

Minutes

Board meeting	Public session
Date	5 July 2022
Venue	Watercare Services, Level 3 Boardroom, 73 Remuera Rd, Remuera and via Microsoft Teams
Time	9:47am

Attendance		
Board of Directors	Watercare staff	Guests
Margaret Devlin (Chair) Brendon Green Dave Chambers Nicola Crauford Julian Smith Graham Darlow	Jon Lamonte (CE) Jamie Sinclair (Chief Corporate Services Officer) Mark Bourne (Chief Operations Officer, for items 7 to 9) Amanda Singleton (Chief Customer Officer, for items 7 and 9) Bronwyn Struthers (Head of Health, Safety and Wellbeing, for items 7 to 9) Rebecca van Son (Head of Strategy, for item 6) Emma McBride (Co-Head of Governance) Laura Saunders (Legal and Governance Advisor) Via Microsoft Teams Richie Waiwai (Poutiaki Tikanga Māori, Principal Advisor) Sarah Phillips (Acting GM – People & Capability, for items 7 and 9) Nigel Toms (Acting GM – Finance, for items 8 to 13)	Stephen Toplis, Head of Research at BNZ (for item 6) Kylie Dunn, Partner, Russell McVeagh (for item 9) Via Microsoft Teams Trudi Fava, CCO Programme Lead, Auckland Council

1.	Opening karakia Brendon Green opened the meeting with a karakia.
2.	Apologies Apologies were received from Frances Valintine, Hinerangi Raumati-Tu’ua, Wi Pere Mita (Board intern), and Councillor Linda Cooper. The Chair advised that Hinerangi had provided feedback and questions on the papers.
3.	Quorum The Chair confirmed that a quorum was established.
4.	Minutes of the previous meeting <i>The Board resolved that the minutes of the public session of the Board meeting held on 7 June 2022 be confirmed as true and correct.</i>
5.	Public deputations There were no public deputations.
6.	Scanning the Horizon Rebecca van Son introduced Stephen Toplis, Head of Research at BNZ, to the Board. Stephen provided the Board with a presentation on the current worldwide and New Zealand economic climate. He also responded to various questions and discussion points from the Board, including in relation to inflation, supply chains, migration figures, productivity, and employment figures. The Chair thanked Stephen and noted that it was good to get an external perspective.
7.	Chief Executive’s report The CE highlighted the following topics from the report: <i>Current significant issues</i> <ul style="list-style-type: none"> Voluntary turnover is now sitting at 14.6% and this needs to be monitored.

Key performance measures

- During May 2022:
 - Leakage rates showed a consistent downward movement.
 - There was significant effort in the Health, Safety and Wellbeing arena.
 - Musculoskeletal injuries continue to be a focus area for Watercare.

Matters for noting

- The Central Interceptor's micro-tunnel boring machine Domenica broke through at Haycock Avenue shaft almost one month ahead of schedule.
- A serious health and safety breach was reported by an engineer, after sixteen people (including supervisors) were lifted from the bottom of the MPS shaft in a ten-person cage. Whilst no injury occurred, it was a high-risk incident. Operations were immediately suspended whilst an investigation was undertaken. The Joint Venture partners also brought in safety experts from Italy to review the site.

Water resources update

- The Board and Management had a discussion around compliance with Taumata Arowai's (TA) new Drinking Water Standards, Aesthetic Values and Quality Assurance Rules, which are effective 14 November 2022.
- Mark Bourne noted that E.coli was detected on 30 May 2022 at Cornwall Road Water Treatment Plant in a treated water sample. Investigation confirmed it was an isolated event and not representative of the water supply.
- The current regulations allow for a small number of transgressions. However, the new standards will not allow any transgressions. Therefore, if the above scenario occurred post 14 November 2022, Watercare would be non-complaint for a 24-hour period in that zone only.
- Reporting against the new standards commences 1 January 2023. There is a degree of uncertainty with the new Drinking Water Standards on how compliance with the standards will be assessed when it relates to a response to transgressions. Watercare anticipates receiving confirmation on this in the coming weeks.
- Management will consider whether Watercare needs to brief Council on any changes to the TA new standards versus the existing standards (once confirmation of all the new standards have all been obtained from TA).
- The Board questioned the risk regarding the Mangakura Dam 1 (water supply dam for Helensville). While the absolute risk of a failure is low, the consequences of a failure are high.
- Mark confirmed that an investigation is almost complete about how the fault should be remedied. The repair methodology needs to be changed from what was originally planned.
- An update on the remediation plan for the Mangakura Dam 1 will be presented to the Board, via the CE's report, once the business case has been finalised and approved.

