

**BEFORE THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**ENV-2020-AKL-000101**

**I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKĀURAU 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** **AUCKLAND/WAIKATO AND EASTERN FISH AND GAME  
COUNCILS**

**Appellant**

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

**Respondent**

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**NOTICE BY HAMILTON CITY COUNCIL TO BECOME A PARTY TO PROCEEDINGS  
UNDER SECTION 274 OF THE ACT**

**28 September 2020**

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**TOMPKINS | WAKE**

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**TO:** The Registrar  
Environment Court  
Auckland

1. **HAMILTON CITY COUNCIL** (“HCC”) gives notice under s 274 of the Act that it wishes to be a party to these proceedings, being *Auckland/Waikato and Eastern Fish and Game Councils v Waikato Regional Council* (ENV-2020-AKL-000101).
2. The Appeal challenges the decision by the Respondent on Proposed Waikato Regional Plan Change 1 - Waikato and Waipā River Catchments (“PC1”), “the Decision”.
3. HCC is a local authority and a person who made a submission about the subject matter of the proceedings.
4. HCC is not a trade competitor for the purposes of section 308C or 308CA of the Act.
5. HCC’s interests, positions and reasons in relation to the appeal are set out in Table 1 below.
6. HCC agrees to participate in mediation or other alternative dispute resolution of the proceedings.

**DATED** at Hamilton this 28<sup>th</sup> day of September 2020



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M Mackintosh / L Muldowney

HCC reference: D-3386213

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In accordance with the Environment Court Decision No. [2020] NZEnvC 063 this notice is lodged with the Environment Court at [WRC.PC1appeals@justice.govt.nz](mailto:WRC.PC1appeals@justice.govt.nz) and served on:

The Council at: [PC1Appeals@waikatoregion.govt.nz](mailto:PC1Appeals@waikatoregion.govt.nz)

The Appellant at: [BWilson@fishandgame.org.nz](mailto:BWilson@fishandgame.org.nz)

***Advice***

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

**Table 1: Details of HCC’s section 274 party interests**

Provision	Relief sought by Appellant	HCC’s position	Reasons
Objective 2	<p><i>“Progress is made over the life of this Plan towards the restoration and protection of the health and wellbeing of the Waikato and Waipā River catchments in relation to nitrogen, phosphorus, sediment, <del>and</del> microbial pathogens <u>and other contaminants</u>, by the short-term numeric water quality <del>values</del> <u>attribute states</u> in Table 3.11-1 being met no later than 10 years after Chapter 3.11 of this Plan is operative.</i></p> <p><i><u>(This is a Freshwater Objective for the purpose of the NPSFM).</u></i>”</p>	Oppose	The implications (including costs) of including other contaminants in PC1 have not been assessed.
Objective 3	<p><i>Waikato and Waipā communities are assisted to provide for their social, economic, spiritual and cultural wellbeing through staging the reduction of the discharges of nitrogen, phosphorus, sediment and microbial pathogens <u>and other contaminants</u> necessary to restore and protect the health and wellbeing of the Waikato and Waipā River catchments, and by the encouragement of collective community action for that purpose.</i></p>	Oppose	The implications (including costs) of including other contaminants in PC1 have not been assessed.
Policy 5	<p>Delete Policy 5. If Policy 5 remains then it must be on the basis of a definition of “offset/compensation” contained in Policy</p>	Oppose	HCC considers offset or compensation measures should relate to contaminants and not to "conservation action" or "conservation outcomes" per se.

