

IN THE ENVIRONMENT COURT

ENV- 2020—ACK-

I MUA I TE KOOTI TAIAO AOTEAROA

IN THE MATTER

of an appeal under Clause 14 of the First
Schedule of the Resource Management
Act 1991

AND IN THE MATTER

of Plan Change 1 of the Waikato Regional
Plan

BETWEEN

**THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND
INCORPORATED**
Appellant

AND

WAIKATO REGIONAL COUNCIL
Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**

July 2020

To: The Registrar
Environment Court
Auckland

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird'; 'the Society') appeals against decisions of Waikato Regional Council on the Proposed Waikato Regional Plan Change 1 ("PC1").
2. Forest & Bird made a submission and a further submission on the proposed plan.
3. Forest & Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Forest & Bird received notice of the decision on or about 22 April 2020.
5. The decision was made by the Waikato Regional Council.
6. Forest & Bird is willing to participate in alternative dispute resolution.

PARTS OF DECISION APPEALED, REASONS FOR APPEAL, AND RELIEF SOUGHT

7. The parts of the decision that Forest and Bird is appealing, the reasons and the relief are set out in Table 1. These relate to the provisions regarding primarily indigenous biodiversity, the National Policy Statement on Freshwater Management ("NPSFM"), the Waikato Regional and includes consequential amendments to other plan provisions as necessary for consistency and to give effect to relief sought as set out in the Table 1 below.
8. In addition to Table 1, Forest & Bird considers that:
 - a. The objectives of PC1 fall far short of what is necessary to effectively address the severely degraded water quality in the Waipa and Waikato Rivers;
 - b. The setting of an 80 year time frame is far too long regardless of whether this time frame is in relation to lag times or economic impact. In addition, the short term objectives are weak;
 - c. Allowing 10 years to put actions in place to achieve 10% of the required reductions fails to grasp the significance of the issue. In addition, waiting 10

years before any concerted action is required is inconsistent with giving effect to the Vision and Strategy. This approach fails to place any responsibility on those who can make the biggest impact on restoring and protecting the health and wellbeing of the Waikato River.

- d. The provisions that provide for non-notification of resource consents are not supported.

9. In addition to the relief sought in Table 1 Forest & Bird also seeks the following relief:

- a. Reduce the time frame for achieving;
- b. Delete all references to industry certified schemes; and
- c. Delete all provisions relating to non-notification of resource consents.

10. In addition to the reasons set out in the table below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:

- a. do not give effect to relevant provisions of the Waikato Regional Policy Statement (RPS);
- b. do not give effect to the New Zealand Coastal Policy Statement (NZCPS);
- c. are not consistent with Part 2 of the Resource Management Act ('the Act');
- d. do not implement the Council's functions under s 30 of the Act;
- e. do not represent best resource management practice; or
- f. Any combination of the above matters.

11. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal.

Attachments

12. In *Wairakei Pastoral & Ors*¹ the Environment Court waived the appellant's requirements to provide the following documents:

- a. Hard copies of the appeal;
- b. A list of names and addresses of persons to be served with a copy of this notice;
- c. A copy of Forest and Bird's original submission;
- d. A copy of Forest and Birds further submission; and
- e. A copy of the Waikato Regional Council's decision on PC1.

Dated: 07 July 2020



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¹ *Wairakei Pastoral Ltd & Ors* [2020] NZEnvC 063 at [24]

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must, —

- 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
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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.

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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