- The Board questioned whether the update to the National Hazards Model could impact Watercare's dams. Mark noted that the Building Regulations that impact our dams changed in March 2022, resulting in increased monitoring for some of our dams. Management and the Operations team will confirm whether the National Hazards Model could also impact Watercare's assets.

People

- The Board noted the discrepancy in the number of employees between the People and HSW updates. The Board encouraged Management to report people numbers in a consistent way.
- The Chair noted that it was good to see Watercare team members and projects receiving recognition and awards at the recent Water New Zealand Conference Awards.
- The Board also congratulated and wishes the team luck on their Diversity Works Award nomination for the Inclusive Workplace Award.

Legal action – Non-RMA related

- Jamie Sinclair will provide an update at the next Board meeting on the claim for \$1.2m for alleged damage to a residential property from a burst watermain.

Health, safety and wellbeing

Bronwyn Struthers took the report as read and responded to questioning from the Board.

- The Board noted that it was concerning that the contractor who sustained a broken hip returned to work the following day. Even if the worker said they felt well enough to work, the Board and Management agreed that they should have been made to take further time to recover before returning to work.
- Several directors have conducted Health and Safety site visits and advised Management that Watercare's safety standards look extremely good (ie inductions, PPE, safety barriers). The directors had met some very passionate staff and contractors on site.
- The Board noted that they remain concerned with the TRIFR rate, which is above the average for the industry.
- In response to this concern, Bronwyn noted that most of Watercare's iCare incidents are musculoskeletal related. Watercare has introduced a physio programme and are trialling this with MSN and Laboratories as most musculoskeletal injuries are sustained in those divisions.
- The Board noted that they had noticed that there had generally been an increase in personal safety issues within Auckland neighbourhoods and questioned whether this is a critical risk for Watercare's staff in the field. Bronwyn confirmed that personal safety is a focus area for Watercare and there is a good training programme related to de-escalation, which the Watercare teams are putting into practice.
- Amanda Singleton added that not only are staff in the field being verbally abused and threatened, but so too are customer service officers on the phones. These staff members have also received de-escalation training and are putting it into practice when necessary.

	<i>The Board noted the report.</i>
8.	<p>Watercare’s final draft Statement of Intent (SOI) measures 2022-25</p> <p>Emma McBride presented the report.</p> <p><i>Subject to Hinerangi Raumati-Tu’ua reviewing the SOI financials before the final documentation is submitted, the Board approved:</i></p> <ul style="list-style-type: none"> • <i>the final draft SOI for submission to the Shareholder, Auckland Council, by 31 July 2022; and</i> • <i>the final draft cover letter to the Mayor, which will enclose the final SOI.</i>
9.	<p>Health, Safety and Wellbeing update</p> <p>Emma McBride introduced Kylie Dunn, Partner at Russell McVeagh. Kylie provided an update to the Board on Health, Safety and Wellbeing, including core duties of directors, due diligence requirements of directors, and overlapping duties (Attachment 1).</p> <p>The Chair thanked Kylie and noted that the presentation had been useful.</p>
10.	<p>Board planner</p> <p>The Chair requested that Management provide a condensed CE’s report with financials for the months without a Board meeting (October 2022 and December 2022).</p> <p>The Chair and Nicki Crauford will be apologies for the August Board meeting.</p> <p>Dave Chambers will be the Acting Chair between 11 July 2022 and 1 September 2022.</p> <p><i>The Board noted the Board planner.</i></p>
11.	<p>Directors’ appointment terms and committee memberships and meeting attendances</p> <p>Now that FY22 has ended, the Chair requested that future attendance reports focus on the current financial year.</p> <p><i>The Board noted the report.</i></p>
12.	<p>Disclosure of Directors’ and Executives’ interests</p> <ul style="list-style-type: none"> • Margaret Devlin advised that in April 2022 she stepped down as Chair of Women in Infrastructure. • Dave Chambers advised he is now a director of GB & DD’s Outfit Limited.

