

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

ENV-2020-AKL-000096

**I MUA I TE KOOTI TAIAO O AOTEAROA
I TE TĀMAKI MAKĀURAU ROHE**

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of Clause 14(1) of Schedule 1

BETWEEN **DIRECTOR-GENERAL OF CONSERVATION**
Appellant

AND **WAIKATO REGIONAL COUNCIL**
Respondent

NOTICE OF CONTACT ENERGY LIMITED'S WISH TO BECOME A PARTY TO PROCEEDINGS

29 September 2020

TO:

The Registrar
Environment Court
AUCKLAND

1. Contact Energy Limited ("**Contact**") gives notice under section 274 of the Resource Management Act 1991 ("**RMA**") that it wishes to be a party to the appeal by The Director-General of Conservation ("**Appellant**") against the Waikato Regional Council's decision on Proposed Plan Change 1 to the Waikato Regional Plan ("**PC1**").
2. Contact is a person who has an interest in the proceedings that is greater than the public generally. Contact manages and operates a number of significant geothermal power stations in the Waikato Region geothermal (Wairakei, Te Mihi, Ohaaki, Poihipi and Te Huka). These provide around 8% of New Zealand's total electricity supply, and have the capacity to power around 470k homes. Contact takes its relationship to the River seriously and is continually working to improve its health, wellbeing and mauri. However, each of these operations rely to varying extents on the take and discharge of water (including geothermal water) from or into the Waikato River, its tributaries, or lands hydraulically connect to the river. These takes and discharges are allowed for by current resource consents and conditions.
3. Contact is also a significant landowner in the Waikato Region with its extensive geothermal steamfields containing wells, vast pipework and other significant equipment, as well as surface activities such as farming, forests, and protected natural areas.
4. Contact made a submission on PC1 dated March 2017.
5. Contact is not a trade competitor for the purposes of section 308C of the RMA.
6. Contact is interested in those parts of the Appellant's appeal relating to:
 - a. The inclusion of other contaminants (Tables 3.11-1(a)-(c));
 - b. priority contaminants (Policy 1, Policy 4 and Table 3.11-2);
 - c. amendments to offsetting and compensation (Policy 5 and Policy 12);
 - d. clarity of "high water quality" and "high level of contaminant reduction" (Policy 13);
 - e. identification of attribute states for all lakes (Policy 15, Table 3.11-1(d) and Map 3.11-1);
 - f. Table 3.11 -1 – amendments to the nitrogen and phosphorous parameters to ensure there are "no toxic effects on aquatic life including within tributaries";
 - g. Table 3.11 – 1 and Table 3-11.1(c) inclusion of dissolved inorganic nitrogen ("**DIN**") and dissolved reactive phosphorus ("**DRP**") attribute states for tributaries; and
 - h. Table 3.11 – 1 inclusion of attributes for deposited sediment and macroinvertebrate community index ("**MCI**").
7. Contact opposes the relief sought by the Appellant including for the following reasons.

Inclusion of other contaminants and other attributes

8. The Appellant seeks that other short- and long-term attributes including those for DIN, DRP, deposited sediment and MCI be established.¹

¹ See for example proposed amendments to Tables 3.11-1 (a)-(d).

9. The Decision concluded that DIN, DRP, deposited sediment and MCI were sufficiently connected with the content of PC1 and therefore within scope.²
10. However, the Decision concluded that attributes for DIN,³ deposited sediment⁴ and MCI⁵ (among others⁶) could not be set, and that DRP while to be included, should be at the current state on the basis that this was a 'place-holder' pending the development of tailored targets.⁷
11. Contact supports the Decision's reasoning⁸ and conclusions on this issue.
12. Contact considers the inclusion of other contaminants and attributes should be pursued through the review of the Waikato Regional Plan that the Council has recently commenced, rather than through the confined PC1 process. This will ensure that "other contaminants" are robustly considered through a comprehensive plan making process which allows for full participation of interested and affected parties and a full section 32 analysis.

Offsetting and compensation

13. The Appellant seeks to amend the criteria for offsetting and compensation in Policy 5 and Policy 12.
14. Contact considers that offsetting and compensation should be provided for where:
 - a. the outcome is "no net loss", or preferably a "net gain", as opposed to only a "net environmental benefit" or "environmental gains" as sought by the Appellant (Policy 5 and Policy 12);
 - b. the positive benefits to the health and wellbeing of the Waikato and Waipa Rivers exceed the adverse effects of the proposed activity, rather than the thresholds in Chapter 3.11 as sought by the Appellant (Policy 12); and
 - c. the positive benefits to the health and wellbeing of the Waikato and Waipa Rivers will continue for at least the duration of the adverse effects, and preferably in perpetuity, but are not required to be permanent or in perpetuity as sought by the Appellant (Policy 5 and Policy 12).
15. Contact considers the above approach would better:
 - a. achieve the purpose, and in particular section 104(1)(ab), of the RMA; and
 - b. align with the objectives, policies and methods of implementation of the Waikato Regional Policy Statement⁹; and
 - c. align with the principles underpinning good biodiversity offsetting as set out in with the Guidance on Good Practice Biodiversity Offsetting in New Zealand (August 2014); and

² The Hearing Panel's Recommendation Report section 4 of paragraph 554.

