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Partner Reference  
W S Loutit - Auckland

Watercare Services Limited  
Private Bag 92521  
Wellesley Street  
AUCKLAND 1141

Writer's Details  
Direct Dial: +64-9-977 5141  
Email: kate.stubbing@simpsongrierson.com

For: Mark Bourne

Dear Mark

**Huia Replacement Water Treatment Plant and Reservoirs Project  
Advice on Council Processing of Regional Resource Consents and Outline Plan of Works**

*Introduction and summary*

1. You have asked us to provide advice in relation to the regional resource consent applications (**Regional Applications**)<sup>1</sup> to be lodged shortly for Watercare Services Limited (**Watercare**)'s replacement water treatment plant (**WTP**) and reservoirs project in Huia.
2. You have specifically asked for advice on the process (and Council's role in this process) once the Regional Applications are lodged, and the distinction between this process and the process for submitting an outline plan of works (**OPW**) (required because the works are within the area covered by Watercare's designation<sup>2</sup> (**Designation 9324**)).
3. In summary, once the Regional Applications are publicly notified by the Council the public will have the opportunity to lodge submissions **only** on matters relevant to those applications. That is, relating to earthworks, vegetation removal within a Significant Ecological Area overlay, streamworks, contamination, groundwater and stormwater matters.
4. There is no public notification or any opportunity for public involvement in the separate OPW process relating to the replacement WTP and reservoirs themselves. This includes matters relating to the design, construction and operation of the WTP and reservoirs. These matters are authorised by the designation, meaning there is no public submission process on the WTP or reservoirs themselves. The description of those works is provided to the Council through the OPW process with no third party involvement or right of appeal by a Third party.

*Processing of the Regional Applications*

5. Watercare is in the final stages of preparation of the Assessment of Environmental Effects (**AEE**) and supporting reports so that it can lodge the Regional Applications.

1 Resource consent is also required to disturb potentially contaminated land under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NES Soil**).

2 Designation 9324 Huia and Nihotupu Water Treatment Plants.

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AUCKLAND: Level 27, Lumley Centre, 88 Shortland Street, Private Bag 92518, Auckland 1141, New Zealand. T +64 9 358 2222

WELLINGTON: Level 24, HSBC Tower, 195 Lambton Quay, PO Box 2402, Wellington 6140, New Zealand. T +64 4 499 4599

CHRISTCHURCH: Level 1, 151 Cambridge Terrace, PO Box 874, Christchurch 8140, New Zealand. T +64 3 365 9914

[www.simpsongrierson.com](http://www.simpsongrierson.com)

6. Under the Auckland Unitary Plan, resource consents are required under the regional rules relating to:
  - (a) Earthworks and vegetation removal, including in a Significant Ecological Area overlay, which are required to construct the replacement WTP and reservoirs, and to allow for the North Harbour 2 Watermain valve chamber and tunnelling reception shaft within the proposed reservoir site;
  - (b) Stream works including diversion and reclamation;
  - (c) Dewatering, and groundwater diversion and discharge; and
  - (d) Diversion and discharge of stormwater.
7. Resource consent is also required for the potential discharge of contaminants associated with the disturbance of potentially contaminated land, under the NES Soil.
8. The Regional Applications will be in the prescribed form<sup>3</sup> and include the information required for resource consent applications under Clause 2 of Schedule 4 of the Resource Management Act 1991 (**RMA**).
9. Following lodgement of the Regional Applications, the processing officers at the Council will check the application to ensure that it is complete and contains the matters required under section 88 of the RMA. The Council can reject the application and return it to the applicant within 10 working days after the application was first lodged if it is incomplete<sup>4</sup> or alternatively ask Watercare to supply more information (under section 92) once the application has been accepted.
10. The grounds under which an application can be returned under section 88 within the 10 working days are limited by section 88(3). We have now completed our review of all the draft application documents and in our opinion it would be very unlikely that the Regional Applications could be determined incomplete. On the contrary, considerable effort has gone into the preparation of the application and the expert reports, and a robust and comprehensive assessment of the activity's effects has been provided in the documentation.
11. Once the Regional Applications are accepted by the Council under section 88, because Watercare is requesting that the applications are publicly notified, the Council will then proceed to notify the Regional Applications.<sup>5</sup>
12. Following public notification, any person will have 20 working days to make a submission on the Regional Applications.<sup>6</sup> Importantly, any submission can only be on the matters relating to the Regional Applications (described in paragraph 6 above).
13. Land use activities (under section 9 of the RMA) are not part of the Regional Applications because Watercare has a designation of the land for "water supply purposes – Huia and Nihotupu water treatment plans and associated structures". All effects arising from land use matters, such as environmental effects from the design and construction of the WTP

3 RMA, s 88(2).

4 RMA, s 88(3).

5 RMA, s 95.

6 RMA, s 97.



and reservoirs, is addressed through the OPW process (described below). Specifically, the OPW process will address district land use matters including:

