

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2020-AKL-

**I MUA I TE KOOTI TAIAO
I TĀMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of an appeal under clause 14(1) of Schedule 1 of
the RMA

BETWEEN

OJI FIBRE SOLUTIONS (NZ) LIMITED

Appellant

AND

WAIKATO REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL ON BEHALF OF OJI FIBRE SOLUTIONS (NZ) LIMITED
AGAINST DECISIONS ON PROPOSED WAIKATO REGIONAL PLAN CHANGE
1: WAIKATO AND WAIPA RIVER CATCHMENTS**

6 JULY 2020

**G K Chappell
Barrister**

Vulcan Building Chambers
DDI 09 300 1259 | E gillian@chappell.nz |
PO Box 3320 Auckland 1140 |
DX CP20546 |

**TO: THE REGISTRAR
ENVIRONMENT COURT
AUCKLAND**
WRC.PC1appeals@justice.govt.nz

1. INTRODUCTION

- 1.1 Oji Fibre Solutions (NZ) Limited ("**OjiFS**") appeals against the decisions of the Waikato Regional Council ("**Respondent**") on Proposed Waikato Regional Plan Change 1: Waikato and Waipa River catchments ("**PC1**") ("**the Decisions**").
- 1.2 OjiFS made submissions and further submissions on PC1.
- 1.3 OjiFS is not a trade competitor for the purposes of section 308D of the RMA.
- 1.4 OjiFS received notice of the Decisions on 22 April 2020.
- 1.5 The Decisions adopted recommendations made to the Respondent by a Hearings Committee of Councillors and Independent Hearings Commissioners ("**the Hearings Panel**").
- 1.6 Further to *Re Wairakei Pastoral & Ors* [2020] NZEnvC 063, the relevant parts of the Decisions, the submissions of the appellant and the names and addresses or persons required to be served with the notice of appeal are not attached.

2. PARTS OF THE DECISIONS BEING APPEALED

- 2.1 The specific parts of the Decisions that OjiFS is appealing are:
- (a) Objective 3
 - (b) Policies 2, 5, 8, 10 -13, 19
 - (c) Rule 3.11.4.9

3. REASONS FOR APPEAL

Introduction

- 3.1 OjiFS is the owner and operator of the Kinleith Pulp and Paper Mill ("**Kinleith Mill**"), located in the industrial park at Kinleith, 8 kilometres south of Tokoroa. Kinleith Mill is a regionally and nationally significant industry and also makes up a key part of OjiFS's strategic assets. The Kinleith Mill supports the primary sector by producing locally made packaging paper and is also New Zealand's largest user of recovered paper, underpinning the country's recycling objectives. As a producer of pulp and paper, Kinleith Mill is reliant on the Waikato River and its tributaries, both for a secure supply of water for its operations, and as a discharge medium for wastewater after it has been treated.

3.2 Kinleith Mill has been regularly upgraded since its establishment in the 1950s. OjiFS is committed to continued improvements in the mill and seeks to ensure that future upgrades, expansion and resource consent renewals are feasible under PC1. OjiFS also seeks to ensure that PC1 does not disincentivise investment in production forestry in the region.

General reasons for appeal

3.3 The general reasons for the appeal are that the Decisions, in parts:

- (a) Will not promote the sustainable management of resources, will not achieve the purpose of the RMA and are contrary to Part 2 and other provisions of the RMA;
- (b) Will not meet the reasonably foreseeable needs of future generations;
- (c) Do not have sufficient regard to or represent an efficient use and development of rural land and supporting assets such as Kinleith Mill;
- (d) Do not represent the most appropriate means of exercising the Respondent's functions and achieving the purpose of the RMA;
- (e) Do not enable the social, economic and cultural well-being of the Waikato community;
- (f) Are ambiguous or unclear in parts, which may result in inefficiencies or unintended outcomes;
- (g) Are unclear as to provenance or jurisdiction in parts, potentially raising issues of scope;
- (h) Do not give effect to the Regional Policy Statement ("RPS"), including Te Ture Whaimana o Te Awa o Waikato (the Vision and Strategy);
- (i) Do not give effect to the National Policy Statement for Freshwater Management 2014 ("NPS-FM");
- (j) Fail to achieve the functions of the Respondent under s31 of the Act in respect of integrated management of the effects of the use and development of land and physical resources;
- (k) Fail to meet the requirements of section 32 of the RMA. The provisions do not represent the most appropriate way of meeting the PC1 objectives, and means of exercising the Respondent's functions, having regard to the efficiency and effectiveness of the provisions relative to other means; and
- (l) In the case of the lower order provisions, are not the most appropriate way to achieve the higher order objectives and policies of PC1.