³ The Hearing Panel's Recommendation Report paragraphs 964-966. The Decision concluded that there was insufficient evidence to support the inclusion of additional attribute states for DIN.

⁴ The Hearing Panel's Recommendation Report paragraph 996. The Decision concluded that there was insufficient evidence to support the inclusion of additional attribute states for deposited sediment.

⁵ The Hearing Panel's Recommendation Report paragraphs 988-992. The Decision concluded that there was insufficient evidence to support the inclusion of additional attribute states for MCI.

⁶ The Decision concluded that there was insufficient evidence to support the inclusion of additional attribute states including DO (paragraph 987) and QMCI (paragraphs 988-992) and Fish IBI paragraphs 993-995.

⁷ The Hearing Panel's Recommendation Report paragraph 966.

⁸ The Hearing Panel's Recommendation Report section 4 of paragraphs 461 -562.

⁹ See implementation methods 8.3.1 and 8.3.3 of the Waikato Regional Policy Statement.

- d. avoid, remedy and mitigate potential adverse environmental effects and promote the sustainable management of natural and physical resources under section 5 of the RMA.

"High water quality" and "high level of contaminant reduction" (Policy 13)

16. The Appellant seeks clarity of meaning for the terms "high water quality" and "high level of contaminant reduction" in Policy 13.
17. In the absence of specified amendments to Policy 13 there is uncertainty about what thresholds or tests the Appellant wishes to apply to the words "high water quality" and "high level of contaminant reduction". Contact wishes to be involved in this appeal point to ensure any thresholds imposed are practicable.

Restoration and protection of all lakes (Policy 15, Table 3.11-1(d) and Map 3.11-1)

18. The Appellant considers that the focus on riverine and peat lake catchments is too narrow. The Appellant therefore seeks to expand consideration to "all lakes" and impose more short-term water quality targets for all lakes.
19. If the intention is to amend Policy 15 so that it applies to all the lakes currently identified in the Lake Freshwater Management Units ("**FMUs**") on Map 3.11-1, that is riverine, peat, volcanic and dune Lake FMUs, then Contact is neutral on this appeal point. However, for clarity, Contact seeks that the proposed change be limited to "all lakes identified on Map 3.11- 1." This would ensure consistency with the Appellant's proposed change to Policy 1.
20. If the intention however, is to amend Policy 15 so that it applies to all lakes in the region, including those not currently identified in the Lake FMUs on Map 3.11-1, and to impose short-term attributes on these additional lakes, then Contact has concerns.
21. Contact considers the inclusion of additional lakes into the Lake FMUs beyond those already identified in Map 3.11-1 is not within the ambit of PC1. Further, Contact understands that the Decision found there was insufficient evidence to support the inclusion of short-term targets.¹⁰
22. Contact considers that the inclusion of additional lakes into the Lake FMUs identified in Map 3.11-1 and additional attributes should be pursued through the review of the Waikato Regional Plan that the Council has recently commenced, rather than through the confined PC1 process. This will ensure that any additional lakes and any attributes to be applied to these lakes are robustly considered through a comprehensive plan making process, including the participation of interested and affected parties and a full section 32 analysis.
23. Contact agrees to participate in mediation or other alternative dispute resolution.

DATED at Wellington this 29th day of September 2020



¹⁰ The Hearing Panel's Recommendation Report page 15 paragraph 1009.

Signature: Chris Drayton
Date: 29 September 2020
Address for Service: C/- Chris Drayton
Consenting Manager
Contact Energy Ltd
Level 2, Harbour City Tower
29 Brandon Street
PO Box 10742, Wellington 6143
WELLINGTON

Telephone: 027 511 0365

Email: chris.drayton@contactenergy.co.nz

TO: The Registrar of the Environment Court at Auckland
WRC.PC1appeals@justice.govt.nz
AND TO: Waikato Regional Council PC1Appeals@waikatoregion.govt.nz
AND TO: The Director General of Conservation agray@doc.govt.nz and
vtumai@doc.govt.nz