

File ref ENQ-47780-K6P7L3

7 May 2024

Hon Penny Simmonds  
Minister for the Environment  
Parliament Buildings  
Wellington 6014

Private Bag 63002  
Wellington 6140, New Zealand  
  
Level 10, Grant Thornton House  
215 Lambton Quay  
Wellington 6011, New Zealand

epa.govt.nz  
+64 4 916 2426

NZBN: 9429041901977

Dear Minister

**Environmental Protection Authority (EPA) recommendation on where to refer Global Contracting Solutions Ltd resource consent applications for Te Awamutu waste-to-energy plant if you decide to call them in**

On 11 April 2024, we provided you with advice that the Global Contracting Solutions Ltd resource consent applications for a waste to energy plant in Te Awamutu may be considered to be a proposal of national significance and we recommended that you call in the applications.

We did not make a recommendation on where you should refer the applications for decision, if you make a decision to call them in. This was because, as noted on paragraph 102 of our advice document, we considered that there was no overall advantage in referring the matters to the Environment Court or a board of inquiry.

On 1 May 2024, you requested us to provide an addendum to our advice in order to provide you with a recommendation on where to refer the matters if you make a decision to call in the matters. Our advice and recommendation are provided in this letter.

**Relevant statutory provisions**

If you consider that the matters are a proposal of national significance, then when deciding where to refer them for a decision, in accordance with section 142(2) and (4) of the Resource Management Act 1991 (the RMA), you must have regard to:

- (a) *the views of the applicant and the local authority;*
- (b) *the capacity of the local authority to process the matter; and*
- (c) *the recommendations of the EPA.*

Section 142(7) of the RMA makes it clear that you may make a direction that differs from the EPA recommendation. We also note that Cabinet Office Circular CO (06) 7 proposes that you consult with Cabinet prior to making a direction to call in the matter and where to refer it for decision if you call it in.

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Nga Wai o Maniapoto (Waipa River) Act 2012 are relevant to the resource consent applications, given that the site adjoins the Mangapiko Stream, which is a tributary to the Waipā River and beyond.

These Treaty Settlement Acts resulted in unique RMA arrangements, including arrangements for applications that are called in as proposals of national significance and the requirement to consider Te Ture Whaimana (the primary direction-setting document for the Waikato and Waipā Rivers and their catchments, which includes a strategy of encouraging and fostering a 'whole of river' approach to the restoration and protection of the Waikato River).

These Acts do not require you to refer a matter to a board of inquiry if you do call it in. However, if you call in the matters and refer them to a board of inquiry for decision, section 29(3) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 requires you to request the Waikato River Authority (the Authority) for names of persons for appointment to the board (one person if the Board is to have three members and two persons if the Board is to have five members). Section 29(6) of this Act also requires the Authority and you to discuss the persons to be appointed to the board with a view to ensuring that the Board contains members with an appropriate mix of skills, expertise, and experience.

The Nga Wai o Maniapoto (Waipa River) Act 2012 does not include the same provisions about the membership of a board of inquiry. However, this Act does provide for a joint management agreement on resource consent processes between the relevant local authority and the Maniapoto Māori Trust Board (Te Nehenehenui). There is also a relationship agreement between the Minister for the Environment and the Trust whereby the Trust can suggest members for a board of inquiry.

These arrangements relating to the appointment of board members do not apply if you make a referral to the Environment Court. However, the Environment Court would be required to consider Te Ture Whaimana.

### **Views received on where to refer matters for decision**

In our 11 April advice, we explained that the following parties requested you to call in the matters and refer them to a board of inquiry:

- a. Waikato Regional Council
- b. Waipā District Council
- c. Te Whakakitenga o Waikato
- d. Te Nehenehenui

Since providing our advice, you have forwarded views that you have received from the Raukawa Settlement Trust and the Raukawa Charitable Trust (included as Attachment 1 to this letter). Raukawa's views are in keeping with the views of Te Whakakitenga and Te Nehenehenui. Raukawa's takiwā includes Te Awamutu and it also has Treaty settlements relating to the Waikato and Waipā Rivers and their catchments.

They all noted that the relevant Treaty Settlement Act provisions would provide the Waikato River Authority with a role in appointing local people to the board of inquiry who have a good understanding of Te Ture Whaimana and the strong community interest in the application regarding concerns about technology, processes, or methods that are new to New Zealand and that may affect the environment. Essentially, the relevant iwi consider that this option will uphold the integrity of their Treaty settlements.

In addition to the appointment role for the Waikato River Authority, the preferences for a board of inquiry appear to be based on the expectation that a board of inquiry would be more community friendly and flexible than Environment Court proceedings.

