

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

**STATEMENT OF REBUTTAL EVIDENCE OF CHRISTOPHER JAMES
SCRAFTON ON BEHALF OF WATERCARE SERVICES LIMITED**

Planning

Dated: 6 October 2020

1. INTRODUCTION

1.1 This statement of rebuttal evidence on behalf of Watercare Services Limited responds to matters raised in the following statements of primary evidence:

- (a) The evidence of Ms Foley on behalf of the Waikato Regional Council; and
- (b) The evidence of Ms Burns on behalf of the Director-General of Conservation.

1.2 I confirm that I have the qualifications and expertise previously set out in my primary evidence.

1.3 I repeat the confirmation given in my primary evidence that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014 and that my evidence has been prepared in accordance with that Code.

2. EVIDENCE OF MS FOLEY ON BEHALF OF THE WAIKATO REGIONAL COUNCIL

2.1 I have reviewed the primary evidence Ms Foley for the Waikato Regional Council.

2.2 Ms Foley's evidence has identified an inconsistency between the rule framework of Chapter 14 and other zone chapters, that being that there are no restrictions or thresholds for vegetation clearance for infrastructure as a permitted activity within a Significant Natural Area (SNA)¹ currently proposed. It is only if vegetation removal becomes a restricted discretionary activity that there is a consideration of any effects on the values, qualities and characteristics of the site. Ms Foley's evidence considers that the absence of such permitted activity standards in the Proposed Waikato District Plan (PWDP) does not give effect to the Waikato Regional Policy Statement (RPS), specifically Policy 11.2 which requires district plans to protect areas of significant indigenous vegetation and Implementation Method 11.2.2², which recognises some activities have a functional need to be located in SNAs.

2.3 In response to this, Ms Foley's evidence has recommended the inclusion of specific permitted activity standards for vegetation clearance within a Significant Natural Area³ in Rule 14.3.1.4(1) of the PWDP. These are:

(c) Any indigenous vegetation alteration or removal with a Significant Natural Area must not:

(i) include any trees over 6m in height or 600mm in girth at a height of 1.4m; and

¹ Para 16, Statement of Evidence of Marie-Louise (Miffy) Foley for the Waikato Regional Council

² Para 17, Statement of Evidence of Marie-Louise (Miffy) Foley for the Waikato Regional Council

³ Para 18, Statement of Evidence of Marie-Louise (Miffy) Foley for the Waikato Regional Council

(ii) exceed 50m² per site over any consecutive 12 month time period.

- 2.4 Ms Foley's evidence also provides comment on Policy 6.1.10⁴ and the preamble to this policy which states: "*Ensure consideration of the values of...*". Ms Foley's evidence states that wording consistent with the RPS should be used, namely Implementation methods 11.2.2 (SNAs) and 12.1.1 (ONFLs) which use the hierarchy of avoid, remedy and mitigate adverse effects rather than ensuring the consideration of the values.

3. RESPONSE

- 3.1 I agree with the evidence of Ms Foley that there are no permitted activity standards in Chapter 14 related to infrastructure and vegetation clearance within a SNA. In such a scenario, my understanding of general planning practice is that such rules would likely be provided within the zone or overlay chapters. However, I note that Rule 14.1(1) as notified, states:

The provisions within this Infrastructure and Energy chapter of the district plan shall apply across the district in all the zones and overlays in the district plan. The zone chapters and their associated overlays, objectives, policies and rules do not apply to infrastructure and energy activities unless specifically referred to within this Infrastructure and Energy chapter.

- 3.2 This rule makes it clear that other sections do not apply to infrastructure and energy activities, including the rules of the underlying zone in relation to SNA.
- 3.3 Given this, I agree with the evidence of Ms Foley that the absence of permitted activity standards setting appropriate thresholds for vegetation removal within SNAs for infrastructure appears to be an omission from the PWDP. I consider this a consequence of the drafting approach taken in Chapter 6 and 14 of the PWDP where all overlays are grouped into the single term "Identified Areas". Whilst this approach reduces repetition of rules and standards in Chapter 14, I consider it also makes it difficult to introduce overlay specific rules and standards due to the general grouping of all overlays together.
- 3.4 Notwithstanding the absence of any assessment as to whether the permitted activity rules proposed by Ms Foley are the most appropriate way to achieve the objectives under section 32(1)(b) of the RMA, I generally agree with the proposed approach

⁴ Para 19, Statement of Evidence of Marie-Louise (Miffy) Foley for the Waikato Regional Council

noting that the proposed provisions are similar to standards included in the Auckland Unitary Plan Operative in Part.

3.5 In terms of the point raised in Ms Foley’s evidence regarding the inconsistent policy language between the PWDP and RPS, I considered this discrepancy when drafting my recommended policies in my primary statement of evidence (refer Attachment A). I consider that the management hierarchy should be applied when considering the effects of infrastructure on the values of Identified Areas, and I recommended this approach. Therefore, I consider my recommended policies for Infrastructure within Identified Areas, and in particular my proposed Policy 6.1Y, gives effect to the RPS and addresses the concerns raised in the evidence of Ms Foley.

4. EVIDENCE OF MS BURNS ON BEHALF OF THE DIRECTOR-GENERAL OF CONSERVATION.

4.1 I have reviewed the primary evidence of Ms Burns for the Director-General of Conservation.

4.2 Ms Burns’ evidence sets out her agreement with the s42A Report that the activity status for infrastructure within Identified Areas should remain as a non-complying activity, rather than a discretionary activity⁵. This is in response to a submission of Powerco⁶ which sought a change in activity status of infrastructure within Identified Areas. Ms Burns’ evidence⁷ notes that:

The current non-complying activity status allows for consideration of a full suite of effects and provides additional triggers on any consent application of this nature. Allowing a less stringent activity status would not appropriately recognise the potential for significant adverse effects on identified areas and be inconsistent with national and regional policy direction.

