

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

ENV-2022-AKL-000036

In the matter of the Resource Management Act 1991
And in the matter of an application under Section 274 of the Act

Between

Director-General of Conservation

Appellant

and

Waikato District Council

Respondent

**Notice of Genesis Energy Limited's wish to be party to
proceedings**

21 March 2022

BELL GULLY

BARRISTERS AND SOLICITORS

N J GARVAN / L M LINCOLN

SOLICITOR FOR THE APPLICANT

LEVEL 22, VERO CENTRE, 48 SHORTLAND STREET

PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND

TEL 64 9 916 8800 EMAIL NATASHA.GARVAN@BELLGULLY.COM / LAURA.LINCOLN@BELLGULLY.COM

To: The Registrar
Environment Court
Auckland

1. Genesis Energy Limited (**Genesis**) wishes to be a party to the following proceedings:
 - (a) *Director-General of Conservation v Waikato District Council* – ENV-2022-AKL-000036.
2. Genesis is a person who made a submission about the subject matter of the proceedings.
3. Genesis is not a trade competitor for the purposes of section 308C of the Resource Management Act 1991.
4. Genesis is interested in the following parts of the proceedings:
 - (a) Part 1: Introduction and general provisions / Interpretation – Definition of “Significant Natural Area”;
 - (b) Part 2: District-wide matters / Natural environment values / ECO – Ecosystems and indigenous biodiversity;
 - (c) Part 2: District-wide matters / Natural environment values / ECO – Ecosystems and indigenous biodiversity – Policy ECO-P2;
 - (d) Part 2: District-wide matters / Natural environment values / ECO – Ecosystems and indigenous biodiversity – Policy ECO-P3;
 - (e) Part 2: District-wide matters / Natural environment values / ECO – Ecosystems and indigenous biodiversity – Rules ECO-R7 and ECO-R14 and the proposed addition of new provisions; and
 - (f) Part 4: Schedules and appendices / APP3 – Biodiversity offsetting.

5. Genesis is interested in the following particular issues:
- (a) The proposed expansion of the definition of “Significant Natural Area” (**SNA**) to include unmapped areas that meet the criteria in Appendix 2 of the Proposed Plan;
 - (b) Proposed amendments to *Part 2: District-wide matters / Natural environment values / ECO – Ecosystems and indigenous biodiversity* to include recognition, provision and protection of the “habitat” of indigenous fauna, rather than “indigenous fauna”;
 - (c) Proposed amendments to Policies ECO-P2 and ECO-P3 which concern the management hierarchy for indigenous biodiversity and the use of biodiversity offsets in SNAs;
 - (d) Proposed amendments to rules ECO-R7 and ECO-R14 and the insertion of new provisions to provide for protection of exotic trees, where those trees qualify as significant habitat for indigenous species; and
 - (e) Proposed amendments to Appendix 3 to require a quantitative assessment of biodiversity losses and gains rather than a qualitative assessment.
6. Genesis opposes the relief sought because—
- (a) The proposed amendments create unnecessary uncertainty in the Proposed Plan. Mapping of SNAs is necessary to give plan users sufficient certainty about the provisions that apply to their activities;
 - (b) Genesis agrees with the Hearings Panel that the identification of SNAs on planning maps with rules that relate explicitly to those mapped sites provides far more certainty for plan users than other approaches, is favoured by the Draft National Policy Statement on Indigenous Biodiversity, and will not lead to

perverse outcomes where a single tree on a site could be deemed to be an SNA¹;

- (c) Expanding the definition of SNA to include areas that are not mapped but meet one or more of the criteria in Appendix 2 of the Proposed Plan places an onus on the landowner to have their land independently assessed by a suitably qualified ecologist. This approach is inconsistent with Policy ECO-P12 of the Proposed Plan which requires the WDC is jointly responsible with WRC to meet the costs of an ecological assessment that shows the area meets one or more of the Appendix 2 criteria;
- (d) Genesis agrees with the Hearings Panel that the data that informed the mapping of SNAs in the PDP was inaccurate² and therefore should not be relied on. Genesis supports the Panel's approach to the identification of SNAs, noting that its separate appeal on this issue relates to what appears to be an administrative error;
- (e) No changes to *Part 2: District-wide matters / Natural environment values / ECO – Ecosystems and indigenous biodiversity* are required to recognise, provide for and protect habitats of indigenous fauna. For example, Policy ECO-P1 provides for the identification and mapping of areas of significant indigenous vegetation and habitats of indigenous fauna where it meets one or more criteria in Appendix 2;
- (f) Genesis considers that offsetting should only be required where residual adverse effects are significant or more than minor. The proposed amendments to Policies ECO-P2 and ECO-P3 are overly onerous and unnecessary to achieve Objectives ECO-O1 and ECO-O2 in the Proposed Plan. They are also inconsistent with the *Guidance on Good Practice Biodiversity Offsetting in New Zealand dated August 2014* which draws from the Business

¹ Report and Decisions of the Waikato District Plan Hearings Panel, Decision Report 9: Significant Natural Areas at [5.3].

² Report and Decisions of the Waikato District Plan Hearings Panel, Decision Report 9: Significant Natural Areas at [5.4].

and Biodiversity Offsets Programme (**BBOP**) to define biodiversity offsetting with reference to significant residual adverse effects;

- (g) Genesis agrees with the Hearings Panel that the Proposed Plan should provide for the removal of non-indigenous vegetation in an SNA as a permitted activity. In the absence of specific relief to protect exotic trees where those trees qualify as significant habitat for indigenous species, Genesis considers that the Appellant's amendments are likely to create uncertainty and are also opposed on that basis; and
- (h) Genesis supports the use of a qualitative assessment of losses and gains in a biodiversity offset. The *Guidance on Good Practice Biodiversity Offsetting in New Zealand dated August 2014* states an appropriate "currency" needs to be chosen to assess a biodiversity offset, and the options discussed include both qualitative and quantitative currencies (and the option to use both as complementary currencies). It is not appropriate to simply replace "qualitative" with "quantitative" in Appendix 3 as it would not be consistent with the guidance.

7. Genesis agrees to participate in mediation or other alternative dispute resolution of the proceedings.



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

Dated 21 March 2022

Address for service:

Genesis Energy Limited
C/- Bell Gully
PO Box 4199
Shortland Street
Auckland 1140
Attention: N J Garvan / L M Lincoln

Telephone: (09) 916 8956 or (09) 916 8800

Email: natasha.garvan@bellgully.com / laura.lincoln@bellgully.com

Advice

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