

**BEFORE THE ENVIRONMENT COURT  
I TE KOOTI TAIAO O AOTEAROA**

**ENV-2020-AKL-**

**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** **TAUPO DISTRICT COUNCIL**

**Appellant**

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

**Respondent**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON  
PROPOSED PLAN CHANGE 1 TO THE WAIKATO REGIONAL PLAN**

**Dated 7 July 2020**

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**To the Registrar**  
**Environment Court**  
**Auckland**

1. Taupo District Council (**TDC**) appeals against parts of the decision of Waikato Regional Council (**WRC**) to approve Proposed Waikato Regional Plan Change 1 – Waikato and Waipa River Catchments (**PC1**) to the Waikato Regional Policy Statement (**WRPS**).

**Background**

2. TDC made a submission dated 7 March 2017 on PC1.
3. TDC is not a trade competitor for the purposes of s 308D of the Resource Management Act 1991 (**RMA**).
4. TDC received notice of the decision on 22 April 2020.
5. The parts of the decision TDC is appealing are set out below.

**REASONS FOR APPEAL**

**General reasons for appeal**

6. While generally supportive of PC1, TDC considers that in its current form, parts of PC1:
  - a) Do not promote the sustainable management of the natural and physical resources in the Taupo District or the Waikato Region, and is therefore contrary to or inconsistent with Part 2 and other provisions of the RMA;

- b) Do not meet the reasonably foreseeable needs of future generations;
  - c) Do not enable the social, economic, and cultural wellbeing of the people of Taupo District or the Waikato Region;
  - d) Do not avoid, remedy, or mitigate actual and potential adverse effects on the environment; and
  - e) Are not appropriate in terms of s 32 of the RMA.
7. The parts of PC1 which are the subject of TDC's appeal, and the specific reasons for the appeal are set out below.

#### **Municipal discharges and reasonable mixing**

8. Under PC1, the provisions relating to the management of discharge to water and reasonable mixing zones are unclear and inconsistent. Policies 12 and 13 do not adequately provide for the application of a reasonable mixing zone in relation to discharges to water as is provided for under Policy 3.2.3.8 of the WRPS. As drafted, the policy support for reasonable mixing is ambiguous and seen only as a transitional measure. This has significant implications for regionally significant infrastructure, including in respect of the maintenance and future upgrades of municipal stormwater networks and wastewater treatment plants.
9. In particular, without clear policy support for reasonable mixing of municipal point source discharges, TDC will potentially incur significant and additional costs ensuring that any discharge met the relevant contaminant levels. Accordingly, TDC seeks amendment to Policy 12 to more expressly provide for reasonable mixing and to recognise that offsetting or compensation measures may extend over the duration of the consent. It also seeks amendment to Policy 13 to make it clear that Policy 3.2.3.8 and

the concept of reasonable mixing will apply to the consideration of resource consent applications for point source discharges.

10. The WRPS and the Waikato Regional Plan (**WRP**) are yet to be amended to give effect to the National Policy Statement on Urban Development Capacity 2016 (**NPSUDC**). Irrespective of the requirement under s104(1)(b) of the RMA, this means that there is no direct policy direction in either instrument specifying how the obligations in the NPSUDC are to be considered in relation to proposed Chapter 3.11. The lack of reference to the NPSUDC, as well as TDC's obligations under the Local Government Act 2002 to provide for community wellbeing and its health and safety through the provision of infrastructure, means that these important obligations are at risk of not being considered by decision-makers through a consent process. TDC seeks amendment to Policy 13 to recognise TDC's obligations under the NPSUDC.
11. The specific amendments to Policy 12 and Policy 13 that TDC seeks are as follows (deletions shown in strikethrough, and insertions shown in underline):

**Policy 12/ Te Kaupapa Here 12**

- 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 Waipa 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 water body, 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 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 residential 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. ~~if the measure~~ 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. 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 Waipa River catchments; and ~~in either case~~
  - iii. in respect of both c.i and c.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.