- (a) Traffic effects, and proposed management and mitigation measures associated with the construction and operation of the WTP and reservoirs;
  - (b) Construction and operational noise effects, and proposed measures to manage and mitigate these effects;
  - (c) Landscape effects, including the height, shape and bulk of the replacement WTP and reservoirs, along with proposed landscape mitigation measures; and
  - (d) Any effects on heritage values or archaeology.
14. We note that in support of the Regional Applications there are a number of expert reports and these include transport, noise / vibration and stormwater reports. Those experts have only prepared one report each that will be lodged in support of both the Regional Applications and OPW process. It is important to be aware that parts of their reports do assess the effects of the OPW matters, which are outside the scope of the Regional Applications. Within these reports, the experts have considered the different construction stages that distinguish between the clearance of vegetation and related earthworks (Regional Applications), and the works required for the construction and operation of the WTP and reservoirs (OPW).
15. The AEE for the Regional Applications has also made it clear the extent that the matters discussed in the expert reports are effects of the Regional Applications, and matters on which the Council can ask further questions (under section 92) or the public can lodge submissions in due course.
16. Following the close of the public submission period on the Regional Applications, the applications will proceed to a hearing before a panel of Independent Commissioners delegated to make a decision on behalf of the Council. Hearings are open to the public, however only those who lodge a submission are entitled to be heard and call evidence.

#### *Provision of the Outline Plan of Works*

17. As Watercare is aware, an OPW is a plan or description of works that a requiring authority submits to the Council in advance of when it anticipates carrying out work on a designated site. The RMA provides that an OPW relating to development on designated land must be submitted by Watercare to the Council, and a process which enables the Council to request changes before construction is commenced.<sup>7</sup>
18. For completeness, we note that an OPW does not need to be submitted to the Council if:<sup>8</sup>
- (a) the proposed work has been approved under the RMA;
  - (b) the details of the proposed work are incorporated into the designation; or
  - (c) the Council waives the requirement for an outline plan.
19. None of these circumstances apply in relation to this project.
20. The RMA requires that an OPW must show:<sup>9</sup>
- (a) the height, shape, and bulk of the work;
  - (b) the location on the site;

<sup>7</sup> RMA, s 176A(1).

<sup>8</sup> RMA, s 176A(2).

<sup>9</sup> RMA, s 176A(3).

- (c) the likely finished contour of the site;
  - (d) the vehicular access and circulation;
  - (e) the provision for parking;
  - (f) the proposed landscaping; and
  - (g) any other matters required to avoid, remedy, or mitigate any adverse effects on the environment.
21. The conditions on Designation 9324 also requires that additional matters are addressed in the OPW.
22. Once the OPW is provided to the Council (which will be some time after the Regional Applications), the Council's process is very different to the steps required when processing resource consent applications (as described above). Importantly, there is no equivalent section 88 "acceptance" steps and there is no requirement to consider whether notification is appropriate because under the RMA, an OPW is not notified.
23. Within 20 working days after receiving the OPW, the Council may request that Watercare make changes to the OPW.<sup>10</sup> There will not be a hearing on the OPW. If no requests are made by the Council within that timeframe then Watercare can begin work on the site (subject to obtaining the necessary regional resource consents of course). If Watercare decides not to make the changes requested, the Council may, within 15 working days after being notified of Watercare's decision, appeal against the requiring authority's decision to the Environment Court.<sup>11</sup> In determining any appeal, the Environment Court must consider whether the changes requested by the Council will give effect to the purpose of the RMA.<sup>12</sup>
24. Finally, we note that there is no opportunity for the public to make submissions on an OPW because the process only involves the requiring authority and the territorial authority. Further, there is also no ability in the RMA for any third party to appeal against the decision of the requiring authority on an OPW.
25. We anticipate that because of the different processes and timeframes, the OPW will be confirmed prior to any decision on the Regional Applications.

### *Conclusion*

26. The process for consideration by the Council of the Regional Applications is very separate to the OPW process where a requiring authority provides an OPW to the Council. There would be no basis under the RMA for the Council to seek to delay processing of the Regional Applications or notification on the basis that the OPW has not been lodged. The two "applications" will track along separate processes, as required under the RMA.
27. Importantly, only the Regional Applications will be publicly notified (at Watercare's request) and therefore the public will only have the opportunity to lodge submissions on matters relevant to those applications. That is, relating to earthworks, vegetation removal within a Significant Ecological Area overlay, streamworks, contamination, groundwater and stormwater matters. There is no scope in the resource consenting

<sup>10</sup> RMA, s 176A(4).


<sup>11</sup> RMA, s 176A(5).

<sup>12</sup> RMA, s 176A(6).

process for the public to raise issues relating to effects arising from the design, construction and operation of the WTP and new reservoirs.

28. If you have any questions please do not hesitate to contact us.

Yours faithfully  
SIMPSON GRIERSON



Bill Loutit/Kate Stubbing  
Partner/Senior Associate