

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2020-AKL-000096

**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 **DIRECTOR-GENERAL OF CONSERVATION**

Appellant

AND **WAIKATO REGIONAL COUNCIL**

Respondent

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

Dated 28 September 2020

TOMPKINS | WAKE

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

TO: The Registrar
Environment Court
Auckland

1. **SOUTH WAIKATO DISTRICT COUNCIL** (“SWDC”) gives notice under s 274 of the Resource Management Act 1991 (“the Act”) that it wishes to be a party to these proceedings, being *Director General of Conservation v Waikato Regional Council* ENV-2020-AKL-000096 (“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. SWDC is a local authority and a person who made a submission about the subject matter of the proceedings, being those provisions of PC1 identified in paragraph 5 below.
4. SWDC is not a trade competitor for the purposes of sections 308C or 308CA of the Act.
5. SWDC is interested in those parts of the Appeal relating to:
 - (a) Objective 1;
 - (b) Objective 2;
 - (c) New Objective A;
 - (d) Policy 1;
 - (e) Policy 4;
 - (f) Policy 5;
 - (g) Policy 12;
 - (h) Policy 13;

- (i) Policy 17; and
 - (j) New Method.
6. SWDC's position on the Appeal and the reasons for that position are set out in respect of each part of the Appeal below. For brevity, the description of the relief sought in the Appeal is paraphrased in this notice.

Objective 1

7. The Appeal on Objective 1 seeks to include reference to ecosystem health.
8. SWDC opposes the relief sought by the Appellant for the following reasons:
- (a) The Vision and Strategy – Te Ture Whaimana is the preeminent policy document that is 'given effect to' by PC1, not the National Policy Statement for Freshwater Management 2020; and
 - (b) It is unlikely that ecosystem health can be achieved within the scope of the matters managed by PC1, being nitrogen, phosphorus, sediment and microbial pathogens.

Objective 2

9. The Appeal seeks to amend Objective 2 to include reference to ecosystem health, replace the word 'values' with 'attribute states' and to require the 20% attribute states to be met within 10 years of PC1 being made operative.
10. SWDC opposes the relief sought by the Appellant for the following reasons:
- (a) It is unlikely that ecosystem health can be achieved within the scope of the matters managed by PC1, being nitrogen, phosphorus, sediment and microbial pathogens;

- (b) The provisions of the Decisions version of PC1 have not been modelled to determine the level of additional effects on the communities of the South Waikato, which were already severe;
- (c) No modelling has demonstrated that a 20% reduction is either achievable or practical with the policy mix provided; and
- (d) The increase from 10% to 20% undermines the management of effects on communities by the staging approach set out in Objective 3.

New Objective A

- 11. The Appeal seeks to introduce a new Objective A to provide for integrated management of freshwater ecosystems and the coastal environment.
- 12. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) The meaning and effect of the proposed objective is unclear, particularly how that would affect communities in the South Waikato District.
 - (b) The objective is neither specific, measurable, achievable, realistic nor time bound.

Policy 1

- 13. The Appeal seeks to amend Policy 1 to:
 - (a) delete subparagraph b. (sub-catchment priority action on contaminants in table 3.11-2);
 - (b) to include 'all lakes' not just riverine and peat lakes; and
 - (c) provide clarification to the meaning of 'general improvement'.

14. The Appeal also seeks to amend Policy 1 to “provide greater specificity on what constitutes an acceptable level of ‘general improvement’, and including reference to how the improvement contributes to sub-catchment and cumulative catchment outcomes.”
15. SWDC both opposes in part and supports in part the relief sought by the Appellant for the following reasons:
 - (a) The removal of the reference to Table 3.11-2 will adversely affect the ability of the implementation of PC1 to meet Objectives 1, 2 and 3.
 - (b) The words ‘general improvement’ are vague and its interpretation would benefit from more certainty.

