

In the Environment Court of New Zealand
at Auckland

I mua i te Kōti Taiao o Aotearoa
I te rohe o Tāmaki Makaurau

ENV-2020-AKL-000096

under: the Resource Management Act 1991

in the matter of: an appeal pursuant to clause 14(1) of the First Schedule
to the Resource Management Act 1991

between: **Director-General of Conservation**
Appellant

and: **Waikato Regional Council**
Respondent

Notice of Mercury NZ Limited's wish to be party to proceeding

Dated: 28 September 2020

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NOTICE OF MERCURY NZ LIMITED'S WISH TO BE PARTY TO PROCEEDINGS

Section 274, Resource Management Act 1991

To The Registrar
Environment Court
Auckland

- 1 Mercury NZ Limited (*Mercury*) wishes to be a party to the appeal by the Director-General of Conservation (*DOC*) against a decision of the Waikato Regional Council on Proposed Plan Change 1 to the Waikato Regional Plan (*PC 1*).

Mercury's interest in these proceedings

- 2 Mercury made a submission and a further submission about the subject matter of the proceedings.
- 3 Mercury is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 (*RMA*).
- 4 Mercury is interested in those issues that may affect its ability to operate, maintain, upgrade and develop its renewable electricity generation assets (in particular the Waikato Hydro System), including those parts of the proceedings related to:
- 4.1 Environmental offsetting/compensation; and
- 4.2 Amendments to Table 3.11-1 and related Methods 3.11.3.3 and 3.11.3.4 as they relate to attribute states.

Relief opposed by Mercury

- 5 While Mercury supports *DOC's* request for clarity on what "high water quality" and "high level of contaminant reduction" means, overall it opposes the relief sought in relation to Policies 5 and 12 and Table 3.11-1 because it does not:
- 5.1 Promote the sustainable management of natural and physical resources;
- 5.2 Promote the efficient use and development of natural and physical resources;
- 5.3 Meet the reasonable foreseeable needs of future generations;
- 5.4 Result in the most appropriate plan provisions in terms of section 32 of the *RMA*;
- 5.5 Implement the Council's functions of section 30 of the *RMA*;
- 5.6 Give effect to higher order planning documents under section 67(3) of the *RMA* including the National Policy Statement for Renewable Electricity Generation 2011 and the Waikato Regional Policy Statement; and
- 5.7 Ensure consistency with good resource management practice.
- 6 Without limiting the generality of the above, the specific reasons for Mercury's opposition of the relief sought in relation to Policies 5 and 12 and Table 3.11-1 include:

Environment Offsetting/compensation

- 6.1 The Notice of Appeal's sought relief with respect to Policies 5 and 12(b) would allow for offsetting/compensation measures only when the benefits of those measures are additional to the water quality improvements already required under PC 1.
- 6.2 Mercury opposes this relief as it places an additional burden on the applicant to establish at a given point in time what the "environmental gains" required by PC 1 are. Given the long term and collective nature of PC 1's approach to environmental improvements, this could be difficult for a single applicant to establish in the context of a specific consent application. Moreover, this qualification is unnecessary given Policy 12(b) already states that the purpose of the offsetting or compensation is to achieve "positive effects on the environment". This reference to "positive effect of the environment" is clearer and preferable to the sought relief.
- 6.3 The Notice of Appeal also seeks amendment to existing Policy 12(b)(iv) with such that any offsetting/compensation measure is required to remain in place in perpetuity, rather than for the duration of the residual effect.
- 6.4 This sought relief is inappropriate as it provides for offsetting and compensation to go beyond and therefore not relate to an effect on the environment caused by an activity. Any suggestion that a proposal should be required to provide for offsetting/compensation that is unrelated to effects of that activity is inappropriate and inconsistent with good resource management practice. While an applicant may offer mitigation in perpetuity that goes beyond the duration of the adverse effects of its activities, it is inappropriate and inconsistent with an effects-based approach to environmental management to require such offsetting/compensation in planning provisions.

Table 3.11-1 - Attribute states

- 6.5 The Notice of Appeal seeks a range of amendments to Table 3.11-1, Methods 3.11.3.3 and 3.11.3.4, and its application including the setting of additional short and long term targets, the inclusion of additional water quality attributes, and methods including the monitoring of those attributes.
- 6.6 Mercury opposes any amendments to Table 3.11-1 which:
 - (a) go beyond the scope of PC 1 as it relates to four target contaminants;
 - (b) seek to include target states that are not supported by sufficient data or scientific certainty; and/or
 - (c) where the application of the relevant attribute is not appropriate to the relevant sub-catchment setting due to its physical characteristics.

Mediation

- 7 Mercury agrees to participate in mediation or other alternative dispute resolution of the proceedings.

Signed for and on behalf of Mercury NZ Limited by its solicitors and authorised agents
Chapman Tripp



Catherine Somerville-Frost
Partner
28 September 2020

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Advice

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