	<ul style="list-style-type: none"> Graham Darlow advised he is no longer a Chair or Director of Holmes GP Structure Limited. He has been appointed a Director of Holmes Group Limited. <p><i>The Board noted the report.</i></p>
13.	<p>General business</p> <p>The Chair requested that Trudi Fava follow up the one outstanding reappointment letter for those directors that are being reappointed through to 30 June 2024.</p> <p>The meeting closed at 11:47am.</p>

CERTIFIED AS A TRUE AND CORRECT RECORD

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Margaret Devlin, Chair

Attachment 1

Russell
McLeagh

Health and safety update

Kylie Dunn
5 July 2022

Today's session

- Core duties
- Due diligence obligation
- Overlapping duties – case example

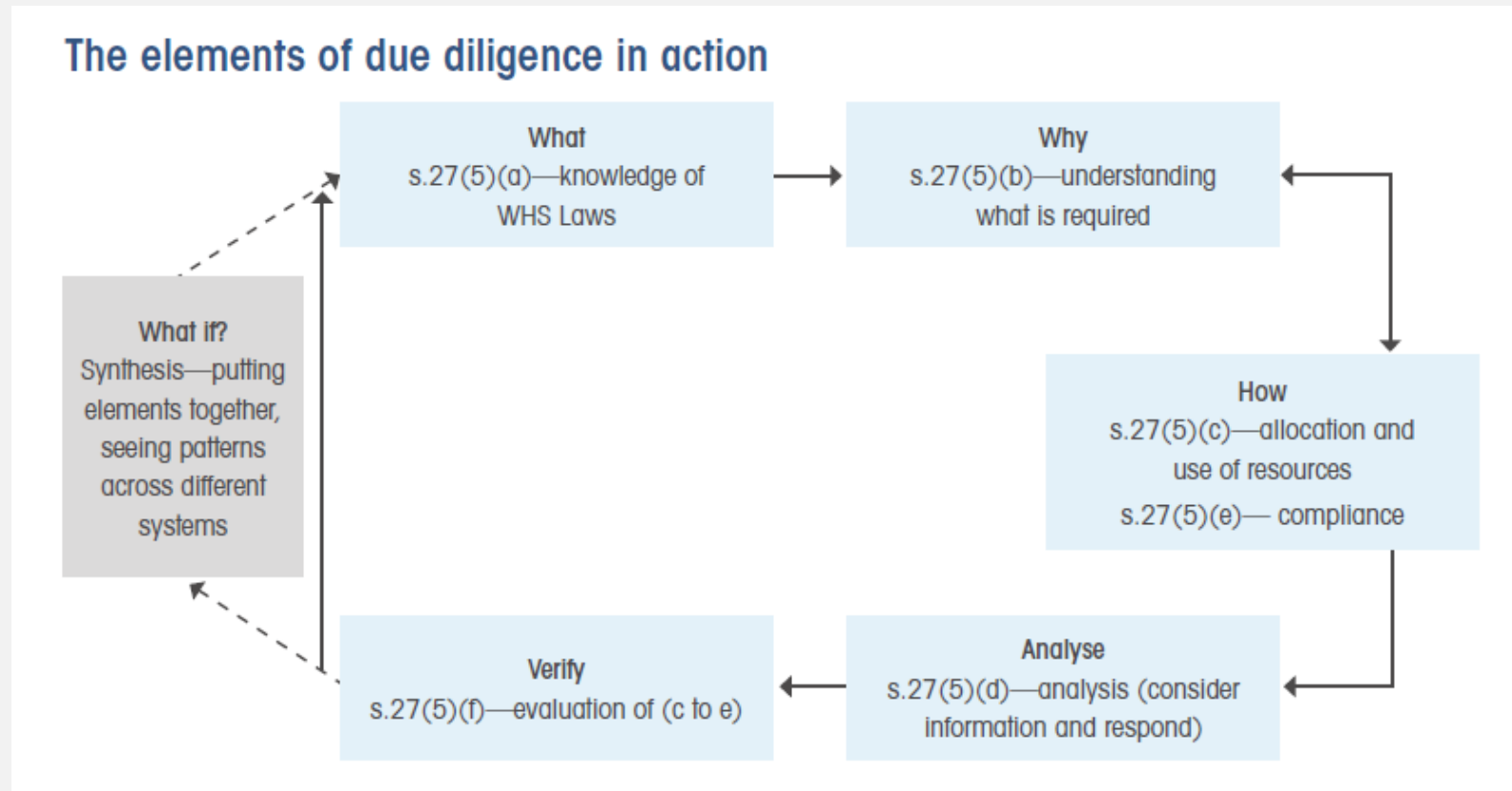
Core duties

- **PCBU** must ensure so far as is reasonably practicable the health and safety of:
 - Workers at work in the business or undertaking
 - Workers who are influenced or directed by PCBU
 - Other persons who could be affected by work of the PCBU
- **Officer** of a PCBU must exercise due diligence to ensure that the PCBU complies with that duty
- **Workers** must ensure own safety; safety of others

Due diligence obligation

- Section 44 of the Health and Safety at Work Act:
 - a) acquire, and keep up to date, knowledge of health and safety matters
 - b) understand nature of PCBU's operations and risks/hazards
 - c) ensure PCBU has available, and uses, appropriate resources/processes for eliminating/minimising risks
