

# TAKING LEGAL ACTION AGAINST WATER THEFT: PROTECTING CUSTOMERS, NOT REVENUE

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## **ABSTRACT**

Unlike most businesses, money is not Watercare's primary concern when people steal our services. Water meters not only enable us to charge our customers accurately, but they also contain backflow prevention. This means that people who create connections to our network without following the correct process risk contaminating the water supply.

Recently, one company found themselves on the wrong end of our bylaw, a bylaw that was put in place to protect Auckland's drinking supply from contamination and theft. This paper will examine Watercare's first – and first successful – prosecution under the Health Act and Water Supply and Wastewater Network Bylaw. The paper provides a brief overview of our processes and discusses Watercare's motivation to pursue a legal remedy, what we discovered, the challenges we faced, how we were able to secure a successful outcome and how we set a precedent in determining fines under bylaws.

Correcting the misconception that theft is about money has been challenging for us. While we must also consider asset damage and cost recovery, our conversation with unauthorised users is about changing their attitude towards water. The paper covers the associated conversations Watercare has had with the media, Aucklanders who report theft, the people who are reported, and the social media commentary on our posts about theft.

## **KEYWORDS**

**Theft, prosecution, backflow, contamination, legal, bylaw**

## **PRESENTER PROFILE**

Lauren leads the Revenue Assurance team at Watercare and has 10 years' experience in compliance-based roles. She has helped secure millions of dollars in lost revenue and led the companies first prosecution for theft. Lauren is a passionate problem solver and is known for taking on challenging portfolios. She is currently studying Business at AUT and is on Watercare's Diversity Inclusion and Belonging Committee.

# **INTRODUCTION**

Watercare is the drinking water and wastewater service provider for the Auckland region and is wholly owned by the Auckland Council. Aucklanders are fortunate to live in a city where they don't need to worry about the quality of their water. To maintain our high-quality standards, we must carefully manage how people connect to our network. Unfortunately, some people choose to connect to our services without our knowledge. While some of these connections were made erroneously without knowledge of the connections process, others choose to put their convenience of access above the safety of a lifeline resource for 1.7 million people.

For the purposes of this paper, we will refer to anyone using our services as a "customer", irrespective of whether they intended to pay for the services. "We", "us", and "our" refer to Watercare Services and its employees.

## **1 BACKGROUND**

### **1.1 OUR CHARGES**

Customer surveys show that most Aucklanders feel they get value for money when it comes to their water and wastewater services. Water is a taonga; it is precious, and the world's freshwater sources are finite.

Watercare has adopted a user-pays pricing model that ensures customers are incentivised not to waste water. Aucklanders are the most efficient water users in New Zealand, and we believe this is partly due to our user-pays pricing model. The unintended consequence is that it financially benefits the customer when they use our services without our knowledge.

Like so many cities in New Zealand, Auckland is experiencing strong growth. As the population increases and more houses are required, new suburbs are created, and so are new water and wastewater networks. Catering to this growth requires upgrades to bulk infrastructure, reservoirs, treatment plants, transmission pipes and pump stations. We recover the cost of these upgrades through the Infrastructure Growth Charge (IGC), similar to development contributions. The principle of this targeted charge is that the cost of building for growth is transferred onto the people who cause us to build to accommodate growth. Essentially, it is a continuation of our user-pays pricing model. The IGC is charged once for a residential dwelling.

Residential demand assumes an average household of three people with an approximate annual demand of 220 kilolitres. We refer to this measurement as a Development Unit Equivalent (DUE). We use the DUE measurement to ensure that our commercial customers' growth is fairly recovered – for each DUE they use, one IGC is payable, unless further growth is realised. That is to say, the IGC is not an annual charge. If a customer uses 2,200 kilolitres per year or 10 DUE, then 10 Infrastructure Growth Charges are payable. Further growth charges will be payable if the customer's demand for services increases beyond 2,200 kilolitres by one DUE or more.

To ensure that the cost of our services can retain their value for money when customers ask us or cause us to undertake work, we recover the cost of these activities through one-off charges.