Policy 4

16. The Appeal seeks to amend Policy 4 to remove references to Table 3.11-2 relating to priority sub-catchment contaminants.
17. SWDC opposes the relief sought by the Appellant. The removal of the reference to Table 3.11-2 will have adverse consequences on the ability to implement Objectives 1 and 2 and is inconsistent with the staged approach in Objective 3 of PC1.

Policy 5

18. The Appeal seeks to amend Policy 5 to include the principles of good biodiversity offsetting, require offsets to be in place in perpetuity, and remove reference to the prioritisation of sub catchment contaminants in Table 3.11-2.
19. SWDC opposes the relief sought by the Appellant for the following reasons:

- (a) The removal of the reference to Table 3.11-2 will have adverse consequences on the ability to implement Objectives 1 and 2 and is inconsistent with the staged approach in Objective 3.
- (b) The Appellant inappropriately conflates Biodiversity Offsetting under the Department of Conservation guidelines which draws from the Business and Biodiversity Offsets Programme (“BBOP”) with the offsetting of nutrients.
- (c) Use of the term ‘net environmental benefit’ is not appropriate as offsetting should relate to the reduction of the relevant diffuse discharges of the four contaminants that are within the scope of PC1.
- (d) There is no scientific or evidential basis for requiring offsets in perpetuity. Such an approach is not practical, achievable or necessary, particularly when an activity has ceased.
- (e) A requirement for a ‘net environmental benefit’ inappropriately implies all discharges of the four contaminants must be offset in their entirety and is inappropriate and unnecessary to meet Objectives 1 and 2.

Policy 12

- 20. The Appeal seeks to amend Policy 12:
 - (a) to ensure that offsetting or compensation must be additional to any measures that would otherwise have already occurred as a result of PC1; and
 - (b) to ensure that offsets/compensation are in place in perpetuity.
- 21. SWDC opposes the relief sought by the Appellant for the following reasons:

- (a) The proposed clause iv has no meaning or effect for individual point source discharges and is unnecessary and confusing;
- (b) The Appellant inappropriately conflates Biodiversity Offsetting under the BBOP guidelines with the offsetting of nutrients; and
- (c) Requiring offsets in perpetuity is not practical, achievable or necessary, particularly when an activity/discharge has ceased.

Policy 13

- 22. The Appeal seeks to amend Policy 13 to provide clarity on the terms 'high water quality' and 'high level of containment reduction'.
- 23. SWDC supports in part the relief sought by the Appellant as clarity is required for the terms outlined by the Appellant to aid in the implementation of Chapter 3.11. However, SWDC reserves its position should the basis for the relief be inconsistent with the reasons for the appeal by SWDC (ENV-AKL-2020-000092).

Policy 17

- 24. The Appeal seeks to amend Policy 17 to identify the 'significant values' of wetlands.
- 25. SWDC opposes in part the relief sought by the Appellant as wetlands created as part of infrastructure systems should be excluded from the policy.

New Implementation Method

- 26. The Appeal seeks to include a new Implementation Method that requires benchmarking for a range of metrics for wetland health.
- 27. SWDC opposes in part the relief sought by the Appellant as wetlands created as part of infrastructure systems should be excluded from the method.

Table 3.11-2

28. The Appeal seeks to delete Table 3.11-2.
29. SWDC opposes in part the relief sought by the Appellant. SWDC supports the retention of Table 3.11-2 in principle, on the basis that it may assist to achieve Objective 2. However, SWDC reserves its position as to the final detail of Table 3.11-2 for the following reasons:
- (a) The provisions of the Decisions version of PC1 have not been modelled to determine the level of additional effects on the communities of the South Waikato, which were already severe.
 - (b) No modelling has demonstrated that a 20% reduction is either achievable or practical with the policy mix provided.
 - (c) The increase from 10% to 20% undermines the management of effects on communities by the staging approach set out in Objective 3.
30. SWDC agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED this 28th day of September 2020



M Mackintosh / K Dibley

Address for service

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

Kirsty.Dibley@tompkinswake.co.nz

Contact Person:

Marianne Mackintosh / Kirsty Dibley

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:

agray@doc.govt.nz

vtumai@doc.govt.nz

Advice

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