

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of the Proposed Natural Resources
Plan for the Wellington Region

MINUTE # 49

**MINUTE IN RESPONSE TO LEGAL SCOPE ASSESSMENT FOR WELLINGTON WATER LTD'S
SUBMISSION FOR THE WAIWHETU GROUNDWATER PROTECTION AREA**

Hearing Stream 6

1. Our Minute # 45 dated 11 June 2018 refers.
2. That Minute was in relation to the scope of submissions to the Waiwhetu Aquifer Groundwater Protection Area and requested legal advice from both the relevant submitter (s135 Wellington Water Ltd) and Counsel for GWRC. The Minute also requested the technical experts for the submitter and GWRC to conference in relation to the spatial extent, and the activities that may potentially impact on, the Groundwater Protection Area.
3. Since then we have received the following:
 - a) The legal memorandum from Counsel for WWL (14 June 2018);
 - b) The Joint Witness Statement for the technical conferencing (18 June 2018);
 - c) The legal memorandum from Counsel for GWRC (19 June 2018)
4. The Joint Witness Statement reached a preliminary agreement:
 - a) That there is technical justification to extend the protection area to cover the entire Hutt Valley Floor provided that a finer scale verification of the boundary using a suitable digital terrain layer is used; and
 - b) That there are potentially arguments for extending the Groundwater Protection Area upstream of the infiltration zone but there is currently insufficient information beyond the conceptual and theoretical characterisation of risk to meaningfully consider the merits for extending the Groundwater Protection Area to the north
5. The JWS recommended that further joint conferencing be undertaken to consider the options for extending the Protection Areas to the north. It was also recommended that a joint technical/planning conference would offer the best chance of progressing this matter.
6. The outcome from the two legal memorandums is that there is potentially scope to alter Map 27b so as to extend the spatial extent of the Groundwater Protection Area to both the north (to cover the Hutt Catchment upstream of the infiltration zone) and to the south (to include all the valley floor to the foreshore of Wellington Harbour). The advice from Counsel for GWRC (para 14) is that there does not appear to be scope to extend the Surface Water

Protection Areas as they are different and are identified on Map 26. The WWL submission did not seek to alter Map 26.

7. Counsel for GWRC clarified that for the purposes of scope, all of the northern extension to the Groundwater Protection Area which is within the Hutt catchment provided it is 'upstream' of the infiltration zone and provided it impacts on the quality of groundwater being taken for drinking supplies. This was clearly stated in the submission and is a foreseeable outcome of the submission.
8. However, at this stage further technical evidence is required to confirm the exact geographic area that this applies to. In particular, further conferencing will need to occur to determine what is 'upstream' of the 'infiltration zone' and whether such areas will impact on groundwater quality. In other words, the incidence of both these parameters is necessary to fulfil the scope requirement.
9. A similar situation prevails for the southern extension of the Groundwater Protection Area along the valley floor area to the foreshore of the Harbour; the legal advice is that such an extension is also a foreseeable consequence of the WWL submission provided it impacts on the quality of groundwater being taken for drinking supplies and that further technical evidence is required to determine what that means in relation to groundwater.
10. Based on the above, the Panel is not opposed to further technical/planning conferencing occurring in relation to the northern extent of the Groundwater Protection Area. If necessary, such conferencing can extend to the finer scale verification of the southern boundary. However, the question of scope is still a live matter for the Panel in respect of the northern area. In this respect the issue that needs to be addressed by the technical experts is twofold as outlined by the GWRC Counsel; namely:
 - a) Is there a technical argument supporting the inclusion of the entire Hutt Catchment as being 'upstream' of the infiltration zone? To clarify this, the Panel notes that one of WWL's witnesses at the hearing suggested that parts of the extension area (e.g. Korokoro) are not technically upstream of the infiltration zone. If this is the case whilst there may be technical justification for including such an area, there may be a scope barrier.
 - b) Will all parts of the northern extension of the Groundwater Protection Area have a risk of contamination as a result of land use activities having regard to land tenure and activities permitted by the notified rules of the Plan?
11. Regarding scope for the southern extension, aside from the fine-grained alteration to the boundary, the issue to be addressed by the technical experts is whether the entire extended area is at risk of groundwater contamination.
12. Upon receipt of information on the above the Panel will invite legal Counsel for GWRC to finalise their position regarding scope.
13. This Minute will supersede the past instructions to both the Planning conferencing participants and the interested parties identified in Minute # 48. Two of those interested parties (HortNZ and CDC) have indicated that they don't have a direct interest in the Hutt catchment and therefore are unlikely to be involved. We are yet to hear formally from the other four parties as to whether their involvement is required.

14. Based on the above, the following will apply:

- a) We note that the JWS received suggested that more specificity around some of the questions above can likely be achieved in the overall timeframes of conferencing but there is agreement that a joint technical/planning conference would offer the best chance of progress. In this respect the original timeframe for the planning JWS was 6 July 2018, it would make sense to extend this so that a joint technical/planning JWS was available by **13 July 2018**;
- b) Following receipt of the JWS technical/planning, Counsel for GWRC will advise the Panel as to the scope of the JWS. This shall be received by **20 July 2018**.
- c) Once the legal advice is available and should the interested parties wish to provide written submissions, this should be directed to the Panel by **27 July 2018**.



Mark St. Clair

Panel Chair

Date: 25 June 2018