



greater WELLINGTON
THE REGIONAL COUNCIL

Report 03.514
Date 29 August 2003
File RE/02/02/04

Committee Policy, Finance and Strategy Committee
Authors Murray Kennedy Project Manager, Renewable Energy

Water Board Functions Bill

1. Purpose

To obtain the Council's approval to proceed with a Bill that will provide the option of constructing wind turbines on land held for water supply purposes. Also, to provide an update on the potential use of water supply land for wind generation.

2. Background

In May, the Council approved the drafting of a Bill so that wind generation could take place on land designated for water catchment or forestry purposes (Report 03.224). Once drafted, the Bill was to be referred back to the Council together with an update on potential water catchment or forestry sites. Most water supply and non-Wairarapa exotic forestry land sits within the auspices of the Wellington Regional Water Board Act 1972 (WRWBA).

3. Water Board Bill

It was originally proposed that the Bill would effectively be an amendment to the WRWBA. However, following discussions between the Council's legal advisors and Parliamentary Counsel, there is now a preference for a new 'Act'. **Attachment 1** is the proposed "Wellington Regional Council (Water Board Functions) Bill". If it becomes an Act, it would sit alongside the WRWBA. From the Council's point of view, the result will be the same as was originally suggested in Report 03.224 (**Attachment 2**).

The main points of the Bill are:

- Any electrical works can be constructed on land held under the WRWBA. Electrical works are defined in the Electricity Act 1992 and have a wide scope.
- The Council can grant easements licences or permits for electrical works without the time constraints of the WRWBA.

- Before allowing any electrical works, the Council has to be satisfied the works will not impede any future water supply activities. The Council though is free to give preference to electricity works over exotic forestry.
- There is full flexibility as to who carries out the electrical works.
- The Act would not affect the provisions in the Resource Management Act 1991.

It is important to note that the Bill simply provides the Council with the option of allowing wind turbines but does not direct Council towards any specific decision. Any decision to allow (or not allow) wind turbines will be site specific, and will take into account a range of factors including the economics of any proposal as well as any environmental effects.

4. Next steps

These are set out in **Attachment 2** of report 03.224. Initially there is a notification process and once this is completed, the relevant documents are forwarded to the Office of the Clerk of the House of Representatives.

By convention, an electorate Member of Parliament for the area concerned is asked to take charge of the Bill through the Parliamentary process. In this case, the land areas are across several electorates and the Regional Council Centre is within Wellington City.

5. Wind generation update

An update of potential sites on “WRWBA” land is as follows:

Mt Climie

An agreement was reached with BCL to allow wind recording equipment to be installed on top of the BCL Mt Climie communications tower. The equipment was installed on 25 August. It will be a few months before there is an indication of the quality of the wind resource. No other investigation work has been carried out for this site.

Puketiro

A resource consent has been applied for to erect a 20 metre high tubular mast. Given the location and the distance from the neighbouring forested properties, it is expected that the consent will be non-notified. The mast and monitoring equipment have been ordered and should be delivered about mid October. Work has started on investigating the best access to the site.

Te Marua

A site has been identified that is relatively close to the Te Marua water treatment plant. A desktop exercise is underway to see if the wind resource is likely to be sufficient to warrant further investigations.

Other sites

Some ridges in the forestry area have been identified as possible areas for development but access may prove difficult. These sites will be evaluated in due course.

Belmont

For the sake of completeness, the Belmont site has been included although it does not fit within the WRWBA land holdings.

An application has been made for a resource consent for an anemometer mast. Once this is received, tenders will be called for the mast construction and foundations. The earliest wind recordings will start in January 2004. Secondary recording instruments at the Belmont site are being arranged and should be in place before the end of the year.

Work on other issues, such as roading, is continuing with the city councils and other groups. A number of other studies will be commissioned as part of the overall assessment.

6. Finance

The approved budget for 2003/4 is adequate for this year's investigation work. However, in some instances, investigations have shown it will be preferable to purchase wind recording equipment rather than lease it. This is because the pay back period on lease rates is 12 to 18 months. Most equipment will be in use at each site for two years or will be relocated. This means it is better to substitute capital expenditure for operating expenditure to produce benefits in the 2004/5 financial year. Details of the shift from operating expenditure to capital expenditure will be confirmed at the half yearly review.

7. Recommendations

It is recommended that the Committee:

1. *receive the report.*
2. *note its contents.*
3. *recommend to Council that:*
 - (i) *the Draft “Wellington Regional Council Water Board Functions Bill” proceeds*
 - (ii) *a local electorate Member of Parliament is asked to take charge of the Bill through the Parliamentary process.*

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Attachment 1: Proposed “Wellington Regional Council (Water Board Functions) Bill”

Attachment 2: Report 03.224

Wellington Regional Council (Water Board Functions) Bill

Local Bill

Explanatory note

General policy statement

Under Part II of the Wellington Regional Water Board Act 1972 (the Act), the Wellington Regional Council (the Council), as successor to the Wellington Regional Water Board, is responsible for the supply of bulk water to the territorial authorities within the Wellington Water Region. Under Part III of the Act, the Council is empowered to establish forests and carry out forestry operations. For these purposes, certain lands are vested in or under its control as water collection areas or as forestry areas. In the interests of sustainable development, the Council wishes to be empowered to use lands vested in it or under its control under the Act for the production of renewable energy. The object of this bill is to authorise the Council to establish and operate electrical installations and works in circumstances similar to those permissible under the Reserves Act 1977, whether itself or by a council-controlled organisation or a council-controlled trading organisation or under any contract, agreement or arrangement.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The bill is to come into force on the day after the date on which it receives Royal assent.