 - d) ensure PCBU has appropriate processes for receiving/considering information regarding hazards, risks and incidents, and responding
 - e) ensure PCBU has, and implements, processes for compliance
 - f) verification of (c) to (e) above

Due diligence obligation (SafeWork Aust)



Due diligence obligation

- Practical implications:
 - Duty requires taking an intelligent interest in information, understanding it and applying an inquiring mind.
 - Reactive receipt of information not sufficient – proactive consideration is required.
 - Can rely on expertise of others – but reliance must be reasonable.
 - Understand connections between health and safety and other business actions/priorities (especially financial).
 - Understand the impact you/your questions have.

Whakaari/White Island prosecution

- 22 deceased and a number of others with significant injuries
- 10 entities initially prosecuted
 - Whakaari Management Ltd
 - Institute of Geological and Nuclear Sciences
 - White Island Tours Ltd
 - Volcanic Air Safaris Ltd
 - Aerius Ltd
 - Kahu NZ
 - Tauranga Tourism Services Ltd
 - ID Tours Ltd
 - Inflight Charters (pleaded guilty - \$227,500 fine; \$40,000 prosecution costs)
 - National Emergency Management Agency (charges dismissed)

Whakaari/White Island prosecution

- 3 individuals: Andrew, James and Peter Buttle (directors of Whakaari Management Ltd)
 - Breach of due diligence obligations
 - Failed to acquire and keep updated knowledge
 - Failed to adequately understand hazards and risks associated with access to Whakaari
- Trial scheduled for July 2023