Residential and commercial customers are subject to a different pricing structure that reflects the different nature of how they use water and the proportion/of that water that returns to the wastewater network. For commercial customers, the wastewater discharge quality is also reflected in the pricing structure.

## **1.2 CONNECTION PROCESS**

When new mains are installed, points of supply are created on both the water network (often referred to as a service lead) and the wastewater network (often referred to as a stub) for each proposed lot. These are created to minimise the need to dig back to the mains for each new connection, saving both the time and the costs of doing so. Essentially it makes it easy to connect to our networks. New connections to our network are approved through an application process that can take a few weeks from assessment to installation. While certified drainlayers can make wastewater connections, the installation of water meters is only performed by Watercare contractors once payment has been received and before the water network can be accessed.

For customers who need water but do not need a permanent connection, such as drinking water deliveries and earthwork companies who need to temporarily access our network, tanker filling stations and standpipes hire agreements are a more pragmatic solution. Standpipe hire was suspended in May 2020 due to drought restrictions and has remained suspended as we move towards adopting the recommendations from Taumata Arowai. As part of removing the standpipe service, Watercare has opened non-potable water stations in various locations throughout Auckland and has encouraged customers to use non-potable water when Aa grade drinking water is not required. We have also designed portable tanker filling stations that can be relocated to areas with high demand for tanker deliveries or to temporarily replace an existing filling station that needs to come offline for maintenance.

Photograph 1: A prototype of the portable tanker filling station.



The use of standpipes on the public network has been divisive. Even within Auckland the former constituent councils had their own rules. Standpipe use has always been prohibited in the Franklin and Rodney regions, while in Papakura (which is managed by Veolia Water) standpipes can be used at select locations. The remaining four Auckland regions – Manukau, Central Auckland, Waitakere, and the North Shore – allowed the use of standpipes, provided they were hired from Watercare, and users had been briefed on how to use them correctly. Connections that do not follow the approved Watercare process are in breach of the Water Supply and Wastewater Network Bylaw (2015) and, therefore, Section 239 of the Local Government Act 2002.

### **1.3 OUR CHALLENGES**

When a developer has not allowed time for the connection process to be completed or an unexpected delay occurs, some customers succumb to the temptation to connect to the points of supply without completing the connection application process. In some cases, the costs associated with connecting are not considered at all or not timed early enough in the client's payment schedule. The point of supply on the water network is often referred to as a service lead, and we sometimes find that service leads are used for heavy water-use activities such as keeping concrete wet to prevent cracking, water blasting, filling pools, and dust suppression. When approaching building companies, we are often met with a response of shock that they are unable to use the service lead for construction-related activities. In one case, the response was, "we weren't stealing the water; we were using it for construction".

The difficulty for Watercare is that we cannot disconnect water from a residential property without the property being deemed uninhabitable and evicting the occupiers. Unauthorised connections must therefore be disconnected before the completion of the build, otherwise the connection must remain in place. A water meter must be installed as soon as practical to protect the network from backflow contamination and account for the water being used.

Figure 1: Signs are used to notify customers who have an unauthorised connection to contact Watercare.



The adage “time is money” is particularly true in today's building market. For every week someone cannot move into a new build, it is another week the owners will be paying for other accommodation and paying interest in any borrowings associated with the build.

An important factor as the industry heads into reform is that Watercare lost visibility to historic customer information in 2010, when Auckland transitioned from having several local network operators to Watercare being the service provider. While undertaking site surveys, we have often found connections that we were unaware of but later learned that an agreement had been entered into with the previous provider. It is important that we establish and maintain relationships with Auckland Council, so the investigator can arrive at the correct conclusion when we are investigating what appears to be an unauthorised activity.

## **2 IMPLICATIONS OF UNAUTHORISED CONNECTIONS ON OUR NETWORK**

### **2.1 DAMAGE TO NETWORK AND HEALTH AND SAFETY**

Watercare carefully manages how people connect to and access our network for many reasons. We have a team dedicated to supporting customers who work close to our networks; they are the same team managing third-party damage investigations. Our primary concern with unauthorised connections to hydrants is that non-compliant equipment or fittings could damage the hydrant in a way that would limit Fire Emergency New Zealand from coupling to the hydrant to fight fire.

