providing reliable base load generation: and:

(ii) Reducing dependence on the National Grid; and

(iii) Reducing transmission losses

(section 7(b)).

(c) The wind park will have tangible positive effects for tourism in Raglan (section 5).

(d) Consultation has been undertaken with tangata whenua and measures have been developed to actively protect features of cultural and spiritual significance to Tangata Whenua and the opportunity remains for iwi to exercise kaitiakitanga and to be consulted in accordance with the CHAR (section 6(e), 7(a) and 8).

(e) Issues of historical heritage have been considered and measures are included to ensure that the wind park proposal has no adverse effects on them (section 6(f)).

(f) The project will enable an efficient use of New Zealand's wind resource (section 7(a)) which enables the benefits to be derived from the use and development of renewable energy to be achieved and thus assist is addressing the effects of climate change (section 7(j)) and

(g) The project will result in a substantial reduction in greenhouse gas emissions (section 104E). and reduce the national dependence on fossil fuels for electricity generation (section 7(i)).

(h) The proposal will have a significant impact on visual and amenity values (section 7(c)) but not such that a grant of consent is not warranted having regard to natural character and outstanding natural landscapes (section 6(b)) or in terms of any impact on the coastal environment (of which the application site does not form part (section 6(a)).

(i) Apart from the inability to implement mitigation measures to address the visual effects of the turbines, there are no potential adverse effects of the project which cannot be avoided, remedied or mitigated by the suite of conditions that WEL, WDC and EW recommend be imposed (section 108)

(j) Considered overall, the positive effects of the wind park project far outweigh potential negative effects.

14.9 In summary, the project will enable the wind resource in the Te Uku area to be utilised in a way that will enable people and communities in the Waikato Region (particularly those in WEL's supply area) to provide for the social and economic wellbeing while:

(a) Sustaining the potential of the to meet the needs of future generations;

(b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems;

(c) Adequately avoiding or mitigating potential adverse effects (section 5).

14.10 It is therefore submitted that exercising an overall broad judgement, the Committee can and should grant the consents sought subject to the conditions recommended.

**DATED** this 19th day of November 2007

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**S J Berry**

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**J L Vella**

**Counsel for WEL Networks Limited**