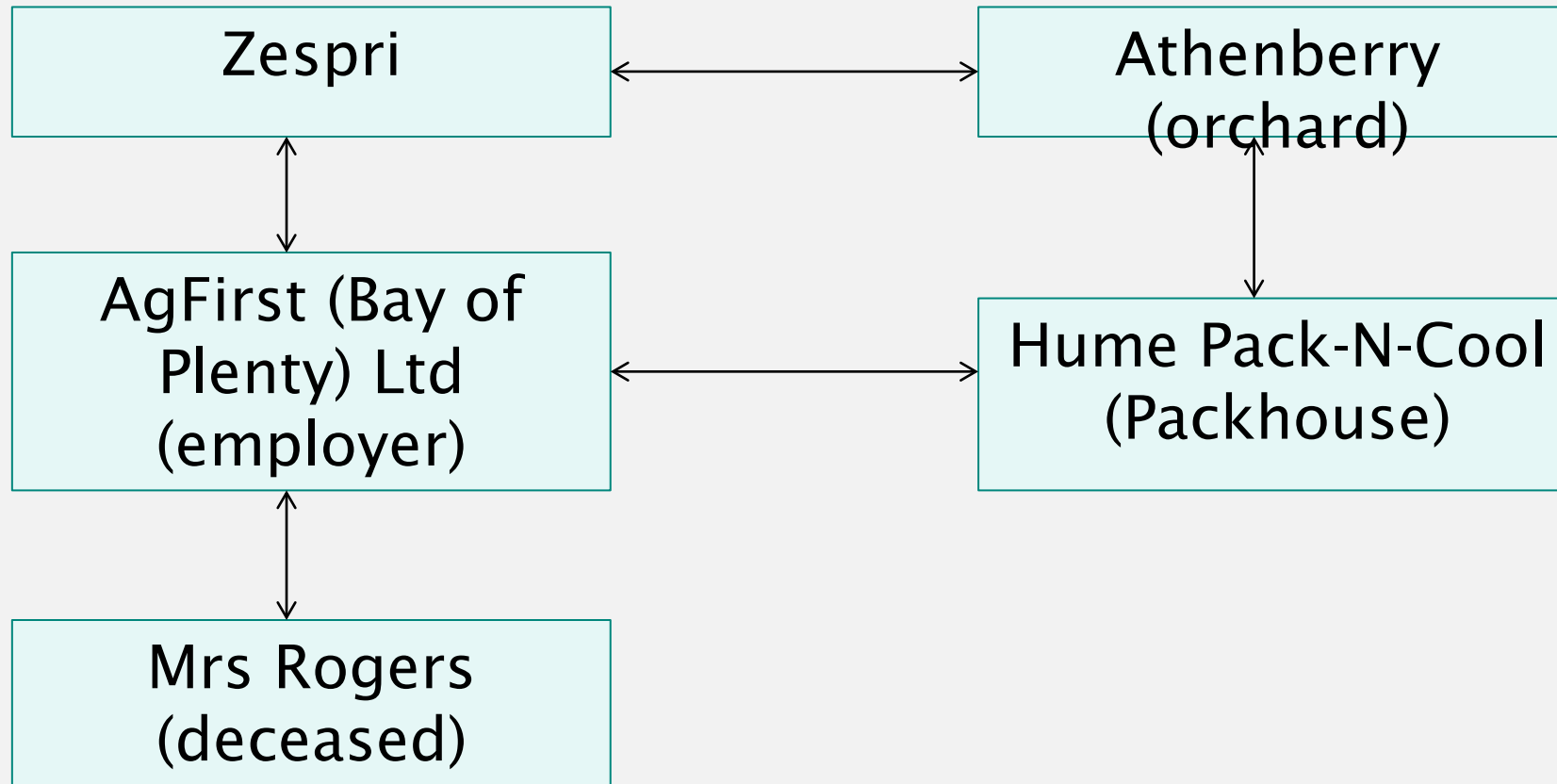
Other officer prosecution(s)?

- Media reports indicate Tony Gibson (former CEO of Ports of Auckland) has been charged as an officer in relation to an employee death
- What does this mean:
 - Enforcement of officers duties not hypothetical
 - Involvement in the facts irrelevant for the purposes of officer obligations

Overlapping duties

- Multiple PCBUs may have the same/overlapping duties:
 - Each duty holder must comply with own duties
 - Must discharge duties to the extent PCBU “has the ***ability*** to influence and control the matter”
 - Must “consult, co-operate with, and co-ordinate activities” with other PCBUs who have duties in relation to the same manner.
 - Retention of the ‘competent contractor’ defence?

WorkSafe v Athenberry Holdings Ltd



WorkSafe v Athenberry Holdings Ltd

- Quad bike rolled (supplied by employer)
 - Deceased left mown path and drove diagonally up a hill
 - Laden with kiwifruit samples – high centre of gravity
- Zespri system meant neither Athenberry nor Hume had any influence or control over work of sampler
 - No contractual relationship (with individual or her employer)
 - No control over practical carrying out of work
 - No provision of advice
 - No specification of matters affecting conduct or work methods
 - No reporting requirements
 - No oversight or supervision

WorkSafe v Athenberry Holdings Ltd

- Land owners entitled to assume contractors who come on their property:
 - are competent to operate the machinery they bring with them;
 - are competent to operate their vehicles with sufficient care and skill to avoid visually obvious hazards; and
 - will follow instructions
- Not required to identify “visually obvious hazards”, which includes obvious hazardously steep terrain, obvious open water and obvious open drains
- Required to identify hazards which are not obvious (hidden rabbit warrens; steep drops around blind corners)

Presenter



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