Even how someone accesses a hydrant can cause health and safety risks. We have responded to reports where people have been blocked from leaving their driveways or even accessing a road due to a standpipe. We have had reports where pedestrians are forced to walk on arterial roads to avoid getting wet from leaking standpipes or because the operator is blocking the footpath and there is no safe way around. Standpipes often being silver in colour, camouflage easily

against concrete and roads and should not be left unattended or without suitable hazard signage. For these reasons, Watercare approved standpipes are always bright blue and have a yellow reflective strip to improve visibility.

Unauthorised connections, whether from a hydrant, behind a meter, or straight into the water main, are often found to be leaking. As you can see from the photo below, the standpipe is not perpendicular to the ground level, suggesting there may be a poor connection to the hydrant or that there is damage to the network or equipment.

Photograph 2: An offender using an unauthorised standpipe.



## **2.2 DISCOLOURATION AND CONTAMINATION**

Reports of discoloured water are often the trigger for members of the public to report standpipe use. Discolouration can occur when a sudden change in pressure or direction of water flow unsettles the minerals in the water, causing it to change colour. This sudden pressure change often occurs when turning a standpipe on quickly. Although the water is still safe, it is advisable to flush the discoloured water from the network. Where flushing is required from the private network, customers generally want to be compensated for water that passes through their meter. Ideally, flushed water could be captured for reuse, but the cost and time associated with getting tanker trucks onsite outweigh the cost of the lost water and the benefits to the customer of quickly draining the water to the ground or the stormwater network.

While lost water and unhappy customers are negative consequences, our biggest concern when people connect to our network is backflow into the public water supply. Unfortunately, the incident at Havelock North has shown us that contamination of the drinking water supply can devastate communities and have nationally significant consequences. Watercare only allows trained contractors and employees to undertake work on the Watercare water network. Customers

can only access the water network after the water meter fittings. Our residential meters house a non-testable, non-return valve, as do our low-risk commercial meters. While these sites might be seen as low risk, during site visits to subdivisions we often see water leads leading to barrels of dirty water, concrete mixers or connected into containers of pesticides or fertiliser that are used to help establish landscaping. Without the meters in place, the water supply is not protected from backflow contamination.

Commercial sites that are deemed higher risk, such as breweries or aquatic centres, must have a higher hazard backflow prevention device that must be tested annually.

Activities that risk backflow contamination into the public water supply are an offence under Sections 69ZZR(4) and 69ZZX(1) of the Health Act 1956.

## **2.3 FINANCIAL IMPLICATIONS**

With a user-pays pricing model, any attempt to divert water around a meter or connect to either network without our approval will result in cost avoidance. Utilising existing connections for unapproved activities, such as discharging water from an irrigation meter or a bore connection, can also result in revenue loss. Reclassifying a property or intensifying the development can have astronomical financial impacts. Some of our most challenging cases are where customers have repurposed an existing meter, such as a residential house on a lifestyle block that was redeveloped into a retirement village. Customers will sometimes use tanks between their meters and business to allow them to draw large volumes of water from a small meter without having to contend with low-pressure issues. We have, for instance, seen this happen at laundromats outfitted in existing commercial premises.

Deliberate activities that limit Watercare's ability to charge accurately are offences under the Crimes Act and viewed as theft by Watercare. Where customers fail to notify us of changes to their property that impact their charging, it is considered a breach of the Customer Contract.

## **3 INVESTIGATIONS INTO THEFT**

### **3.1 TEAM RESPONSIBILITIES**

Watercare has a Revenue Assurance team whose focus is to investigate any customer-driven activity that results in inequitable revenue collection. This can be intentional, where someone connects to the network in a manner that enables them to avoid paying for our services. But it can also be unintentional – where a re-development occurs, and we were not notified to adjust account information that will impact charging.

