

**BEFORE THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**ENV-2020-**

**I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

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

**AND**

**IN THE MATTER** of an appeal under Clause 14 of Schedule 1 of the Act  
against the decision of the Waikato Regional Council on  
Proposed Plan Change 1 to the Waikato Regional Plan

**BETWEEN** **SOUTH WAIKATO DISTRICT COUNCIL**

**Appellant**

**AND** **WAIKATO REGIONAL COUNCIL**

**Respondent**

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**NOTICE OF APPEAL BY SOUTH WAIKATO DISTRICT COUNCIL**

**7 July 2020**

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**TOMPKINS | WAKE**

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TO:           The Registrar  
              Environment Court  
              **AUCKLAND**

1.       **SOUTH WAIKATO DISTRICT COUNCIL** (“SWDC”) appeals against parts of a decision of Waikato Regional Council (“WRC”) on Proposed Plan Change 1 to the Waikato Regional Plan (“PC1”), “the Decision”.
2.       SWDC has a right to appeal the Decision to the Environment Court under clause 14 of Schedule 1 to the Resource Management Act 1991 (“RMA”) because SWDC made submissions on PC1 seeking relief, including consequential relief, in relation to the matters which are now being appealed, being Policies 12 and 13. SWDC also made 12 further submissions on PC1.
3.       Through this appeal, SWDC seeks that Policy 12 is amended to:
  - (a)      Provide for reasonable mixing; and
  - (b)      Provide for the staging of offsetting or compensation measures; and
  - (c)      Provide for offsetting or compensation measures to apply to a network of linked wastewater treatment systems; and
  - (d)      Reflect that offsetting or compensation measures may contribute towards the improvement of the Waikato and Waipā River catchments; and
  - (e)      Allow consideration of lesser residual effects.
4.       SWDC also seeks that Policy 13(i) is amended to be clear that Policy 3.2.3.8 applies to the consideration of resource consent applications for point source discharges.
5.       SWDC provides further details for its appeal below.

6. SWDC is not a trade competitor for the purposes of s 308D of the RMA.
7. SWDC received notice of the Decision on 22 April 2020.
8. On 15 May 2020, the Environment Court granted waivers<sup>1</sup> of the requirements to provide the following with a Notice of Appeal, when it is lodged with the Environment Court:
  - (a) A copy of the appellant's submission and/or further submissions;
  - (b) A copy of the Decision; and
  - (c) A list of the parties to be served with a copy of this Appeal.
9. Accordingly, this information is not included with this Notice of Appeal.

## **REASONS FOR THE APPEAL**

### **Policy 12 - Offsetting and compensation measures**

10. SWDC supports the Decisions on Policy 12 in principle, with respect to providing for offsetting and compensation of residual adverse effects. However, SWDC seeks clarity on the application and implementation of the policy, as set out below.
11. All four of SWDC's wastewater treatment plants ("WWTPs") are currently undergoing consent renewals. SWDC has two WWTPs discharging into the Waikato River catchment, being:
  - (a) The Tokoroa WWTP which discharges into a tributary of the Waikato Awa; and

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<sup>1</sup> Decision No. [2020] NZEnvC 063.

- (b) The Arapuni WWTP, which discharges directly into the Waikato Awa.
12. The remaining WWTP's, Putaruru and Tirau, discharge into the Waihou catchment.
  13. SWDC seeks a policy framework that more appropriately enables the consideration of those applications and reflects their specific circumstances, within the context of PC1.
  14. The proposed programme of WWTP upgrades are over 30 years, with the biggest gains being from mitigation towards the end of that 30 years. To that end, SWDC seeks that Policy 12 provides for offsets or compensation also to be staged over the duration of a consent.
  15. SWDC considers that the WWTPs in the Waikato River catchment are a network of systems and therefore the associated environmental effects should be treated as such. While there will be localised environmental effects from the individual WWTPs, SWDC seeks to leverage from the proportionally larger decrease in contaminants from the Tokoroa WWTP to offset the environmental effects which are not mitigated through the Arapuni WWTP upgrade further downstream in the Waikato River catchment. As such, SWDC seeks that Policy 12 is amended to allow for offsetting or compensation measures to apply to a network of linked systems.
  16. Consequent to extensive consultation with the relevant River Iwi (Te Arawa River Iwi Trust, Ruakawa, Tainui, and other hapu), wetland discharge options have been chosen for the Tokoroa, Tirau and Putaruru WWTP discharges. In that regard, wetland treatment is considered to be a form of cultural mitigation and is an element of "betterment" or contribution to the restoration of the Waikato Awa's biodiversity values. SWDC seeks that Policy 12 is amended to acknowledge that offsetting and

compensation measures may also achieve the objectives in Te Ture Whaimana o Te Awa o Waikato for the Waikato and Waipā Awa.

17. Given the nature of wetland treatment, SWDC considers that it is inappropriate for Policy 12 to require the offsetting of the four contaminants that are added by wetland treatment, such as E.coli. The requirement to offset should be the lesser of the discharge to or from an artificial wetland.

