

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of an application for regional resource consents and a land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES Soil**) in fulfilment of section 88 of the RMA.

FURTHER SUPPLEMENTARY EVIDENCE OF KAREN LEANNE BAVERSTOCK ON BEHALF OF WATERCARE SERVICES LIMITED

Planning

13 April 2021

1. INTRODUCTION

1.1 My full name is Karen Leanne Baverstock.

1.2 I prepared a statement of evidence dated 4 February 2020 in relation to Watercare Services Limited (**Watercare**)’s application for regional resource consents and a land use consent for the replacement of the existing Huia Water Treatment Plant (**WTP**) (the **Project/Application**). I refer to my qualifications and experience in my statement of evidence in chief and do not repeat those matters here.

1.3 I also presented a statement of summary, supplementary and rebuttal evidence at the Council hearing on 27 February 2020.

1.4 The purpose of this supplementary statement is to address the National Policy Statement for Freshwater Management 2020 (**NPS-FW**) and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-FW**), both of which have come into effect on 3 September 2020, since the hearing was adjourned.

1.5 Pursuant to s 104(1)(b) of the Resource Management Act 1991 (**RMA**) the Commissioners are required to have regard to them when making their decision. This section of my evidence provides an assessment of the application against both documents.

1.6 I refer to the evidence of chief of Dr Ian Boothroyd which describes the watercourses on the Project site, and Dr Sarah Flynn which describes the vegetation communities across the Project site including the 'swamp maire-puketea-kahikatea swamp forest' (swamp forest wetland) at the western margin of the Reservoir 1 site. I also refer to Dr Boothroyd's supplementary evidence dated 13 April 2021 which responds to the NPS-FW and NES-FW.

1.7 I advise that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence.

2. NPS-FW 2020

2.1 The NPS-FW is a relevant national policy statement for the Commissioners to consider under section 104(1)(b)(iii). Therefore, the relevant objectives and policies of the NPS-FW must be considered.

2.2 In addition, under section 55(2) of the RMA, Auckland Council (**AC / the Council**) must amend its regional plan, without using a Schedule 1 process, to make the changes set out in Subpart 1.7 of the NPS-FW. Subpart 4.1(1) of the NPS-FW provides that every local authority must give effect to the NPS-FW as soon as reasonably practicable. These matters are addressed below.

2.3 This section therefore considers:

- a) The Project's compliance with the objectives and policies of the NPS-FW; and
- b) The Project's compliance with the policies in the Subparts of the NPS-FW that must be incorporated by AC into its regional plan without using a Schedule 1 process.

2.4 The objective of the NPS-FW is as follows:

The objective of this [NPS-FW] is to ensure that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems*
- (b) second, the health needs of people (such as drinking water)*
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

2.5 The NPS-FW includes 15 policies which relate to:

- (a) Te Mana o te Wai and involving tangata whenua in freshwater management (Policies 1 and 2);
- (b) Integrated whole-of-catchment management (Policy 3);
- (c) Integrated management with New Zealand's response to climate change (Policy 4);
- (d) Implementation of a National Objectives Framework to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and for all others is either maintained or improved (Policy 5);
- (e) No further loss of extent of wetlands, and protection of their values and restoration (Policy 6);
- (f) Avoidance of the loss of river extent and values to the extent practicable (Policy 7);
- (g) Protection of significant values of outstanding water bodies (Policy 8);
- (h) Protection of the habitats of indigenous freshwater species (Policy 9);
- (i) Protection of the habitat of trout and salmon (Policy 10);
- (j) Efficient use and allocation of freshwater (Policy 11);
- (k) Achievement of the national target (as set out in Appendix 3) for primary contact (Policy 12);

- (l) Monitoring and reporting (Policies 13 and 14); and
- (m) Enabling communities to provide for their social, economic, and cultural well-being (Policy 15).

