

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2025-AKL-000159

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER OF

an appeal under Clause 14
of Schedule 1 of the RMA
against the decision of the
Waitomo District Council in
relation to the Proposed
Waitomo District Plan

BETWEEN

**THE ROYAL FOREST AND
BIRD PROTECTION SOCIETY
OF NEW ZEALAND
INCORPORATED
(APPELLANT)**

AND

**WAITOMO DISTRICT
COUNCIL
(RESPONDENT)**

**NOTICE OF KING COUNTRY ENERGY LIMITED'S WISH TO BE A PARTY TO
PROCEEDINGS PURSUANT TO SECTION 274 OF THE RESOURCE MANAGEMENT
ACT 1991**

22 AUGUST 2023

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TO: The Registrar
Environment Court
AUCKLAND

1. King Country Energy Limited ('KCE') wishes to become a party to an appeal by the Royal Forest and Bird Protection Society Incorporated ('F&B') (under clause 14(1) of the First Schedule of the Resource Management Act 1991 ('RMA' or 'the Act')) in relation to the Respondent's decisions on the Proposed Waitomo District Plan ('PWDP').
2. KCE submitted and further submitted on the provisions of the PWDP to which this appeal relates. KCE is also a person with an interest greater than the public generally, as KCE is a publicly owned renewable electricity generation company, and within the Waitomo District, KCE is the owner of the Wairere and Mokauiti Hydroelectric Power generation Schemes ('Schemes' or 'HEPS') located near Aria on the Mokau and Mokauiti rivers respectively.
3. KCE is not a trade competitor for the purposes of section 308C or 308CA of the RMA.
4. KCE has an interest in the following parts of the proceedings, being all aspects of appeal points related to:
 - (a) New definition for Vegetation Clearance;
 - (b) ENRGY-R6, R8 and R10;
 - (c) ECO-P1 ;
 - (d) ECO-P2;
 - (e) ECO-R16; and
 - (f) NFL rules.
 - (g) Effects on the operation and development of existing hydroelectric energy generation.
5. KCE opposes the relief sought by F&B that may affect its operations including to the new definition for vegetation clearance; Energy rules R6, R8 and R10; Ecosystems and indigenous biodiversity policies ECO-P1 and ECO-P2 and rule ECO-R16; and the Natural Features and Landscapes NFL rules. KCE is concerned that the effects of the relief sought may undermine the balance provided in the decisions on the PWDP, and fail to give effect to the requirements of the RMA, the National Policy Statement for Renewable Electricity Generation ('NPS-REG'), and the Waikato Regional Policy Statement ('WRPS').
6. The provision of existing and new renewable electricity generation infrastructure is identified as a matter of national significance under the RMA, as well as being identified in the NPS-REG, and is provided for under the WRPS, including the Objective for Energy and associated policies and methods, including by providing clear and directive intent for Regionally Significant Infrastructure and specifically for renewable electricity generation activities, such as required under *EIT-P1 - Significant infrastructure and energy resources*, and recognising *the locational and technical*

practicalities associated with renewable electricity generation and the technical and operational requirements of the electricity transmission network.

7. At this early point, KCE wishes to maintain a general overview of the appeal in line with matters raised on this notice and its concerns expressed in its submission and further submission until it can be sure that the implications of the appeal have been fully developed. Its reasons for wishing to be a party include, without derogation to this point, the following specific matters:

New Definition for Vegetation Clearance

8. F&B, in its appeal seeks to define vegetation clearance and removal. The definition proposed in the appeal is inconsistent with the WRPS definition for vegetation clearance within its glossary of terms, and inconsistent with the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ('NES-F') definition for vegetation clearance, both of which list a number of exemptions. Given this, KCE opposes the definition proposed by F&B on the basis that it is overly restrictive, not consistent with either the WRPS or the NES-F, and may bring about unintended consequences.

Energy Rules – ENRGY-R6, R8 and R10

9. The decisions version of Rules ENRGY-R6, R8 and R10 are supported.
10. KCE lodged submissions to ENRGY-R6, R8 and R10. KCE is concerned that adding an additional matter of discretion for 'effects on indigenous biodiversity' associated with free-standing solar panels, hydroelectricity generation activities and renewable energy exploration activities may bring about unintended consequences, particularly as the matter is more broadly stated than the requirements of s6(c) RMA. Given this, KCE opposes the proposed inclusion to ENRGY-R6, R8 and R10.

