

**BEFORE THE ENVIRONMENT COURT  
AUCKLAND REGISTRY**

**ENV-2020-AKL-000092**

**I TE KŌTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU 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** **SOUTH WAIKATO DISTRICT COUNCIL**

**Appellant**

**AND** **WAIKATO REGIONAL COUNCIL**

**Respondent**

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

**Dated 29 September 2020**

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**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 *South Waikato District Council v Waikato Regional Council* ENV-2020-AKL-000092 (“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 a person who made a submission on PC1. It has an interest in the subject matter of the proceedings greater than the general public has, given Otorohanga DC’s 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 ss 308C or 308CA of the Act.
5. Otorohanga DC is interested in those parts of the Appeal relating to:
  - (a) Policy 12; and
  - (b) Policy 13.
6. Otorohanga DC’s position on the Appeal and the reasons 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 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 on the receiving waterbody, 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 occurs 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:

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, or when ~~and~~ if this is not practicable, then upstream within either the same Freshwater Management Unit or a separate Freshwater Management Unit ~~located upstream;~~ and

iv. the measure ~~it~~ 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. When considering measures for offsetting or compensating any residual adverse effects, relevant considerations include:

i. The ability to stage offsetting over the duration of the consent, the timing of the stages proposed, and the level of investment required over that timeframe;

ii. That offsetting or compensating may be applied to a network of linked networks and systems, which may include both point source and/or diffuse discharges from regionally significant infrastructure; and

iii. The extent to which measures also assist to achieve the objectives in Te Ture Whaimana o Te Awa o Waikato for the Waikato and Waipā Rivers.

e. d. 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/or microbial pathogens contaminants to either the Waikato River or Waipā River catchments; and ~~in either case~~

iii. in respect of both d)i. and d)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; and

iv. where discharges are from regionally significant infrastructure to artificial wetlands, the lesser of the residual effects from either the end of pipe discharge or point of discharge from the wetland.

8. Otorohanga DC supports the relief sought by the Appellant for the same reasons as set out in the Appellant's Notice of Appeal.

9. Otorohanga DC holds resource consent for the discharge of wastewater from its wastewater treatment plant, which will require renewal in the future. It is appropriate that offsetting and compensation measures are available to applicants and can be staged over the duration of the consent. Reasonable mixing is an accepted and standard mechanism for managing adverse effects of point source discharges. It is appropriate that Policy 12 include express reference to reasonable mixing.

### **Policy 13**

10. The Appeal seeks the following amendments (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 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;~~

11. 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. There is a lack of certainty in Policy 12 and 13 as to whether and when reasonable mixing will be accepted as part of an application for resource consent. The relief sought will remove this uncertainty.

12. Otorohanga DC agrees to participate in mediation or other alternative dispute resolution of the proceedings.

**DATED** this 29<sup>th</sup> 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](mailto:WRC.PC1appeals@justice.govt.nz) and served on:

The Council at: [PC1Appeals@waikatoregion.govt.nz](mailto:PC1Appeals@waikatoregion.govt.nz)

The Appellant at: [marianne.mackintosh@tompkinswake.co.nz](mailto:marianne.mackintosh@tompkinswake.co.nz)

***Advice***

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