

**BEFORE THE INDEPENDENT HEARINGS PANEL**  
**THE PROPOSED WAIKATO DISTRICT PLAN (STAGE 1)**

**UNDER** the Resource Management Act 1991 (“**RMA**”)

**IN THE MATTER OF** hearing submissions and further submissions on the  
Proposed Waikato District Plan (Stage 1)  
**Topic 22: Infrastructure and Energy**

**BY** **WATERCARE SERVICES LIMITED**  
Submitter

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**MEMORANDUM OF COUNSEL FOR WATERCARE SERVICES LIMITED**

**Dated: 17 December 2020**

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## MAY IT PLEASE THE HEARINGS COMMISSIONERS:

### Introduction

1. This memorandum is filed on behalf of Watercare Services Limited (**Watercare**) in response to the directions of the Hearings Panel dated 4 November 2020 directing that:

#### General Drafting

9. No later than 5pm on Friday 4 December 2020, Council representatives are to provide a revised version of the all the objectives policies and rules of the proposed plan that apply to Infrastructure to all parties that presented evidence or submissions at the Infrastructure Hearing and to the Hearings Administrator. For the avoidance of doubt, that document need not address matters arising from Directions 5-8 above, but should address all other amendments that the Council considers either aid clarity and/or which address matters raised by the Hearings Panel during the Infrastructure Hearing.
  10. No later than 5pm on Friday 18 December 2020, any submitter who presented evidence or submissions at the Infrastructure Hearing who wishes to do so, is to provide the Hearings Administrator with any drafting amendments they propose, and to identify areas of agreement and disagreement.
2. Watercare has considered the revised provisions prepared by Mr Mackie and provided to submitters on 4 December 2020 pursuant to direction 9 (**revised provisions**).
  3. In its legal submissions and evidence presented at Hearing 22 Watercare sought:
    - (a) amendments to the policy framework to enable infrastructure to locate in Identified Areas where there is a functional or operational need for this;
    - (b) the activity status of water treatment plants, wastewater treatment plants and above ground reservoirs in Identified Areas under Rule 14.11.4 be changed from non-complying to discretionary; and

- (c) the Panel adopt the permitted activity thresholds for vegetation clearance within SNAs proposed in the evidence of Ms Foley on behalf of the Waikato Regional Council (**WRC**).<sup>1</sup>
4. Watercare's position on the revised provisions in relation to each of these three matters is set out below.

***The Policy Framework to enable Infrastructure in Identified Areas***

5. Watercare generally supports the policy framework for infrastructure in Identified Areas in the revised provisions, and in particular the amended Policy 6.1.10 Policy – Infrastructure in Identified Areas.<sup>2</sup>
6. The one exception to this is that Policy 6.1.10(b), as proposed in the revised provisions, refers to “providing for lifeline utility infrastructure” within Identified Areas.
7. Watercare assumes the term “Lifeline utility” is intended to have the same meaning as under Schedule 1 of the Civil Defence Emergency Management Act 2002. However, the term is currently not defined in the definitions chapter of the proposed plan.
8. Using a term taken from other legislation and not defined in the proposed plan may create unnecessary uncertainty. In Watercare's respectful submission, Policy 6.1.10(b) should be amended to either:
- (a) refer simply to “infrastructure in Identified Areas”. Infrastructure is defined in the proposed plan, and has the same meaning as in section 2 of the RMA; or
- (b) If the Panel is minded to take a more restrictive approach to the type of infrastructure that gets the benefit of Policy 6.1.10(b), the term “regionally significant infrastructure”, as defined in the Waikato Regional Policy Statement should be used. The term regionally significant infrastructure is well understood in the Waikato, and covers a range of key infrastructure including municipal water treatment

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<sup>1</sup> Opening Legal Submissions of Counsel for Watercare Services Limited, paragraph 1.5.

<sup>2</sup> Policy 6.1.10(b) largely adopts wording provided by Watercare to Council officers after the Hearing, in response to a direction made during the Hearing on 20 October 2020 by Commissioner Mitchell.

plants, water supply treatment plants and above ground reservoirs.<sup>3</sup>  
The definition of regionally significant infrastructure also includes lifeline utilities, as defined under the Civil Defence and Emergency Management Act 2002.

***Activity Status for Water Treatment Plants, Wastewater Treatment Plants and Above Ground Reservoirs***

9. The revised provisions amend the activity status of water treatment plants and above ground reservoirs located in Identified Areas under Rules 14.11.3 and 14.11.4 from non-complying to discretionary, as sought by Watercare.
10. However, the activity status of wastewater treatment plants in Identified Areas remains non-complying under Rule 14.11.4(a) NC2 (viii) of the revised provisions.
11. It is not clear whether the proposed discretionary activity status for water treatment plants and above ground reservoirs but non-complying activity status for wastewater treatment plants in Identified Areas is an intentional distinction, or an inadvertent error.
12. Watercare's legal submissions and evidence for Hearing 22 sought that water treatment plants, above ground reservoirs and wastewater treatment plants in Identified Areas all be discretionary activities, for the same reasons.
13. It is respectfully submitted that for the reasons set out in Watercare's legal submissions and evidence wastewater treatment plants in Identified Areas should also be accorded discretionary activity status.
14. Lastly, it is submitted that the drafting amendments proposed in the revised provisions to make water treatment plants and above ground reservoirs in Identified Area discretionary activities are not as clear as they could be, and have the potential to create uncertainty in the future.<sup>4</sup>
15. To make the drafting of the rules as clear as possible Watercare seeks that Rule 14.11.3 Discretionary Activities be amended to explicitly state that water

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<sup>3</sup> Statement of Primary Evidence of Mr Scrafton, paragraph 8.4.

<sup>4</sup> Rule 14.11.3 Discretionary Activities D1 uses a "negative definition" to accord all water treatment plants "not located within road or unformed road" discretionary activity status. D3 provides that "Above ground reservoirs" are discretionary.

treatment plants, above ground reservoirs and wastewater treatment plants in Identified Areas are discretionary activities, as follows:

D4	Water treatment plants, above ground reservoirs and wastewater treatment plants located within Identified Areas
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16. Watercare also seeks that Rule 14.11.4 NC2(viii) which makes wastewater treatment plants in Identified Areas a non-complying activity be deleted.

***Permitted Activity Threshold for Vegetation Clearance in SNAs***

17. The revised provisions include at Rule 14.3.1 P5 the permitted activity rule for vegetation clearance in SNAs proposed by Ms Foley on behalf of the WRC.

18. Watercare supports this amendment.

**Conclusion**

19. Watercare supports the revised provisions prepared by Mr Mackie, subject to the amendments to:
- (a) Policy 6.1.10(b) set out in paragraph 8; and
  - (b) Rules 14.11.3 and 14.11.4, set out in paragraphs 15 and 16 above.



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17 December 2020