5. RESPONSE

5.1 I discuss the activity status of infrastructure within Identified Areas at Paragraphs 8.1 – 8.8 of my primary statement of evidence and to summarise, recommend that infrastructure that qualifies as “regionally significant infrastructure” under the RPS definition should be identified as a discretionary activity within Identified Areas as opposed to a non-complying activity. In support of this recommendation, I also

⁵ Para 7.9 Evidence of Maggie Rose Burns for the Director-General of Conservation.

⁶ Submission 836.15

⁷ Para 7.10 Evidence of Maggie Rose Burns for the Director-General of Conservation.

recommend a number of policy changes designed to enable infrastructure within Identified Areas where there is a demonstrated functional or operational need⁸.

- 5.2 For ease of reference I have appended my recommended amendments at Attachment A to this statement.
- 5.3 Ms Burns supports a non-complying activity status for infrastructure within Identified Areas noting that ...*non-complying activity status allows for consideration of a full suite of effects and provides additional triggers on any consent application of this nature*⁹.
- 5.4 In my view, the only difference between a discretionary and non-complying activity status from a resource consent perspective is the gateway tests in section 104D that are applied to a non-complying activity. Apart from the gateway tests in section 104D, the “full suite” of effects and other considerations set out in section 104 of the RMA apply to both discretionary and non-complying activities. I address my concerns regarding the application of the gateway tests to infrastructure within Identified Areas at Paragraph 8.3 of my primary statement of evidence.
- 5.5 I do not consider that the “suite of effects” that can be considered for a discretionary activity or a non-complying activity are in any way different assuming a non-complying activity can pass the section 104D(1)(b) policy gateway test. In such a scenario, both activity statuses are subject to consideration against section 104 of the RMA.
- 5.6 Having regard to the above, I consider that Ms Burns’ reasoning for supporting a non-complying activity status for infrastructure within Identified Areas can equally be achieved by a discretionary activity status.
- 5.7 Ms Burns also notes that ...*a less stringent activity status would not appropriately recognise the potential for significant adverse effects on identified areas*¹⁰.
- 5.8 If a non-complying activity is considered to be contrary to the objectives and policies of the plan or proposed plan and therefore cannot pass the Section 104D(1)(b) policy gateway test, in accordance with Section 104D(1)(a) of the RMA, it is required to demonstrate that the adverse effects of the proposal will be no more than minor.
- 5.9 As such, in my view, a non-complying activity status is appropriate where there are concerns that an activity will be potentially contrary to the objectives and policies of

⁸ Para 6.4, Evidence of Christopher James Scrafton for Watercare

⁹ Para 7.10 Evidence of Maggie Rose Burns for the Director-General of Conservation.

¹⁰ Para 7.10 Evidence of Maggie Rose Burns for the Director-General of Conservation.

the Plan, which is not the case here, as opposed to being applied to recognise the potential for significant adverse effects. As such, I do not agree with Ms Burns that a non-complying activity status is necessary to recognise the potential for significant adverse effects.

- 5.10 Ms Burn also considers that: *Allowing a less stringent activity status would...be inconsistent with national and regional policy direction*¹¹.
- 5.11 I am unclear which specific national and regional policy direction Ms Burn is referring to but note that I discuss the relevant national and regional policy direction for regionally significant infrastructure at paragraphs 8.4 – 8.8 of my primary statement of evidence noting policy support for the provision of infrastructure to support growth within the National Policy Statement for Urban Development (NPS:UD), RPS and the PWDP.
- 5.12 Whilst I acknowledge and generally support national and regional policy direction supporting protection of recognised values, I also note that:
- a) Such policy direction generally needs to be considered in the whole with competing policy direction seeking to enable infrastructure provision and growth, for example in the National Policy Statement on Urban Development, 2020 (NPS:UD)¹²; and
 - b) “Protective policy” at national and regional policy level generally recognises the need for infrastructure and provides for it subject to certain tests being met. For example, the recognition of “specified infrastructure” and associated policy in the National Policy Statement: Freshwater Management, 2020 (NPS:FM)¹³.
- 5.13 Having regard to the above, I do not consider identifying regionally significant infrastructure within Identified Areas as a Discretionary Activity to be inconsistent with national and regional policy direction. Lastly, as set out in my primary evidence,¹⁴ I consider the objectives of the proposed plan can be achieved by discretionary activity status, and for this to be a more efficient and effective approach than a non-complying activity status in terms of section 32(1)(b)(ii).

Chris Scrafton
6 October 2020

¹¹ Para 7.10 Evidence of Maggie Rose Burns for the Director-General of Conservation.

¹² For example, section 3.2 of the National Policy Statement on Urban Development, 2020

¹³ For example, section 3.22 of the National Policy Statement for Freshwater Management, 2020

¹⁴ Paragraph 8.7.

Attachment A: Recommended Additional Policies for Infrastructure in Identified Areas

6.1.X Policy – Functional or Operational Need for Infrastructure in Identified Areas

Enable infrastructure in Identified Areas where there is a demonstrated functional or operation need.

6.1.Y Policy – Infrastructure within Identified Areas

When infrastructure has a functional or operational need to be located within an Identified Area:

- a) Avoid adverse effects on the values of the Identified Area to the greatest extent practicable.
- b) Where adverse effects cannot practicably be avoided, then mitigate or remedy adverse effects on the values of the Identified Area to the greatest extent practicable.
- c) Offset any remaining significant residual adverse effects that cannot be practicably avoided, remedied or mitigated.