2.6 In my opinion, the Project is consistent with this objective and policy framework for the following reasons:

In terms of the NPS-FW objective:

2.7 The Project has been developed to prioritise the health and well-being of water bodies and freshwater ecosystems. The site layout optimisation process described in Section 5.5 of the Assessment of Environmental Effects and in Ms Jessica Urquhart's evidence in chief established key environmental constraints including avoiding effects on freshwater ecosystems as far as practicable. The assessment undertaken at this stage of the Project focused on refining the size/footprint of the proposed WTP and locating the footprint, where practicable, away from permanent and intermittent streams. Where it was not practicable to avoid effects on streams, the focus was on the remediation and then mitigation of adverse effects.

2.8 As a result of the site layout optimisation process and subsequent work, the Project footprint avoids effects on the Armstrong Gully stream channels and wetland area. While the Project footprint requires the reclamation of a 53 m length of intermittent stream (the Yorke Stream), the response to this has been thorough and comprehensive, as described in the evidence in chief of Dr Boothroyd. In summary, an ecologically functional diversion channel of at least 70 m in length will be constructed together with riparian planting, daylighting of approximately 45 m of currently underground piped sections of the Armstrong Stream, the provision of fish passage in the Armstrong Stream, wider riparian enhancement planting throughout the remainder of the Project site, and off-site compensation in the form of erosion protection works in the upper Yorke Stream downstream of the Project site.

2.9 Dr Boothroyd considers these measures ensure 'no net loss' of freshwater ecological values and provide an overall ecological gain for freshwater values. These requirements are supported by a suite of recommended conditions of consent to ensure the expected outcomes are achieved. Watercare has also agreed to enter into a covenant to protect the remaining vegetation across the Project site and the Armstrong Gully and Yorke Stream and the stream restoration areas (along with high value SEA vegetation) in perpetuity, and this commitment is reflected in the proposed conditions of consent (Section F: Protective

covenant or encumbrance). These updated conditions will be provided to the Commissioners as part of Watercare's reply.

- 2.10** The Project directly provides for the health needs of people through the provision of safe drinking water, and more broadly enables people and communities to provide for their social, economic, and cultural well-being, now and in the future. This has been addressed in detail in the evidence in chief of Mr Mark Bourne and Mr Priyan Perera as well as in my evidence in chief and is not repeated here.

In terms of the NPS-FW policy framework:

- 2.11** Engagement with Mana Whenua is described in the evidence of Mr Paul Jones (refer Section 7 of his evidence in chief). The Cultural Impact Assessment (**CIA**) prepared by Te Kawerau ā Maki identifies the cultural values, interests and associations that Te Kawerau ā Maki hold in relation to the Project site, as well as the Waitākere Ranges more broadly. The CIA assesses the potential effects of the Project on these values, and identifies a comprehensive suite of measures to address these effects. Ms Urquhart has responded to the CIA prepared by Te Kawerau ā Maki for the Project in her summary and supplementary evidence.
- 2.12** To respond to the matters raised in the CIA, Watercare is proposing an additional condition of consent requiring the preparation and implementation of a Cultural Heritage Management Plan (**CHMP**). The CHMP is to be prepared in consultation with Te Kawerau ā Maki and is to include, amongst other things, Te Kawerau ā Maki input into the monitoring of freshwater ecology and opportunities for additional mitigation and offsetting based on the measures identified in the CIA, including input into stormwater treatment and design.
- 2.13** As Ms Urquhart has described in her summary and supplementary evidence, there are a range of other management measures and protocols proposed as part of the Application that are consistent with the CIA recommendations, including riparian planting and enhancement riparian planting along sections of Yorke and Armstrong Gully streams within the Project Site; daylighting of approximately 45 m of piped sections of Armstrong Stream; and erosion protection works in the upper Yorke Stream. Further, as set out in Ms Urquhart's summary and supplementary evidence, the proposed CHMP condition provides for Te Kawerau ā Maki to assist in the preparation of the final Ecological Management Plan to ensure the knowledge, expertise and practices held by Mana Whenua is utilised in the final design of these measures.

