

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

ENV-2020-AKL-000101

**I MUA I TE KOOTI TAIAO O AOTEAROA
I TE TĀMAKI MAKĀURAU ROHE**

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of Clause 14(1) of Schedule 1

BETWEEN **AUCKLAND/WAIKATO AND EASTERN FISH AND
GAME COUNCILS**
Appellant

AND **WAIKATO REGIONAL COUNCIL**
Respondent

NOTICE OF CONTACT ENERGY LIMITED'S WISH TO BECOME A PARTY TO PROCEEDINGS

29 September 2020

TO:

The Registrar
Environment Court
AUCKLAND

1. Contact Energy Limited ("**Contact**") gives notice under section 274 of the Resource Management Act 1991 ("**RMA**") that it wishes to be a party to the appeal by Auckland/Waikato and Eastern Fish and Game Councils ("**Appellant**") against the Waikato Regional Council's decision on Proposed Plan Change 1 to the Waikato Regional Plan ("**PC1**").
2. Contact is a person who has an interest in the proceedings that is greater than the public generally. Contact manages and operates a number of significant geothermal power stations in the Waikato Region geothermal (Wairakei, Te Mihi, Ohaaki, Poihipi and Te Huka). These provide around 8% of New Zealand's total electricity supply, and have the capacity to power around 470k homes. Contact takes its relationship to the River seriously and is continually working to improve its health, wellbeing and mauri. However, each of these operations rely to varying extents on the take and discharge of water (including geothermal water) from or into the Waikato River, its tributaries, or lands hydraulically connect to the river. These takes and discharges are allowed for by current resource consents and conditions.
3. Contact is also a significant landowner in the Waikato Region with its extensive geothermal steamfields containing wells, vast pipework and other significant equipment, as well as surface activities such as farming, forests, and protected natural areas.
4. Contact made a submission on PC1 dated March 2017.
5. Contact is not a trade competitor for the purposes of section 308C of the RMA.
6. Contact is interested in those parts of the Appellant's appeal relating to:
 - a. the inclusion of values (new section 3.11.1 and Objective 1);
 - b. the inclusion of other contaminants (Objectives 1, 2, 3, 5 and Policies 1, 3, 4, 11, 12, 16 and 19);
 - c. amendments to offsetting and compensation (Policy 5 and Policy 12);
 - d. clarity of "high water quality" and "high level of contaminant reduction" (Policy 13);
 - e. duration of point source discharge consents and straight-line progression (Policy 14);
 - f. identification of attribute states for all lakes (Policy 15, Table 3.11-1(d) and Map 3.11-1); and
 - g. Dissolved Reactive Phosphorus ("**DRP**") and Nitrogen attributes (Table 3.11-1).
7. Contact opposes the relief sought by the Appellant including for the following reasons.

Inclusion of values

8. The Appellant seeks the re-insertion of section 3.11.1 "Values and uses for the Waikato and Waipa Rivers" as notified with amendments, including, the removal of the "use values – electricity generation". The Appellant also seeks that the values be provided for in Objective 1.
9. Contact supports the reasons and conclusions for removing section 3.11.1, as notified, from the plan.¹

¹ The Hearing Panel's Recommendation Report section 6 of paragraphs 712- 739.

10. Alternatively, if the values are to be re-instated, then the values and uses for electricity generation need to be included in section 3.11.1, as notified, which would align with the National Policy Statement for Freshwater Management 2014 and National Policy Statement for Freshwater Management 2020.

Inclusion of other contaminants and other attributes

11. The Appellant seeks that "other contaminants" be managed under the plan.² The Appellant has not specified which additional contaminants it wishes to be managed.
12. Only those attributes which are sufficiently connected with the content of PC1, are within scope and able to be considered as part of these appeal proceedings. This does not include all "other contaminants" as sought by the Appellant.
13. The Decision concluded that the contaminants (sediment, E.Coli, nitrogen and phosphorus) ("the **four priority contaminants**") and other specified attributes related to the four priority contaminants such as periphyton and DO, were within scope of PC1.³ The Decision, however, concluded that attributes such as periphyton and DO should not be included in Table 3.11-1.⁴
14. The Decision concluded that other attributes were beyond the ambit of PC1.⁵
15. Contact supports this Decision's reasoning⁶ and conclusion that other contaminants not sufficiently connected with the content of PC1 were not within the scope of PC1.
16. Contact's position is that PC1 should be limited to the four priority contaminants and related attributes.
17. Contact considers the inclusion of "other contaminants" should be pursued through the review of the Waikato Regional Plan that the Council has recently commenced, rather than through the confined PC1 process. This will ensure that "other contaminants" are robustly considered through a comprehensive plan making process which allows for full participation of interested and affected parties and a full section 32 analysis.