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

TABLE 1 - PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF SOUGHT

	PROVISION	REASONS FOR APPEAL	APPEAL – RELIEF SOUGHT
	Objectives		
1.	Obj 1	<p>The time frame of “at the latest 2096” is far too long. This in combination with Obj 2 means PC 1 in itself will not achieve any of the improvements discussed in Objectives 1 & 2 in the very minimum for at least 10 years.</p> <p>With nothing required for 10 years another plan will be in place or at in least in the process of being developed and yet another set of proposed target dates will be recommended. The Council needs to take this opportunity to see quantifiable improvements in the life of PC1.</p> <p>It is accepted that this is a long term goal oriented objective but Forest & Bird say it can be much tighter and encourage more improvements more quickly.</p>	<p>Reword: <i>“The restoration and protection of water quality to achieve healthy rivers by 2050”</i></p>
2.	Obj 2	<p>This objective defers actions to improve water quality for a further 10 years. This is inappropriate because there will be many who will not implement any changes to their farming practices until the near fruition of the ten year time frame.</p> <p>The ten year time frame sets a worrying trend that each subsequent plan change will not have to meet the next set of short-term numeric water quality values for another 10 years. Rather than a gradual increase in water quality it will create a 10 year burst in improved quality which is then followed by a another 10 years of stagnation.</p>	<p>Amend the objective:</p> <p><i>Immediate and constant progress is made over the life of this plan towards ...</i></p>

		<p>PC1 should require immediate actions required to address the deteriorating water quality.</p> <p>This objective is inconsistent with many of the policies which imply that PC1 actually requires reductions in contaminant losses.</p>	
Policies			
3.	Policies 1, 2, 3 & 4	<p>Policy 4 states where a Farm Environmental Plan is required to assist in achieving policies 1, 2, and 3.</p> <p>There is no clear indication in Policies 1, 2, and 3 when a farm environment plan will be required. Policy 1 simply states the timely implementation of Farm Environment Plans. Policy 2 provides for farming activities with a farm environment plan but doesn't say when a Farm environment plan will be required. The rules do require the implementation of Farm Environment Plans but the rules require guidance from the policies to implement certain aspects such as Farm Environment Plans</p> <p>Neither does Policy 4 refer to Schedule D1 or give clear scope for the implementation of schedule D1</p>	<p>Amend Policies 2 & 3 to reflect the rules that require Farm Environment Plans</p> <p>Amend Policy 4 to give clear scope for the implementation of Schedule D1</p>
4.	Policies 3(d)(iv), 5, 12(b), and 13	<p>Offsets and compensation are not appropriate in a water quality context.</p> <p>Even if there was a place for offsetting or compensation in the freshwater context. It needs to comply with the mitigation hierarchy, avoid, remedy and then mitigate.</p>	Delete references to offsetting and compensation
5.	Policy 6 along with	Agree with the s42A report that sector schemes would develop without any encouragement through PC1. If they will	Delete all references to "sector schemes" within PC1

	definition of Sector/scheme, schedule D1, D2 and E	<p>develop irrespective of whether PC1 provides for them why make PC1 any more confusing than it already is. Council can encourage sector schemes outside of the regulatory process.</p> <p>Maintaining certified sector schemes within PC1 particularly where it is says “a scheme group or organisation responsible for preparing and assisting with the implementation” raises issues of liability</p> <p>Sector schemes are not responsible for preparing Farm Environment Plan the farm owner is</p>	
6.	Policies 12 and 13	<p>The time frame is far too long</p> <p>Policies 12 and 13 need to make it implicitly clear that they only apply to regionally significant infrastructure and regionally significant industry</p>	<p>Amend the 80 year time to give effect to relief sought on Objective 1</p> <p>Amend to make abundantly clear that Policies 12 & 13 only apply to point source discharge consents for regionally significant infrastructure and regionally significant industry</p>
7.	Policy 16	Minimise further loss of bog wetland is not strong enough	Amend: Minimise <u>Prevent further loss of...</u>
8.	Policy 17	<p>The policy refers to the protection of significant values but then in the next instance simply refers to improving the values. There should be no requirement that value of wetland must be significant to be restored and protected</p> <p>RMA, s 7 requires preservation of wetlands irrespective of whether they have significant values</p>	Amend: ... <i>and protection of the significant values and uses of wetlands...</i>
9.	Policy 19	This policy seems to go some ways towards supporting offsets and compensation. This policy should make it clear that it does not relate to biodiversity offsets or environmental compensation which does not have a place in freshwater management	Amend: ... <i>seek opportunities <u>other than through offsets and compensation of residual effects to advance ...</u></i>
Definitions			
10.	Sector	Farmers are responsible for providing their own FEPs	Delete

	scheme		
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