An example of reclassifying a site with significant charging implications is a concrete manufacturer reclassifying to warehousing. A good proportion of water from a concrete manufacturing plant will end up in the product, which is reflected in the wastewater calculation. If that plant reclassifies to warehousing, the water use might go down, but the percentage of water returning to the

wastewater network will increase. The reverse is also true where warehousing converts to a concrete manufacturer.

A crucial part of these investigations is that we look at not only the revenue adjustments, but also the way that services will be used. Perhaps the water meter is undersized for the new business and the customer may end up with low pressure, or the meter could fail when it cannot cope with the new peak flow. The change in use can also change the risk of backflow contamination into the public supply, or it may require a trade waste agreement.

The team coordinates with different departments to facilitate various activities that may need to be completed. In a large organisation such as Watercare, referring the customers to multiple specialised departments can be overwhelming and confusing. The purpose of our team is to create a single point of contact and facilitate outcomes for the customer across the business, so that by the time the investigation is closed, customers and Watercare are confident that all actions have been completed.

### **3.2 REPORTS**

Most of our reports are generated internally through exception reporting or from proactive site visits to residential greenfield subdivisions. The investigations are relatively straightforward, but we often find that the impact on customers is devastating. Customers with unauthorised connections in new builds have often been led to believe that all requirements have been followed by the people they engaged in building their home. However, as our charges are contractual, the property owner at the time the connection is made is the party responsible for paying associated IGC and connection costs. Watercare has no authority to enforce contracts between a homeowner and a third party, so it is the homeowner's responsibility to pursue any recourse through these contracts.

Undertaking regular site visits is a relatively new process for Watercare. As construction season geared up in 2019, we began with ad hoc site visits in greenfield locations. While we were expecting to find some cases of unauthorised connection, we were surprised at how many there were. In one subdivision, we found over a dozen new builds with unauthorised connections to the water and wastewater network.



Photograph 3: An unauthorised connection at a new build.

Photograph 4: Several unauthorised connections at a subdivision.



Watercare now has a staff member that (among other responsibilities) undertakes site visits at construction sites to look for unauthorised connections to the network; the staff member also takes office-based colleagues from across the business to help build company-wide knowledge on unapproved activities. This initiative has seen a rise in reports from across the business when staff see unauthorised standpipe use when dropping their kids at school or when they identify an unauthorised connection on their daily walk. Staff are encouraged to gather the following information:

- Description of activity, including any impacts
- Date and time
- Location
- Persons or vehicles involved, including license plates
- Photographs
- Details of any conversations had.

In particular, the photo evidence can make or break an investigation, but having a photo in itself cannot make a case. We recently had a case where we were notified of an unknown party accessing a hydrant in Greenhithe. Unfortunately, the reporter was uncomfortable providing further details because they were concerned that additional information could lead to the offender identifying them and retaliating.

The importance of educating our colleagues is that it helps them triage cases straight through to us, so we can act quickly, or they can coach customers to gather evidence that we need and convey confidence that our processes protect their privacy. It also enables frontline staff to reassure a customer that the activity they are describing is approved if that is the case.

People who report cases of theft will often have asked the offender whether they have permission to access the network and will then reach out to us for confirmation. We view these people as assets to their community, and our team will always make the time to follow up with people who report these cases to help them understand what activities people may undertake. We have members

of the community who actively search for cases of theft to report to us in their daily life, because they understand the risk and are passionate about protecting the water network.

### **3.3 INVESTIGATIONS**

Every investigation that the Revenue Assurance team completes is done with the understanding that it could proceed legally. Whether that is because Watercare intends to file charges or because the customer disputes our findings, we often spend days or weeks collecting evidence and collaborating with Auckland Council to ensure that our findings are correct before we reach out to customers. When we do write to a customer, it is essential that customers understand that they have the right to provide further evidence, challenge our findings, and that they will be supported with a payment arrangement where necessary.

It is also necessary to have support available to staff. Informing someone of significant and unexpected debts or even accusing them of breaching a bylaw is not an easy conversation, and it often elicits an emotionally charged reaction. That is partly why we will refer to a connection as “unauthorised” rather than “illegal”. We never intend to threaten or upset customers, but we must convey the seriousness of any errant activity.