#### **Policies 12 and 13 - Reasonable mixing**

18. The Decision on Policies 12 and 13 does not appropriately provide for the application of a reasonable mixing zone to apply for a discharge to water as is provided for by Policy 3.2.3.8 of the Waikato Regional Plan (“WRP”).
19. Reasonable mixing is a standard and accepted approach to manage adverse effects of point source discharges and as outlined in the above paragraph, is expressly provided for in the WRP. Therefore, it is clearly a viable, relevant, recognised and appropriate resource management tool. Relevantly, the Decision gives no reasons for limiting reasonable mixing as a transitional measure (over the duration of PC1).
20. SWDC is concerned that Policy 12 does not adequately provide for the concept of reasonable mixing, and is also concerned with the wording of Policy 13(i), as PC1 does not provide guidance or criteria for when “reasonable mixing...may be acceptable as a transitional measure”.
21. The qualification of reasonable mixing as a “transitional measure” in Policy 13 would have a significant consequence for regionally significant infrastructure, and SWDC’s WWTPs. Removing the ability to have mixing zones downstream from a WWTP will mean that the costs for the treatment and discharge of municipal wastewater will significantly increase. Removing this approach from the “toolbox” is likely to result in significant additional costs for the treatment and discharge of municipal wastewater.

22. There are diminishing returns on investment for SWDC's WWTP upgrades that need to be recognised through the PC1 Policies. The financial impact on the ratepayer for the currently programmed upgrades to the WWTPs is already bordering on extreme, particularly towards the end of the repayment period.
23. The South Waikato communities suffer from some of the highest levels of deprivation in the country, and further costs will have significant adverse social and economic effects. The recognition of reasonable mixing and more flexibility in respect of offsetting and compensation would assist to reduce the burden on South Waikato's communities.

#### **RELIEF SOUGHT**

24. For the reasons set out above, SWDC seeks that Policy 12 is amended as follows:

***Policy 12/Te Kaupapa Here 12:***

*a. When considering resource consent applications for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato or Waipā River catchments, require demonstration that the proposed discharge represents the Best Practicable Option at the time resource consent is being considered, to prevent or minimise the adverse effects of the discharge on the receiving waterbody, after reasonable mixing occurs in accordance with Policy 3.2.3.8.*

*b. Where, despite the adoption of the Best Practicable Option and after reasonable mixing occurs in accordance with Policy 3.2.3.8, there remain residual adverse effects, measures should be proposed at an alternative location(s) to the point source discharge, for the purpose of ensuring positive effects on the environment are sufficient over the duration of the consent to offset or compensate for any residual adverse effects of the*

discharge(s) that will or may result from allowing the activity, provided that:

i. the primary discharge does not result in the discharge having either significant adverse effects on aquatic life or toxic adverse effects; and

ii. the measure relates to the contaminant(s) giving rise to the residual adverse effects; and

iii. the measure occurs upstream within the same sub-catchment in which the primary discharge occurs, or when ~~and if~~ this is not practicable, ~~then~~ upstream within either the same Freshwater Management Unit or a separate Freshwater Management Unit ~~located upstream~~; and

iv. the measure ~~it~~ remains in place for the duration of the residual adverse ~~residual~~ effect and is secured by consent condition or another legally binding mechanism; and

c. When considering measures for offsetting or compensating any residual adverse effects, relevant considerations include:

i. The ability to stage offsetting over the duration of the consent, the timing of the stages proposed, and the level of investment required over that timeframe;

ii. That offsetting or compensating may be applied to a network of linked networks and systems, which may include both point source and/or diffuse discharges from regionally significant infrastructure; and

iii. The extent to which measures also assist to achieve the objectives in Te Ture Whaimana o Te Awa o Waikato for the Waikato and Waipā Rivers.

~~e~~ d. For the purpose of establishing if a discharge will have a residual adverse effect, relevant considerations include:

i. the extent to which any replacement discharge(s) fails to reduce the contaminant load of an existing discharge proportionate to the decrease required to achieve the short-term numeric water quality

values in Table 3.11-1 or the steady progression towards the 80-year water quality attribute states in Table 3.11-1, including at downstream monitoring sites; and

ii. in respect of a new discharge, whether any new discharge will increase the load of nitrogen, phosphorus, sediment and/or microbial pathogens contaminants to either the Waikato River or Waipā River catchments; and ~~in either case~~

iii. in respect of both d)i. and d)ii where the discharge is associated with the damming or diversion of water, whether it will exacerbate the rate or location of those contaminants that would otherwise have occurred without the damming or diversion, and if so, the extent of such increase or exacerbation; and

iv. where discharges are from regionally significant infrastructure to artificial wetlands, the lesser of the residual effects from either the end of pipe discharge or point of discharge from the wetland.

25. SWDC seeks that Policy 13 is amended as follows:

**Policy 13/Te Kaupapa Here 12:**

*When considering a resource consent application for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato or Waipā River catchments, and subject to Policy 12, consider the contribution made to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads in the Waikato River or Waipā River catchments and the impact of that contribution on the achievement of the short-term numeric water quality values in Table 3.11-1 and, where applicable, the steady progression towards the 80-year water quality attribute states in Table 3.11-1, taking into account the following:*

...



*i, The application of reasonable mixing ~~in accordance with Policy 3.2.3.8) may be acceptable as a transitional measure during the life of this Chapter;~~*

26. Unless Policies 12 and 13 of PC1 are amended in accordance with the relief sought by SWDC above, they will not:
- (a) Promote the sustainable management of resources;
  - (b) Otherwise be consistent with Part 2 of the RMA; or
  - (c) Be appropriate in accordance with s 32 of the RMA.
27. SWDC seeks the relief set out above and such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal.

**DATED** at Hamilton this 7<sup>th</sup> day of July 2020



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M Mackintosh