

IN THE ENVIRONMENT COURT
AUCKLAND

ENV-2024-AKL-000165

I MUA TE KOOTI TAIAO O AOTEAROA
I TE TĀMAKI MAKAURAU ROHE

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

AND

IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the
RMA

BETWEEN **CONTACT ENERGY LIMITED**

Appellant

AND **TAUPŌ DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST PART OF THE
DECISION ON PLAN CHANGE 42 TO THE TAUPŌ DISTRICT PLAN**

25 JULY 2024

TO: The Registrar of the Environment Court at Auckland

AND TO: The Respondent

CONTACT ENERGY LIMITED ("Contact") appeals against part of the decision ("**Decision**") of the Taupō District Council ("**Council**") in respect of changes to the Taupō District Plan ("**District Plan**") under Plan Change 42 ("**PC42**").

Background

1. Contact is the second largest electricity generator / retailer in New Zealand with a flexible and largely renewable portfolio of electricity generation assets.
2. Contact owns and operates 11 power stations across the country and currently produces 80-85% of its electricity from renewable hydro and geothermal resources.
3. Contact is New Zealand's largest producer of renewable electricity from geothermal resources with the operation of its Wairākei A & B Power Station, Wairākei Binary Plant, Poihipi Road, Te Mihi, Ohaaki and Te Huka Power stations (all located in the Taupō District). Contact is also currently commissioning the Tauhara Power Station and constructing Unit 3 on the Te Huka Power Station Site.
4. Contact made a submission on PC42 on 9 December 2022 and made a further submission on 6 April 2023. PC42 involved a full review of the existing Rural Chapters within the Taupō District Plan with some of the key changes including the creation of a new Rural Lifestyle Environment from the General Rural Environment, a new set of provisions for the Rural Lifestyle Environment including relaxation of subdivision rules, allowance for minor dwellings, providing for primary production and rural industry, more flexible papakainga provisions, and the removal of the Mapara Valley Structure Plan, Mapara Valley Environments and associated provisions.
5. As relevant to this notice of appeal, Contact's submission sought to ensure that Rural Lifestyle Environments (Zones) are only created in appropriate locations which does not include within or in close proximity to permitted, lawfully existing and / or consented renewable electricity generation activities.
6. Contact's submission was that if Rural Lifestyle Environments are only located in appropriate locations, that outcome avoids the need to Contact (and others) to seek changes to the rules and performance standards relating to the Rural Lifestyle Environment to avoid reverse sensitivity effects.

7. Contact received notice of the Decision on 14 June 2024. The Decision did not reflect all of the relief sought in the submission by Contact, particularly in relation to the zoning matters. The Council either did not consider that rezoning the areas has the potential to exacerbate the vulnerability of existing lawfully established and/or consented activities or considered that the sites comply with all seven criteria (developed by the Council), are small and near to existing clusters and therefore it would be appropriate to re-zone the land as Rural Lifestyle Zone.
8. Contact is not a trade competitor for the purposes of section 308D of the Act.

Nature of appeal

9. Contact appeals the Decision in part, including in particular the part of the Decision that relates to the zoning of particular areas as Rural Lifestyle Environment. Contact appeals the Council's confirmation of the planning maps as notified, and some of the definitions, objectives and policies, rules and standards that apply to activities within the Rural Lifestyle Environment and General Rural Environment.

General reasons for appeal

10. The Decision:
 - (a) will not promote the sustainable management of resources, and therefore is contrary to or inconsistent with Part 2 and other provisions of the RMA;
 - (b) is contrary to, and does not give effect to, the National Policy Statement for Renewable Electricity Generation 2011 (“**NPS-REG**”) and the Waikato Regional Policy Statement;
 - (c) will not enable the social and economic wellbeing of the community;
 - (d) will not meet the reasonably foreseeable needs of future generations;
 - (e) will not achieve integrated management of the effects of use, development or protection of land and associated resources of the Taupō District;
 - (f) will not enable the efficient use and development of Contact’s assets and operations, including the ability to exercise resource consents held; and

- (g) does not represent the most appropriate way to achieve the objectives of the District Plan, in terms of section 32 of the RMA.

