

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of **PROPOSED PLAN CHANGE 1** to the Waikato Regional Plan – hearing of **BLOCK 3** topics

**AND**

**IN THE MATTER** of the hearing of submissions and the further submission by **WATERCARE SERVICES LIMITED** in relation to **BLOCK 3** topics

## **OUTLINE OF LEGAL SUBMISSIONS OF COUNSEL FOR WATERCARE SERVICES LIMITED**

### **1. INTRODUCTION**

1.1 This is the hearing of the Block 3 submissions and further submissions on, amongst other matters, the following matters of interest to Watercare Services Limited (“Watercare”):

- (a) Proposed Policy 17.
- (b) The definition of the term “wetland.”
- (c) The joint witness statement on Table 3.11-1 (“JWS”).

#### **Watercare Services Limited**

1.2 As advised in Mark Bourne’s evidence for the Block 1 hearings, Watercare is a council-controlled organisation (“CCO”) owned by the Auckland Council. Watercare is responsible for providing essential water and wastewater services to existing and future communities in Auckland and also townships in the northern part of Waikato District.

1.3 Watercare has significant interests in the Waikato Region as detailed in the evidence of Mr Bourne for the Block 1 hearings and in our legal submissions in the Block 1 hearings and need not be repeated here.

- 1.4 In the context of the Block 3 hearings the Watercare interests / assets that give rise to a particular interest in the matters set out at paragraph 1.1 above are:
- (a) As owner and operator of the Pukekohe Wastewater Treatment Plant ("Pukekohe WWTP"), which receives and treats wastewater from Pukekohe, Patumahoe, Buckland, Pokeno and Tuakau. The Pukekohe WWTP is in the process of being upgraded at a cost of approximately \$143M.
  - (b) As owner and operator of the Tuakau Water Treatment Plant, which treats the water taken from the Waikato River for municipal supply to Auckland (and places en route to Auckland).
  - (c) As the result of a bulk supply agreement with WDC for the provision of water and wastewater services to Pokeno and Tuakau within the Waikato District, including provision of bulk treated drinking water; transmission and treatment of bulk wastewater; and maintenance services for local network reticulation. The scope of these services may be increased in the future.

**Watercare support for PC1**

- 1.5 Watercare remains supportive of PC1 insofar as it is intended to achieve the Vision and Strategy for the Waikato River ("V & S") and thus reduce the amount of contaminants entering the Waikato River from the Waikato and Waipā catchments.

**Key issues for determination - Watercare Block 2 evidence - overview**

- 1.6 The key issues raised for determination by Watercare's three submissions on PC1 (primary submission, further submission and submission on Variation 1) in the context of the Block 3 hearings are addressed in the two statements of evidence filed by Mr Scrafton.

*Chris Scrafton – planning consultant (Beca)*

- 1.7 Mr Scrafton is a Technical Director – Planning at Beca. His evidence relates to planning issues raised by PC1. His evidence addresses the following matters:
- (a) The uncertainty arising from the drafting of Policy 17 and the reasons why it should be deleted.
  - (b) The need for a definition of wetland in PC1 that excludes artificial wetlands that are used for infrastructure purposes.

- (c) The level of agreement in the JWS regarding the need for numeric and narrative attribute states to be included in Table 3.11-1.

**Scope of legal submissions**

1.8 As with the Block 2 hearings, very little in the way of strictly “legal” issues arise in the context of the Block 3 hearings. To that extent, the purpose of these submissions is primarily to scope Watercare’s case by reference to the evidence of Mr Scrafton. Specifically, these submissions address the following issues:

- (a) The JWS and numeric and narrative attribute states (Section 2).
- (b) Including a definition of wetland in PC1 (Section 3).
- (c) Deletion of Policy 17 (Section 4).

**2. THE JWS AND NUMERIC AND NARRATIVE ATTRIBUTE STATES**

2.1 Mr Scrafton has analysed the JWS and identified that, at a high level, there is a significant amount of agreement amongst the experts regarding the attribute states that should be included in PC1. In that regard, Mr Scrafton states the following in his evidence:

"3.3 *In order to assist my understanding of the degree of consensus reached, I have summarised Table 1 of the JWS as follows:*

- (a) *All freshwater experts agree with the inclusion of a numeric attribute state for nutrients.*
- (b) *The majority of experts agree with the inclusion of a numeric attribute state for:*
  - (i) *E.coli;*
  - (ii) *Clarity;*
  - (iii) *Macroinvertebrates; and*
  - (iv) *Lakes.*
- (c) *The majority of experts agree with the inclusion of a narrative attribute state for:*
  - (i) *Deposited sediment;*
  - (ii) *Periphyton; and*
  - (iii) *Other wetlands.*
- (d) *The majority of experts agree with not including a narrative or numeric attribute state for:*
  - (i) *Macrophytes;*

- (ii) *Fish;*
  - (iii) *Riparian;*
  - (iv) *Temperature; and*
  - (v) *Toxicants.*
- (e) *Consensus was evenly split on the inclusion of either a numeric or narrative attribute state for Whangamarino Wetland."*

2.2 Mr Scrafton's evidence is that:

- (a) inclusion of numeric, rather than narrative, attribute states in PC1 should be preferred in terms of implementing the National Policy Statement for Freshwater Management 2014 (Updated 2017) ("NPSFW");<sup>1</sup> and
- (b) if appropriate numeric attribute states cannot be identified, then including narrative attribute states is an appropriate approach to give effect to the NPSFW.<sup>2</sup>

2.3 In that respect, and as the Panel will be aware, Policy CA2 of the NPSFW sets out the national objectives framework ("NOF") process for developing freshwater objectives and states the following with respect to numeric and narrative attribute states:

*"By every regional council, through discussion with communities, including tangata whenua, applying the following processes in developing freshwater objectives for all freshwater management units:*

...

