



PRE-ELECTION REPORT TO THE PUBLIC

March 2020

Trustees

Mark Ingle (Chair)
Charlotte Isaac (Deputy Chair)
Denise Harding
Rob Hamill
Mike Rolton
Craig Stephen
Kathryn Williams

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PRE-ELECTION REPORT TO THE PUBLIC

[This report and its conclusions were presented for adoption and authorisation for publication by resolution of the WEL Energy Trust on 25 March 2020.]

1. PURPOSE OF REPORT

The WEL Energy Trust (the Trust) was established by a Deed of Trust on 26 May 1993. Clause 16.21 of the Deed requires that no later than three months prior to every election, the Trust must review the purposes of the Trust and report publicly the results of the review.

In conducting the review the Trust must consider the following three questions:

- (i) Do the rules and policies of the Trust provide adequate protection for customers?
- (ii) Should the Trust continue in its existing form or be amended?
- (iii) Should the Trust be wound up?

2. PURPOSES OF THE TRUST

The Trust is a special purpose body with responsibilities to:

- (i) Manage its investment in WEL Networks Ltd (the Company).
- (ii) Ensure the Company operates as a successful business.
- (iii) Have regard to customer interests in industry matters.
- (iv) Distribute surplus income at its discretion and to be accountable to the community.

Income Beneficiaries are the Company, customers, the community and energy related projects, at the Trust's discretion.

Capital Beneficiaries are the Hamilton City Council (63%), Waikato District Council (35%) and the Waipa District Council (2%).

3. ACTIONS TAKEN TO MEET THE PURPOSES OF THE TRUST

(i) To manage its investment in the Company

(ii) To ensure the Company operates as a successful business

- The Trust's operating expenses are stable. Trustees are satisfied that the current structure and its operating expenditure are sufficient to maintain good governance and management of the Trust.
- An annual review of the Trust's investment in the Company and of the performance of the Directors is undertaken in accordance with clauses 8.1 and 16.2 of the Trust Deed.
- In 2020 the Trust engaged KPMG to complete a review of the Company for the purpose of fulfilling this legal requirement.
- In 2015 the Trust developed a Statement of Investment Policies and Objectives (SIPO), which includes consideration of the Trust's full portfolio of investments. This was reviewed in November 2018 and again in March 2020.
- The Strategic Direction, Targets and Measures of the Company are reviewed annually as part of the formal review of investment in the Company.
- Every quarter the Company reports on electricity industry issues and the Company's financial results against targets in the Strategic Directions document.
- Continued review and support where necessary of the Company for its significant capital structure reviews.
- Quarterly meeting with the Board of Trustees and Company Chair and Executives to review quarterly, half yearly and yearly results.
- In June 2018 an Owners Expectation Manual (OEM) was agreed between WEL Networks Ltd and WEL Energy Trust. The OEM is a good faith agreement between the Trust and the Company. The intent of the OEM from the Trust's perspective is to enhance clarity around the generic long-term expectations and requirements already outlined in legislation and relevant governance documents in one easy-to-navigate place. These include:
 - The Companies Act 1993
 - Section 39 of the Energy Companies Act regarding Statements of Corporate Intent (SCI) and briefings to the Trust
 - The Company Constitution
 - Company Governance Charter
 - The Trust Deed
 - Trust Governance Policies
 - Other matters as agreed by the Trust and Board by letter agreement

(iii) **To have regard to customer interests in industry matters**

- The Trust keeps a watching brief on changes in alternative technologies, and this has been added as a section in the Company quarterly updates to the Trust, including how alternative technologies are being applied and used.
- Price thresholds set by the Commerce Commission have been achieved by WEL Networks Ltd.
- The Trust has for many years been a member of the Energy Trusts of New Zealand Inc (ETNZ), which is a national body providing support and opportunities for the sharing of knowledge and experience among member trusts throughout New Zealand. Trustees and staff have regularly attended ETNZ conferences.
- The Trust is aware and supportive of the NZ Government Electricity Price Review, published in May 2019.

(iv) **To distribute surplus income at its discretion and to be accountable to the community**

- In 2018 the Trust adopted a new Mission statement:

Working together, working smarter, to grow investment and to unlock the powerful possibilities of our community, now and into the future.

- Our Mission refers to both the Trust's financial investments (including the Trust's core investment as 100% shareholder of WEL Networks Ltd), as well as investment in the community through grants and other investments.