Specific reasons for appeal

- 11. Without limiting the generality of the above, Contact appeals the Decision on the basis that:
 - (a) The Council decided to rezone the land on Centennial Drive from Rural Environment to Rural Lifestyle Environment;
 - (b) The Council decided to rezone the land on Oruanui Road from Rural Environment to Rural Lifestyle Environment;
 - (c) The Council decided to rezone the land on Tukairangi Road from Rural Environment to Rural Lifestyle Environment;
 - (d) Objective 3b.3.1 does not provide for rural residential activities in appropriate locations (i.e. only the Rural Lifestyle Environment) where they will not give rise to reverse sensitivity effects on the General Rural Environment and/or the Industrial Environments;
 - (e) Rule 4b.1.4 does not provide for ancillary activities or activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation;
 - (f) Rule 4b.1.7 does not exclude renewable electricity generation activities from needing consent in the National Grid Yard;
 - (g) Standard 4b.2.7 does not ensure that minor residential units are not located closer than a primary residential unit on the same site to a Consent Area which is the subject to resource consents for the take or discharge of geothermal fluid;
 - (h) Standard 4b.2.8 does not ensure that home businesses are not located closer than the existing primary residential unit on the same site to consent areas associated with the take or discharge of geothermal fluid as sought; and
 - (i) Standard 4b.2.13 only excludes noise from the operation of renewable electricity generation activities within Electricity Generation Core sites from maximum noise performance standards,

rather than from all renewable electricity generation activities, no matter where they are located.

Rezoning of land from Rural Environment to Rural Lifestyle Environment

12. Contact opposes the Council's decision to rezone the land on Centennial Drive, and parts of land on Oruanui Road, and Tukairangi Road to Rural Lifestyle Environment.
13. The Council either did not consider that rezoning the area has the potential to exacerbate the vulnerability of existing lawfully established and/or consented activities or considered that the sites comply with all seven criteria (developed by the Council), are small and near to existing clusters and therefore it would be appropriate to re-zone the land as Rural Lifestyle Environment.
14. Contact is of the opinion that the criteria which Council have developed for selecting areas to be Rural Lifestyle Environment are inadequate as they should include "Development Geothermal System" areas as mapped in the Waikato Regional Plan (beyond urban areas) as not being suitable for Rural Lifestyle Environments.
15. Existing land use character is a relevant factor when determining land use zoning, but it is not necessarily determinative of the outcome as there are a range of other factors that need to be taken into account.
16. The separation of incompatible land use activities is one of the most fundamental principles of sound planning and resource management practice. A Rural Lifestyle Environment in these locations would reinforce the ongoing existence, and enable the intensification of rural residential activities which are incompatible with the nature and character of the surrounding environment (and planned future development including that which will be facilitated by the existing and planned future zoning pattern in the area). This includes large scale heavy industrial activities, geothermal steamfield activities, electricity generation, a motorsport park, horse racing track and an aerodrome.
17. The Centennial Drive area is vitally important for enabling large scale industrial activities and noisy recreational activities.
18. The surrounding environment of Oruanui Road includes the Te Mihi Power Station and associated steamfield activities. Additional wells are planned to be drilled in the area to the north of Te Mihi Power Station in accordance with resource consents held by Contact.

19. The surrounding environment of Tukairangi Road includes the Poihipi Power Station and associated steamfield activities to the north and east.
20. The utilisation of the Wairākei-Tauhara Geothermal System for renewable electricity generation purposes is a matter of national significance as recognised in the NPS for Renewable Electricity Generation. This area should not be compromised by an ability to increase and/or intensify the establishment of incompatible rural residential activities.
21. If Rural Lifestyle Environments are only located in appropriate locations, that outcome avoids the need to Contact (and others) to seek changes to the rules and performance standards relating to the Rural Lifestyle Environment to address the potential for reverse sensitivity effects to arise.

Objective 3b.3.1 not providing for rural residential activities in appropriate locations

22. Contact considers this to be an unexpected objective for the parts of the Rural Environment where a greater density of subdivision and development is anticipated and provided for. The objective should focus on enabling rural residential opportunities in appropriate locations (i.e. where they will not create reverse sensitivity effects on activities in the wider General Rural Environment or Industrial Environments).
23. If Rural Lifestyle Environments are proposed in inappropriate locations (and no decision is made to amend that situation), it forces Contact (and other parties) to seek to amend the rules and performance standards within the Rural Lifestyle Environment as an alternative means to avoid the creation of reverse sensitivity effects. It is preferable that only appropriate locations are zoned Rural Lifestyle Environment whereby activities occurring within those zones do not need to be constrained by way of the rules and performance standards.