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	<p>12 (as sought to be amended in this appeal) or as follows:</p> <p><i><u>“Offset/compensation: For the purpose of Chapter 3.11 means for a specific contaminant/s a measurable conservation action, demonstrated to achieve ‘net gain’ through robust and appropriate methodology, that reduces the intensity, extent and/or duration of residual adverse effects on water quality and achieves conservation outcomes above and beyond that which would have been achieved if the offset had not taken place.”</u></i></p>		
<p>Policy 11</p>	<p><i>“When considering resource consent applications for point source discharges of <u>contaminants, including</u> nitrogen, phosphorus, sediment and microbial pathogens to water or onto or into land, in the Waikato and Waipā River catchments, subject to policies 12 and 13 and <del>having regard-subject</del> to the need to achieve Objective 1, provide for the continued operation and development of regionally significant infrastructure and regionally significant industry.”</i></p>	<p>Oppose</p>	<ol style="list-style-type: none"> <li>1. The amendment would extend the application of the policy to contaminants other than nitrogen, phosphorus, sediment and E-coli. The implications (including costs) of including other contaminants in PC1 have not been assessed.</li> <li>2. It is inappropriate and meaningless to make provision for the continued operation and development of regionally significant infrastructure and regionally significant industry conditional on (subject to) achieving an objective in 2096.</li> </ol>

Provision	Relief sought by Appellant	HCC's position	Reasons
Policy 12 a	<p><i>a. When considering resource consent applications for point source discharges of nitrogen, phosphorus, sediment, <del>or</del> microbial pathogens <u>and other contaminants</u> 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.</i></p>	Oppose	<p>The implications (including costs) of including "other contaminants" in PC1 have not been assessed.</p>
Policy 12 b	<p><i>b. Where, despite the adoption of the Best Practicable Option, 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 sufficient 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></p> <ul style="list-style-type: none"> <li><i>i. the primary discharge does not result in the discharge having either significant adverse effects on aquatic life or toxic adverse effects; and</i></li> <li><i>ii. the measure relates to the contaminant(s) giving rise to the residual adverse effects; and</i></li> </ul>	Oppose	<ol style="list-style-type: none"> <li>1. The proposed new sub-clause (b)(v) could be interpreted as requiring point source discharges to have no adverse effects on the environment. Such an interpretation conflicts with Policy 12 (c). The amendment would therefore reduce PC1's clarity and certainty.</li> <li>2. The proposed new sub-clause (b)(v) is meaningless; it simply says the offset or compensation measure should achieve something.</li> </ol>

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	<p><i>iii. the measure occurs upstream within the same sub-catchment in which the primary discharge occurs and if this is not practicable, then upstream within the same Freshwater Management Unit or a Freshwater Management Unit located upstream; and</i></p> <p><i>iv. it remains in place for the duration of the adverse residual effect and is secured by consent condition or another legally binding mechanism <u>for at least that duration</u>; and</i></p> <p><i><u>v. it is demonstrated that positive effects will be sufficient to offset or compensate for residual adverse effects using methodology that is appropriate and commensurate to the scale and intensity of the residual adverse effects.</u></i></p> <p><i><u>vi. the measure achieves outcomes above and beyond that which would have been achieved if the offset/compensation had not taken place.</u></i></p>		
Policy 14	<p><i>In addition to having regard to the matters set out in Policy 1.2.4.6, when determining an appropriate duration for any consent granted for a point source discharge have regard to the following matters:</i></p>	Oppose	<ol style="list-style-type: none"> <li>1. If necessary, the Regional Council can review the conditions of consent in accordance with s128 of the Resource Management Act.</li> <li>2. In general, HCC is opposed to the review of the conditions of a point source</li> </ol>

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	<p>a. <i>The matters set out in Policies 12 and 13;</i></p> <p>b. <i>The magnitude and significance of the investment made or proposed to be made in contaminant reduction measures and any resultant or predicted improvement in the water quality of the receiving environment;</i></p> <p>c. <i>The desirability of providing certainty of investment where contaminant reduction measures are proposed (including investment in treatment plant upgrades or land-based application technology);</i></p> <p><u>ca. Whether anticipated difficulty in undertaking future review(s) of the consent due to the relationship between the activity and the need to discharge the contaminant(s), means that a duration beyond 2035 could create an impediment to a future regime that allocates the assimilative capacity of waterbodies; <del>and</del></u></p> <p>d. <i>The need not to compromise a steady improvement in water quality consistent with the achievement of Objective 1 <u>through point source dischargers being required to demonstrate how a (relatively) straight line progression will be made toward</u></i></p>		<p>discharge for regionally significant infrastructure because of the high cost of gaining such a consent, the high cost of the infrastructure, and the additional costs associated with responding to a review of consent conditions.</p> <p>3. Typically, technology upgrades occur following renewal of a point source discharge for regionally significant infrastructure. Such upgrades will result in a step-change improvement in the quality of the effluent. It is inappropriate, therefore, to require an individual point source discharge to achieve straight-line progression towards long-term water quality attribute states.</p>