- In 2018 the Trust also developed a general Theory of Change:

If we make coordinated use of different forms of capital and non-financial resources to support innovation and the wider innovation ecosystem, then we will begin to see the systemic change required for impact at scale.

- The Theory of Change recognises that change on a community level requires systemic change, and that there *is* a need to look at new and innovative ideas to achieve this.

- Through a **thorough** process of community engagement, the Trust developed and adopted a new long-term community investment strategy for 2019-2022.

- The Trust has moved away from funding categories and is instead focussing on outcomes-based funding – funding and measuring outcomes, not activities.
- The Trust is partnering to achieve global, national and regional priorities through the Sustainable Development Goals (SDGs).
- We offer a 'blended finance' model to link capital with purpose, driving grants and investments to work together to support change makers and to achieve the Trust's Mission.

- In the past two years the Trust has supported the Company to replace the previous electricity lines rebate programme with lower lines charges to retail consumers, and in the development of innovations such as OurPower, a low-cost electricity retailer. These changes are aimed at lowering electricity prices across the region, especially for consumers most in need, and have also led to this significantly higher grant and investment income for the Trust.
- The increases will support region-wide innovation and collaboration that we haven't seen before and are aimed at achieving the long-term systemic change outlined in the Trust's community investment strategy which also supports the outcomes of the Waikato Wellbeing Project and is based on the United Nations' global SDGs.
- The Trust's 2020/21 Annual Plan includes a total distribution budget of \$9.5 million (up from \$4.5 million in 2019/20). This includes a \$6.5 million grants budget, and a special allocation of \$3 million to be delivered over five years to support a backbone organisation to help people to navigate the complex ecosystems associated with catalysing the Waikato Wellbeing Targets into action.

4. ACCOUNTABILITY TO THE COMMUNITY

- Monthly Trust meetings are advertised for the public to attend.
- A draft Annual Plan is prepared, and the public can make submissions on any aspect of the plan. Submitters may request to be heard in support of their submission.
- An annual report is prepared and available to the public. An Annual General Meeting is held for the public to attend and have the opportunity to comment on the Trust's activities, ask questions and to also appoint the Auditor.
- In addition, the Trust continues to periodically review its operations through surveys and benchmarking.

5. SAFEGUARDS

There are numerous safeguards in the Trust Deed to ensure satisfactory governance and management of the Trust. Among these are as follows:

- A public consultation procedure is required in relation to:
 - The Annual Plan
 - Any proposed action to sell any shares in the Company; carry out an amalgamation, merger, or reconstruction of the Company that results in sale of, or voting rights change, to the shares in the Company
 - Distributing part of the Trust fund to the capital beneficiaries
 - Bringing forward the termination date of the Trust

- Variations to the Trust Deed:
 - Every amendment must be publicly notified
 - Public consultation procedures are also required for amendments to Clause 9 Trusts of Income until Termination Date; Clause 10 Trusts of Capital; Clause 11 and Rule 2 Election, Appointment, Retirement and Proceedings of Trustees; Rule 3 Term of Office and Rule 4 Cessation of Trusteeship
- Conflict of Interest:
 - A Trustee must disclose any material interest whether held directly or indirectly which is or may be in conflict with the interests of the Trust from time to time
- Guidelines for Access to Information by Beneficiaries:
 - Adoption of the Guidelines for Access to Information by Beneficiaries of Electricity Community and Customer Trusts.

6. CONCLUSIONS

The Trust Deed requires this review to consider three specific issues:

- (i) **Do the rules and policies of the Trust provide adequate protection for customers?**

Trustees' View: The Trustees are satisfied that the rules and policies of the Trust provide adequate protection for customers.

- (ii) **Should the Trust continue in its existing form or be amended?**

Trustees' View: The Trustees are satisfied, from the actions taken and the outcomes achieved, that the Trust should continue in its existing form.

- (iii) **Should the Trust be wound up?**

Trustees' View: The Trustees are satisfied, from the actions taken and the outcomes achieved, that there are no compelling reasons for the Trust to be wound up.