Rule 4b.1.4 not providing for ancillary activities or activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation

24. A second clause to the rule which provides for ancillary activities or activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity has not been included as requested by Contact in its original submission.

Rule 4b.1.7 does not exclude renewable electricity generation activities from needing consent in the National Grid Yard

25. In addition to network utilities, this rule should also provide an exception for renewable electricity generation activities (which are not necessarily network utilities).

Standard 4b.2.7 does not ensure that minor residential units are not located closer than a primary residential unit on the same site to a Consent Area which is the subject to resource consents for the take or discharge of geothermal fluid

26. The standard presently enables minor residential units to be located closer than the primary residential unit on the same site to a Consent Area which is the subject to resource consents for the take or discharge of geothermal fluid.

27. Minor residential units (including granny flats) need to be located so that they do not create additional restrictions on renewable electricity generation activities by, for example, moving a point of noise compliance closer to the source of noise.

Standard 4b.2.8 does not ensure that home businesses are not located closer than the existing primary residential unit on the same site to consent areas associated with the take or discharge of geothermal fluid as sought

28. The standard presently enables home businesses to be located closer than the existing primary residential unit on the same site to a Consent area which is the subject to resource consents for the take or discharge of geothermal fluid.

29. Home businesses need to be located so that they do not create additional restrictions on renewable electricity generation activities.

Standard 4b.2.13 only excludes noise from the operation of renewable electricity generation activities within Electricity Generation Core Sites

30. The standard presently only excludes noise from renewable electricity generation activities within Electricity Generation Core Sites from the maximum noise performance standards.

31. Contact considers this is a limitation to the operation of renewable electricity generation activities as the exclusion does not apply to all sites associated with

the operation of renewable electricity generation activities (and therefore not all renewable electricity generation activities).

Relief sought

32. Contact respectfully requests that:
- (a) The proposed Rural Lifestyle Environment on Centennial Drive as shown on Figure 1 below is deleted and the former Rural Environment (now General Rural Environment) is retained.

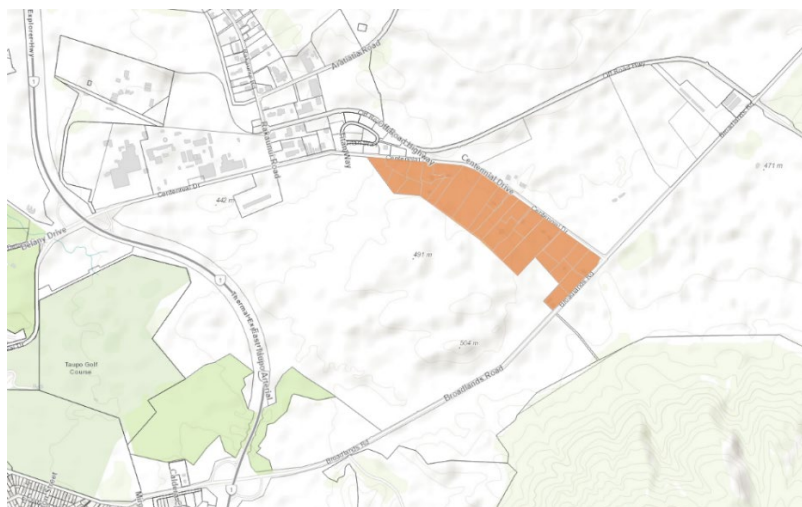


Figure 1: Centennial Drive - Proposed Rural Lifestyle Environment

- (b) The parts of the proposed Rural Lifestyle Environment on Oruanui Road as outlined in red on Figure 2 below are deleted and the former Rural Environment (now General Rural Environment) is retained.

