

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2020-AKL-000086

**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 **TAUPO DISTRICT COUNCIL**

Appellant

AND **WAIKATO REGIONAL COUNCIL**

Respondent

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

28 September 2020

TOMPKINS | WAKE

Solicitor: Marianne Mackintosh
marianne.mackintosh@tompkinswake.co.nz

Counsel: Lachlan Muldowney
lachlan@muldowney.co.nz

Westpac House
430 Victoria Street
PO Box 258
DX GP 20031
Hamilton 3240
New Zealand
Ph: (07) 839 4771
Fax: (07) 839 4913
tompkinswake.co.nz

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 *Taupo District Council v Waikato Regional Council* (ENV-2020-AKL-000086).
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 28th day of September 2020



M Mackintosh / L Muldowney

HCC reference: D-3448573

Address for service: C/- Marianne Mackintosh
Westpac House
Level 8,
430 Victoria Street,
Hamilton 3204
PO Box 258
DX GP200031

Telephone: 07 838 6034

Email: Marianne.Mackintosh@tompkinswake.co.nz

Contact Person: Marianne Mackintosh

Copy to counsel: Lachlan Muldowney
Barrister
14 Garden Place, Hamilton
PO Box 9169
Waikato Mail Centre
Hamilton 3240

Telephone: 07 834 4336/021 471 490

Email: lachlan@muldowney.co.nz

Contact Person: Lachlan Muldowney

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 and served on:

The Council at: PC1Appeals@waikatoregion.govt.nz

The Appellant at: lachlan@muldowney.co.nz

shayethomas@muldowney.co.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
Policy 12 a	<p><i>a. When considering resource consent applications for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato or Waipa 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 <u>on the receiving water body, after reasonable mixing occurs in accordance with Policy 3.2.3.8.</u></i></p>	Support	<ol style="list-style-type: none"> 1. The assessment as to whether a point source discharge has adverse effects should be made in accordance with Policy 3.2.3.8. Policy 3.2.3.8 recognises, and enables use to be made of, the receiving water’s assimilative capacity, while also considering any effects of the mixing zone on other users of the water body and the extent of adverse effects within the mixing zone (Policy 3.2.3.8 (j) and (k)). 2. If reasonable mixing in accordance with Policy 3.2.3.8 were not allowed, then those responsible for point source discharges would be faced with significant additional costs to achieve a much higher quality effluent at the point of discharge than if reasonable mixing were allowed. In the case of the Pukete Wastewater Treatment Plant, for example, this additional cost would amount to millions of dollars.
Policy 12 b	<p><i>b. Where, despite the adoption of the Best Practicable Option <u>and after reasonable mixing in accordance with Policy 3.2.3.8,</u> 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 <u>are sufficient over the duration of the consent</u> to offset or compensate for any residual adverse effects of the discharge(s) that will</i></p>	Support	<ol style="list-style-type: none"> 1. The assessment as to whether there are residual adverse effects should be made downstream of the zone of reasonable mixing for the discharge, in accordance with Policy 3.2.3.8. Policy 3.2.3.8 recognises, and enables use to be made of, the receiving water’s assimilative capacity, while also considering any effects of the mixing zone on other users of the water body and the extent of adverse effects within the mixing zone (Policy 3.2.3.8 (j) and (k)).

Provision	Relief sought by Appellant	HCC's position	Reasons
	<p><i>or may result from allowing the activity, provided that:</i></p> <ul style="list-style-type: none"> <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> <i>ii. the measure relates to the contaminant(s) giving rise to the residential adverse effects; and</i> <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> <i>iv. the measure remains in place for the duration of the <u>residual</u> adverse residual effect and is secured by consent condition or another legally binding mechanism; and</i> 		<ul style="list-style-type: none"> 2. If reasonable mixing in accordance with Policy 3.2.3.8 were not allowed, then those responsible for point source discharges would be faced with significant additional costs to achieve a much higher quality effluent at the point of discharge than if reasonable mixing were allowed. In the case of the Pukete Wastewater Treatment Plant, for example, this additional cost would amount to millions of dollars. 3. Offset or compensation matters should be required only where the residual adverse effects are significant and allowed to be staged over the duration of the consent in response to growing contaminant load, which may occur, for example, because of urban growth. 4. The proposed amendments to Policy 12 b iv improve clarity.
<p>Policy 12 c ii and iii</p>	<ul style="list-style-type: none"> <i>c. For the purpose of establishing if a discharge will have a residual adverse effect, relevant considerations include:</i> <ul style="list-style-type: none"> <i>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</i> 	<p>Support</p>	<p>The amendments to Policy 12c ii and iii improve clarity.</p>

Provision	Relief sought by Appellant	HCC's position	Reasons
	<p><i>in Table 3.11-1, including at downstream monitoring sites; and</i></p> <p><i>ii. in respect of a new discharge, whether any new discharge will increase the load of nitrogen, phosphorus, sediment and/or microbial pathogens contaminants to either the Waikato River or Waipa River catchments; and in either case</i></p> <p><i>iii. <u>in respect of both c.i and c.ii</u>, 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.</i></p>		
<p>Policy 14</p>	<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> <p>...</p> <p><i>c. The desirability of providing certainty of investment where contaminant reduction measures are proposed (including investment in treatment plant upgrades or land-based application technology); and</i></p> <p><i>d. The need not to compromise a steady improvement in water quality consistent with achievement of Objective 1-; <u>and</u></i></p> <p><i><u>e. That a 35 year term will generally apply to Regionally Significant Infrastructure</u></i></p>	<p>Support</p>	<p>Renewing point source discharge consents for regionally significant infrastructure is expensive, particularly when needing to accommodate urban growth and achieve effluent with lower contaminant concentrations. Consent renewal involves considerable planning, technical studies and community engagement. For example, Hamilton City Council is beginning now, in 2020, detailed planning for the renewal of its discharge consent for the Pukete Wastewater Treatment, which expires in 2027 and is budgeting \$10M for this process. This is just the cost of gaining the consent; it does not include the capital cost of upgrading the treatment plant. It would be an unnecessary financial burden on the City's ratepayers to</p>

Provision	Relief sought by Appellant	HCC's position	Reasons
	<p><i><u>provided by territorial authorities that reflects their community's expectation for a long term strategy, their responsibility under the Local Government Act 2002 to provide infrastructure to support their communities and their health and safety, and the level of financial investment in such infrastructure.</u></i></p>		<p>impose these costs more frequently by setting shorter terms for these types of consents.</p>
<p>Additions to Glossary of Terms - "Regionally Significant Infrastructure"</p>	<p>Regionally Significant Infrastructure: <i>is as defined in the Operative Waikato Regional Policy Statement 2016- <u>and for the purpose of Chapter 3.11, includes municipal stormwater systems and networks.</u></i></p>	<p>Support</p>	<ol style="list-style-type: none"> 1. The amendment would improve PC1's clarity and certainty. 2. Municipal stormwater systems include point source discharges of contaminants to the Waikato River and its tributaries and should fall within the scope of PC1.