

BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU

Decision No. [2020] NZEnvC 196

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

AND of an appeal under s 120 of the Act

BETWEEN NGĀTI PIKIAO ENVIRONMENTAL  
SOCIETY INCORPORATED

(ENV-2020-AKL-000138)

Appellant

AND BAY OF PLENTY REGIONAL COUNCIL

Respondent

AND WESTERN BAY OF PLENTY DISTRICT  
COUNCIL

Applicant

Court: Chief Environment Court Judge DA Kirkpatrick sitting alone under  
s 116 and s 279 of the Act.

Date of Decision: 26<sup>th</sup> November 2020

Date of Issue: 26<sup>th</sup> November 2020

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**DECISION ON APPLICATION UNDER S 116(1) OF THE ACT**

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- A: The application under s 116 of the Act is granted.
- B: There is no order for costs in relation to this decision.



## REASONS

### Introduction

[1] This appeal concerns a decision of the Bay of Plenty Regional Council that granted a comprehensive stormwater discharge consent to the Western Bay of Plenty District Council (**District Council**) authorising existing discharges and activities associated with the District Council's reticulated network in relation to its Eastern Catchments (**Eastern CSC**).<sup>1</sup>

[2] The Eastern CSC comprise four separate and discrete catchments being the urban areas of Te Puke, Paengaroa, Maketu/Little Waihi, and Pukehina. Those catchments are separately identified in the Eastern CSC and certain catchments have their own conditions which do not apply to the other catchments.

[3] This appeal relates solely to the Maketu/Little Waihi catchment.

### The application under s 116 of the Act

[4] The District Council has applied under s 116 of the Act for an order enabling the partial commencement of six of the consents forming part of the Eastern CSC suite, and to three discrete catchments as follows:

(a) RC67841-DC (Discharge consent), RC67481-BC.16 (River structures), RC67481-LC (Earthworks) and RC67481-BC.17 (Dam and Divert) in relation to the following catchments:

- (a) Te Puke;
- (b) Paengaroa; and
- (c) Pukehina.

(b) RC67481-CC.01 (Coastal), and RC67481-CC.02 (Coastal Occupation), in relation to the Pukehina Catchment only.

[5] The effect of allowing partial commencement would be to separate the discrete Maketu/Little Waihi Catchment which is subject to this appeal from the other catchments. The order, if granted, would allow the Eastern CSC to commence in relation to the other catchments not the subject of this appeal.

[6] The application was accompanied by a joint memorandum signed by all the

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<sup>1</sup> Resource consent application 67481 granted on 29 June 2020.



parties to this matter recording that they all consent to this application being made.

### Section 116 of the Act

[7] Section 116 of the Act states:

(1) Except as provided in subsections (1A), (2), (4), and (5), or sections 116A and 116B, every resource consent that has been granted commences—

(a) when the time for lodging appeals against the grant of the consent expires and no appeals have been lodged; or

(b) when the Environment Court determines the appeals or all appellants withdraw their appeals— unless the resource consent states a later date or a determination of the Environment Court states otherwise

[8] The approach taken to an application under s 116 is succinctly summarised in paragraphs [7] and [8] of *NCI Packaging (NZ) Ltd v Auckland Council*<sup>2</sup> as follows:

[7] In *Walker v Manukau City Council*<sup>3</sup> it was confirmed that there are two tests under section 116(1). The first is whether allowing the consent to commence pending an appeal will serve the purpose of the Act. The second is whether prejudice arises from either allowing or disallowing the consent to commence.

[8] The Court is able to authorise a limited exercise of a consent, which is still subject to appeal,<sup>4</sup> provided those parts of the consent that commence do not go to the core of the matter to be determined by the Court.<sup>5</sup>

### Consideration

[9] In support of its application the District Council referred me to *Ngāti Rauhoto Land Rights Committee and Kaumatua of Ngāti Rauhoto v Waikato Regional Council*,<sup>6</sup> and submitted that:

(a) There is no prejudice to the relief sought in this appeal because the relief relates to the the Maketu/Little Waihi Catchment only.

<sup>2</sup> [2013] NZEnvC 40.

<sup>3</sup> Environment Court Christchurch, C106/99, 14 June 1999.

<sup>4</sup> *Ngawha Geothermal Resource Co Ltd v Northland Regional Council*, EnvC Akl, A062/05, 18 April 2005.

<sup>5</sup> *Armstrong v Central Otago District Council*, EnvC Chch, C132/09, 23 December 2009.

<sup>6</sup> [1997] 3 ELRNZ 32. In this case a discharge permit was allowed to commence under s 116 of the Act after the Court considered the applicant's interests in allowing the application and whether there would be any prejudice to the appellants and the outcome of the appeal.



- (b) There is no prejudice to any party, as they all consent to this application being granted.
- (c) Enabling partial commencement of the Eastern CSC would achieve the sustainable management purpose of the Act by ensuring the benefits enabled under the Eastern CSC can be achieved earlier.
- (d) Significant work is required to be undertaken by the District Council upon commencement under the conditions of consent. This work cannot formally commence in any of the catchments under the Eastern CSC until this appeal is resolved, and includes:
  - (i) Within 12 months of commencement:
    - A Reviewing and updating the Catchment Management Plan to reflect the requirements of the conditions of consent required to be implemented;<sup>7</sup>
    - B Mapping all stormwater network assets authorised by the consent in a GIS database;<sup>8</sup> and
  - (ii) Within 24 months of commencement, undertaking specific additional modelling in relation to the Te Puke Urban Area and assessing effects on downstream areas within the catchment of the Lower Kaituna Scheme.<sup>9</sup>

## Decision

[10] Having considered the application under s116 of the Act, and the fact that no party opposes the application being granted, I am satisfied that there is no prejudice to any party. I am also satisfied that the commencement of the consents that are not subject to this appeal will serve the purpose of the Act because:

- (a) It will enable work in three of the four sub-catchments to start; and
- (b) It will not impinge on the resolution of this appeal, nor will it impact the outcome.

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<sup>7</sup> Consent 67481-DC at 7.2.

<sup>8</sup> Consent 67481-DC at 6.11.

<sup>9</sup> Consent 67481-DC at 6.7.

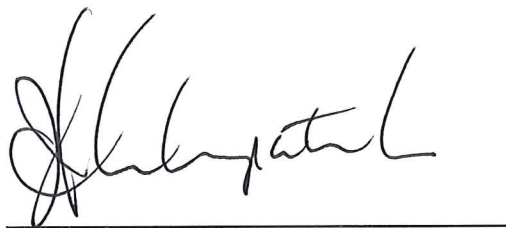




[11] On this basis the application to commence is granted pursuant to s 116(1) of the Act.

[12] The Court hereby orders that the following resource consents shall commence on the date of this order, in relation to the following catchments only:

- (a) RC67841-DC (Discharge consent), RC67481-BC.16 (River structures), RC67481-LC (Earthworks) and RC67481-BC.17 (Dam and Divert) in relation to the following catchments:
  - (i) Te Puke;
  - (ii) Paengaroa; and
  - (iii) Pukehina Catchment.
- (b) RC67481-CC.01 (Coastal), and RC67481-CC.02 (Coastal Occupation), in relation to the Pukehina Catchment only.



D A Kirkpatrick  
Chief Environment Court Judge

