

BEFORE THE ENVIRONMENT COURT

AT AUCKLAND

ENV-2020-AKL-000101

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under clause 14(1) of the First Schedule of the Resource Management Act 1991 in relation to the Proposed Waikato Regional Plan Change 1: Waikato and Waipa Catchments

BETWEEN

Auckland/Waikato and Eastern Fish and Game Councils

Appellant

AND

Waikato Regional Council

Respondent

**NOTICE OF KING COUNTRY ENERGY LIMITED'S
WISH TO BE A PARTY TO THE PROCEEDINGS PURSUANT TO
SECTION 274 OF THE RESOURCE MANAGEMENT ACT 1991**

TO: The Registrar
Environment Court
AUCKLAND

Via E-mail: WRC.PC1appeals@justice.govt.nz

1. King Country Energy Limited ('KCE') wishes to become a party to an appeal by Auckland/Waikato and Eastern Fish and Game Councils ('F&G') (under clause 14(1) of the First Schedule of the Resource Management Act 1991 ('RMA')) in relation to the Respondent's decisions on the Proposed Waikato Regional Plan Change 1: Waikato and Waipa Catchments ('PC1').
2. This notice is made as KCE submitted on the provisions of PC1 to which this appeal relates.
3. KCE is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
4. KCE has an interest in the following parts of the proceedings:
 - (a) Objectives 1, 2 & 3
 - (b) Policies 11 & 12
5. KCE opposes the relief sought by F&G to objectives 1, 2 & 3, together with policies 11 & 12, specifically where F&G seeks to amend the provisions to include 'other contaminants'.

Objectives 1, 2 & 3

- 5.1 In response to the decisions version of Objective 1, F&G consider that there are other contaminants that need to be managed to achieve restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers (as well as nitrogen, phosphorus, sediment and microbial pathogens). F&G notes that the decision found that additional attributes that are sufficiently connected with the content of PC1, are within 'scope', they do have merit and should be referenced in the Objectives and Policies. Further, F&G notes that the National Policy Statement for Freshwater Management ('NPS FM') requires values to be identified for each freshwater management unit ('FMU'). Given this F&G record that the values should be transparent, be stated in the planning document, and referred to in the Objectives. F&G consider that the values of swimming and taking food should remain specially stated. In addition, F&G notes that the freshwater objectives of PC1 should be labelled as such for the purpose of clear implementation of (part of) the NPS FM, and should clearly cross-reference the Table 3.11-1 attribute states.

F&G seek that Objective 1 is amended as follows: *"In relation to the effects of nitrogen, phosphorus, sediment and microbial pathogens and other contaminants on water quality, the health and wellbeing of the Waikato and Waipā Rivers, including all springs, lakes and wetlands within their catchments, is both restored over time and protected, with the result that the values are provided for, in particular, ~~they~~ these waterbodies are safe for people to swim in and take food from, and the water quality states in Table 3.11-1 are achieved, at the latest by 2096."*

- 5.2 With regard to Objective 2, F&G again notes that there are other contaminants that need to be managed to achieve restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers and that the short-term numeric goals in Table 3.11- 1 do not include all the attributes required, and some attributes are not stringent enough to give effect to Policy A1(a) of the NPSFM. F&G similarly records that Objective 3 should reference ‘other contaminants’.

F&G seeks that Objective 2 is amended as follows: *“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 and microbial pathogens and other contaminants, by the short-term numeric water quality ~~values~~ attribute states in Table 3.11-1 being met no later than 10 years after Chapter 3.11 of this Plan is operative.”*

Further, F&G seeks the following amendments to Objective 3: *“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 and other contaminants 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.”*

In addition, F&G requests consequential amendments to Table 3.11-1 as sought in its appeal points.

- 5.3 KCE considers that the general amendment seeking to include the term ‘*other contaminants*’ has the potential to broaden the scope of the objectives considerably, particularly without an understanding of what other contaminants are intended to be included within PC1. KCE considers that the provisions of PC1 should be limited to the four key contaminants and related attributes as set out in the notified version of PC1, the section 32 Report and the associated scoping documents. Were the amendments requested by F&G accepted and included within PC1, KCE considers that there could be a number of affected, or potentially affected parties to the amendments that have not and will not have the ability to respond to the same. KCE considers this to be both unfair and inappropriate.

Policies 11 & 12

- 5.4 Much like objectives 1, 2 & 3, in its appeals to policies 11 & 12 F&G considers that there are other contaminants that need to be managed to achieve restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers (as well as nitrogen, phosphorus, sediment and microbial pathogens). F&G records that while the Decision properly renders the ‘provide for’ aspect of Policy 11 ‘subject to’ policies 12 and 13, the Decision does not also make the Policy ‘subject to’ achieving Objective 1. F&G note that the words ‘have regard to’ in this Policy, do not reflect the absolute importance of the need to achieve Objective 1, when considering applications for regionally significant infrastructure. F&G consider that this is particularly the case when compared to Policy 13, which uses the words ‘taking into account’. Given this, F&G seek the following amendments to Policy 11: *“When considering resource*

consent applications for point source discharges of contaminants, including 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 ~~having regard~~ subject to the need to achieve Objective 1, provide for the continued operation and development of regionally significant infrastructure and regionally significant industry

- 5.5 In addition, F&G consider that there are other contaminants that need to be managed to achieve restoration and protection of the health and wellbeing of the Waikato and Waipā Rivers (as well as nitrogen, phosphorus, sediment and microbial pathogens). F&G state that sub-clause (b)(iv) needs to clarify that the consent condition or other legally binding mechanism is to be for the duration of the adverse residual effect. Otherwise, F&G consider that there could be argument that such security need not be provided 'up front'. F&G note that compensation, as well as offsetting, should be demonstrated using appropriate methodology for the purpose of this Policy. F&G seek the following amendments to Policy 12:
- Refer to the effects of other contaminants where reference is made to nitrogen, phosphorus, sediment, and microbial pathogens e.g. "... *nitrogen, phosphorus, sediment, ~~and~~ microbial pathogens and other contaminants ...*";
 - Amend sub-clause (b)(iv): "*it remains in place for the duration of the adverse residual effect and is secured by consent condition or other legally binding mechanism for at least that duration*";
 - Add a new sub-clause in (2)(b) e.g. (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*".
- 5.6 As with F&G's amendments to objectives 1, 2 & 3, KCE considers that the reference to 'other contaminants' sought by F&G within policies 12 and 13 is inappropriate for the reasons set out in 5.3 above.
- 6.0 KCE agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Chris Fincham

General Manager for King Country Energy Limited

Dated: 29th of September 2020

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Note to person wishing to be a party

You must lodge the original and 1 copy of this notice with the Environment Court within 15 working days after–

- the period for lodging a notice of appeal ends, if the proceedings are an appeal; or
- the decision to hold an inquiry, if the proceedings are an inquiry; or
- the proceedings are commenced, in any other case.

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. The notice must be signed by you or on your behalf.

You must serve a copy of this notice on the relevant local authority and the person who commenced the proceedings within the same 15 working day period and serve copies of this notice on all other parties within 5 working days after that period ends.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

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