

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO
TĀMAKI MAKĀURAU ROHE**

ENV-2020-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal pursuant to Clause 14 of the First Schedule to the Act against the decision on submissions on **PROPOSED PLAN CHANGE 1 (WAIKATO AND WAIPA RIVERS) TO THE WAIKATO REGIONAL PLAN**

BETWEEN **WAIPA DISTRICT COUNCIL**

Appellant

AND **WAIKATO REGIONAL COUNCIL**

Respondent

NOTICE OF APPEAL

Dated 7 July 2020

To: The Registrar
Environment Court
AUCKLAND

1. INTRODUCTION

1.1 **WAIPA DISTRICT COUNCIL** ("WDC") appeals against a decision of **WAIKATO REGIONAL COUNCIL** ("WRC") approving Proposed Plan Change 1 (Waikato and Waipa Rivers) ("PC1") to the Waikato Regional Plan.

1.2 WDC made a submission on PC1 and presented evidence at the hearing in support of that submission.

1.3 WDC is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("RMA").

1.4 WDC received notice of the decision on 22 April 2020.

Part of the decision appealed

1.5 The part of the decision that WDC appeals against is:

- (a) The increase in the short term reduction target for discharge of contaminants from 10% to 20%;
- (b) the wording of Objective 3;
- (c) Policy 12 regarding the best practicable option and offsetting / compensation;
- (d) Policy 13 regarding reasonable mixing;
- (e) Policy 19;
- (f) monitoring of point source discharges;
- (g) analysis of monitoring data; and
- (h) temperature and pH for determining compliance with maximum and median water quality targets.

Reasons for the appeal

1.6 The reasons for the appeal in relation to each of the above matters are set out in the following sections of this notice of appeal by reference to the topics / issues listed in paragraph 1.5.

Waipa District Council Wastewater Treatment Plants

1.7 WDC is required by section 130 of the Local Government Act 2002 ("LGA02") to maintain "water services." Pursuant to the definition in section 124 of the LGA02, water services include wastewater treatment and disposal.

1.8 WDC operates wastewater treatment plants at Cambridge and Te Awamutu. The Cambridge Wastewater Treatment Plant discharges to the Waikato River. The Te Awamutu Wastewater Treatment Plant discharges to the Mangapiko Stream, which in turn discharges to the Waipa River.

2. **SHORT TERM REDUCTION TARGET**

Grounds for appeal

- 2.1 The Notified Version of PC1 required various measures to be implemented by 2026 in order to achieve the short-term water quality targets in Table 3.11-1 of PC1. Those short-term water quality targets represented a 10% reduction in current contaminant loads.
- 2.2 The Decisions Version of PC1 has increased the short-term targets for the reduction of contaminants from 10% to 20%.
- 2.3 It is likely to be technologically very difficult for point source discharges such as wastewater treatment plants to achieve the 10% reduction required by PC1 as notified. It is doubtful whether achieving a 20% reduction in current contaminant loads in 10 years is technically feasible; if it is, very significant expenditure on wastewater treatment plant upgrades would be required, which would place a significant and unwarranted financial burden on Waipa District ratepayers.
- 2.4 WDC therefore opposes the increase in the short-term reduction target from 10% to 20%.

Relief sought

- 2.5 The relief sought by WDC in this regard is as follows (addition underlined and deletion ~~struck through~~):

[Background and explanation to PC1]

Because of the extent of change required to restore and protect water quality in the 80-year timeframe, this Plan Change has adopted a staged approach. This approach breaks the required improvements into a number of steps, the first of which is to put in place and implement the range of actions in a 10-year period from when Chapter 3.11 is operative, that will be required to achieve 20 10 percent of the required change between current water quality and the long-term water quality...

[Explanatory note to Table 3.11-1]

...

For example, at Otamakokore Stream, Upper Waikato River FMU:

- the current state value for median nitrate is 0.740 mg NO₃-N/L. The short-term attribute state and 80-year attribute state are set at 0.740 mg NO₃-N/L to reflect that there is to be no decline in water quality
- the current state value for one of the four measures of *E. coli*, namely the 95th percentile, is 696 *E. coli*/100ml. The 80- year

attribute state is set at 540 *E. coli*/100ml and the short-term attribute state is set at ~~20%~~ 10% of the difference between the current state value and the 80 year attribute state (i.e. 665 *E. coli*/100ml).

...

[Table 3.11-1: Amend all figures so that they represent a 10% reduction, not a 20% reduction]

3. **OBJECTIVE 3**

Grounds of appeal

- 3.1 Objective 3 refers to "Waikato and Waipa communities being assisted to provide for their..."
- 3.2 The word "assisted" should be replaced with "enabled" as that is consistent with the wording of section 5 of the Resource Management Act 1991.

Relief sought

- 3.3 The relief sought by WDC in this regard is as follows (addition underlined and deletion ~~struck through~~):

Waikato and Waipā communities are ~~assisted~~ enabled to provide for their social, economic, spiritual and cultural wellbeing through staging the reduction of the discharges of nitrogen, phosphorus, sediment and microbial pathogens necessary to restore and protect the health and wellbeing of the Waikato and Waipā river catchments, and by the encouragement of collective community action for that purpose.

