

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

I MUA I TE KOOTI TAIAO O AOTEAROA

ENV-2022-AKL-

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

AND

IN THE MATTER of an appeal under
clause 14(1) of the First
Schedule of the Act

BETWEEN **WAIKATO REGIONAL
COUNCIL**

Appellant

AND **WAIKATO DISTRICT
COUNCIL**

Respondent

NOTICE OF APPEAL

To: The Registrar
Environment Court
Auckland

1. The Waikato Regional Council appeals against the following parts of the decision of the Waikato District Council (**Respondent**) on submissions on its Proposed Waikato District Plan (**Proposed DP**):

(a) Decision Report 9: Significant Natural Areas; and

(b) Decision Report 29A: Natural Hazards and Climate Change – Objectives, Policies and General Submissions.

(Together referred to as the **Decision**)

2. The Waikato Regional Council made:

(a) A submission dated 18 September 2018 on the Proposed DP;

(b) A further submission dated 15 July 2019 on the Proposed DP;

(c) A submission dated 22 September 2020 on Stage 2 of the Proposed DP; and

(d) A further submission dated 14 December 2020 on Stage 2 of the Proposed DP.

3. The Waikato Regional Council is not a trade competitor for the purposes of section 308D of the Act.

4. The Waikato Regional Council received notice of the Decision on 17 January 2022. The Decision was made by an Independent Hearings Panel of the Waikato District Council.

Parts of the Decision that are appealed

5. The Waikato Regional Council appeals the following specific parts of the Decision:

- (a) With respect to Decision Report 9: Significant Natural Areas - the Hearing Panel's decision to:

"...delet[e] all SNAs from the planning maps except for the following:

- (a) Those that have been visited and verified (in terms of consistency with Appendix 2 Criteria and spatial extent) by Ms Chibnall and Mr Turner);*
- (b) Submitters that have appeared at the hearing with clear photographs and evidence of their properties;*
- (c) Sites in public ownership such as Department of Conservation, WRC and the Council; or*
- (d) QEII National Trust Covenanted sites."¹*

- (b) With respect to Decision Report 9: Significant Natural areas - the Hearing Panel's decision to limit the application of the Significant Natural Area (**SNA**) rules to only sites mapped as SNAs.²

With respect to Decision Report 29B: Natural Hazards and Climate Change – Flood Hazards and Defended Areas - the Hearing Panel's decision rejecting the Waikato Regional Council's submission seeking that the Proposed DP be amended to ensure that activities in all areas at potential high risk from hazards are able to be adequately assessed, not just activities in those areas that are currently identified and mapped.

Reasons for the appeal - SNAs

6. With respect to the parts of the appeal relating to SNAs, the reasons for the appeal are:
- (a) As a result of the Decision, large areas of significant indigenous vegetation and significant habitats of indigenous fauna located on privately owned land will not have an adequate level of legal protection, and will be capable of being cleared or modified as a permitted activity on the basis that they are not identified as SNAs in the Proposed DP,

¹ Decision Report 9 Significant Natural Areas, paragraph 5.4.

² Decision Report 9 Significant Natural Areas, paragraph 5.3.

and the Decision has amended the rules relating to SNAs so that they only apply to mapped areas.

- (b) The Waikato Regional Council considers that, as a result of this, the Decision does not achieve the purpose of the RMA because the Proposed DP will not:
 - (i) give effect to the Waikato Regional Policy Statement (**WRPS**) and in particular Objective 3.19 Ecological integrity and indigenous biodiversity, Policy 11.2 Protect significant indigenous vegetation and significant habitat of indigenous fauna, and Implementation Method 11.2.2 Protect areas of significant vegetation and significant habitats of indigenous species; and
 - (ii) recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as required by section 6(c) of the Act; and

7. With respect to areas of significant indigenous vegetation present in the Waikato District but not mapped as SNAs in the Proposed DP, the Decision affords these areas inadequate protection. The Waikato Regional Council considers that:

- (a) The definition of SNA needs to include both areas mapped as SNAs in the Proposed District Plan, and areas that meet one or more of the criteria in Appendix 2 of the Proposed DP, as assessed by a suitably qualified ecologist.
- (b) Otherwise, the Proposed DP will not achieve the purpose of the Act because it will not:
 - (i) give effect to the WRPS, and
 - (ii) recognise and provide for the matter of national importance described section 6(c) of the Act.

Reasons for appeal – natural hazards

8. With respect to the parts of the appeal relating to natural hazards, the reasons for the appeal are:

- (a) The Waikato Regional Council in its submission on the Proposed DP sought to ensure that activities in all areas at potentially high risk from natural hazards are able to be adequately assessed, not just activities in those areas that are currently identified and mapped.
- (b) This submission was declined by the Hearings Panel.
- (c) By rejecting the submission, the Decision means that an assessment of the risk of flooding will only be triggered where activities are undertaken in an area has been specifically mapped as being subject to flood hazards. However, this means the Proposed DP will not achieve the purpose of the Act because it:
 - (i) Ignores the reality that there are areas within the district that will be subject to flooding, but have not yet been mapped;
 - (ii) Does not give effect to the WRPS, and in particular Objective 3.24 Natural Hazards, Policy 13.2 Floodplain management and Method 13.2.6 Control of development within a floodplain or coastal hazards; and
 - (iii) Does not recognise and provide for the management of significant risks from natural hazards in accordance with section 6(h) of the RMA.

9. For the reasons set out above the Decision means that Proposed DP will not meet the requirements of the Act and will not assist the Waikato District Council to achieve the purpose of the Act.

Relief Sought

10. The Waikato Regional Council seeks, by way of relief, that the Proposed DP be amended to:
- (a) Retain the SNA maps as notified in the Proposed DP, unless evidence was submitted during the district plan hearing process from a qualified

ecologist establishing that the SNA or part of the SNA does not meet the criteria set out in 11A of the WRPS.

- (b) Not accept the Decision's full or partial removal of SNAs from the notified SNA maps, where those SNAs form part of a larger SNA unit that has not been assessed in its entirety by Mr John Turner in his report 'Waikato District Plan Review Significant Natural Areas Assessment' dated 14 October 2020, prepared in support of the S42A report for Hearing 21A.
- (c) Include the manuka / kanuka scrub in SNA 60 around Whaanga Road, Raglan that was deleted in the Decision.
- (d) Amend the definition of 'Significant Natural Area' as follows:

“Means an area identified as a Significant Natural Area on the planning maps or those areas that meet one or more of the criteria set out in APP2 of the Plan, as assessed by a suitably qualified ecologist.”
- (e) Amend the definition of “Flood plain management area” as follows:

“Means an area ~~identified on the planning maps~~ which is at risk of flooding in a 1% AEP flood event and is otherwise described in this District Plan as the 1%AEP floodplain.”.
- (f) 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

11. The following documents are attached to this notice:

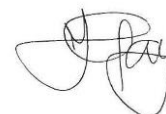
- (a) A copy of the Waikato Regional Council's submissions and further submissions (**Appendix 1**);
- (b) A copy of the relevant part of the Decision (**Appendix 2**); and

- (c) A list of names and addresses of persons to be served with a copy of this notice (**Appendix 3**).

Mediation

12. The Waikato Regional Council agrees to participate in mediation or other alternative dispute resolution of these proceedings.

DATED at Hamilton this 1st day of March 2022



Tracey May
Director, Science, Policy and
Information
Waikato Regional Council

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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,-

- (a) 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
- (b) 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 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 attach a copy of the appellant's further submission and the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Auckland Registry.