

BEFORE THE ENVIRONMENT COURT

AT AUCKLAND

ENV-2020-AKL-000083

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

OJI Fibre Solutions (NZ) Limited

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 OJI Fibre Solutions (NZ) Limited ('OJI Fibre') (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) Policy 11
 - (b) Policy 12
5. KCE generally supports the relief sought by OJI Fibre to policies 11 & 12

Policy 11

- 5.1 The decisions version of Policy 11 reads: *"When considering resource consent applications for point source discharges of nitrogen, phosphorus, sediment and microbial pathogens to water or onto or into land in the Waikato or Waipā River catchments, subject to policies 12 and 13 and having regard to the need to achieve Objective 1, provide for the continued operation and development of regionally significant infrastructure and regionally significant industry."*
- 5.2 OJI Fibre seeks that Policy 11 is amended to give effect to the reasons for their appeal and to provide a clear consenting pathway for the continued operation and development of regionally significant industry and infrastructure in the region by;
 - Better providing for the continued operation and development of industry and infrastructure as appropriate in circumstances other than where it solely protects and restores the rivers;
 - Better recognising or clarifying that Te Ture Whaimana o Te Awa o Waikato can be given effect to by providing for the continued operation and development of regionally significant industry or infrastructure through the achievement of the water quality attribute states in Table 3.11-1;
 - Better recognising the social and economic benefits of new or replacement regionally significant industry and infrastructure and promoting best practice rather than implying a no net effect approach;
 - Better reflecting the social and economic benefits of regionally significant industry and infrastructure to the region, including by having regard to the need to achieve (revised) Objective 3, rather than Objective 1; and

- Better reflecting the significant advances already made in reducing discharges of the four contaminants from point source discharges from regionally significant industry and infrastructure.

5.3 KCE considers that it is appropriate to provide for the continued operation and development of regionally significant industry and infrastructure in order to give effect to the Waikato Regional Policy Statement ('**WRPS**') and the National Policy Statement for Renewable Electricity Generation ('**NPS REG**'). KCE notes that having enabling policy within PC1 will assist in recognising that regionally significant infrastructure and regionally significant industry provide for social and economic wellbeing. Further, KCE records that the resource consent processes associated with both existing and new regionally significant infrastructure and industry are intended to ensure that the benefits brought about by these activities can be realised while also addressing and managing the actual and potential adverse effects.

Policy 12

5.4 The decisions version of Policy 12 reads:

- a. *When considering resource consent applications for point source discharges of nitrogen, phosphorus, sediment and 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.*
- 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. *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 and if this is not practicable, then upstream within the same Freshwater Management Unit or a Freshwater Management Unit located upstream; and*
 - iv. *it remains in place for the duration of the adverse residual effect and is secured by consent condition or another legally binding mechanism; and*
- c. *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 microbial pathogens to either the Waikato River or Waipā River catchments; and in either case*

iii. *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.*

5.5 OJI Fibre seeks that Policy 12 is amended to:

- Better reflect that not all effects associated with regionally significant industry and infrastructure can be avoided, remedied or mitigated, to the point that there are no net effects, and that there should be no obligation (explicit or implied) that any such residual effects need to be offset or compensated for;
- By deleting clause (b) and replacing it with a new clause that provides a pathway for offsets / compensation that is optional for applicants, but which if adopted, is recognised and given credit for;
- To the extent that the policy applies to discharges having either significant adverse effects on aquatic life or toxic adverse effects, by providing for the discharge to be assessed “*after reasonable mixing in the receiving waters*”; and
- By ensuring that the policy recognises that if offsets are applied they may occur at the same location as well as alternative locations to the point source discharge.

5.6 KCE considers that there should be no compulsory requirement under Policy 12 to propose measures to offset or compensate any residual adverse effects of discharges. In this respect, not all residual adverse effects require offsetting or compensation measures to be employed. While KCE considers it is appropriate to provide for offsetting within the suite of measures available to avoid, remedy or mitigate the adverse effects of contaminants, the choice regarding whether offsetting is appropriate, and the options available should be the decision of the applicant and utilised to lessen any significant residual effects that remain after options to avoid, remedy or mitigate those effects have been investigated. Further, KCE agrees with OJI Fibre that it is appropriate to assess the effects of point source discharges after reasonable mixing. Providing for reasonable mixing is common and accepted practice, further it acknowledges that it can be necessary to allow for a mixing zone or area of the receiving water in which water quality standards are not met.

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

Address for Service 1: King Country Energy Limited
PO Box 363,
TAUMARUNUI 3946

Attention: Chris Fincham

E-mail: cfincham@kce.co.nz

Address for Service 2: Enspire,
Level 3, 35 Grey Street,
TAURANGA 3110

Attention: Bridgette Munro

E-mail: bridgette@enspire.co.nz

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.