

**Before Hearing Commissioners at
Waikato Regional Council**

**I mua i te kaikōmihana
ki te kaunihera o te rohe o Waikato**

Under the Resource Management Act 1991
In the matter of Proposed Plan Change 1 to the Waikato Regional Plan and in the
matter of Hearing Block 2

Between

Genesis Energy Limited

Submitter 74052

And

Waikato Regional Council

Consent Authority

**Addenda to Legal submissions of behalf of Genesis
Energy Limited**

8 July 2019

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May It Please the Hearing Panel:

1. Genesis Energy Limited (**Genesis** - submitter 74052) submitted that:¹

The RMA is not a “no effects” statute.² This means that some level of effect is acceptable and not all adverse effects arising from a proposal must be mitigated. Further, any mitigation which is required should be proportionate to the scale and severity of the effect.³

Implication of the Puke Coal decision

2. The Hearing Panel questioned whether the above applies to the Waikato River in light of the *Puke Coal* decision discussing the implications of Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River (the **Vision and Strategy**).
3. Genesis accepts that the *Puke Coal* decision means some element of betterment is intended,⁴ and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 requires the improvement of Waikato water quality over a reasonable period.⁵ Nevertheless Genesis submits this can be interpreted consistently with the above case law that **not all** adverse effects arising from a proposal must be mitigated (emphasis added).
4. The Environment Court was of the view applicants for resource consent “would need to show that, in proportion to the impact of the proposal, there was real benefit to the river catchment” – noting that:⁶
 - (a) ‘In proportion’ is a qualifier as the Vision and Strategy did not intend that the first applicant is responsible for the entire upgrade of the river catchment, nor could such an approach be in

¹ Legal Submissions on behalf of Genesis Energy Limited dated 13 June 2019 at [23].

² *Day v Manawatu- Wanganui Regional Council* [2012] NZEnvC 182 at [3-72]; *Re Meridian Energy Ltd* [2013] NZEnvC 59.

³ *Day v Manawatu- Wanganui Regional Council* [2012] NZEnvC 182 at [3-72]; *Re Meridian Energy Ltd* [2013] NZEnvC 59.

⁴ *Puke Coal Limited v Waikato Regional Council* [2014] NZEnvC 223 at [92].

⁵ *Puke Coal Limited v Waikato Regional Council* [2014] NZEnvC 223 at [94].

⁶ *Puke Coal Limited v Waikato Regional Council* [2014] NZEnvC 223 at [137].

accordance with the Act. Nevertheless, the generational impacts upon the river should be recognised and addressed.⁷

- (b) The Vision and Strategy is seeking long-term improvement, which is to be achieved on an incremental basis and by a proportionate response on individual consent applications.⁸

Application to the Huntly Power Station

5. Resource consents for the Huntly Power Station (**HPS**) were granted following the development of the Vision and Strategy and following the *Puke Coal* decision.⁹ Relevantly, these consents provide for the establishment of the:

- (a) Waikato-Tainui/Genesis Energy Partnership Group which includes the function of reviewing ongoing alignment of the activities authorised by the consent with the Vision and Strategy, and based on this making any recommendations as to any additional measures to address actual or potential effects;¹⁰ and
- (b) Tangata Whenua Consultation Group whose purpose is to facilitate consultation and provide a coordinated approach to monitoring programmes including in light of the Vision and Strategy for the Waikato River.¹¹

6. There are also conditions committing Genesis to undertake riparian planting works.¹² The advice note to these conditions states:

Advice Note: Conditions 6 and 7 above have been proposed by the Consent Holder, following discussions with tangata whenua and other Waikato River stakeholders. These conditions represent the Consent Holder's ongoing commitment to playing an active role in assisting with implementing the "Vision and Strategy" for the Waikato

⁷ *Puke Coal Limited v Waikato Regional Council* [2014] NZEnvC 223 at [138].

⁸ *Puke Coal Limited v Waikato Regional Council* [2015] NZEnvC 212 at [66].

⁹ Genesis Energy advised Waikato Regional Council it would commence operating under the new consents on 1 July 2012

¹⁰ For example, condition 16 of AUTH123643.01.05 relating to the discharge of cooling water to the Waikato River

¹¹ For example, condition 17 of AUTH123643.01.05 relating to the discharge of cooling water to the Waikato River

¹² For example, conditions 6 and 7 of AUTH123643.01.05 relating to the discharge of cooling water to the Waikato River

River, and have not been proposed because the Consent Holder considers them necessary to avoid, remedy or mitigate the adverse effects of the activities authorised by this consent. Tangata whenua and the Department of Conservation have differing views in this regard, but acknowledge the inclusion of this condition.

7. Genesis submits the resource consents for HPS reflect the approach envisaged by the *Puke Coal* decision and the Vision and Strategy that consent applications require a proportionate response to achieving long-term improvement, which recognises not all adverse effects need to be mitigated.



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