Policy ECO-P1

11. F&B, in its appeal to Policy ECO-P1 states that the changes it seeks to ECO-P1 are to ensure protection of s6(c) matters, to include an effects management hierarchy and to maintain indigenous biodiversity. F&B states that it is not generally opposed to the decision amendment which replaces the policy with the effects management hierarchy of the National Policy Statement for Indigenous Biodiversity 2023 ('NPS-IB'), however, seeks to amend ECO-P1 to include requirements to avoid adverse effects on the matters listed under clause 3.10(2) of the NPS-IB; and to include areas meeting s6(c) across the whole district. Further, F&B seek to add a new policy providing for the maintenance of indigenous biodiversity to give effect to the Council's function under s31(1)(b)(iii).
12. KCE lodged a submission and further submissions to ECO-P1. Without an understanding of the wording of the proposed amendments to ECO-P1, or the wording

of the new policy providing for the maintenance of indigenous biodiversity, KCE is unable to determine whether the amendments, and new policy will effectively promote the sustainable management of natural and physical resources and appropriately give effect to higher order planning instruments. Further, KCE is unable to determine whether F&B's proposed amendments will have unintended consequences that may adversely impact its existing lawfully established regionally significant infrastructure and the continuation and development of the same. Given this, KCE seeks to better understand the amendments proposed by F&B and the implications of the same.

Policy ECO-P2

13. In its appeal, F&B states that the decision adds ECO-P2(5) which provides: *"Recognising the continued operation of lawfully established regionally significant activities."* F&B consider that this does not make sense when read with the chapeau which requires recognition, protection and enhancement of ecological sustainability, indigenous biodiversity values and characteristics of significant natural areas by undertaking a number of measures. As such, F&B recommend that ECO-P2(5) be deleted.
14. KCE lodged a submission and further submissions to ECO-P2, noting that there are SNA's of both local and regional significance that encompass a large part of its Mokauiti HEPS site. While the SNAs appear to avoid the Mokauiti Power Station and Dam, as viewed on the proposed Plan maps, they sit very close to the same and given this, may impinge upon the operations and activities that occur on the Mokauiti HEPS site. KCE in its submission sought that the SNAs did not cover any parts of its Mokauiti Scheme. Given this, KCE considers the inclusion of ECO-P2(5) to be appropriate and consistent with the sustainable management purpose of the RMA. The clause will ensure that the proposed plan provisions adequately provide for the continued operation of lawfully established regionally significant activities, consistent with the direction provided elsewhere in the proposed plan (including the Rural Production Zone) and with higher order instruments, such as the NPS-REG.

Rule ECO-R16

15. The decisions version of Rule ECO-R16 is supported. KCE is concerned that the proposed relief sought by F&B will apply too widely, and will be more onerous than is appropriate. KCE supports a discretionary activity status.

NFL – Rules

16. F&B, in its appeal to the Natural Features and Landscapes rules stated that it considers that NFL-R15 is inconsistent with s6(b) and s6(c) of the RMA, and Council's functions to maintain indigenous biodiversity. Given this, F&B seek to amend NFL-R15 by adding an additional matter of discretion for *"effects on indigenous biodiversity"*; and reducing the permitted activity clearance within Outstanding Natural Landscapes and

Karst overlays to 1000m2 per any ten year period and making consequential amendments to align with the restricted discretionary activity.

17. KCE submitted to the Natural Features and Landscapes Chapter, noting that *“while recognising that outstanding natural landscapes, outstanding natural features, landscapes of high amenity value and the karst overlays are important and should be protected from inappropriate subdivision, use and development, KCE is again, concerned to ensure that the provisions of this chapter provide for the continued operation of its regionally significant renewable electricity generation HEPS”*. KCE is concerned that adding an additional matter of discretion for ‘effects on indigenous biodiversity’ associated with removal of indigenous vegetation outside of a significant natural area may bring about unintended consequences that will impact upon the continued operation of its lawfully established regionally significant infrastructure. In addition to this, KCE is concerned with the significant reduction to the indigenous vegetation clearance provided for as a permitted activity in Outstanding Natural Landscapes and Karst Overlays that F&B proposes, as again, this may impact upon the continued operation of its lawfully established regionally significant infrastructure.

Mediation and/or ADR

17. KCE agrees to participate in mediation or other alternative dispute resolution of the proceedings.



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Dated: 22nd of August 2025

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