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	<p><u><i>the long term water quality attribute states in Table 3.11-1 based upon an assessment of their proportional contribution to catchment load together with any offset/compensation under Policy 12.</i></u></p>		
Policy 15	<p>Identify management units for all lakes in the Region that are of a scale appropriate for assessing lake ecosystem health. Set short and long-term water quality targets (attribute states) for lakes based on the information currently available, and the more refined management unit classification.</p>	Oppose	<ol style="list-style-type: none"> <li>1. The required degree of improvement for each lake has yet to be determined, and the cost of achieving such improvement have yet to be assessed.</li> <li>2. Appropriate short and long-term water quality attribute states for each lake will be determined on a lake-by-lake basis as part of the preparation of the lake catchment plans that will be prepared in accordance with Policy 15.</li> </ol>
Table 3.11-1(d) – Dune, Riverine, Volcanic and Peat Lakes Freshwater Management Units	<p>Amend Table 3.11-1(d) to reflect an alternative re-categorisation of lake FMUs, and appropriate short and long-term attributes, limits and targets for the purpose of achieving PC 1 Objectives 1 and 2, based upon the best information/data currently available</p>	Oppose	<ol style="list-style-type: none"> <li>1. The implications (including the costs) of providing the relief sought have yet to be assessed.</li> <li>2. Appropriate short and long-term water quality attribute states for each lake will be determined on a lake-by-lake basis as part of the preparation of the lake catchment plans that will be prepared in accordance with Policy 15.</li> </ol>
Table 3.11-1: New sub-table(s)	<p>Amend Table 3.11-1 to provide attribute states for all aspects of ecosystem health, and reflecting the habitat requirements of</p>	Oppose	<p>The term "wetlands" includes "infrastructure wetlands" built to treat stormwater or wastewater. Water quality</p>

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	<p>trout for the Region's trout fisheries, including:</p> <ul style="list-style-type: none"> <li>- MCI (% change) - numeric objective at all wadeable monitoring sites.</li> <li>- Fish Q – IBI.</li> <li>- Dissolved Oxygen 7-day mean minimum (mg/L).</li> <li>- Dissolved Oxygen 1-day minimum (mg/L).</li> <li>- Deposited sediment (% cover) - no naturally hard bottomed sites should have a deposited fine sediment cover greater than 20%.</li> <li>- QMCI and ASPM.</li> </ul> <p>Amend the tables to include a table which lists water quality attribute states for all wetlands (in addition the Whangamarino Wetland) for TN, TP, sedimentation and for hydrological alteration (where it exacerbates water quality contamination). This may require narrative or numeric attribute states.</p>		<p>attribute state requirements should not apply within infrastructure wetlands.</p>
<p>Values and uses for the Waikato and Waipa Rivers</p>	<p>Reinsert section 3.11.1 "Values and uses for the Waikato and Waipa Rivers" with the changes as shown in Appendix 1 to this Appeal.</p>	<p>Oppose</p>	<p>HCC agrees with the decision to delete the values and uses from PC1 for the reasons the Hearings Panel set out in its Recommendation Report. Reinserting the values and uses is unnecessary and will likely result in a lot of conflict between appellants for no benefit to the restoration</p>

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			and protection of the health and wellbeing of the Waikato River and its tributaries.