One of the more intense aspects of engaging with customers is interviewing them. Interviews are common practice with what we consider to be serious offending. It gives customers an opportunity to convey their perspective. Understanding why someone has not followed due process can help us determine what course of action is more appropriate. If someone is accessing the network to contain a serious health and safety event, then a judge might not look to favourably on us if we took the matter to court. Although accessing the network itself is considered a health and safety risk, doing so to douse a house engulfed in flames, for instance, might be considered the lesser of two evils.

Watercare has interviewed dozens of customers for cases related to theft. Interviews should be conducted in a closed meeting room with at least two people from Watercare. Customers should be warned that the meeting is considered a formal interview and that they are welcome to bring legal representation. If customers choose to, then the organisation should also bring our general counsel.

It is useful to have three people attending interviews, two main interviewers and someone who watches for body language and expressions that are often missed when an interviewer is writing responses. Following interviews, a comprehensive letter is written to the offender outlining any knowledge gaps the offender may have. The purpose is to ensure that there is no reason the offender could have to reoffend. This means that we are set up for success should another incident occur.

Watercare's prosecution policy also sets out the process that should be taken when determining any additional action, we would take in response to illegal activities. The key takeaways of the policy are:

- a) Proceeding with prosecution or civil action depends on the standard of proof we must present. A successful prosecution requires proof "beyond a reasonable doubt," whereas civil action requires us to establish that offending occurred "on the balance of probabilities" (i.e., a lower standard of proof).
- b) The person who decides whether to prosecute should be independent of the investigation. The decision should be informed but detached and objective. Where appropriate, in-house counsel or an external lawyer should be consulted.
- c) Before deciding, the decision maker should be confident that the evidence is sufficient to reasonably ensure conviction and that the prosecution is in the public interest. Public interest considerations include the seriousness of the offending, if the offending is repeated or continuing, if the offending is premeditated, the general conduct of the person or company, and the risks the offending posed to ourselves, our customers, and the public.

Another important consideration is the resources required to bring about a prosecution. The cost of the services taken will almost always be less than the cost of legal action. The work in the lead-up to and during the prosecution is time intensive and will take several months to over a year. Key stakeholders will often need to be available to make decisions on short notice.

### **3.4 PROSECUTION CASE**

In March 2020, we received a report of a company accessing our network via an unauthorised standpipe. This would become the first company Watercare filed charges against under the Water Supply and Wastewater Network Bylaw and the Health Act.

Watercare's dam levels were the lowest they had been in decades, and a campaign was underway asking Aucklanders to conserve 20 litres of water a day. New Zealand had just had its first case of Covid-19 and was preparing to close its borders. This context is important, because when Watercare contacted this company concerning the incident, their reaction was likely indicative of the stress that we were all feeling.

There's no telling how someone will react when you tell them they have been reported stealing from the network. Over time, Watercare has refined how we manage these conversations, so that customers appreciate the seriousness of the situation and are encouraged to continue talking to us. Essentially, we strive to take the feelings away from the facts.

On March 27, the lead investigator received an email from a colleague who had photographed someone using an unauthorised standpipe on our network. Three things made this report particularly helpful. Although cropped for this paper, the report included a photo that showed the license number plate and company information on the vehicle, the vehicle is connected to the hydrant through the unauthorised standpipe, and the report included the date, time, and location of the incident.

Photograph 5: The evidence provided by a Watercare staff member of an offender using an unauthorised standpipe to steal water in March 2020.



Immediately following this report, Watercare contacted the company to bring the incident to the attention of its leadership team. This call was not received well, so it was ended. Immediately following the call, an email was sent reiterating our concerns, outlining the relevant information to allow them to investigate the matter internally and provide us with a response. The email also set clear expectations about permitted activities. We do this by describing the activities that we believe took place, and state that those activities are not permitted and by providing a hyperlink to the relevant contracts, bylaw or legislation that support our statement.

The company was given 14 days to provide us with an incident report. They did not do so.