- e) *formulating freshwater objectives:*
  - i. *in those cases where an applicable numeric attribute state is specified in Appendix 2, in numeric terms by reference to that specified numeric attribute state; or*
  - ii. *in those cases where the attribute is not listed in Appendix 2, in numeric terms where practicable, otherwise in narrative terms;"*

2.4 The short point to be taken from the above provisions is that the Panel:

- (a) must include the numeric attribute states from the NOF in PC1 insofar as those numeric attribute states are applicable; and

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<sup>1</sup> Scrafton JWS evidence, paragraph 4.1.

<sup>2</sup> Ibid, paragraphs 5.1 and 5.2.

- (b) subject to any scope issues arising, may include other attribute states in numeric terms if practicable otherwise in narrative terms.

### 3. INCLUDING A DEFINITION OF THE TERM "WETLAND" IN PC1

#### 3.1 Mr Scafton's evidence:

- (a) addresses Watercare's concern that the objectives, policies, and implementation methods of PC1 might be applied to artificial wetlands associated with water and wastewater infrastructure;
- (b) notes that Watercare considers that such artificial wetlands should be treated as infrastructure in comparison to natural wetlands;<sup>3</sup> and
- (c) also notes that there is a definition of "wetland" in the Waikato Regional Policy Statement that aligns with the definition of "wetland" in the Resource Management Act 1991 ("RMA"), but, unlike the RMA definition, includes reference to wetlands in the coastal marine area.<sup>4</sup>

#### 3.2 Mr Scafton states the following in his evidence:

"4.3 *Whilst I accept that it is generally good practice plan drafting to rely on a RMA definition where available, in my view it would be inappropriate for Watercare infrastructure to be considered the same as a natural wetland in the context of PC1. In this regard I note that "wastewater storage systems" and "water supply dams" are included in the definition of "regionally significant infrastructure I recommended through Block 1."*

#### 3.3 In light of the above, Mr Scafton recommends the following definition of the term "wetland" be included in PC1:

*"**wetland** (in the Waikato River catchment excluding the part of that catchment that is in the Lake Taupo catchment) includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions but does not include artificial wetlands that are used for infrastructure purposes."*

#### 3.4 By way of comparison, the definition of "wetland" in section 2 of the RMA is as follows:

*"**wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions."*

#### 3.5 The definition proposed by Mr Scafton is the RMA definition with:

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<sup>3</sup> Scafton Block 3 evidence, paragraph 4.1.

<sup>4</sup> Scafton Block 3 evidence, paragraph 4.2.

- (a) a spatial qualification ("*in the Waikato River catchment...*") at the beginning; and
- (b) a proviso of it regarding the exclusion of artificial wetlands used for infrastructure purposes at the end.

3.6 Counsel note that the definitions section of PC1 includes numerous new definitions that are to be inserted into the glossary of the Waikato Regional Plan that start with the following words:

*"For the purposes of Chapter 3.11..."*

3.7 To be consistent with that approach to drafting, Mr Scafton proposes amending his definition as follows (additions underlined and deletions ~~struck through~~):

**Wetland** ~~(in the Waikato River catchment excluding the part of that catchment that is in the Lake Taupo catchment)~~ For the purposes of Chapter 3.11, includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions but does not include artificial wetlands that are used for infrastructure purposes."

3.8 It is submitted that the above definition should be included in PC1 to ensure that artificial wetlands constructed for infrastructure purposes, such as wastewater treatment, are not treated in the same way as natural wetlands.

#### 4. **DELETION OF POLICY 17**

4.1 The wording of Policy 17 as recommended in the section 42A report for the Block 3 hearings is as follows (~~strike through~~ is a deletion recommended by the reporting officer):

***"Policy 17: Considering the wider context of the Vision and Strategy/Te Kaupapa Here 17: Te whakaaro ake ki te horopaki whānui o Te Ture Whaimana***

*When applying policies and methods in Chapter 3.11, seek opportunities to advance those matters in the Vision and Strategy and the values^ for the Waikato and Waipa Rivers that fall outside the scope of Chapter 3.11, ~~but could be considered secondary benefits of methods carried out under this Chapter~~<sup>18</sup>, including, but not limited to:*

- a. *Opportunities to enhance biodiversity, wetland values^ and the functioning of ecosystems; and*
- b. *Opportunities to enhance access and recreational values^ associated with the rivers."*

4.2 Mr Scafton is recommending deletion of Policy 17 for the following reasons:

(a) Policy 17 does not cascade from an objective that implements a value in PC1.<sup>5</sup>

(b) It is uncertain in a number of respects.<sup>6</sup>

4.3 It is submitted that Policy 17 should be deleted for the reasons given in Mr Scafton's evidence.

5. **CONCLUDING SUBMISSION**

5.1 Having regard to the above, Watercare respectfully submits that:

(a) Mr Scafton's definition of wetland should be included in PC1; and

(b) Policy 17 should be deleted.

5.2 Watercare is grateful for the Panel's consideration of this matter.

**DATED** this                    day of August 2019



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**S J Berry**



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**C D H Malone**

**Counsel for Watercare Services Limited**

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<sup>5</sup> Scafton Block 3 evidence, paragraph 3.5(c).

<sup>6</sup> Scafton Block 3 evidence, paragraph 3.6(a) to (e) and 3.7.