### **Policy 13/Te Kaupapa Here 13:**

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 obligations of territorial authorities to give effect to the National Policy Statement on Urban Development Capacity 2016 and to deliver infrastructure to provide for community wellbeing under the Local Government Act 2002;

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;  
 ...

### **Regionally significant infrastructure**

12. Regionally significant infrastructure provided by territorial authorities, including TDC, involve significant levels of investment at great cost to ratepayers and the development community. These community stakeholders have a legitimate expectation that the investments made by local authorities will be sustainable and secured for the long term. Policy 14, as drafted, does not reflect the significance of this infrastructure and the community expectations regarding its longevity.
13. Accordingly, TDC seeks the following amendments to Policy 14 and Implementation Method 3.11.3.3 to address its concerns (deletions shown in strikethrough, and insertions shown in underline):

#### **Policy 14/Te Kaupapa Here 14:**

In addition to having regard to the matters set out in Policy 1.2.4.6, when determining an appropriate duration for any consent granted for a point source discharge have regard to the following matters:

...

- c. The desirability of providing certainty of investment where contaminant reduction measures are proposed (including investment in treatment plant upgrades or land-based application technology); ~~and~~
- d. The need not to compromise a steady improvement in water quality consistent with achievement of Objective 1; and
- e. That a 35 year term will generally apply to Regionally Significant Infrastructure provided by territorial authorities that reflects their community's expectation for a long term strategy, their responsibility under the Local Government Act 2002 to provide infrastructure to support their communities and their health and safety, and the level of financial investment in such infrastructure.

#### **3.11.3 Implementation methods/Nga tikanga whakatinana**

...

##### **3.11.3.3 Accounting system and monitoring/Te Punaha kaute me te aroturuki**

Waikato Regional Council will establish and operate a publicly available accounting system and monitoring in each Freshwater Management Unit, including:

- a. Collecting information on nitrogen, phosphorus, sediment and microbial pathogen levels in the respective freshwater bodies in each Freshwater Management Unit from:
  - i. Council's existing river monitoring network; and
  - ii. The resource consents held by Regionally Significant Infrastructure operators for Regionally Significant Infrastructure that has point source discharges;

...

14. The definition of 'Regionally Significant Infrastructure' in the WRPS does not include reference to municipal stormwater systems. This is an issue for TDC as these systems result in point source discharges to the Waikato River catchment. Further, while they provide a significant community service, they do not benefit from the provisions in Policies 12 to 14 under PC1. This can be remedied by specific reference to municipal stormwater systems in the definition which can be limited in application to Chapter 3.11. Accordingly, TDC seeks amendment to the definition of 'Regionally Significant Infrastructure' in the Glossary of Terms as follows:

**Regionally Significant Infrastructure:** is as defined in the Operative Waikato Regional Policy Statement 2016- and for the purpose of Chapter 3.11, includes municipal stormwater systems and networks.

## RELIEF SOUGHT

15. TDC seeks the relief set out above and such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this appeal.

**ATTACHMENTS**

16. There are no attachments. In accordance with the Environment Court's decision issued on 15 May 2019<sup>1</sup>, the following documents are not appended to the notice of appeal:

- (a) A copy of TDC's submission and/or further submissions;
- (b) A copy of WRC's decision; and
- (c) A list of the parties to be served with a copy of the notice of appeal.

**Dated** at Hamilton this 7<sup>th</sup> day of July 2020.



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**L F Muldowney/S K Thomas**

Counsel for the appellant

Address for service of the appellant:

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<sup>1</sup> Decision No. [2020] NZEnvC 063



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Documents for service on the appellant may be:

- (a) Left at the address for service; or
- (b) Posted to the solicitor at PO Box 9169, Waikato Mail Centre, Hamilton 3240.

## **Advice to recipients of copy of notice of appeal**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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.

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 appeal, contact the Environment Court in Auckland.