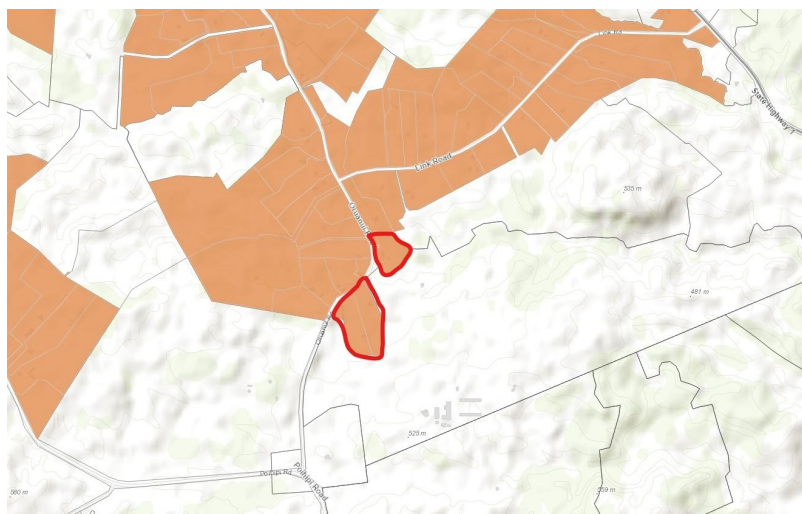


Figure 2: Oruanui Road - Proposed Rural Lifestyle Environment

- (c) The parts of the proposed Rural Lifestyle Environment on Tukairangi Road as outlined in red on Figure 4 below are deleted and the former Rural Environment (now General Rural Environment) is retained.

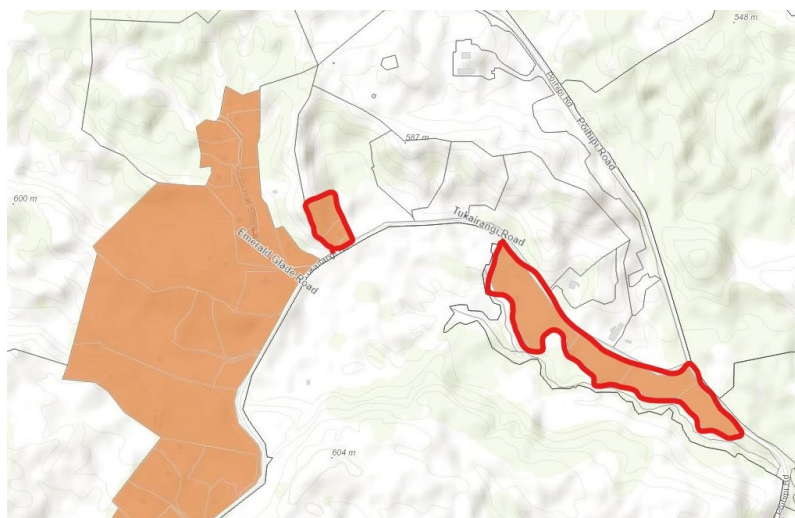


Figure 3: Tukairangi Road - Proposed Rural Lifestyle Environment

- (d) Delete Objective 3b.3.1 and replace it with the following:

Objective 3b.3.1 Enable Rural Residential Activities

Zone parts of the Rural Environment as Rural Lifestyle Environment to enable and provide for rural residential activities in appropriate locations where they will not give rise to reverse sensitivity effects on the surrounding General Rural Environment or Industrial Environments.

- (e) Amend Rule 4b.1.4 as follows:

4b.1.4 Electricity Generation Core Sites, Renewable Electricity Generation Activities and Geothermal Areas

- i. Any activity involving continued operation, maintenance and minor upgrading of existing electricity generation core sites, geothermal areas, renewable electricity generation activities and associated structures and ancillary activities is a **permitted activity**.
- ii. Activities associated with the investigation, identification and assessment of potential sites and energy sources for renewable electricity generation by existing and prospective generators are a permitted activity.

NOTE: For the purpose of this rule “maintenance” means:

All activities associated with the protective care, ~~and monitoring of a hydro dam, a geothermal or hydroelectric power station, geothermal steamfields and associated structures,~~ in order to monitor, test and/or arrest the processes of decay, structural fatigue, erosion or dilapidation of all associated structures and includes maintenance of surrounds and water areas.

NOTE: For the purpose of this rule “minor upgrading” means:

Structural improvement, repair and replacement or upgrade of components, or activities required for the continued safe and efficient operation including worn or technically deficient parts of any structure including the powerhouse, hydro dams, separation plants, switchyards, intake, control and diversion structures, wells, pipes, tunnels, cables, other equipment and accessory buildings and structures, and includes associated drilling, vehicles, infrastructure, machinery, testing, monitoring, earthworks and vegetation removal. Also the extension to existing Buildings and Structures, and the erection of new Buildings and Structures.

