

**In the Environment Court  
I Mua I Te Kōti Taiao O Aotearoa  
Auckland Registry  
Tāmaki Makaurau Rohe**

**ENV-2022-AKL-**

Under the Resource Management Act 1991  
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

**Genesis Energy Limited**

Appellant

and

**Waikato District Council**

Respondent

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**Notice of Appeal on behalf of Genesis Energy Limited  
against decision on the proposed Waikato District Plan**

1 March 2022

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**BELL GULLY**

BARRISTERS AND SOLICITORS  
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**To:** The Registrar  
Environment Court  
Auckland

1. Genesis Energy Limited (**Genesis**) appeals against part of a decision of the Waikato District Council (the **Council**) on the proposed Waikato District Plan (the **Proposed Plan**).
2. Genesis made a submission and a further submission on the Proposed Plan.
3. Genesis is not a trade competitor for the purposes of section 308D of the Act.
4. Genesis received notice of the decision on 17 January 2022.
5. The decision was made by Independent Commissioners appointed by the Council (the **Hearings Panel**).
6. The part of the decision that this appeal relates to is:
  - (a) Mapping of Significant Natural Areas (Decision Report 9);
  - (b) Part 2 – District Wide Matters – Hazards and Risks – Hazardous Substances – Rule HAZS-R2 (Decision Report 11);
  - (c) Part 2 – District Wide Matters – Hazards and Risks – Natural Hazards and Climate Change - Policy NH-P5 (referred to as Policy 15.2.1.5(a) in the notified version of the Proposed Plan) and Rules NH-R6, NH-R7, NH-R11, NH-R16 and NH-R17 (referred to as rules 15.4.1 P5 and P6, 15.5.1 P1 and 15.5.2 RD1 in the notified version of the Proposed Plan) (Decision Reports 29A and 29B); and
  - (d) Part 4 – Schedules and Appendices – APPI Acoustic Insulation – 6.1 Standards for Permitted Activities – Table 25 (Decision Reports 21 and 32).

7. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by Genesis are underlined or ~~struck through~~.

### **Mapping of Significant Natural Areas (Decision Report 9)**

#### *Reasons for appeal*

8. For the reasons set out in its submission on the Proposed Plan, Genesis sought the deletion of areas identified on planning maps as Significant Natural Areas (**SNAs**) on its Huntly Power Station (**HPS**) and Scott Farm sites in Huntly.
9. The Hearings Panel's decision records that the data that informed the mapping of SNAs in the Proposed Plan was inaccurate, and for this reason, the Panel decided that all SNAs should be deleted from the planning maps, with limited exceptions.<sup>1</sup> The Hearings Panel also amended the definition of SNA to mean only an area that is identified as a SNA on the planning maps.<sup>2</sup>
10. Genesis' HPS and Scott Farm sites do not fall within the limited exceptions identified by the Hearings Panel. Accordingly, Genesis was included in the table at page 47 of the Decision Report of sites where SNAs are to be deleted.<sup>3</sup> However, a SNA is still identified over parts

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<sup>1</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 9: Significant Natural Areas at [5.2]-[5.3].

<sup>2</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 9: Significant Natural Areas at [5.4].

<sup>3</sup> We note that only Genesis' submission point 924.7 is included in the table at page 47 of the Decision Report, and the address of the site is not specified. Genesis' submission point 924.6 is not referenced in the Decision Report. Submission 924.7 sought the deletion of the SNA from Genesis' Scott Farm site. Submission point 924.6 sought the deletion of the SNA from Genesis' HPS site. We consider the omission of a reference to submission point 924.6 is likely to be an administrative error, as Genesis' submissions and evidence at the hearing on this issue related to both sites.

of Genesis' HPS and Scott Farm sites on the Decision version of the planning maps.

11. Genesis considers this incorrect mapping is an administrative error and has requested that the Council correct this error in accordance with clause 16(2) of Schedule 1 of the Resource Management Act 1991 (the **RMA**). However, for completeness, and in the event Genesis' request to the Council is not granted, Genesis seeks amendment of the planning maps through this appeals process.

*Relief sought*

12. Amend the planning maps to remove the SNA over Genesis' HPS and Scott Farm sites.

**Part 2 – District Wide Matters – Hazards and Risks – Chapter 14 – Hazardous Substances – Rule HAZS-R2 (Decision Report 11)**

*Reasons for appeal*

13. In its submission on the Proposed Plan, Genesis noted its concern that the proposed rules relating to hazardous substances in the Proposed Plan represented a duplication of the requirements under the Health and Safety at Work Act 2015 (the **HSW Act**) and the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the **HS Regulations**).
14. The Decision records that the Hearings Panel considered the extent of the Council's role in the management of hazardous substances under the RMA in light of the amendments to the RMA by the Resource Legislation Amendment Act 2017, and agreed that duplication of requirements should be avoided in the Proposed Plan and consent triggers should be reserved for regulatory gaps.<sup>4</sup>
15. The Hearings Panel replaced the notified plan provisions with new objectives, policies and rules for the management of hazardous

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<sup>4</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 11: Hazardous Substances and Contaminated Land at [4.1]-[4.5].

substances. The HPS falls within the meaning of “Significant Hazard Facility” in those provisions, and is subject to the rules relating to hazardous substances in Chapter 14, notably new Rule HAZS-R2.