APPENDIX 1

History of the Trust

- a) WEL Energy Group was the first power company to be corporatised. The Waikato Electricity Authority introduced a share ownership plan that saw one-third sold to customers, one-third to the WEL Energy Trust (set up to represent community interests) and the remaining one-third to UtiliCorp United.
- b) A merger was proposed by UtiliCorp between Power New Zealand and the WEL Energy Group, which was strongly resisted by the Trust.
- c) In 1995 Power NZ began a major share buying campaign for WEL Energy Group shares. A share war broke out between WEL Energy Trust and the UtiliCorp-Todd-Power NZ combo, resulting in the Trust spending \$20 million to increase its holding to nearly 43%, and the UtiliCorp group failing to gain a controlling interest. The Trust funded this through a combination of cash reserves (\$8 million) and an ANZ loan facility (up to \$15 million).
- d) In 1998 the Trust entered into a deal which returned WEL to local community control. The Company sold its shareholding in Power NZ for \$79.7 million. This represented a capital profit for WEL of \$28 million. Auckland Electricity Ltd, a wholly owned subsidiary of Mercury Energy, purchased the UtiliCorp NZ and Power NZ shareholding in WEL. It also undertook to make an offer to the remaining minority shareholders of WEL. The Trust had the ability to purchase AEL's shareholding in WEL at an estimated purchase price of \$119 million. The Trust also received an \$18 million interim dividend, part of which went towards repaying the ANZ loan.
- e) On 3 February 1999 the Trust paid out \$110.8 million to Mercury Energy to take its shareholding from just below 43% to 95%. On 1 March the WEL Energy Company sold its electricity consumers to Natural Gas Corporation in a deal worth \$89.5 million.
- f) In 2000 the Trust proceeded with compulsory acquisition of the remaining 5% of shares held by private shareholders.
- g) The financial transactions around (e) and (f) are complex and the file is held by WEL Networks. The minutes of January 1999 note that the loan draw down figure for the Mercury Energy deal was \$107.5 million. In December 1999, to fund the compulsory acquisition scheme, the Trust endorsed an extension of the ANZ loan and additional funding of \$15-20 million by variation to the present facility.
- h) The Trust's 1999 annual report states:
- i) "The share purchase was funded by a term loan of \$107,500,000 from the ANZ Banking Group and \$4,000,000 of cash from the Trust."
- j) The Trust's 2000 annual report states:

- (i) “Arrangements were made with the WEL Energy Group to utilise its surplus funds to repay \$110,000,000 of WEL Energy Trust Shareholding Ltd’s loan from the ANZ Bank when it became due on 3 August 2000 and this was completed on 9 August 2000.
 - (ii) A residual loan of \$16,000,000 from ANZ Bank is the balance remaining from the purchase of the 5% minority shareholdings, and will remain for up to 5 years with flexible repayment terms.”
- k) **2010 CAPITAL RESTRUCTURE:** The Trust increased its investment in the Company by \$20.3 million through a new capital structure arrangement (Convertible Note). One of the key objectives of the strategic review was for the Trust to create financial security, thus removing the Trust’s reliance on year by year WEL Networks dividends to cover operating costs and the Community Grants Programme. The return on the \$39 million convertible note facility was reset in 2015/16 by IRD at 6.28%.
- l) Ultrafast Fibre Ltd was established by WEL Networks Ltd in 2010 in order to fulfil a New Zealand Government initiative to rollout ultrafast broadband (UFB) across eight centres in Central North Island.

In 2011/12 the Trust kept a watching brief on the non-core business projects that the Company was currently rolling out, being Broadband and the Smart Network.

- (i) Fibre – Interests are held through Waikato Networks Ltd (WNL) of which WEL is an 85% shareholder (Waipa Networks owns 15%). This was a significant investment for WEL, and has a different risk/ return profile to the core lines business.
 - (ii) Smart Networks and Smart Boxes – WEL’s smart box programme in the Waikato and Top Energy Smart Meter rollout in Northland. Operated internally and not regulated. Top Energy project is delivered through Smart Co Ltd, of which WEL is a 15% shareholder.
- m) In 2013 **MOMENTUM FOUNDATION** is established through a long-term loan from WEL Energy Trust. While the Trust initiated the concept of the Momentum Foundation, it is a separate legal entity with a fully independent Board who is appointed by an appointments panel of 7, one being the WEL Trust Chair or appointee. The treatment of the Momentum Foundation loan of \$10,000,000, due for repayment at the Trust’s termination in 2073, was written down to recognise the net present value of the loan.
- n) \$39 million convertible note facility was reset in 2015/16 by IRD at 6.28%.
- o) **Investment Valuation:** In 2017 the indicative valuation of WEL Energy Trust’s interest in WEL Networks Ltd places the equity value between \$610 million and \$690 million, with a midpoint of approximately \$650 million (plus convertible note of \$39 million).

