

BEFORE THE ENVIRONMENT COURT

AT AUCKLAND

ENV-2020-AKL-000096

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

The Director-General of Conservation

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 the Director-General of Conservation ('DoC') (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) Objectives 1, 2 & Table 3.11-1
 - (c) Policy 12
5. KCE opposes the relief sought by DoC to Objectives 1, 2 & Table 3.11-1, and to Policy 12.

Objectives 1, 2 & Table 3.11-1

- 5.1 The decisions version of Objective 1 states that *"In relation to the effects of nitrogen, phosphorus, sediment and microbial pathogens on water quality, the health and wellbeing of the Waikato and Waipā Rivers, including all springs, lakes and wetlands within their catchments, is both restored over time and protected, with the result that in particular, they are safe for people to swim in and take food from at the latest by 2096."*

The decisions version of Objective 2 reads as follows: *"Progress is made over the life of this Plan towards the restoration and protection of the health and wellbeing of the Waikato and Waipā River catchments in relation to nitrogen, phosphorus, sediment and microbial pathogens by the short-term numeric water quality values in Table 3.11-1 being met no later than 10 years after Chapter 3.11 of this Plan is operative."*

The decisions version of Table 3.11-1 sets out the short-term water quality attribute states and 80-year attribute states for the Waikato and Waipa River catchments.

- 5.2 DoC, in its appeal, states that Objectives 1 and 2 have a greater focus on the human aspects of health and wellbeing of the Waikato and Waipā rivers than the intrinsic aspects. DoC notes that there is a lack of provision for, or recognition of, the need to restore and protect ecosystem health, which is a compulsory national value under the National Policy Statement for Freshwater Management ('NPS FM'). DoC states

that without objectives which seeks to achieve ecosystem health, PC1 will not adequately provide for ecological health, ecosystem processes, indigenous species habitats and biological diversity. DoC argues that including reference to ecosystem health will give effect to the NPS FM and Te Ture Whaimana by taking a more holistic approach. Given this, DoC seek to amend Objective 1 as follows: *“In relation to the effects of nitrogen, phosphorus, sediment and microbial pathogens on water quality and ecosystem health, the health and wellbeing of the Waikato and Waipā Rivers, including all springs, lakes and wetlands within their catchments, is both restored over time and protected, with the result that in particular, they are safe for people to swim in and take food from at the latest by 2096”*.

Further, DoC seeks to amend Objective 2 as follows: *“Progress is made over the life of this Plan towards the restoration and protection of the health and wellbeing, including ecosystem health, of the Waikato and Waipā River catchments in relation to nitrogen, phosphorus, sediment and microbial pathogens by ensuring the short term numeric water quality values-attribute states in Tables 3.11-1 (a)-(d) being are met no later than 10 years after Chapter 3.11 of this Plan is operative.”*

DoC seeks numerous amendments to Table 3.11-1 which set the short-term water quality attribute states, from amending the explanatory note and defining a 5-year monitoring period for those sub-catchments where little or no monitoring data currently exists, to including new attribute states. In this regard, DoC seeks the inclusion of attribute states for DIN and DRP for all sub-catchments; new attribute states for planktonic cyanobacteria in the lower Waikato FMU mainstem sites consistent with national bottom lines in the NPS FM (or better); new narrative attributes for deposited sediment and MCI with 80-year targets that improve the proportion of stream length (over the whole of the Waikato and Waipā catchments using the REMS monitoring programme and data); new numeric 80-year attributes for dissolved oxygen and periphyton that are at least consistent with the national bottom lines in the NPS FM; a narrative attribute in Table 3.11-1 that recognises the impacts of deposited sediment on ecosystem health and seeks improvement over time in streams that currently exceed a ‘poor’ threshold for fine sediment of approximately 50% cover; and a narrative attribute in Table 3.11-1 that recognises the impacts of poor MCI condition on ecosystem health and requires improvement over time in the length of stream across the Waikato and Waipā River catchments where there is poor MCI condition, amongst other amendments.

- 5.3 KCE considers that DoC’s requested amendments to Objectives 1, 2 & Table 3.11-1 together go beyond the scope of PC1. In this respect, KCE notes that DoC seeks a number of amendments to Table 3.11-1. The achievement of the short-term water quality targets are contingent on the attribute state data provided in Table 3.11-1. KCE considers that, were the amendments requested by DoC accepted and included within PC1, there could be a number of affected or potentially affected parties to the amendments that have not and will not have the ability to respond to the same. KCE considers this to be both unfair and inappropriate.

Policy 12

- 5.4 DoC states that the benefits of any offsetting or compensation proposal must be additional to any measures that would otherwise have already occurred as a result of PC1. Without this principle there may not be a net gain in water quality, which

may result in further degradation at the sub-catchment, FMU, or catchment scale. DoC considers that this will not result in achieving the objective of the plan, or Te Ture Whaimana. As such, DoC seeks to retain policy 12 with the following amendments:

“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. the measure demonstrates environmental gains in addition to those already required by Chapter 3.11, in the absence of the offset or compensation; and*
- v. it remains in place for the duration of the adverse residual effect in perpetuity 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 KCE considers that DoC’s requested amendment to Policy 12 to demonstrate ‘environmental gains’ in addition to those already required by Chapter 3.11 in the

absence of offsetting or compensation, goes beyond the RMA requirement on consent holders to avoid, remedy or mitigate adverse effects.

- 5.6 Further, KCE considers that DoC's requested amendment to require offset and compensation measures to remain in place 'in perpetuity' is overly restrictive, and may significantly constrain consent holders when it comes to resolving adverse effects associated with an activity.
- 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: 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.