3.4 Without limiting the general reasons above, further particular reasons for the appeal are:

For Objective 3

- (a) That the Decisions fail to enable communities to provide for their social and economic well-being, including productive economic opportunities while managing within limits in a manner consistent with the NPS-FM, and otherwise misinterpret the social and economic directions of Te Ture Whaimana o Te Awa o Waikato;

For policies relating to point source discharges and / or offsetting and compensation

- (b) That the Decisions inappropriately conflate the objectives and policies of Te Ture Whaimana o Te Awa o Waikato as requiring a “no effects” bottom line approach to new or replacement resource consents that are sought for discharges of nitrogen, phosphorus, sediment and microbial pathogens contaminants (“**the four contaminants**”) to land or water that may enter water; and / or otherwise fail to recognise that the application of offsetting or compensation is not required to achieve a “no effects” result.
- (c) That the Decisions fail to appropriately provide for the continued operation and development of industry or infrastructure in circumstances other than where it protects and restores the river;
- (d) That the Decisions fail to recognise or clarify that Te Ture Whaimana o Te Awa o Waikato can be given effect to by providing for the continued operation and development of industry or infrastructure through the achievement of the water quality attribute states in Table 3.11.1;
- (e) That the Decisions fail to reflect the social and economic benefits of new or replacement resource consents for regionally or nationally significant industry or infrastructure by:
 - (i) Not referring to the need to achieve (revised) Objective 3; and
 - (ii) Not promoting “best practice” (rather than requiring no net effect);
- (f) That the Decisions, fail to appropriately recognise, for the purposes of PC1, that when considering replacement resource consents for discharges from regionally significant industry and infrastructure, the situations where significant advances have already been made in reducing discharges of the four contaminants;
- (g) That the Decisions inappropriately obligate (explicitly or implicitly) offsetting / compensation for the residual adverse effects associated with new or replacement resource consents for discharges of the four contaminants to land or water that may enter water;
- (h) That the Decisions fail to recognise or clarify that offsetting / compensation may be proposed pursuant to s104(1)(ab) and / or that this is the most appropriate way to address the issue.

For other policies

- (i) Policy 10: That the Decisions fail to recognise that the future efficient use of land requires that unsustainable land use and land management practices are discontinued and that PC1 should incentivise the transition of land use and land management commensurate with a “natural capital” approach, which, in turn, requires matters like land suitability to be better understood;
- (j) Policy 19: That the Decisions set policy relating to enhancement of biodiversity and opportunities to enhance access and recreational values that advance matters falling outside the scope of PC1;

For provisions relating to land use change

- (k) Through regulation of land use change under Policy 2 (c) and Rule 3.11.4.9, that the Decisions restrict land use flexibility in a manner that is inconsistent with Part 2 of the RMA;
- (l) That the Decisions, in finding that permitted farming activities (per rules 3.11.4.1, 2 and 3) will have a relatively low risk of more than minor discharges of the four contaminants, err by failing to apply a consistent, equitable approach to other land uses seeking to change to farming; and
- (m) That the Decisions lack scope or jurisdiction to remove Rule 3.11.4.9’s notified expiry date of 1 July 2026. No submission requesting retention of the Rule sought deletion of the expiry date.

4. RELIEF SOUGHT

4.1 OjiFS seeks the following relief:

Objective 3

4.2 Amend Objective 3 to give effect to the reasons for the appeal and to better reflect:

- (a) The wider economic relationship of the community with the river, including that the river needs to “continue to provide for” social, economic and cultural wellbeing;
- (b) That the Waikato River has some assimilative capacity.

Policy 2

4.3 Delete clause (c) of Policy 2.

Policy 5

4.4 Delete Policy 5.

Policy 8

4.5 Amend Policy 8 as follows:

a. People and communities will need to ~~collectively~~ change practices and activities so as to contribute proportionately to achieving the short-term numeric water quality values in Table 3.11-1 for the catchments as a whole; and

b. Recognise that the changes will need to continue more than 10 years after Chapter 3.11 of this Plan is operative while minimising the adverse social and economic impacts on people and communities, enabling innovation and new practices to develop, and responding to the reasonably foreseeable effects of climate change.