16. Genesis is concerned that new Rule HAZS-R2 will trigger new and potentially onerous consent requirements for the HPS, irrespective of the amount or nature of hazardous substances stored on the site and the corresponding land use effect. This is because the rule is not triggered by hazardous substance quantities and risks; the Proposed Plan does not include any set minimum quantities or properties of hazardous substances before the rule applies. Accordingly, *any* new storage, handling or use of hazardous substances at the HPS will require a consent by virtue of the site being a “Significant Hazard Facility”.
17. A range of hazardous substances are stored and used at HPS, in compliance with the HSW Act and HS Regulations. Rule HAZS-R2 results in a significant and unnecessary overlay with these requirements, and adds an onerous consenting requirement on Genesis every time it uses a new hazardous substance at the HPS (including where there is no corresponding land use effect).
18. Given the unique operation of the HPS as a large scale thermal electricity generation site, with large storage capacity of hazardous substances, Genesis considers that Rule HAZS-R2 should be amended so that it does not apply to the HPS. It is critical that the rule framework allows for the efficient functioning of the HPS as regionally significant industry and infrastructure.

*Relief sought*

19. Amend Rule HAZS-R2 to specifically exclude the HPS from the application of the rule, or alternatively to exclude the HPS from the definition of “Significant Hazard Facility”.

**Part 2 – District Wide Matters – Hazards and Risks – Natural Hazards and Climate Change - Policy NH-P6 and Rules NH-R6, NH-R7, NH-R11 and NH-R17 (Decision Reports 29A and 29B)**

*Reasons for appeal*

20. Genesis' submission on the Proposed Plan sought the explicit reference to infrastructure, including ancillary activities and site rehabilitation activities, in the natural hazards policies and rules. This was sought in order to adequately provide for the operation, maintenance and minor upgrading of existing infrastructure in all areas subject to natural hazards as anticipated by the objectives and policies of the Plan, particularly Policy NH-P6.
21. The Hearings Panel agreed with the need to provide for infrastructure in the relevant rules, but adopted an indirect approach to achieving the relief sought. The Panel agreed to amend the definition of "utility" in the Proposed Plan to delete the words "provided by network utility operators or requiring authorities", which would mean Genesis' infrastructure would fall within the definition of "utility" by virtue of being "electricity generation infrastructure".<sup>5</sup>
22. Despite the Panel's Decision, the relief agreed has not been carried through into the Decision's version of the Proposed Plan.<sup>6</sup> Genesis considers this is an administrative error and has requested that the Council correct this error in accordance with clause 16(2) of Schedule 1 of the RMA.
23. Regardless of the error being corrected, Genesis considers an explicit reference to infrastructure (including ancillary and site rehabilitation activities) in the provisions is preferable to an implicit reference, and

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<sup>5</sup> Report and Decisions of the Waikato District Plan Hearings Panel - Decision Report 29B: Flood Hazards and Defended Areas at [4.8] – [4.9] and [5.6].

<sup>6</sup> See the definition of "utility" at Part I: Introduction and general provisions / Interpretation, pg 38.

seeks amendment to the relevant rules to expressly reference infrastructure.

*Relief sought*

24. Amend Policy NH-P6 as follows:

Existing infrastructure and utilities in all areas subject to natural hazards.

Provide for the operation, maintenance and minor upgrading of existing infrastructure and utilities, including ancillary activities, and site rehabilitation, in all areas subject to natural hazards.

25. Amend Rules NH-R6, NH-R7, NH-R11 and NH-R17 as follows:

<b>NH-R6</b>	Construction, replacement, repair, maintenance, minor upgrading, <del>or</del> upgrading of <u>infrastructure and utilities and their ancillary activities, including rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities.</u>	
Flood plain management area and Flood ponding area across all zones	<b>(1) Activity status: PER</b> <b>Activity-specific standards:</b> Nil	<b>(2) Activity status where compliance not achieved: n/a</b>