- 2.14** Te Kawerau ā Maki has requested ongoing consultation with Watercare to further discuss the impacts of the Project on the rāhui and to identify other potential mitigation measures as the Project progresses. In this regard, Ms Urquhart notes that the development and implementation of a CHMP in consultation with Te Kawerau ā Maki, will enable ongoing engagement throughout the Project to address other cultural matters that might arise during construction. The proposed consent conditions also specifically provide for a representative of Te Kawerau ā Maki to act as a trustee of the Trust that is accountable for implementing the projects and achieving the biodiversity targets of the Waima Biodiversity Management Plan.
- 2.15** An integrated approach to freshwater management that considers the effects of the use and development of land on a whole-of-catchment basis has been taken, as encapsulated in the evidence of Dr Boothroyd and Dr Flynn (Policy 3).
- 2.16** The effects of climate change have been considered as part of stormwater design for the Project as described in the evidence in chief of Mr Campbell McGregor (Policy 4).
- 2.17** The Project has avoided the loss of natural inland wetlands and has protected their values (Policy 6). This is addressed later in this evidence.
- 2.18** While the Project does involve the permanent loss of a section of stream, a thorough assessment was undertaken to avoid the loss of watercourse extent as far as practicable. In addition, the freshwater offset package (summarised above at paragraphs 2.8 and 2.9) will offset the effects of this loss of stream and protect the habitats of indigenous freshwater species (Policies 7 and 9).
- 2.19** The Project does not affect any outstanding water bodies (Policy 8).
- 2.20** The Project does not affect the habitat of trout or salmon (Policy 10).
- 2.21** The Project does not involve the allocation and use of water (Policy 11).
- 2.22** The Project will maintain existing water quality through the application of best practise erosion and sediment control methodologies that are consistent with, and in many instances better than, best practise set out in GD05. Therefore the primary contact requirements in Appendix 3 of the NPS-FW will not be affected (Policy 12).

- 2.23** Policies 13 and 14 (which relate to monitoring and information sharing) are not relevant to the Project but the recommended conditions require monitoring and reporting on water quality.
- 2.24** The significant benefits of the Project will enable communities to provide for their social, economic and cultural well-being (Policy 15).

Subpart 3.22(1) - natural inland wetlands

- 2.25** Subpart 3.22(1) provides that every regional council must include the specified policy (or words to the same effect) in its regional plan. As set out in the supplementary evidence of Dr Boothroyd, the Project footprint does not encompass any natural wetlands as defined by Clause 3.12 of the NPS-FW and there are no earthworks or vegetation removal located within 10 m of a natural wetland. As set out in paragraph 1.6 of this evidence, the only natural wetland within the wider Watercare site is the swamp forest wetland located on the northern side of Woodlands Park Road to the west of, and well outside, the Project footprint. In his supplementary statement Dr Boothroyd estimates this is located at a distance of over 100m from the closest boundary of the Project footprint (Reservoir 1 and the NH2 shaft).
- 2.26** Further to the above, outside of the Project footprint extensive remediation and on-site mitigation works are proposed, including the protection and enhancement of the remaining 11 ha of native vegetation within the Project Site which extends to weed and pest control and replanting.
- 2.27** The loss of extent of natural inland wetlands is therefore avoided and their values are protected.

Subpart 3.24(1) - rivers

- 2.28** As noted above, the Project involves the permanent loss of a 53 m intermittent section of the Yorke Stream. Subpart 3.24(1) provides that every regional council must include the following policy (or words to the same effect) in its regional plan:

"The loss of river extent and values is avoided, unless the council is satisfied:

- (a) that there is a functional need for the activity in that location; and*
- (b) the effects of the activity are managed by applying the effects management hierarchy."*

2.29 "Functional need" is defined in the NPS-FW as meaning "*the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.*" This is the case for this activity for the following reasons:

- a) The Project needs to be located within a certain elevation band in close proximity to the existing raw water network and to the existing and future treated water network. It also needs to be in proximity to the roading network, near a power supply and in a logical location for the customers it is going to supply. This is addressed at paragraph 10.2 of the evidence in chief of Mr Perera. Alternative locations to construct a replacement WTP and reservoirs were considered and evaluated through a comprehensive site alternatives assessment. Watercare undertook a thorough and detailed evaluation of the options before deciding on the preferred site.
- b) A thorough onsite alternatives assessment was then undertaken (through the site layout optimisation exercise) to avoid the loss of stream extent and values as far as practicable. Careful review of stream length loss was undertaken by the design team and the ecologists.
- c) The constraints on the design of the Project included reducing ecological and landscape effects while ensuring the replacement WTP could be appropriately designed and constructed to deliver a fit for purpose modern facility. In this respect, while every effort has been made to avoid effects on watercourses the Project comprises large-scale water treatment infrastructure. The location of the Yorke Stream towards the centre of the replacement WTP site meant that avoidance was not achievable and the Project had to be located (in part) within that environment.

