

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2020-AKL-000101

**I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource Management Act 1991 (the Act)

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 **AUCKLAND/WAIKATO AND EASTERN FISH AND GAME
COUNCILS**

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

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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 *Auckland, Waikato and Eastern Fish and Game Council v Waikato Regional Council* ENV-2020-AKL-000101 (“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 on PC1 in relation to the subject matter of the proceedings (objectives and policies relating to farming, offsetting and point source discharges, and Rule 3.11.9). SWDC has an interest greater than the interest the general public has relating to Table 3.11-2 and limits insofar as they affect both point source discharges and land use generally.
4. SWDC is not a trade competitor for the purposes of sections 308C or 308CA of the Act.
5. SWDC is interested in part of the Appeal, specifically:
 - (a) Headings for objectives;
 - (b) Objective 1;
 - (c) Objective 2;
 - (d) Objective 3;
 - (e) Policy 1;
 - (f) Policies 3, 11, 16 and 19;

- (g) Policy 4;
- (h) Policy 5;
- (i) Policy 7;
- (j) Policies 8 and 10;
- (k) Policy 11;
- (l) Policy 12;
- (m) Policy 13;
- (n) Policy 14;
- (o) Policy 17;
- (p) Rule 3.11.4.9;
- (q) Limits; and
- (r) Table 3.11-2.

Headings for Objectives

- 6. The Appeal seeks relief in relation to the headings for the objectives to include reference to the term 'freshwater objectives'.
- 7. SWDC opposes the relief sought by the Appellant. SWDC considers it unnecessary to include reference to "freshwater objectives" as well as "objectives". The objective in question should be clear on its face whether it is a freshwater objective or not.

Objective 1

- 8. The Appeal on Objective 1 seeks its amendment to, amongst other things, include reference to 'other contaminants', values, and water quality attribute states.

9. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) 'Other contaminants' are outside the scope of PC1.
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework.
 - (c) The impact of the requirement to manage 'other contaminants' is unknown and lacks certainty. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever "management actions" are required for the yet to be identified contaminants and standards.

Objective 2

10. The Appeal seeks amendments to Objective 2 to add reference to 'other contaminants', amongst other matters.
11. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) 'Other contaminants' are outside the scope of PC1;
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework; and
 - (c) The impact of the requirement to manage 'other contaminants' is unclear. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever "management actions" are required for the yet to be identified contaminants and standards.

Objective 3

12. The Appeal seeks amendments to Objective 3 to add reference to 'other contaminants'.
13. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) 'Other contaminants' are outside the scope of PC1; and
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework.
 - (c) The impact of the requirement to manage 'other contaminants' is unclear and lacks certainty. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever "management actions" are required for the yet to be identified contaminants and standards.

Policy 1

14. The Appeal on Policy 1 seeks to introduce 'other contaminants' and remove the reference to priority contaminants and Table 3.11-2.
15. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) 'Other contaminants' are outside the scope of PC1;
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework;
 - (c) The impact of the requirement to manage 'other contaminants' is unclear and lacks certainty. No assessment of the adverse effects on the community and its well-being have been carried out in

relation to whatever “management actions” are required for the yet to be identified contaminants and standards; and

- (d) Focussing on priority contaminants will more likely achieve the Objectives of PC1 and does not exclude the requirement to manage all four contaminants.

Policies 3, 11, 16 and 19

- 16. The Appeal against Policies 3, 11, 16 and 19 also seeks relief to add reference to ‘other contaminants’.
- 17. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) ‘Other contaminants’ are outside the scope of PC1;
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage ‘other contaminants’ as they are not specified in the framework; and
 - (c) The impact of the requirement to manage ‘other contaminants’ is unclear. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever “management actions” are required for the yet to be identified contaminants and standards.

Policy 4

- 18. The Appeal on Policy 4 seeks the introduction of ‘other contaminants’ and the deletion of sub-clause (e) which relates to priority contaminants in Table 3.11-2.
- 19. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) ‘Other contaminants’ are outside the scope of PC1

- (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework.
- (c) The impact of the requirement to manage 'other contaminants' is unclear and lacks certainty. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever "management actions" are required for the yet to be identified contaminants and standards.
- (d) Focussing on priority contaminants will more likely achieve the Objectives of PC1 and does not exclude the requirement to manage all four contaminants.

Policy 5

- 20. The Appeal on Policy 5 seeks its deletion and inclusion of a 'conservation' based offset policy.
- 21. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) Offsets for biodiversity or 'conservation' offsets under the BBOP principles are outside the scope of PC1 and not appropriate for water quality.
 - (b) Offsets for water quality management purposes are an appropriate and necessary tool for achieving the objectives of PC1.

Policy 7

- 22. The Appeal on Policy 7 seeks to remove the term 'generally' from the policy, resulting in limitation of the duration of consents for farming and commercial vegetable production activities.

23. SWDC opposes in part the relief sought by the Appellant for the following reasons:
- (a) The use of the term “generally” contemplates that there will be circumstances when a consent may be granted for a duration beyond 2035. This is appropriate in the context of any consent application.
 - (b) Decisions on durations of consent should reflect risk, investment, and contribution towards achieving the objectives of PC1.
 - (c) One common expiry date for resource consents under PC1 is not practically achievable to manage.
 - (d) There are appropriate tools available in the Act to assist in managing the transition of existing consents into new freshwater frameworks.