Because New Zealand was in a level 4 lockdown, Watercare assumed that the company might not be able to access its email accounts. In May 2020, the same company applied to Watercare to hire standpipes. New Zealand had moved to alert level 3, and we took this to mean the company had returned to business as usual. We contacted the company, advising them that they had had sufficient time to provide us with a response. The following day, the company informed us via email that the water network was accessed to undertake a commercial activity, and they asked Watercare to produce an invoice for the water taken alongside standpipe meter readings that showed the scale of the offending. They also asked what the options were for them to access the network. The response was short and not indicative of a company that was overly concerned with the issues we had raised.

In response to the standpipe hire application, Watercare had announced that mandatory water restrictions were coming into effect, and standpipe use would be prohibited for all customers until further notice. Watercare was concerned that the company would continue to access the network through their unauthorised standpipes.

In early June, Watercare couriered a formal warning to the company's director and sent a copy of the letter via email to the director and the manager we had been talking to. The warning set out the details of the incident, the response we had been provided, and our findings. We provided the company with compliant ways to access the network. The letter also reiterated the breaches that had occurred and that we reserved the right to take enforcement action should an offence of a similar nature occur in the future.

The next day, the lead investigator received a report that the company had again accessed our network in the same manner.

Photograph 6: The evidence provided by a member of the public of an offender using an unauthorised standpipe to steal water in May 2020.



As a result of the first phone call and follow-up email in March, the company had been informed that its actions amounted to an offence under the Water Supply and Wastewater Network Bylaw. They had therefore been put on notice, and this was sufficient communication to enable Watercare to treat future offending as deliberate. Watercare began seeking legal advice on the best way to proceed.

The information we received from a member of the public showed a company-branded vehicle connected to a hydrant via an unauthorised standpipe; the license plate was the same. Our actions were broadly similar: We contacted the company to bring the incident to management's attention and requested an incident report. Following a reminder that an incident report was required, the company emailed the explanation that water was required for commercial activity, provided meter readings from their standpipes to enable us to invoice them, and confirmed that they were accessing the water network daily or as required. As part of their response, the company stated that "if" they had done something wrong, they were prepared to rectify the matter. The company suggested that we meet to discuss the matter.

Interviewing someone can provide the interviewer with clarity on the customers' perception of the incident. If that person declines to be interviewed, that in itself

can also provide insight. Working in a Covid-19 environment can mean that interviews have to take place virtually. Although meeting in person is preferred for interpreting behaviour, virtual interviews can also be helpful. Watercare accepted the company's invitation to meet, but the company then declined to be interviewed and became unreachable shortly after that. We attempted to communicate with the company through multiple channels, including different phone numbers, and we did not receive a response.

We sought advice relating to invoicing for the water taken. It was viewed that invoicing based on the company's meter readings would give a false impression that Watercare accepted this was an agreeable way for the company to operate. Although the invoice would have had a four-figure value, we decided not to issue it. The message we wanted to the company was clear: connecting to the network without our authorisation is unacceptable.

At this stage, the deadline for filing charges for the first incident was nearing. We no longer had communication with the company and the evidence we did have suggested the offending was continuing. As the bylaw belongs to Auckland Council, Watercare sought their support to proceed. With their support and that of our lawyers, a memo was written to our decision maker (our Chief Customer Officer) recommending prosecution for both incidents.

Our lawyers had researched fines awarded through breaches of other New Zealand bylaws and advised that any penalties Watercare could be awarded were likely to be a few hundred dollars per offence. Although the cost of prosecution was a consideration, deterring offenders to protect the public water supply has always been our priority. Although this company was not the first that had connected in this manner, they were the first who demonstrated an ongoing contempt for our processes and gave us cause for concern that reoffending was inevitable. Collectively we agreed that failing to act could be more costly than any legal fees we were about to incur.