Clause 3 defines terms used in the bill.

Clause 4 enables the Council to establish and operate electrical installations and works on land vested in it under the Act and confers on the Council ancillary powers for such purpose.

Clause 5 enables the function conferred by clause 4 to be performed by a council-controlled organisation or a council-controlled trading organisation if the Council agrees and that organisation is controlled by the Council.

Clause 6 makes the bill subject to the Resource Management Act 1991.

Hon Marian Hobbs

Wellington Regional Council (Water Board Functions) Bill

Local Bill

Contents

Preamble

- (1) The Wellington Regional Water Board Act 1972 constituted the Wellington Regional Water Board and provided for its functions, powers, and duties:
- (2) The Wellington Region Constitution Order 1980 (*Gazette* 1980 page 1618) established the Wellington Regional Council and clause 7 of the order—
 - (a) transferred to the Wellington Regional Council the functions, rights, powers, and duties conferred or imposed on the Wellington Regional Water Board by the Wellington Regional Water Board Act 1972; and
 - (b) continued with all necessary modifications the application of provisions of the Wellington Regional Water Board Act 1972 (except sections 6, 8, 9, 11, 12, 13, 14, 15, 17, and 19) to the functions transferred to the Wellington Regional Council; and
 - (c) dissolved the Wellington Regional Water Board on the assumption of its functions by the Wellington Regional Council:
- (3) The Local Government (Wellington Region) Reorganisation Order 1989 (*Gazette* 1989 page 2491) dissolved and re-established the Wellington Regional Council; and clause 16 of the order specifies the functions, duties, and powers of the Wellington Regional Council, including the functions, duties, and powers of the former Wellington Regional Council under the Wellington Regional Water Board Act 1972:
- (4) Section 12 of the Local Government Act 2002 confers on local authorities full capacity and full powers for the purpose of performing their role but that section applies subject to any other enactment:
- (5) Under the Wellington Regional Water Board Act 1972 the functions, powers, and duties transferred to the Wellington Regional Council are limited:
- (6) The Wellington Regional Council wishes to establish and operate electrical installations and electrical works (such as wind turbines) to meet the needs for renewable energy but the Wellington Regional Water Board Act 1972 does not authorise this to be done on land previously owned by the Wellington Regional Water Board and now vested in the Wellington Regional Council, including water collection areas and forestry areas under that Act:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Wellington Regional Council (Water Board Functions) Act **2003**.

Part 1

Preliminary provisions

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

In this Act, unless the context otherwise requires,—

council-controlled organisation and **council-controlled trading organisation** have the same meaning as in section 6 of the Local Government Act 2002

electrical installation has the same meaning as in section 2 of the Electricity Act 1992

forestry area and **water collection area** have the same meaning as in section 2 of the Wellington Regional Water Board Act 1972

works has the same meaning as in section 2 of the Electricity Act 1992.

Part 2

Electrical installations and works

4 Construction, operation, and maintenance of electrical installations and works

- (1) The Wellington Regional Council may construct, operate, and maintain electrical installations or works on the land specified in **subsection (2)**.
- (2) The land—
 - (a) is land previously owned by the Wellington Regional Water Board and vested in the Wellington Regional Council; and
 - (b) includes forestry areas and water collection areas.
- (3) The Council has full powers for the purpose of performing the functions conferred by **subsection (1)**, including (but not limited to) the power—
 - (a) to enter into any contract, agreement, or arrangement with any person; and
 - (b) to grant easements, leases, licences, or permits on any conditions that the Council thinks fit.
- (4) Before performing the functions conferred by **subsection (1)**, the Council must satisfy itself that the performance of the function will not impede the performance by the Council of its functions, duties, and powers under Part II of the Wellington Regional Water Board Act 1972.

5 Performance of functions by council-controlled organisation or council-controlled trading organisation

The functions conferred by **section 4(1)** may be performed by a council-controlled organisation or council-controlled trading organisation if—

- (a) the Wellington Regional Council agrees; and
- (b) the council-controlled organisation or council-controlled trading organisation is controlled by the Wellington Regional Council.

6 Relationship with Resource Management Act 1991

This Act does not limit or affect the Resource Management Act 1991.