2.30 Further, the adverse effects of the Project are managed through applying the effects management hierarchy, which is also defined by the NPS-FW. The Project has applied this hierarchy as it has:

- a) Avoided adverse effects where practicable as set out in Dr Boothroyd's evidence in chief in relation to freshwater ecology.
- b) Where adverse effects cannot be avoided, the Project has minimised (including remedied) them where practicable.

- c) Where more than minor residual adverse effects cannot be avoided, minimised, or remedied, provided for aquatic offsetting / compensation, as those terms are defined by the NPS-FW.

2.31 As set out in the evidence in chief of Dr Boothroyd, due to the intermittent nature of the Yorke Stream and its moderate to low ecological value, 'significant' adverse effects will be avoided and other adverse effects are avoided as far as practicable and otherwise minimised. Residual adverse effects, while not significant, will be mitigated and offset on the Project site, in a like-for-like manner, and to achieve a net gain.

2.32 Therefore I consider that the Project complies with the policy direction set out in the NPS-FW.

Subpart 3.26(1) - fish passage

2.33 Subpart 3.26(1) requires every regional council to include the following fish passage objective (or words to the same effect) in its regional plan:

"The passage of fish is maintained, or is improved, by instream structures, except where it is desirable to prevent the passage of some fish species in order to protect desired fish species, their life stages, or their habitats."

2.34 At paragraph 6.26 of his evidence in chief, Dr Boothroyd notes that access for fish passage is currently highly restricted due to stream modification in the Armstrong Stream and stream collapse in the Yorke Stream.

2.35 As set out in Dr Boothroyd's supplementary evidence, there are no instream structures proposed within the intermittent streams or diversion channel and therefore the requirements in relation to fish passage do not apply.

2.36 Notwithstanding this, fish passage will be improved through daylighting sections of the Armstrong Stream and the provision of fish passage to this watercourse. Overall, I understand from Dr Boothroyd's supplementary evidence that fish passage, to the degree such passage actually occurs in the streams onsite, will be maintained and improved.

NES-FW 2020

2.37 The NES-FW also came into force on 3 September 2020¹. In setting out the relationship between national environmental standards and rules or consents, section 43B(7) of the RMA states that:

“The consent prevails over a national environmental standard if the application giving rise to the consent was the subject of a decision on whether to notify it before the date on which the standard is notified in the Gazette. However, the consent does not prevail if the standard expressly provides otherwise.”

2.38 Under that section a consent prevails over a National Environmental Standard (**NES**) if it is the subject of a notification decision before the NES is notified in the gazette. This is the case with the Huia Replacement WTP application. However, I understand the Courts have not specifically considered the meaning of this section, and how it applies to unresolved applications at the time the NES-FW takes effect. I understand that this will be addressed further in the reply legal submissions on behalf of Watercare.

2.39 Irrespective of this legal position, for the reasons explained below I consider that the Project complies with the NES-FW. Minor changes will be made to the proposed conditions to ensure that outcome by including provisions required by the NES-FW. As I have noted above, these updated conditions will be provided to the Commissioners as part of Watercare’s reply.

2.40 The NES-FW sets out rules in relation to works within or in proximity to natural inland wetlands. The definition of natural inland wetlands as it applies to the Project site is addressed in the supplementary evidence of Dr Boothroyd and in paragraph 1.6 above.

¹ Some parts of the NES-FW do not come into force immediately, but those parts are not relevant to the Project (they relate to intensive winter grazing, stockholding areas and application of synthetic nitrogen fertiliser to pastoral land).

2.41 The NES-FW includes the following regulations of relevance to the Project:

Natural wetlands

"Specified infrastructure" within or affecting "natural wetlands" is provided for in Regulations 45 to 47 of the NES-FW as follows:

- a) Regulation 45(1) and (2): Vegetation clearance, earthworks or land disturbance within, or within a 10m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.