Watercare filed three charges for each incident, a charge under the Water Supply and Wastewater Network Bylaw and the Health Act against the company, and a charge under the Health Act against the manager as an individual. Hence there were a total of six charges. Although we were aware that hundreds of kilolitres had been taken, the incidents for which we had evidence were for no more than ten kilolitres each, an approximate value of \$30. Arguably, in addition to the cost of the water, had the company followed our processes, they would have also incurred a standpipe hire fee of approximately \$1,500 per standpipe per year. Our motivation to prosecute had always been to make it clear that risking the public water supply by connecting without our authorisation would not be tolerated, so we chose not to file charges under the Crimes Act so as not to detract from this message.

Our lawyers prepared the documents that needed to be filed with the High Court. As stated earlier, the prosecution is time intensive, and the investigation needs to be documented thoroughly, down to the time and date of every phone call we attempted. Statements were prepared by the people who witnessed the offending and the lead investigator. These statements would become part of the

discovery handed over to the company's lawyer. We had sought the approval of the second witness, who was a member of the public, to drop their anonymity and allow us to share the information they had provided us with. With the knowledge of the location of the second incident and the angle of photos we provided, it was clear to the company who had made the second report, and it was important to Watercare that this customer was comfortable with the steps we were taking.

The company was served at their registered address, and an appearance date was set for October.

Although we were warned of the possibility, it was nonetheless disappointing that we were twice requested to reschedule the appearance date shortly before we were due in court. These postponements meant that we only learned of the company's (herein referred to as the defendant) plea in early 2021 – not guilty. The explanation we were given was that the defendant's legal counsel considered the charges unusual. A court hearing was scheduled for April and rescheduled for June 2021.

During this time, Watercare and the defendant discussed the premise of double jeopardy. Watercare believed that connecting to the network without our approval was an incident separate from drawing water from the network and creating the potential for backflow contamination. The defendant felt the charges arose from identical facts and argued for double jeopardy. The defendant also shared that they were under the impression that Watercare was only interested in financial compensation for the water.

At the same time, and no doubt resulting from the mandatory water restrictions, the media became interested in theft cases and published an article referencing the prosecution.

By June, Watercare and the defendant had negotiated for the charges against the manager (as an individual) to be withdrawn in exchange for the company to enter guilty pleas on the remaining charges. These changes were submitted shortly before the court date, and sentencing was scheduled for August 2021.

### **3.5 OUTCOME**

To establish the fine, the judge had to determine a starting point. Both Watercare and the defendant had made submissions on where we felt that starting point should be. A breach of the Health Act can incur a fine of up to \$5,000 and a breach of the Water Supply and Wastewater Network Bylaw can attract a penalty of up to \$20,000 per offence. The judge first sought clarity that Watercare was not seeking separate fines under the bylaw and the Health Act and agreed that doing so would be a double penalty.

The judge carefully weighed each argument Watercare, and the defendant had put forward and found in favour of both Watercare and the defendant for various arguments. The judge agreed that the defendant had financially gained from the offending but deducted the cost of purchasing the standpipe from the financial gain.

We understood that the fine was likely to be around a few hundred dollars per offence, which was consistent with previous fines awarded under New Zealand's bylaws. However, our lawyers submitted that the judge should adopt a banded approach to assessing culpability. The judge stated that she was attracted to this methodology and assessed culpability for the second offence as deserving 17-40% of the maximum penalty, setting a precedent for future prosecutions under bylaws.

When assessing what discounts to apply to the fine, the judge considered the defendant's early guilty plea, that the defendant had no prior convictions and the impact of the conviction on the defendant's ability to obtain public works contracts. She also described the defendant's conduct as negligent at best and dismissed the argument that the manager's previous occupation as a firefighter somehow mitigated the offending.

In the end, the fine came to \$4,900, a few hundred dollars shy of what the defendant would have paid to Watercare had they followed the correct processes. However, this was significantly more than what could have been potentially awarded.

After the sentencing, and as it was now a matter of public record, Watercare prepared a media statement confirming that the defendant had been prosecuted for creating an unauthorised connection to the public water supply and reiterating the risk to the public water supply and that there could be no tolerance for theft.