The applicant, Global Contracting Solutions Ltd, also requested that you call in the matters. However, the applicant prefers that you refer the matters to the Environment Court for decision, to be consistent with the call-in of the Waimate matters and because it considers the resources and processes of the Environment Court are best to ensure a robust and scientific consideration of proposal that has drawn so many submissions.

### **Analysis of options**

As noted in our 11 April advice, referral to a board of inquiry will trigger the Treaty Settlement Act provisions including nomination of a board member(s) by the Waikato River Authority. While this would not apply if the matters are referred to the Environment Court, the Court has methods for achieving the objectives sought by the local authorities and iwi interests, including the appointment of commissioners with particular knowledge and experience.

In terms of formality, the powers of the Environment Court offer comparatively informal access (i.e. less formal than other Courts), as confirmed in its practice note that derives from section 269 of the RMA. That provides for broad procedural discretion, which is routinely used by the Environment Court for such things as mediations, the appointment of Friends of Submitters, and the hiring of local venues if a courthouse is not available in the vicinity of the site and affected community. Also, the Environment Court has Judges and Commissioners that have a wide range of skills and experience that may be relevant to these matters, including mātauranga Māori and tikanga Māori, and Treaty principles.

Our experience is that board of inquiry processes can involve similar costs to the Environment Court given that the applicant and some of the submitters often choose to engage legal counsel and expert witnesses in a board of inquiry process. We have also had feedback on previous boards of inquiry that the nine-month deadline for issuing a decision can make the process very tight and stressful for parties. The nine-month decision deadline would not apply to the Environment Court.

We note in our 11 April advice that referring the matters to the Environment Court would be consistent with the Waimate call-in. However, we now acknowledge that the two sites are in different Environment Court registries and the matters would not necessarily be considered by the same Environment Judge or Commissioners.

### **EPA recommendation on where to refer matters for decision**

We reiterate our earlier advice that there is no clear advantage in referring the matters to the Environment Court or a board of inquiry. This remains a finely balanced issue. On the basis of the statutory provisions applicable for a board of inquiry in the context of relevant Treaty settlements, and the strong preferences of the local authorities and iwi interests for the Waikato River Authority to be able to nominate a board member(s), we recommend that you refer the matters to a board of inquiry if you make a decision to call in the matters.

As noted in paragraph 91(f) of our 11 April advice, if you refer the matters to a board of inquiry, we would work with staff from the Ministry for the Environment to support the appointment of a board. This work would include:

- a. serving notice of your direction and begin the process of requesting nominations as required under section 149K(2) of the RMA and section 29(3) of the Waikato River Settlement Act;
- b. screening potential board of inquiry candidates for their availability and suitable skills and experience;
- c. preparing a Cabinet Paper relating to your recommended candidates; and
- d. confirming appointments to a board of inquiry.

After the board of inquiry is appointed, we would assist the board in the development of its inquiry process.

As requested in your letter of 1 May 2024, we will serve a copy of this letter on the parties we provided our initial advice to, i.e. Global Contracting Solutions Ltd, Waikato Regional Council, Waipā District Council, Te Whakakitenga of Waikato, Te Nehenehenui and Raukawa Settlement Trust. We will do this once your private secretaries have provided you with our letter.

We are available to provide further advice as required.

Yours sincerely



Dr Allan Freeth  
Chief Executive

Attachment 1: Raukawa letter dated 2 April 2024

2 April 2024

Hon. Penny Simmonds  
Minister for the Environment  
By email: [Penny.Simmonds@parliament.govt.nz](mailto:Penny.Simmonds@parliament.govt.nz)