Offsetting and compensation

18. The Appellant seeks to add a definition of offsetting and compensation to Policy 5 and to amend the criteria for offsetting and compensation in Policy 12.
19. Contact's position is that any offsetting and compensation definition or criteria must ensure that offsetting and compensation can be provided where the outcome is "no net loss", or preferably a "net gain", rather than only a "net gain" as sought by the Appellant.
20. Contact considers the above approach would better:
 - a. achieve the purpose, and in particular section 104(1)(ab), of the RMA; and
 - b. align with the National Policy Statement for Freshwater Management 2020 which specifically provides for aquatic offsetting and compensation;⁷ and

² See for example proposed amendments to Objectives 1, 2, 3, 5 and Policies 1, 3, 4, 11, 12, 16 and 19.

³ The Hearing Panel's Recommendation Report paragraph 987 (DO) and paragraphs 980-983 (periphyton).

⁴ The Hearing Panel's Recommendation Report section 4 of paragraph 552. The Decision concluded that there was insufficient evidence to support the inclusion of additional attribute states such as Fish IBI, MCI for example at paragraphs 987 (DO) 988-992 (MCI and QMCI) 993-995 (Fish IBI) 996 (Deposited sediment).

⁵ The Hearing Panel's Recommendation Report paragraph 554.

⁶ The Hearing Panel's Recommendation Report section 4 of paragraphs 461 -562.

⁷ Clauses 3.21 -3.24 NPSFM 2020.

- c. align with the objectives, policies and methods of implementation of the Waikato Regional Policy Statement⁸; and
- d. align with the principles underpinning good biodiversity offsetting as set out in with the Guidance on Good Practice Biodiversity Offsetting in New Zealand (August 2014); and
- e. avoid, remedy and mitigate potential adverse environmental effects and promote the sustainable management of natural and physical resources under section 5 of the RMA.

"High water quality" and "high level of contaminant reduction" (Policy 13)

21. The Appellant seeks clarity that:
 - a. the term "high water quality" is to be determined with reference to Table 3.11-1; and
 - b. the term "high level of contaminant reduction" is to be considered entirely independently from the Best Practicable Option ("**BPO**") assessment.
22. In the absence of specified amendments to Policy 13 to clarify how Table 3.11-1 will apply to the term "high water quality", Contact wishes to be involved in this appeal point to ensure any thresholds imposed are practicable.
23. Contact is concerned about the removal of the reference to the BPO because this will mean the term "high level of contaminant reduction" is to be assessed in isolation from important considerations such as financial implications and technical capabilities, which form part of the BPO. The BPO is a well-known concept within the RMA framework. Including reference to the BPO in Policy 13 is appropriate and provides a link with Policy 12 which provides the primary direction. Contact supports the reasons and conclusions in the Decision for retaining the reference to the BPO.⁹

Duration of point source discharge consents and straight-line progression (Policy 14)

24. The Appellant seeks a shorter consent duration for point source discharges which may not be easily subject to review to allow for the implementation of a future allocation regime.
25. Contact agrees with the Decision that that diffuse discharges are starting from a different point, and that there is a stronger case for limited consent duration in that situation than for point source discharges.¹⁰
26. Contact agrees with the Decision¹¹ that the requirements in existing Policy 6, including case law, good practice guidelines and potential environmental risks, would apply to point source discharge consents, and that when viewed in conjunction with the existing Policy 6, longer consent durations for point source discharges are appropriate.¹²
27. The Appellant seeks the insertion of an additional reference to "straight-line progression" toward meeting the attribute states in Table 3.11-1.
28. Contact agrees with the Decision¹³ that the reference to "steady improvement" toward achieving Objective 1 provides sufficient direction to enable stakeholders to understand what is expected of them.