Policies 8 and 10

24. In summary, the Appeal against Policies 8 and 10 seeks relief that additional certainty is provided through addressing the content of future plan changes.
25. SWDC opposes the relief sought by the Appellant for the following reasons:
- (a) The relief sought seeks to pre-determine an outcome of a future process which is inappropriate and outside the scope of PC1; and
 - (b) PC1 has a statutory life set under the Act. The provisions of PC1 cannot determine (or seek to determine) any future processes or actions for the purposes of addressing freshwater quality.

Policy 11

26. The Appeal against Policy 11 seeks relief to introduce 'other contaminants' and making point source discharges subject to meeting Objective 1.
27. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) 'Other contaminants' are outside the scope of PC1.
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework.
 - (c) The impact of the requirement to manage 'other contaminants' is unclear and lacks certainty. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever "management actions" are required for the yet to be identified contaminants and standards.
 - (d) Point source discharges and any restrictions associated with the same cannot, on their own, achieve the long term targets.
 - (e) The long term targets are not intended to be fully achieved by the provisions of PC1 in all sub-catchments.
 - (f) The relief is contrary to the staged approach adopted in PC1.

Policy 12

28. The Appeal against Policy 12 seeks relief that:
 - (a) 'Other contaminants' are included within the policy;
 - (b) Offsets be considered for longer than the duration of the discharge;

- (c) Adding a subclause to (2)(b) relating to residual effects and additional methodology; and
 - (d) Adding a subclause to require offsets to demonstrate outcomes additional to the implementation.
29. SWDC opposes the relief sought by the Appellant for the following reasons:
- (a) 'Other contaminants' are outside the scope of PC1.
 - (b) It is unclear, and unlikely, the policy mix in the decisions on PC1 will manage 'other contaminants' as they are not specified in the framework.
 - (c) The impact of the requirement to manage 'other contaminants' is unclear and lacks certainty. No assessment of the adverse effects on the community and its well-being have been carried out in relation to whatever "management actions" are required for the yet to be identified contaminants and standards.
 - (d) It is not reasonable or appropriate to require point source discharges to have "zero" effects in relation to the four contaminants.
 - (e) Offsets for biodiversity or 'conservation' offsets under the BBOP principles are outside the scope of PC1 and not appropriate for water quality.
 - (f) Offsets for water quality management purposes are an appropriate and necessary tool for achieving the objectives of PC1.
 - (g) The effect of the proposed requirement for the additional consideration is unjustified, unnecessary and creates significant uncertainty.

Policy 13

30. The Appeal against Policy 13 seeks amendments to provide clarity on the terms 'high level of contaminant reduction' and 'high water quality'.
31. SWDC supports the relief in part, but only insofar as the terms would benefit from better definition. SWDC reserves its position, should the appellant pursue relief which is contrary to SWDC's position on its own Appeal.

Policy 14

32. The Appeal against Policy 14 seeks relief that additional clauses are included in PC1 that relate to reviews on point source resource consents and requiring a 'straight line progression' towards the long term water quality targets.
33. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) The meaning, implications and effect of the relief sought is ambiguous and confusing.
 - (b) There are appropriate tools available in the Act to assist in managing the transition of existing consents into new freshwater frameworks.
 - (c) The necessity to show a linear progression towards achieving the long term goals is not achievable, necessary, or appropriate, and does not reflect the investment and capital works programs that are required to implement improvements.

Policy 17

34. The Appeal against Policy 17 seeks, amongst other relief, amendment of the policy to ensure the restoration of and protection of wetlands is achieved.
35. SWDC opposes in part the relief sought by the Appellant. There must be an exclusion for wetlands created for infrastructure purposes (infrastructure wetlands).

Rule 3.11.4.9

36. The Appeal against Rule 3.11.4.9 seeks relief to amend the rule to add clarity relating to:
 - (a) That farming does not form part of the 'permitted baseline';
 - (b) Potential effects considered under this rule include cumulative effects at the sub-catchment and catchment scales, using a 'no discharge' baseline; and
 - (c) Whether Policies 2(c) and 5 apply to all discharges, or only increases.
37. SWDC opposes the relief sought by the Appellant for the following reasons:
 - (a) The planning framework which would result from the relief sought would be practically unworkable for diffuse discharges;
 - (b) The relief seeks to undermine legal principles applying to the resource consent process and is outside the scope of any appeal; and
 - (c) Land use change that advances the Objectives of PC1 would be unreasonably and unnecessarily precluded.

Limits

38. The Appeal against the Limits in PC1 seeks relief that PC1 be amended to provide clear limits for farming activities that will enable the freshwater objectives to be met. This includes clarifying what constitute “limits” in PC1, what constitute Freshwater Objectives, and how the two are linked.
39. SWDC opposes the relief sought because this issue has been appropriately considered and addressed by the Decision;

Table 3.11-2

40. The Appeal against Rule Table 3.11-2 seeks its deletion.
41. SWDC opposes the relief sought by the Appellant for the following reasons:
- (a) Focussing on priority contaminants more likely achieves the Objectives of PC1 and does not exclude the requirement to manage all four contaminants.
42. SWDC agrees to participate in mediation or other alternative dispute resolution of the proceedings.

DATED 28 September 2020



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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: BWilson@fishandgame.org.nz

Advice

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