Report **03.224**
Date 6 May 2003
File RE102102104

Committee **Policy, Finance and Strategy**
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Renewable Energy Initiatives and the Wellington Regional Water Board Act 1972

1. Purpose

To obtain Greater Wellington Regional Council (GWRC) agreement to the drafting of a Bill to change the Wellington Regional Water Board Act 1972 for the singular and specific purpose of enabling the possible development of renewable energy generation within GWRC water collection areas.

2. Background

The Policy, Finance and Strategy Committee considered Report 03.11 on renewable energy initiatives in March 2003. Progress is being made on the Belmont Regional Park wind farm feasibility study and discussions are continuing with a number of interest groups. The Landcare Committee has approved the erection of wind recording equipment and quotations have been received for the equipment.

It was mentioned in Report 03.11 that some elevated sites in GWRC's exotic forest areas may be suitable for wind farms and these would be investigated in due course. Investigations have started into land that comes under the Wellington Regional Water Board Act 1972 (WRWB Act) and a land use issue has arisen that does not apply to any potential wind farms in the Council's regional parks.

3. Water Supply and Forest Land Use

GWRC holds nearly 40,000 hectares of land under the auspices of the WRWB Act. This land can be classified for operational purposes into three main groups:

- Existing water catchments
- Future water collection areas, with some parts planted in exotic trees
- Exotic forestry that is not part of any future water collection area.

Recreational activities take place to varying degrees in all three areas.

Exotic forests in the Wairarapa are not included. From a WRWB Act point of view there are just two land classifications - water collection areas and forestry areas.

At present the trees that form the Council's exotic forests (excluding the Wairarapa) are grown on forestry land or future water collection land. There is no exotic forestry in the existing water supply catchment areas.

Under the WRWB Act, different activities are allowed in forest areas compared to water collection areas. Activities in water collection areas are much more restrictive. Section 52 of the WRWB Act allows for the granting of permits for temporary occupation in any water collection or forestry area. While "temporary" is not defined, it would be difficult to construe that a wind turbine erected for an expected life of 20-25 years could be considered temporary. More permanent activities are currently allowed only in forestry areas.

When the WRWB Act was drafted over 30 years ago, there was no water treatment as we know it today - only the addition of chlorine. Hence, effectively precluding commercial or industrial activities in the catchments was very appropriate. Though provision was made in section 30 of the WRWB Act for surplus water to be sold for "motive power", there is no provision for hydro generation other than by the administrator of the WRWB Act. A couple of small sites for hydro generation using a run of river approach exist within the water catchments but are not currently viewed as being economic. At present, an electricity generator would be precluded from constructing these.

A detailed legal analysis of the status of GWRC landholdings that may be suitable for sustainable energy development is contained in **Attachment 1**. It concludes that it is not possible to grant easements over land set aside for water supply purposes. With wind generation costing in the order of \$1.6 million a megawatt of installed capacity, a generator is likely to require some security for its resource. One of the usual ways of achieving this on another person's land is by way of an easement.

For GWRC forestry areas an easement can be granted at present but some possible issues under section 40 of the Public Works Act are alluded to in the legal analysis.

An area in the Puketiro forest that adjoins the Battle Hill Regional Park appears to be very promising for wind generation with the order of 25 MW available. The area though is currently classified for water supply purposes. All up, it is expected that Council land which comes under the WRWBA will have the potential for at least 100 MW of wind generation. GWRC needs to protect its position with respect to sustainable energy generation in both water collection and forestry land.

It is concluded that changes should be sought to the WRWB Act to allow for sustainable energy development. Such changes though would not override any of the provisions in the Resource Management Act.

4. **Changing the WRWB Act**

An initial appraisal by GWRC's solicitors suggests that the best way to proceed is by changing the WRWB Act to contain many of the provisions in the Reserves Act 1977 and the Electricity Act 1992. Specifically this would then allow for electricity generation and directly associated activities. It could preclude activities on water catchment land that are not part of any electricity development. Thermal generation could also be precluded.

Attachment 2 is a set of notes prepared by the Office of the Clerk of the House of Representatives that gives a summary of the procedures for changing an Act of Parliament that is specific to a local issue. The time required to change an Act (or introduce a new Act) can vary considerably but it is unlikely to be less than six months, unless the Government deems the issue to be particularly urgent. A realistic timeframe is possibly 12 months or more.

5. **Communication**

If GWRC decided to proceed, it would be appropriate to issue a media statement.

6. **Consultation**

There are extensive consultation provisions in the Act amendment procedure and it would normally be expected that the Select Committee of Parliament considering the Bill would call for submissions.

No consultation has been carried out to date.

7. **Recommendations**

That the Committee recommend to Council that it:

1. *receive the report.*
2. *note the contents of the report.*
3. *approve the drafting of a Bill that would allow ~~for~~ sustainable energy development on Greater Wellington Regional Council land that is designated for water catchment or forestry purposes under the Wellington Regional Water Board Act 1972.*
4. *direct that, once a Bill is drafted, it be referred to the Committee for further consideration together with an update on the potential 'WRBA' land sites.*

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Attachment 1: Oakley Moran letter

Attachment 2: Promoting a local Bill, Office of the Clerk of the House of Representatives