4. **POLICY 12**

Grounds of appeal

- 4.1 Policy 12 of PC1:
 - (a) requires that the best practicable option ("BPO") be adopted for all point source discharges; and
 - (b) provides for offsetting and / or compensation in the event that there are residual adverse effects from the discharge, even if the BPO is adopted.
- 4.2 As worded, the offsetting / compensation applies to any residual adverse effects, including effects that are so minor as to be de minimis. There will always be some residual adverse effects from wastewater treatment plant discharges, as not all contaminants are removed from the discharge. Policy

12 therefore needs to be amended so that offsetting / compensation only applies in relation to significant residual adverse effects.

- 4.3 The offsetting / compensation provisions only:
- (a) apply to the same contaminant (e.g., nitrogen for nitrogen and phosphorous for phosphorous, etc); and
 - (b) upstream of the discharge point.
- 4.4 In any particular case, better water quality outcomes may be able to be achieved by offsetting / compensating phosphorous for nitrogen and / or undertaking offsetting / compensation downstream of the discharge point.
- 4.5 Staging of offsetting / compensation is likely to be very relevant where population growth is projected to increase the discharge of contaminants over the duration of a consent, which could be as long as 35 years. Staging of offsetting / compensation therefore needs to be provided for in Policy 12.
- 4.6 In determining whether there are any significant residual adverse effects that may need to be offset / compensated, the point for determining any such effects should be after reasonable mixing and Policy 12 needs to be amended accordingly.
- 4.7 Whether the part of the river at the discharge point is nitrogen limited, phosphorous limited, or co-limited is also relevant to assessing whether there are any significant residual adverse effects. This should be specifically recognised in Policy 12 by including limitation status as a matter to take into account in assessing whether there are any significant residual adverse effects.

Relief sought

- 4.8 The relief sought by WDC in this regard is as follows (additions underlined and deletions ~~struck through~~):

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 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 significant residual adverse effects after

reasonable mixing, measures, which may be staged over the duration of the consent, 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 significant 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. ~~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 significant 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 after reasonable mixing, or the steady progression towards the 80-year water quality attribute states in Table 3.11-1 after reasonable mixing, 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 Waipā River catchments; and ~~in either case~~
 - ~~iii. in relation to c.i. and c.ii above,~~ 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; ~~and~~
 - ~~iv. whether the part of the river where the discharge occurs is nitrogen limited, phosphorous limited, or co-limited.~~

5. **POLICY 13**

Grounds of appeal

5.1 PC1 identifies reasonable mixing in Policy 13, but only insofar as it:

"...may be acceptable as a transitional measure during the life of this Chapter."

5.2 That wording indicates that reasonable mixing:

- (a) may or may not be acceptable in relation to some discharges during the 10 year life of PC1; and
- (b) will not be acceptable after the life of PC1 (i.e. at the first review).

5.3 It is likely to be technologically very difficult for the short-term water quality targets in Table 3.11-1 to be met at the end of the discharge pipe. If it is, very significant expenditure on wastewater treatment plant upgrades would be required, which would place a significant and unwarranted financial burden on Waipa District ratepayers.

5.4 The duration of resource consents for wastewater treatment plants is frequently in excess of 10 years. If a 25 year consent duration was sought, WRC processing officers might take the view that reasonable mixing is acceptable for the first 10 years but not thereafter. As a result, the water quality targets in Table 3.11-1 would have to be met at the end of the discharge pipe for the following 15 years. As noted above, that may not even be achievable with present technology and, even if it was, it would require very expensive upgrades to wastewater treatment plants, which would place a significant and unwarranted financial burden on Waipa District ratepayers.

5.5 Given the above, WDC opposes the inclusion in Policy 13 of the words quoted above at paragraph 5.1.

Relief sought

5.6 The relief sought by WDC in this regard is as follows (deletion ~~struck through~~):

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:

...

- j. 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;

6. **POLICY 19**

Grounds of appeal

- 6.1 Policy 19 applies when “managing” resource consent applications. It provides for opportunities to be sought to enhance biodiversity, the functioning of ecosystems, and to enhance access and recreational values.
- 6.2 It is unclear what “managing” means and who it applies to.
- 6.3 Applicants will be required to implement the BPO and offset / compensate for residual adverse effects. It is unclear how this policy would work in practice or what processing officers might seek in addition to implementing the BPO and offsetting / compensating for residual adverse effects.
- 6.4 In light of the above, Policy 19 should be deleted.