Policy 10

4.6 Amend the policy to give effect to the reasons for the appeal by deleting policy 10 and replacing it with the following:

Collect information and undertake research about current discharges, appropriate modelling tools to estimate contaminant discharges, the spatial variability of land use and contaminant losses, and the extent of improvements in farm practices to reduce contaminant discharges. Any information and research should consider the following:

- a. Land suitability reflecting the biophysical properties and prevailing climatic conditions of land, the risk of contaminant discharges from that land, and the sensitivity of relevant receiving water bodies; and
- b. New data and knowledge relevant to nutrient discharges and allocation of nutrient loadings.

Policy 11

4.7 Amend the policy to give effect to the reasons for the appeal and to provide a clear consenting pathway for the continued operation and development of regionally significant industry and infrastructure in the region by;

- (a) Better providing for the continued operation and development of industry and infrastructure as appropriate in circumstances other than where it solely protects and restores the rivers;
- (b) Better recognising or clarifying that Te Ture Whaimana o Te Awa o Waikato can be given effect to by providing for the continued operation and development of regionally significant industry or infrastructure through the achievement of the water quality attribute states in Table 3.11-1;
- (c) Better recognising the social and economic benefits of new or replacement regionally significant industry and infrastructure and promoting best practice rather than implying a no net effect approach;
- (d) Better reflecting the social and economic benefits of regionally significant industry and infrastructure to the region, including by having regard to the need to achieve (revised) Objective 3, rather than Objective 1;

- (e) Better reflecting the significant advances already made in reducing discharges of the four contaminants from point source discharges from regionally significant industry and infrastructure,

Policy 12

4.8 Amend the policy to give effect to the reasons for the appeal and:

- (a) By better reflecting that not all effects associated with regionally significant industry and infrastructure can be avoided, remedied or mitigated, to the point that there are no net effects, and that there should be no obligation (explicit or implied) that any such residual effects need to be offset or compensated for;
- (b) By deleting clause (b) and replacing it with a new clause that provides a pathway for offsets / compensation that is optional for applicants, but which if adopted is recognised and given credit for.
- (c) To the extent that the policy applies to discharges having either significant adverse effects on aquatic life or toxic adverse effects, by providing for the discharge to be assessed “after reasonable mixing in the receiving waters”;
- (d) By ensuring that the policy recognises that if offsets are applied they may occur at the same location as well as alternative locations to the point source discharge.

Policy 13

4.9 Amend Policy 13 to give effect to the reasons for the appeal and by:

- (a) Removing the reference to Policy 13 as being subject to Policy 12;
- (b) In clause (e), deleting the reference to Policy 12 in the context of offsetting / compensation.
- (c) Amending clause (i) which refers to reasonable mixing by deleting the following words “may be acceptable as a transitional measure during the life of this Chapter”.

Policy 19

4.10 Delete Policy 19.

Rule 3.11.4.9

4.11 Give effect to the reasons for the appeal by:

- (a) Deleting Rule 3.11.4.9 so that the use of land for farming is governed by Rules 3.11.4.1 to 3.11.4.8; or
- (b) If the Rule is not deleted, by reinstating the expiry date of 1 July 2026, as notified.

Consequential relief / costs

- 4.12 OjiFS opposes any alternative provisions contrary to achieving the above outcomes and seeks alternative, consequential, or necessary additional relief to that set out in this Notice of Appeal, and to give effect to the matters raised generally in this Notice of Appeal and OjiFS's submissions; and
- 4.13 Costs.

DATED this 6th day of July 2020



G K Chappell
Counsel for Oji Fibre Solutions (NZ) Limited

Address for Service: Gill Chappell
Vulcan Building Chambers
P O Box 3320
Shortland Street
DX CX 20546
AUCKLAND 1140

Telephone: (09) 300 1259

Email: gillian@chappell.nz

Advice to recipients of copy of notice of appeal

How to become a party to proceedings: If you wish to become a party to the appeal you must: -

1. Within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
2. Within 20 working days after the period for lodging an appeal ends, serve copies of your notice on all other parties.
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
4. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

5. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Note;

6. Persons wishing to become a party to the proceeding are referred to *Re Wairakei Pastoral & Ors* [2020] NZEnvC 063.