

**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

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 OTOROHANGA DISTRICT COUNCIL TO BECOME A PARTY TO
PROCEEDINGS UNDER SECTION 274 OF THE ACT**

Dated 29 September 2020

TOMPKINS | WAKE

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TO: The Registrar
Environment Court
Auckland

1. **OTOROHANGA DISTRICT COUNCIL** (“Otorohanga DC”) gives notice under s 274 of the Resource Management Act 1991 (“the Act”) that it wishes to be a party to these proceedings, being *Taupo District Council v Waikato Regional Council* ENV-2020-AKL-000086 (“the Appeal”).
2. The Appeal challenges the decision by the Respondent on Proposed Waikato Regional Plan Change 1 - Waikato and Waipā River Catchments to the Waikato Regional Plan as amended by Variation 1 (“PC1”).
3. Otorohanga DC is a local authority and made a submission on PC1. Otorohanga DC has an interest in the subject matter of the proceedings greater than the general public has, given its role as a territorial authority responsible for providing water, stormwater and wastewater services to its community.
4. Otorohanga DC is not a trade competitor for the purposes of sections 308C or 308CA of the Act.
5. Otorohanga DC is interested in those parts of the Appeal relating to:
 - (a) Policy 12;
 - (b) Policy 13;
 - (c) Policy 14 and Implementation Method 3.11.3.3
6. Otorohanga DC’s position on the Appeal and the reason(s) for that position are set out below.

Policy 12

7. The Appeal seeks the following amendments to Policy 12 (deletions shown in strikethrough, and insertions shown in underline):

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 on the receiving water body, after reasonable mixing occurs in accordance with Policy 3.2.3.8.

b. Where, despite the adoption of the Best Practicable Option and after reasonable mixing in accordance with Policy 3.2.3.8, 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 are sufficient over the duration of the consent to offset or compensate for any residual adverse effects of the discharge(s) that will or may result from allowing the activity, provided that:

...

iv. ~~#~~ the measure remains in place for the duration of the residual 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:

...

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~~

iii. in respect of both c.i and c.ii, 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.

8. Otorohanga DC supports the relief sought by the Appellant for the same reasons as set out in the Appellant's Notice of Appeal. Reasonable mixing is an accepted and standard mechanism for managing adverse effects of point source discharges. It is appropriate that Policy 12 include express provision for reasonable mixing.

Policy 13

9. The Appeal seeks the following amendments to Policy 13 (deletions shown in strikethrough, and insertions shown in underline):

When considering a resource consent application for point source discharges of nitrogen, phosphorus, sediment or microbial pathogens to water or onto or into land in the Waikato or Waipā River catchments, and subject to Policy 12, consider the contribution made to the nitrogen, phosphorus, sediment and microbial pathogen catchment loads in the Waikato River or Waipā River catchments and the impact of that contribution on the achievement of the short-term numeric water quality values in Table 3.11-1 and, where applicable, the steady progression towards the 80-year water quality attribute states in Table 3.11-1, taking into account the following:

...

- (i) i. The obligations of territorial authorities to give effect to the National Policy Statement on Urban Development Capacity 2016 and to deliver infrastructure to provide for community wellbeing under the Local Government Act 2002;
 - (ii) ~~ii. The application of reasonable mixing (in accordance with Policy 3.2.3.8) may be acceptable as a transitional measure during the life of this Chapter;~~
10. Otorohanga DC supports the relief sought by the Appellant for the reasons as set out in its Notice of Appeal, in particular, the recognition of

the obligations of territorial authorities to deliver infrastructure to provide for community wellbeing under the Local Government Act 2002. It is critical that the obligations of territorial authorities are recognised in the context of implementation of PC1.

Policy 14 and Implementation Method 3.11.3.3

11. The Appeal seeks the following amendments (deletions shown in strikethrough, and insertions shown in underline):

Policy 14/Te Kaupapa Here 14:

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:

...

- 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
- d. The need not to compromise a steady improvement in water quality consistent with achievement of Objective 1.; and
- e. That a 35 year term will generally apply to Regionally Significant Infrastructure 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.

3.11.3 Implementation methods/Nga tikanga whakatinana

...

3.11.3.3 Accounting system and monitoring/Te Punaha kaute me te aroturuki

Waikato Regional Council will establish and operate a publicly available accounting system and monitoring in each Freshwater Management Unit, including:

- a. Collecting information on nitrogen, phosphorus, sediment and microbial pathogen levels in the respective freshwater bodies in each Freshwater Management Unit from:
 - i. Council's existing river monitoring network; and
 - ii. The resource consents held by Regionally Significant Infrastructure operators for Regionally Significant Infrastructure that has point source discharges;
12. Otorohanga DC supports the relief sought by the Appellant for the same reasons as set out in the Appellant's Notice of Appeal.
13. Otorohanga DC agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED this 29th day of September 2020



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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 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.