This Regulation is not applicable. There is no vegetation clearance, earthworks or land disturbance within 10m of a natural wetland as set out in Dr Boothroyd's supplementary evidence.

- b) Regulation 45(3): Earthworks or land disturbance within a 100m setback from the natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure, and results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.

This Regulation is not applicable. Earthworks or land disturbance are estimated to be setback further than 100m from the natural wetland and will not result in the complete or partial drainage of all or part of the wetland. This is addressed in the evidence in chief of Mr Kevin Hind and Dr Boothroyd and in the supplementary evidence of Dr Boothroyd.

- c) Regulation 45(4): The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.

This Regulation is not applicable. Groundwater diversion and dewatering during the construction of Reservoir 1 and the NH2 connection is estimated to be setback over 100m from the natural wetland. Notwithstanding this, the effects of this activity are addressed in the evidence in chief of Mr Hind and Dr Boothroyd. The requirement for groundwater monitoring in, and adjacent to,

the Kahikatea wetland has also been added to the proposed conditions of consent (Section N: Groundwater diversion²).

Specified infrastructure

- 2.42** The Project meets the definition of “specified infrastructure” in the NPS-FW as it is infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002 (**CDEMA**)). Watercare is an entity that “supplies or distributes water to the inhabitants of a city, district, or other place” as set out in Schedule 1: Lifeline utilities - Part B. Watercare is therefore defined as a lifeline utility in the CDEMA.
- 2.43** Specified infrastructure in the NPS-FW also means regionally significant infrastructure identified as such in a regional policy statement or plan. This definition is problematic in that while the replacement WTP is unarguably regionally significant infrastructure, the AUP does not contain a definition of regionally significant infrastructure (instead it contains a definition of ‘infrastructure’). In any case, the Project is specified infrastructure by virtue of the above.

Reclamation of the bed of a river

- 2.44** In addition to the regulations outlined above which apply to natural wetlands, the reclamation of the bed of any river is a discretionary activity (Regulation 57). This applies to the proposed diversion and reclamation of a 53m section of the Yorke Stream. However within an SEA this is a non-complying activity in the Auckland Unitary Plan (**AUP**) – Rule E3.4.1(A49)³. Pursuant to section 43B(1) of the RMA, ‘*a rule that is more stringent than a national environmental standard prevails over the standard, if the standard expressly says that a rule may be more stringent than it.*’ Regulation 6(1) of the NES-FW states that a regional rule may be more stringent than the regulations, and therefore the AUP rule prevails over Regulation 57.

3. CONCLUSION

- 3.1** In my opinion the Project complies with the objectives and policies of the NPS-FW, including those that must be incorporated by AC into its regional plan without using a Schedule 1 process. The Project has been developed to prioritise the health and well-being of water

² These updated conditions will be provided to the Commissioners as part of Watercare's reply.

³ The corresponding effects management hierarchy contained in the policy provisions of the AUP establishes a more stringent approach than that set out in the NPS-FW.

bodies and freshwater ecosystems and the adverse effects of the Project are managed through applying the effects management hierarchy.

- 3.2** In particular, the Project footprint avoids effects on the Armstrong Gully stream channels and natural wetland area. While the reclamation of a 53 m length of intermittent stream (the Yorke Stream) is required, the response to this has been comprehensive and as set out in Dr Boothroyd's evidence in chief ensures 'no net loss' of freshwater ecological values and provides an overall ecological gain for freshwater values.
- 3.3** The Project is specified infrastructure which directly provides for the health needs of people through the provision of safe drinking water, and more broadly enables people and communities to provide for their social, economic, and cultural well-being, now and in the future. Therefore I consider that the Project complies with the policy direction set out in the NPS-FW.
- 3.4** In terms of the NES-FW, the applicable regulations impose, at most, a discretionary activity status; however, the resource consents for the Project were bundled with an overall activity status of non-complying. All the relevant activities within the NES-FW have been addressed within the consents for the Project sought to date. The Project complies with the provisions of the NES-FW.

Karen Leanne Baverstock

13 April 2021