- p) Until 2015/16 the Trust sought to maintain a balance of at least \$10,000,000 in term deposits. A further \$2,000,000, less committed funds, was also set aside for the Trust's community lending programme. Approximately \$2.6 million was distributed in grants to community organisations each year.
- q) From 2016 the Trust diversified its investments into global equities and bonds, and developed a Statement of Investment Policies and Objectives (SIPO).
- r) A rebate programme was commenced by WEL Networks Ltd in 2003, following a request from the then Trust that such a scheme be considered. Annually the scheme would charge customers a premium above the Electricity Authority approved prices and then return the premium if the additional funds we're not required. A total of \$275,596,000 is recorded as being rebated over the 15-year life of the scheme.
- s) In 2018 the scheme was stopped, as after 15 years the additional funds had never been required. As a result of the scheme finishing the premium charge was removed and replaced with lower lines charges for residential customers and investments in innovations such as OurPower, a low-cost electricity retailer.
- t) WEL Networks chairman Rob Campbell said in a Times article at the time that the discount was a blunt instrument to benefit customers, which limited the Company's options. "We're developing ways to disrupt the sector so total power prices are reduced".
- u) From 2018, the Trust and Company agreed the development of an Owners' Expectation Manual (OEM) and negotiated a Dividend Policy. A transition period has been agreed in the Company Strategic Direction's Document (SDD), whereby the Trust and Company will transition to the dividend policy while the convertible note is repaid over a three-year period.
- v) In 2019 the Company initiated a capital structure review, which is still ongoing. On 23 August it announced through the NZX that it was undertaking a strategic review into the capital structure of its effective 85% owned subsidiary, Ultrafast Fibre Ltd, and would be considering options available to it, including the status quo.

APPENDIX 2

About the Trust

- Seven Trustees are elected by the electors in the Trust district. Elections are held every three years in June. The next election is on 26 June 2020.
- Trusteeship is an onerous obligation, as detailed in the provisions of the Trustee Act 1956. Trustees have a higher level of liability than Directors of a company (partly because they take less risk, but also because they have additional duties). The obligations of Trusteeship are outlined in the Candidate Handbook.
- The Trust district comprises all of Hamilton City, most of Waikato District and a small part of Waipa District. The Trust has approximately 130,000 electors in the district.
- The Trust continues to the year 2073 unless terminated sooner if its purpose is completed.
- The Trust is a special purpose body with responsibilities to:
 - Manage its investment in WEL Networks Ltd
 - To ensure the Company operates as a successful business
 - To have regard to customer interests in industry matters
 - To distribute surplus income at its discretion and to be accountable to the community
- Income Beneficiaries are the Company, customers, the community and energy-related projects, at the Trust's discretion.
- Capital Beneficiaries are the Hamilton City Council (63%), Waikato District Council (35%) and the Waipa District Council (2%).
- WEL Networks Ltd is a 100% owned subsidiary company.
- The Financial Statements of the Trust are reported on annually in the Annual Report. Annual Reports for the past three Financial Years can be found on the Trust website.
- The Trust's financial strategy is detailed in the Statement of Investment Policies and Objectives (SIPO) (available on the Trust website).
- The Trust's five-year Community Investment Strategy and five-year Strategic Plan are also available on the website.

APPENDIX 3

References

- Deed of Trust
- WEL Energy Trust 2019-22 Community Investment Strategy
- WEL Energy Trust 2017-2021 Strategic Plan
- Trust Statement of Investment Policies and Objectives
- 2020/21 Annual Plan
- WEL Energy Trust 2019 Annual Report
- WEL Networks Ltd and Subsidiaries 2019 Annual Report
- Annual Review of WEL Energy Trust's Investment in WEL Networks Ltd, KPMG (December 2019)
- WEL Energy Trust website (www.welenergytrust.co.nz)

For the WEL Energy Trust

A handwritten signature in blue ink, appearing to read 'Raewyn Jones', is positioned above the printed name and title.

Raewyn Jones
CHIEF EXECUTIVE