(f) Amend Rule 4b.1.7 as follows:

4b.1.7 Buildings, structures and activities in the National Grid

- I. Any building or structure (except network utilities and Renewable Electricity Generation Activities) located within 0 – 12 meters of a high-voltage transmission line is a **restricted discretionary activity**.
- II. Any building, structure and activity in the National Grid Yard which complies with the performance standards in 4b.2.16 is a **permitted activity**.
- III. Any permitted building, structure or activity which does not comply with the performance standards in 4b.2.16 or any building or structure that is not otherwise provided for, is a **non-complying activity**.

Notification:

Transpower will be considered to be an affected party where consent is required under the National Grid specific rules. Notice of any application for resource consent under this rule must be served on Transpower New

Zealand Limited in accordance with Clause 10(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

NOTE: For the purpose of this rule "Building" means: as defined in the National Planning Standards 2019.

- (i) Amend Standard 4b.2.7 as follows:

4b.2.7 Minor residential units

A maximum of one minor residential unit per primary residential unit.

- i. All minor residential units or accommodation activity units shall:
 - a. Be no larger than 100 m² in size (inclusive of garaging).
 - b. Be located no greater than 40 metres from the primary residential unit.
 - c. Be located no closer than the existing primary residential unit on the same site to a Consent Area which is the subject of resource consents issued by the Waikato Regional Council for the take or discharge of geothermal fluid exceeding 1,000 tonnes per day provided that this clause shall not apply to properties more than 300 m away from any aforementioned Consent Area.
 - d. Share an accessway/driveway with the primary residential unit.

EXCEPTION:

Papakāinga

NOTE:

Minor residential units also include accommodation activities, tiny homes/house, caravans and other structures used for accommodation for more than two consecutive months in a calendar year on the allotment.

- (j) Amend Standard 4b.2.8 as follows:

4b.2.8 Commercial and industrial activities, and home businesses

- I. Any indoor or outdoor space used for commercial, industrial or home business purposes, shall have a gross floor area less than 100 m² for indoor activities, or 100 m² of land for outdoor activities.
- II. For home businesses the principal operator of the home business must be a permanent resident on the site to which the home business relates.
- III. Home businesses shall be located no closer than the existing primary residential unit on the same site to a Consent Area which is the subject of resource consents issued by Waikato Regional Council for the take or discharge of geothermal fluid exceeding 1,000 tonnes per day provided that this clause shall not apply to properties more than 300 m away from any aforementioned Consent Area.

EXCEPTION:

Home business or commercial activities within a Papakāinga.

- (k) Amend Standard 4b.2.13 as follows:

4b.2.13 Maximum Noise – Other

- I. Nothing in the foregoing Performance Standards shall apply to farm animals including working dogs, and to agricultural and forestry vehicles, agricultural and forestry machinery or equipment (including mobile plant at produce packing facilities but excluding sawmilling equipment), operated and maintained in accordance with the manufacturer's specifications in accordance with accepted management practices (e.g. for milking, spraying, harvesting, packing, forest harvesting and the like). Provided that the activity shall comply with the requirements of S16 of the Resource Management Act 1991;
- II. Nothing in the foregoing Performance Standards shall apply to sirens, circuit breakers, bursting discs, emergency or upset operating conditions and hydro spills associated with

the operation of renewable electricity generation activities ~~within Electricity Generation Core sites~~. Provided that the activity shall comply with the requirements of S16 of the Resource Management Act 1991.

- (l) An alternative and less preferred relief if Contact's primary relief is not accepted which will have the same or similar effect;
- (m) Such further other orders, relief or other consequential or other amendments as considered appropriate and necessary by the Court to address the concerns set out herein; and
- (n) Costs of and incidental to this appeal.

Attachments

44. Copies of the following documents are attached to this notice:

- (i) **Appendix A** – copies of Contact's original submission and further submission on PC42;
- (j) **Appendix B** – a copy of the relevant decision; and
- (k) **Appendix C** – a list of names and addresses of persons to be served with a copy of this Notice.

CONTACT LIMITED by its authorised agent Mitchell Daysh:



Signature: Mark Chrisp

Date: 25 July 2024

Address for Service: C/- Mark Chrisp
 Mitchell Daysh
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HAMILTON 3204

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Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. If you wish 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.
2. 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.
3. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

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