

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

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

ENV-2020-AKL-

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF an appeal under clause 14(1) of Schedule 1 of
the Resource Management Act 1991

BETWEEN **WAIKATO RIVER AUTHORITY**
Appellant

AND **WAIKATO REGIONAL COUNCIL**
Respondent

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

7 JULY 2020

BUDDLEFINDLAY
Barristers and Solicitors
Wellington

Solicitors Acting: **Paul Beverley / Cerridwen Bulow**
Email: paul.beverley@buddlefindlay.com / cerridwen.bulow@buddlefindlay.com
Tel 64-4-499 4242 Fax 64-4-499 4141 PO Box 2694 DX SP20201 Wellington 6140

To: The Registrar
The Environment Court
Auckland

Waikato River Authority (“**WRA**”) appeals against part of the decision of the Waikato Regional Council (“**Council**”) to approve Proposed Plan Change 1 to the Waikato Regional Plan (“**PPC1**”).

Background and decision appealed

1. WRA made a submission on PPC1 on 2 March 2017 and a submission on Variation 1 to PPC1 on 21 May 2018. WRA made a further submission on 17 September 2018.
2. WRA presented evidence to the Independent Hearing Commissioners on a range of matters raised in its submission(s) on 13 March 2019.
3. WRA received notice of the Council’s decision on PPC1 on 22 April 2020 (“**Decision**”). WRA and other submitters were granted a waiver on the time limit to appeal the Decision to 50 working days from 28 April 2020.¹
4. WRA is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“**RMA**”).
5. WRA is generally supportive of the direction of PPC1 and in particular the parts of the Decision that:
 - (a) implement the Te Ture Whaimana o Te Awa o Waikato (“**Vision and Strategy**”) as the primary direction setting document for the Waikato River;
 - (b) achieve long term contaminant reduction targets over an 80 year timeframe;
 - (c) seek improvements and tighten standards for point source discharges;
 - (d) seek a 20% reduction in contaminants over a 10-year timeframe;
 - (e) support lake protection and restoration; and

¹ *Re Waikato Regional Council* [2020] NZEnvC 51 at [87].

- (f) include the area in the north-eastern portion of the Waikato River Catchment.

6. WRA is appealing parts of the Decision for the reasons given below.

Parts of Decision subject to appeal

7. WRA is appealing against parts of the Decision that:
- (a) exclude current or short-term water quality limits in respect of all lakes (Method 3.11.3.1 Table 3.11.1(d));
 - (b) do not identify and prioritise lakes appropriately (Map 3.11-1 and Table 3.11-3);
 - (c) exclude specific and adequate standards that relate to stock exclusion for lakes and wetlands (Schedule C (4)); and
 - (d) do not define “wetland” (Objective 1 and a number of other provisions).

Reasons for appeal

8. The reasons for the appeal generally are that in some parts, PPC1, as it currently stands:
- (a) does not meet the purpose, principles or requirements of the RMA; and
 - (b) fails to give effect to the objectives and strategies of the Vision and Strategy as set out in Schedule 2 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.
9. In addition to the reasons outlined above, WRA also appeals the Decision for the specific reasons set out below.

Current or short-term water quality limits for lakes

10. Table 3.11.1(d) sets the attributable targets for Dune, Riverine, Volcanic and Peat Lakes, which are long-term 80 year targets only. The Vision and Strategy provides for the adoption of a “precautionary approach” and this applies to lakes.²
11. PPC1, as it currently stands, does not provide for short-term water quality limits for lakes. In order to provide certainty that water quality in lakes will not

² The “precautionary approach” is provided for as an objective at Schedule 2(1)(3)(f) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Lakes are included in the definition of the Waikato River, see for example section 6 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010.

degrade further over a 10 year timeframe, and ensure that a precautionary approach is achieved to give effect to the Vision and Strategy, short-term water quality targets for lakes must be set.

Prioritisation of lakes

12. Map 3.11-1 shows the general catchment boundary and each Freshwater Management Unit for Peat Lakes, Riverine Lakes, Dune Lakes and Volcanic Lakes. Table 3.11-3 identifies sub-catchments and the year (following the date PPC1 is made operative) that particular provisions in PPC1 will apply to those sub-catchments.
13. PPC1, as it currently stands, does not provide for all lakes, within the sub-catchments identified in Table 3.11-3, to be given priority. This is not appropriate given some lakes are under sustained pressure and are not meeting community values, and this fails to give effect to the objectives and strategies of the Vision and Strategy.
14. It would be more appropriate to explicitly identify all lakes and prioritise these based on the difference in scale, water quality and information available on specific lakes or lake types.

Stock exclusion for lakes and wetlands

15. Schedule C sets out the minimum farming standards, including set back provisions for stock exclusion, required to reduce contaminant losses from pastoral farmland when implementing the provisions in Chapter 3.11.
16. PPC1, as it currently stands, provides standards that are better suited for rivers (flowing water) and does not provide standards that are suitable for lakes and wetlands. This approach fails to give effect to the objectives and strategies of the Vision and Strategy and it would be more appropriate to include setback provisions of fencing for stock exclusion to at least 5 metres rather than 3 metres.

Identification of wetlands

17. PPC1, as it currently stands, is not clear on what constitutes a “wetland”. The term “wetland” is referred to in Objective 1 and throughout a number of other provisions in PPC1.

18. It is important to ensure that all wetland areas are captured under the provisions of PPC1, particularly wetlands that have been degraded over time and what may not fall under the definition of “wetland” in the RMA.³

Relief sought

19. WRA seeks that PPC1 be amended to address the issues in this appeal, and specifically that:
- (a) Table 3.11.1(d) is amended to include appropriate short-term water quality targets for lakes;
 - (b) Method 3.11.3.1 is amended to include appropriate provision for the implementation of short-term water quality targets for lakes (as identified in the amendments to Table 3.11.1(d));
 - (c) Table 3.11-3 is amended to identify lakes and give appropriate prioritisation to those lakes;
 - (d) Schedule C is amended to provide specific minimum farming standards relating to lakes and wetlands including setback provisions of fencing to at least 5 metres for stock exclusion; and
 - (e) Objective 1 is amended to define “wetlands” as “permanently or intermittently wet areas, shallow water, and land water margins that support plants that are adapted to wet conditions”.
20. WRA seeks such other relief, whether it be alternative, additional or consequential, to that set out above as may be required to address the issues identified, including to ensure that the Vision and Strategy is given effect to.

³ “Wetland” is defined in section 2(1) of the RMA and includes “permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.”

Attachments

21. The Court granted waivers and directions sought relating to filing and service of documents attached to notices of appeal.⁴ Accordingly, no documents are attached to this notice.

WRA by its solicitors and authorised agents
Buddle Findlay:



Signature: P T Beverley / C E Bulow

Date: 7 July 2020

Address for Service: Buddle Findlay
Level 17, Aon Centre
1 Willis Street
Wellington 6011

Service may also be effected by:

- (a) posting it to the solicitor at PO Box 2694, Wellington; or
- (b) leaving it for for the solicitor at a document exchange for direction to DX SP20201, Wellington; or
- (c) emailing it to the solicitor at paul.beverley@buddlefindlay.com.

Telephone: (04) 499 4242

TO: The Registrar of the Environment Court at Auckland

AND TO: Waikato Regional Council

⁴ *Re Wairakei Pastoral Ltd* [2020] NZEnvC 62 at [24].