<b>NH-R7</b>	Earthworks associated with construction, replacement, repair, maintenance, minor upgrading or upgrading of <u>infrastructure and utilities</u> , including <u>ancillary activities</u> , the formation and maintenance of access tracks, <u>rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u> .	
Flood plain management area and Flood ponding area across all zones	<b>(1) Activity status: PER</b> <b>Activity-specific standards:</b> Nil	<b>(2) Activity status where compliance not achieved: n/a</b>
<b>NH-R11</b>	Repair, maintenance or minor upgrading of existing <u>infrastructure, utilities, and their ancillary activities</u> , including <u>rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u> .	
High risk flood area across all zones	<b>(1) Activity status: PER</b> <b>Activity-specific standards:</b> Nil	<b>(2) Activity status where compliance not achieved: n/a</b>
<b>NH-R17</b>	Upgrading of existing <u>infrastructure, utilities, and their ancillary activities</u> , including <u>rehabilitation of the site occupied by the infrastructure, utilities and their ancillary activities</u> , not provided for in Rule NH-R11	
High risk flood area across all zones	<b>(1) Activity status: RDIS</b> <b>Activity-specific standards:</b> Nil.  <b>Council's discretion is restricted to the following matters:</b>  (a) Functional and operational requirements	<b>(2) Activity status where compliance not achieved: n/a</b>



	<p>to be located in the High risk flood area;</p> <p>(b) The adverse effects on people and property from establishing or upgrading the utility in the High risk flood area;</p> <p>(c) The potential for the development to transfer/increase flood risk to neighbouring properties;</p> <p>(d) Consideration of alternative locations;</p> <p>(e) Consideration of the projected effects of climate change;</p> <p>(f) Any mitigation measures to reduce the risk to people's safety, well-being and property.</p>	
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**Part 4 – Schedules and Appendices – APPI Acoustic Insulation – 6.1 Standards for Permitted Activities – Table 25 (Decision Reports 21 and 32)**

*Reasons for appeal*

26. Appendix 1 of the Proposed Plan requires residential units and other buildings containing sensitive land uses within high noise environments to be insulated to an appropriate standard to achieve a specified internal design level. The Decisions version of the Proposed Plan sets the internal design sound level for noise sensitive activities within 350m of the HPS at 40dB L<sub>Aeq</sub>.

27. Genesis' noise expert presented during the hearings on the Proposed Plan and sought for this internal design sound level to be reduced to 35dB  $L_{Aeq}$  (24 hours) for the following reasons:
- (a) the limit should incorporate a time basis to be technically correct and achievable (i.e. to set the time period in which the acoustic assessment should be taken); and
  - (b) the 40dB value is too high to protect bedrooms.
28. In order to avoid potential reverse sensitivity effects on the HPS, Genesis seeks amendment of the internal design sound level in Table 25 in accordance with its expert's recommendations for sleeping areas, and consistent with the approach taken in other Tables in Appendix 1. For completeness, Genesis notes that the cost implication to achieve a 35dB versus a 40dB internal sound level is minimal.

*Relief sought*

29. Amend Table 25 of APPI – Acoustic Insulation as follows:

Area	Internal design sound level
<ul style="list-style-type: none"> <li>• <u>Within 350m of the Huntly Power Station</u></li> </ul>	<p><u>Habitable rooms: 40dB <math>L_{Aeq}</math> (24 hours)</u></p> <p><u>Sleeping areas: 35dB <math>L_{Aeq}</math> (24 hours)</u></p>
<p><del>Within 350m of the Huntly Power Station</del></p> <ul style="list-style-type: none"> <li>• Residential units in the LCZ – Local centre zone</li> <li>• Residential units in the COMZ – Commercial zone</li> <li>• Residential units in the TCZ – Town centre zone</li> <li>• Within 100m of the Tamahere Commercial Areas A, B and C</li> <li>• Multi-Unit development</li> <li>• Comprehensive Development – Rangitahi Peninsula</li> </ul>	<p>40dB <math>L_{Aeq}</math></p>

## Relief Sought

30. Genesis seeks the following relief from the Court:
- (a) The relief specified in this notice of appeal under each heading '*relief sought*'; and/or
  - (b) Such further, consequential or alternative relief as may be necessary or appropriate to address the reasons for appeal or give effect to the relief sought.
31. Genesis attaches the following documents to this notice:
- (a) a copy of Genesis' submissions and further submissions;
  - (b) a copy of the relevant part of the decision;
  - (c) a list of names and addresses of persons to be served with a copy of this notice.



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N J Garvan / L M Lincoln  
Counsel for Genesis Energy Limited

Dated 1 March 2022

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## **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 Act.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not have attached a copy of the appellant's submission and the part of the decision appealed. These documents may be obtained, on request, from the appellant.

### *Advice*

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

**ATTACHMENT A – GENESIS' SUBMISSIONS AND FURTHER  
SUBMISSIONS**

## ATTACHMENT B – RELEVANT PARTS OF THE DECISION

**ATTACHMENT C – A LIST OF NAMES AND ADDRESSES OF PERSONS TO  
BE SERVED WITH A COPY OF THIS NOTICE**