## **4 FUTURE FOCUS**

### **4.1 PENALTIES**

Watercare's charges are contractual. Therefore, when we investigate reports of theft, we can only recover the costs of what should have been paid had the correct processes been followed. It is also our responsibility to reasonably calculate the quantum of services stolen. We can also recover the cost of undertaking the investigation. However, given the time we spend ensuring that we arrive at the correct conclusion, these charges are often seen as punitive by the customer and become a barrier to settling the matter.

In instances where people have used an unauthorised standpipe to draw water from the network, the cost to recover is so small that invoicing these costs and chasing the charges incur more costs to the business than the cost of the services taken. Any financial penalties we wish to have awarded would have to be brought about by legal proceedings. Therefore, resolving cases of theft should not necessarily be approached with a motivation to collect lost revenue. However, it does need to be done. Not pursuing, discounting, or waiving the costs of providing services to those who have not followed our processes would conflict with our legislative obligation to be a minimum cost provider and would not be fair to those that do use our services in a legal manner. By ensuring that the user pays, we guarantee that most Aucklanders do not subsidise people who do not undertake due diligence or knowingly breach legislation for their own gain.



Watercare does not have the ability to issue infringement tickets similar to that issued by transport entities, however we are currently pursuing this as an option. The capability for us to issue infringements would act as a disincentive to those putting the networks at risk, while minimising the costs we incur. Infringements would also provide us with an enforcement procedure that could serve as an intermediary step before considering legal action. So, a mechanism that would allow Watercare to issue infringement notices should yield good results.

## **4.2 EDUCATION**

One thing is sure, though, and that is that the way forward is through education. To do this effectively, it would help to know who to address. However, no one group is responsible for theft. Most cases are from the construction sector, with the majority of cases from greenfield sites and the majority of revenue coming from the intensification of existing sites. With this information, we are now working on a targeted education campaign to work alongside the Master Builders Association, the Plumbers Drainlayers and Gasfitters Board, as well as the construction industry and organisations such as First Home Buyers Club to ensure that the right information is distributed in the right way to the right people.

Ensuring people are aware of the correct process can be challenging. Working smarter and innovating can mean process changes, and it is not realistic to expect that people who are absorbed within their industries will be visiting our website looking for updates. We need to seek ways of engaging the communities to ensure that the correct process to follow is also the easiest process to follow. Unfortunately, it is doubtful that those processes can operate based on trust.

As part of our education efforts, we posted on social media that standpipes were prohibited and to contact us if you saw someone using one. The responses indicated an expectation that we should have visibility of what was happening on our networks rather than rely on members of the public to report theft, a somewhat tricky task with over 50,000 hydrants. It has also been frustrating at times to read social media commentary that speaks to the intelligence of Watercare staff for asserting that a property has an unauthorised wastewater connection when the property clearly has rainwater tanks. These comments highlight that we need to improve the general water literacy of our customers.

It is also clear that irrespective of who created the connection, customers expect that the supplier quickly identifies them. There is little tolerance afforded to us from homeowners who have received their Code of Compliance when their home has an unauthorised connection to our networks. As an organisation wholly owned by but run separately from Auckland Council, Aucklanders expect that Watercare is fully aware of any activity they undertake through Council's processes.

Historically, organisations like ours have communicated in writing, but we now know that people have different learning styles. FAQs and factsheets are not always the best method to get our messages across. People want information quickly, and we need accessible and easy-to-understand information, not only in

writing, but through infographics, interactive content and videos and be available to customers through phone, live chat, email or in person. Watercare has successfully held forums with various customer groups and looks forward to engaging our communities through forums again.

## **CONCLUSIONS**

There is no room for the "she'll be right" attitude when it comes to our drinking water. Although it is often viewed as red tape, the measures we take to protect the Aa grade drinking water supply and the water network are necessary. While the lost water may only be worth a few dollars, there is no amount of money worth saving that outweighs the risk to a lifeline resource.

The industry's interest in managing reports of theft is encouraging, both here in New Zealand and from our colleagues in Australia and the United Kingdom. Industry reform will provide a platform to bring a greater awareness of drinking water safety to our team of five million. Water is a taonga, and we must treat it as such.

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