Relief sought

- 6.5 The relief sought by WDC in this regard is as follows (deletions struck through):

~~Policy 19/Te Kaupapa Here 19:~~

~~When managing resource consent applications related to the discharge of nitrogen, phosphorus, sediment and microbial pathogens, seek opportunities to advance achievement of the objectives in Te Ture Whaimana o Te Awa o Waikato for the Waikato and Waipā Rivers, including, but not limited to:~~

- ~~a. Opportunities to enhance biodiversity and the functioning of ecosystems; and~~
- ~~b. Opportunities to enhance access and recreational values associated with the rivers.~~

7. **MONITORING OF POINT SOURCE DISCHARGES**

Grounds of appeal

- 7.1 Method 3.11.3.3 of PC1 sets out requirements for the WRC to undertake monitoring of water quality and specifically requires WRC to undertake monitoring in each Freshwater Management Unit. Method 3.11.3.3 is silent on monitoring of point source discharges. WDC considers that Method 3.11.3.3 needs to make specific provision for monitoring in relation to point source discharges from regionally significant infrastructure to ensure that:
- (a) owners and operators of regionally significant infrastructure are consulted regarding the location of such monitoring;
 - (b) the monitoring locations will not unfairly restrict the ongoing and future operations of such infrastructure; and
 - (c) such monitoring is undertaken after reasonable mixing.

Relief sought

- 7.2 The relief sought by WDC in this regard is as follows (additions underlined):

3.11.3.3 Accounting system and monitoring/Te pūnaha 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 fresh water bodies in each Freshwater Management Unit from:
 - i. Council's existing river monitoring network; and
 - ii. Sub-catchments that are currently unrepresented in the existing monitoring network; and
 - iii. Lake Freshwater Management Units.
- b. Using the information collected to establish the baseline data for compiling a monitoring plan and to assess progress towards achieving the Table 3.11-1 water quality attribute targets; and
- c. Using state of the environment monitoring data including biological monitoring tools such as the Macroinvertebrate Community Index to provide the basis for identifying and reporting on long-term trends; and
- d. An information and accounting system for the diffuse discharges from properties that supports the management of

nitrogen, phosphorus, sediment and microbial pathogens diffuse discharges at a property scale.

e. Consulting with the owners and operators of regionally significant infrastructure that have point source discharge consents, in relation to the location of the environmental monitoring sites that will be used for the collection of data for monitoring and assessing progress toward achieving the Table 3.11-1 water quality attribute states. This consultation will include ensuring that the environmental monitoring sites are located in such a way as to not unfairly restrict the ongoing and future operations of such infrastructure and to recognise the requirement to undertake monitoring after reasonable mixing.

8. ANALYSIS OF MONITORING DATA

Grounds of appeal

8.1 The explanatory note to Table 3.11-1 refers to determining achievement of the attribute states in Table 3.11-1 through "analysis of 5-yearly monitoring data."

Relief sought

8.2 WDC seeks an amendment to the explanatory note to Table 3.11-1 so that the analysis is based on "analysis of rolling 5-yearly monitoring data."

9. TEMPERATURE AND PH

Grounds of appeal

9.1 Footnotes 7 and 8 to Table 3.11-1 relate to compliance with maximum and median ammonia targets but do not specify the pH and temperature.

Relief sought

9.2 WDC seeks an amendment to those footnotes so that they refer to a pH of 8 and a temperature 20 degrees Celsius:

The annual median and annual maximum ammonia ~~have been~~ adjusted for pH are based on pH8 and temperature of 20°C

10. GENERAL GROUNDS OF APPEAL, RELIEF SOUGHT AND PROCEDURAL ISSUES

10.1 The amendments sought by WDC will achieve the purpose of the RMA as they will result in the management of natural and physical resources in a way that enables people and communities to provide for their social, cultural,

and economic wellbeing and their health and safety while avoiding, remedying, or mitigating adverse effects.

10.2 The amendments sought by WDC are consistent with the protection of the rivers from inappropriate use and development (section 6(a)) and the protection of significant habitats of indigenous fauna (section 6(c)).

10.3 The amendments sought by WDC are consistent with the following section 7 matters:

"(b) the efficient use and development of natural and physical resources:

...

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

...

(f) maintenance and enhancement of the quality of the environment:

...

(h) the protection of the habitat of trout and salmon:"

Vision and Strategy for the Waikato River

10.4 The amendments sought will give effect to the Vision and Strategy for the Waikato River and, in particular, will enable prosperous communities to help restore and protect the health and wellbeing of the Waikato River.

National Policy Statement for Freshwater Management

10.5 The amendments sought will also give effect to the objectives and policies of the National Policy Statement for Freshwater Management 2014 (updated 2017) regarding water quality and, in particular, Objective A4 regarding enabling communities to provide for their economic wellbeing.

Relief sought

10.6 WDC seeks the following amendments to PC1:

(a) The amendments to PC1 addressed in the above sections of this notice of appeal.

(b) Such further or other relief as may be necessary to address the reasons for this appeal, including different amendments to those addressed above in the event that agreement regarding such amendments is reached via negotiations and / or mediation; and

(c) Costs.

Alternative dispute resolution

10.7 WDC agrees to attend mediation or other forms of alternative dispute resolution.

Service

10.8 In accordance with the waivers and directions granted by the Court for the PC1 appeals, an electronic copy of this notice and attachments have been served simultaneously on the WRC at WRC.PC1appeals@justice.govt.nz.

DATED at AUCKLAND this 7th day of July 2020

WAIPA DISTRICT COUNCIL by its duly authorised agents, Berry Simons:



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