⁸ See implementation methods 8.3.1 and 8.3.3 of the Waikato Regional Policy Statement.

⁹ The Hearing Panel's Recommendation Report paragraphs 1355 - 1389.

¹⁰ The Hearing Panel's Recommendation Report paragraph 1395.

¹¹ The Hearing Panel's Recommendation Report paragraph 1397.

¹² The Hearing Panel's Recommendation Report paragraph 1400.

¹³ The Hearing Panel's Recommendation Report paragraph 1368.

29. The Decision concluded that "straight line progression" was unrealistic¹⁴ and that it is more important for applicants to demonstrate they are on the path towards the long-term goals.¹⁵ Contact agrees.

Attribute states for all lakes (Policy 15, Table 3.11-1(d) and Map 3.11-1)

30. The Appellant seeks to "identify management units for all lakes" and impose more short- and long-term water quality targets for lakes.
31. If the intention is to amend Policy 15 so that it applies to all the lakes currently identified in the Lake Freshwater Management Units ("**FMUs**") on Map 3.11-1, that is riverine, peat, volcanic and dune Lake FMUs, then Contact is neutral on this appeal point. However, for clarity, Contact seeks that the proposed change be limited to "all lakes identified on Map 3.11- 1." This would ensure consistency with the Appellant's proposed change to Policy 1.
32. Contact considers the inclusion of additional lakes into the Lake FMUs beyond those already identified in Map 3.11-1 is not within the ambit of PC1. Further, Contact understands that the Decision found there was insufficient evidence to support the inclusion of short-term targets.¹⁶
33. Contact considers that the inclusion of additional lakes into the Lake FMUs identified in Map 3.11-1 and additional attributes should be pursued through the review of the Waikato Regional Plan that the Council has recently commenced, rather than through the confined PC1 process. This will ensure that any additional lakes, and any attributes to be applied to these lakes, are robustly considered through a comprehensive plan making process, including the participation of interested and affected parties and a full section 32 analysis.

Table 3.11 -1 (b) and (c) Dissolved Reactive Phosphorus and Nitrogen attributes

34. The Appellant seeks to lower the DRP and Nitrogen attribute states to ensure ecosystem health is provided for, a goal Contact supports.
35. However, in the absence of specified amendments to the attributes in Tables 3.11-1(c) and (d) to give effect to this relief, Contact wishes to be involved in this appeal point to ensure any thresholds imposed are practicable.
36. The attributes were established in accordance with the best available information. The Technical Leaders Group ("**TLG**") provided technical information based on existing science and expert input which, was then assessed by the Collaborative Stakeholder Group ("**CSG**"). Expert conferencing was also held during the plan change process to inform the attributes in Table 3.11-1.
37. Contact agrees with the Decision's reasons and conclusions¹⁷ for setting the DRP and Nitrogen attributes as stated in Table 3.11-1.
38. Contact agrees to participate in mediation or other alternative dispute resolution.

¹⁴ The Hearing Panel's Recommendation Report paragraph 1399.

¹⁵ The Hearing Panel's Recommendation Report paragraph 1368.

¹⁶ The Hearing Panel's Recommendation Report page 15 paragraph 1009.

¹⁷ The Hearing Panel's Recommendation Report paragraphs 945 and 966. The Decision concluded that the Nitrogen attributes should be set in accordance with the recommendations of the large majority of experts in the JWS and that the attributes for DRP were set at the current state on the basis that this was a 'place-holder' pending the development of tailored targets.

DATED at Wellington this 29th day of September 2020



Signature: Chris Drayton

Date: 29 September 2020

Address for Service: C/- Chris Drayton
Consenting Manager
Contact Energy Ltd
Level 2, Harbour City Tower
29 Brandon Street
PO Box 10742, Wellington 6143

WELLINGTON

Telephone: 027 511 0365

Email: chris.drayton@contactenergy.co.nz

TO: The Registrar of the Environment Court at Auckland
WRC.PC1appeals@justice.govt.nz

AND TO: Waikato Regional Council PC1Appeals@waikatoregion.govt.nz

AND TO: The Auckland/Waikato and Eastern Fish and Game Councils
BWilson@fishandgame.org.nz