

23 November 2009

Tricia Finn  
Manager  
WEL Energy Trust  
PO Box 1336  
Hamilton 3240

Dear Madam

## **PROPOSED CHANGES TO DEED OF TRUST - RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES**

### **1.0 INTRODUCTION**

- 1.1 Hamilton City Council (HCC) welcomes the opportunity to make a submission to the WEL Energy Trust on the 'Proposed Changes to Deed of Trust - Rules Governing the Appointment, Retirement and Proceedings of the Trustees'.
- 1.2 As one of the three capital beneficiaries of the WEL Energy Trust, HCC takes a very strong interest in the Trust's ongoing operations and plans.
- 1.3 The WEL Energy Trust has advised HCC that specific amendments to the Deed of Trust include:
  - The number of Trustees shall remain at eight.
  - If the number of Trustees falls below eight but is not less than six, the remaining Trustees may, but are not required to, appoint a person or persons to fill the vacancy or vacancies until the next election.
  - If the number of Trustees is less than six, the remaining Trustees must either appoint a person or persons as Trustees, or hold an election, so that the number of Trustees is at least six.

Specifically, the WEL Energy Trust is proposing the following:

### **2.0 APPOINTMENT AND ELECTION OF TRUSTEES**

#### **2.1 Number:**

- (a) *"The number of TRUSTEES shall be eight (8).*
- (b) *If at any time the number of TRUSTEES falls below eight (8) and is not less than six (6) the remaining TRUSTEES may, but are not required to, appoint a person or persons to fill the vacancy or vacancies until the next election.*
- (c) *If the number of TRUSTEES is less than six (6), the remaining TRUSTEES must either appoint a person or persons as TRUSTEES, or hold an election in accordance with Rules 2.12 to 2.29 inclusive to elect a person or persons as TRUSTEES, in either case so that the number of TRUSTEES is at least six (6). If an election date for the election of TRUSTEES required by this*

*clause (c) is within 12 months of the next scheduled triennial election, the TRUSTEES may resolve that the next scheduled triennial election be brought forward, with the Rules in this Schedule applying to that election. No change to the date of the next scheduled triennial election under this clause will affect the date of subsequent elections”.*

## **2.0 SPECIFIC COMMENTS**

- 2.1 HCC does not support the WEL Energy Trust's proposed rule changes to the Deed of Trust for Clauses 2.1(b) and 2.1(c), particularly around the WEL Energy Trust having the option of appointing a person or persons as Trustees if the number of Trustees is less than six.
- 2.2 HCC is of the view that in the interests of operating in a democratic, efficient and effective manner that the WEL Energy Trust should, at all times, endeavour to maintain the number of Trustees at eight.
- 2.3 However, in the event of a Trustee(s) leaving the WEL Energy Trust (either through resigning, being removed from office, or upon the death of a Trustee), HCC is strongly of the view that the new Trustee(s) must be selected through a public election process (as currently provided for in the Deed of Trust). The appointment option available to the WEL Energy Trust that is outlined in proposed Clause 2.1(c) above is regarded as being totally undemocratic and not in keeping with the overall principles around democracy in the current Deed of Trust.
- 2.4 HCC is of the view that if circumstances result in the number of Trustees being reduced to less than six, that the WEL Energy Trust must hold an election in order to bring the number of Trustees back up to the full complement of eight.**
- 2.5 HCC is also of the view that the election of the new Trustees must occur within a six month period of when the number of Trustees was officially reduced to below six members.
- 2.6 To be consistent with the six month period outlined above, HCC also recommends that the provision in proposed Clause 2.1(c) (where the Trust has the option of bringing the whole triennial election forward if the number of Trustees falls below six within 12 months of the next scheduled triennial election) also be changed from 12 months to six months.
- 2.7 HCC therefore recommends that the following amended Clause 2.1 be substituted for the WEL Energy Trust's proposed Clause 2.1 and be adopted by the Trust as part of the rule changes to the Deed of Trust:

### **HCC's Proposed Amended Clause 2.1**

#### Clause 2.1(a)

*“The number of TRUSTEES shall be eight (8).*

#### Clause 2.1(b)

*If at any time the number of TRUSTEES falls below eight (8) and is not less than six (6), the remaining TRUSTEES may, but are not required to, hold an election in accordance with Rules 2.12 to 2.29 inclusive to elect a new TRUSTEE.*

Clause 2.1(c)

*If circumstances result in the number of TRUSTEES being less than six (6), the remaining TRUSTEES must hold an election for new TRUSTEES (in accordance with Rules 2.12 to 2.29 inclusive) that will bring the total number of TRUSTEES back up to eight (8). The election of the new TRUSTEES in this instance must occur within six (6) months:*

- *Of an existing TRUSTEE or TRUSTEES formally notifying the WEL Energy Trust of their resignation.*
- *Of an existing TRUSTEE or TRUSTEES being removed from the WEL Energy Trust.*
- *Upon the death of a TRUSTEE or TRUSTEES.*

*If an election date for the election of the new TRUSTEES required by this clause (c) is within six (6) months of the next scheduled triennial election, the remaining TRUSTEES may resolve that the scheduled triennial election be brought forward, with the Rules in this schedule applying to that election. No change to the date of the next scheduled triennial election under this clause will affect the date of any subsequent election".*

2.8 HCC is of the view that adoption of it's proposed amended Clause 2.1 will more appropriately enable the WEL Energy Trust to operate in a democratic, efficient and effective manner, while at the same time meeting the interests and expectations of WEL Networks Ltd consumers.

2.9 In addition, adoption of HCC's amended Clause 2.1 will mean that the WEL Energy Trust's Rules comprising the Deed of Trust are in greater alignment with the provisions outlined in Part 6 of the Local Electoral Act 2001 (as well as the procedures used by many other organisations that have elected member governance structures).


### 3.0 CONCLUDING COMMENTS

3.1 HCC trusts that the points made in this submission are helpful to the WEL Energy Trust when considering all submissions to the Proposed Changes to Deed of Trust - Rules Governing the Appointment, Retirement and Proceedings of the Trustees.

3.2 HCC **does wish to be heard** in support of this submission at the WEL Energy Trust hearings on this matter.

3.3 If you require clarification of the points raised in this submission, or additional information, please contact Anthony Dick (HCC's Democratic Support Services Manager) in the first instance on 07 838 6883 or email [anthony.dick@hcc.govt.nz](mailto:anthony.dick@hcc.govt.nz)

Yours faithfully



**Michael Redman**  
**CHIEF EXECUTIVE**