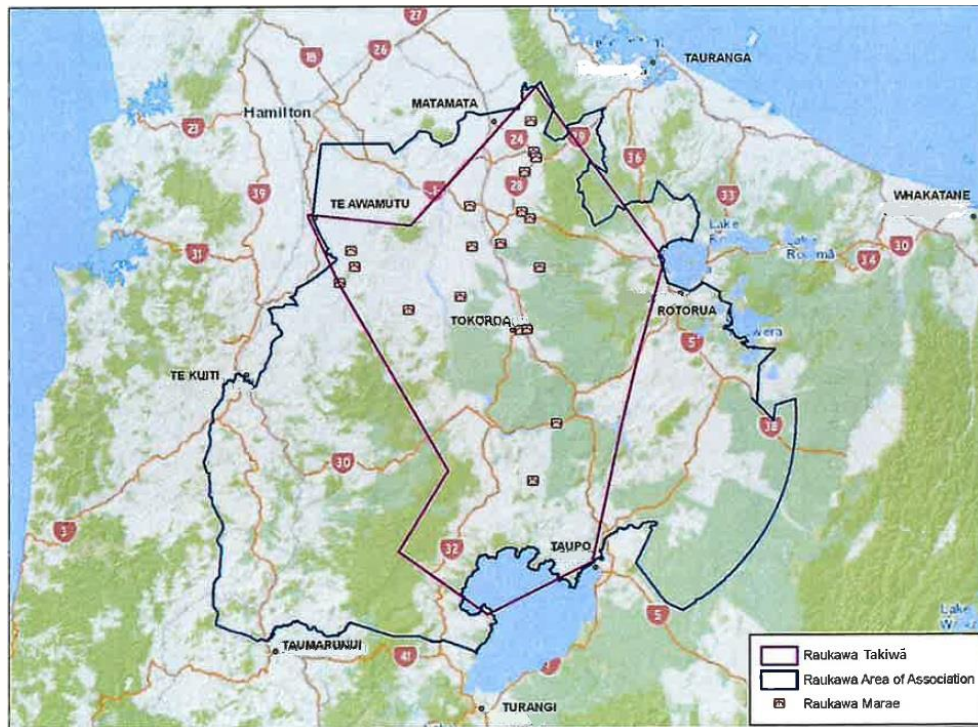
E te Minita, tēnā koe;

**RE: Request to call in the proposed Te Awamutu waste-to-energy facility, as a matter of national significance**

1. We understand that Waikato Regional Council (WRC) and Waipa District Council have requested that you make a direction under Section 142(2) of the RMA to call in the resource consent applications lodged by Global Contracting Solutions (GCS) for a Waste to Energy Plant proposed in Te Awamutu. WRC has also sought that the application be referred to a Board of Inquiry. These requests appear to us to be on the basis that it:
  - allows matters relevant to New Zealand's international obligations to the global environment to be addressed, principally the emissions of greenhouse gases and their effects on climate change; and
  - (b) consistent with Te Ture Whaimana, provides the Waikato River Authority (a mechanism of the River Settlements) a role in appointing members to the Board of Inquiry; and
  - (c) will support the strong community interest in the application and address the concerns raised regarding the introduction of technology, processes, or methods that are new to New Zealand and that may affect its environment.
2. Raukawa is a large iwi associated with a significant area of the central North Island that is rich in natural and cultural heritage, as well as being a key area for energy and primary production for the country. The Raukawa Settlement Trust is the Post Settlement Government Entity for Raukawa and represents the interest of 16 marae throughout our rohe including various hapu. The Raukawa takiwā and broader Area of Association extend primarily to the east and south of the proposed Waste to Energy Plant site.
3. The Raukawa takiwā is extensive and includes Mōkai, Atiamuri, Whakamaru, Mangakino, Arapuni, Tokoroa, Putāruru, Tirau, Tapapa, Matamata, and Kēmureti (Cambridge), along with Kihikihi and Te Awamutu. As you will be aware, this area is one of significant growth and development, and therefore one in which issues of environmental management and economic development are keenly felt. As a major iwi in this area, we are heavily involved in these issues and in balancing their competing drivers.



# Raukawa



4. Along with the Raukawa Claims Settlement Act 2014, Raukawa have a number of Treaty of Waitangi settlements, or Co-Management arrangements with the Crown. These arrangements include the 2009 Deed in Relation to a Co-Management Framework for the Waikato River and the subsequent Ngāti Tūwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010 [the Upper River Act].
5. Te Ture Whaimana is the primary direction-setting document for the Waikato and Waipa Rivers and their catchments, which include the lower reaches of the Waipa River. It includes a strategy of encouraging and fostering a ‘whole of river’ approach to the restoration and protection of the Waikato River. The Upper River Act directly provides for Te Ture Whaimana and (amongst other matters) provides for co-management provisions for the Waikato River.
6. These settlement instruments, together with those of our neighbouring Waikato River Iwi (Waikato-Tainui, Te Arawa, Ngāti Tūwharetoa and Maniapoto), provide specific arrangements that are to be provided for when activities are proposed within the catchments of the Waikato and Waipa River.
7. Raukawa supports the Regional and District Councils’ requests for call in and referral to a Board of Inquiry. It is our view that this option will uphold the integrity of our treaty settlement and its associated instruments.



# Raukawa

8. Raukawa also understand that our neighbouring Iwi, Te Nehenehenui who is the post-settlement governance entity for Maniapoto, has provided you with their position on this call-in request. Raukawa support their view and position expressed in their engagement with you on this matter.

Nāku noa, nā



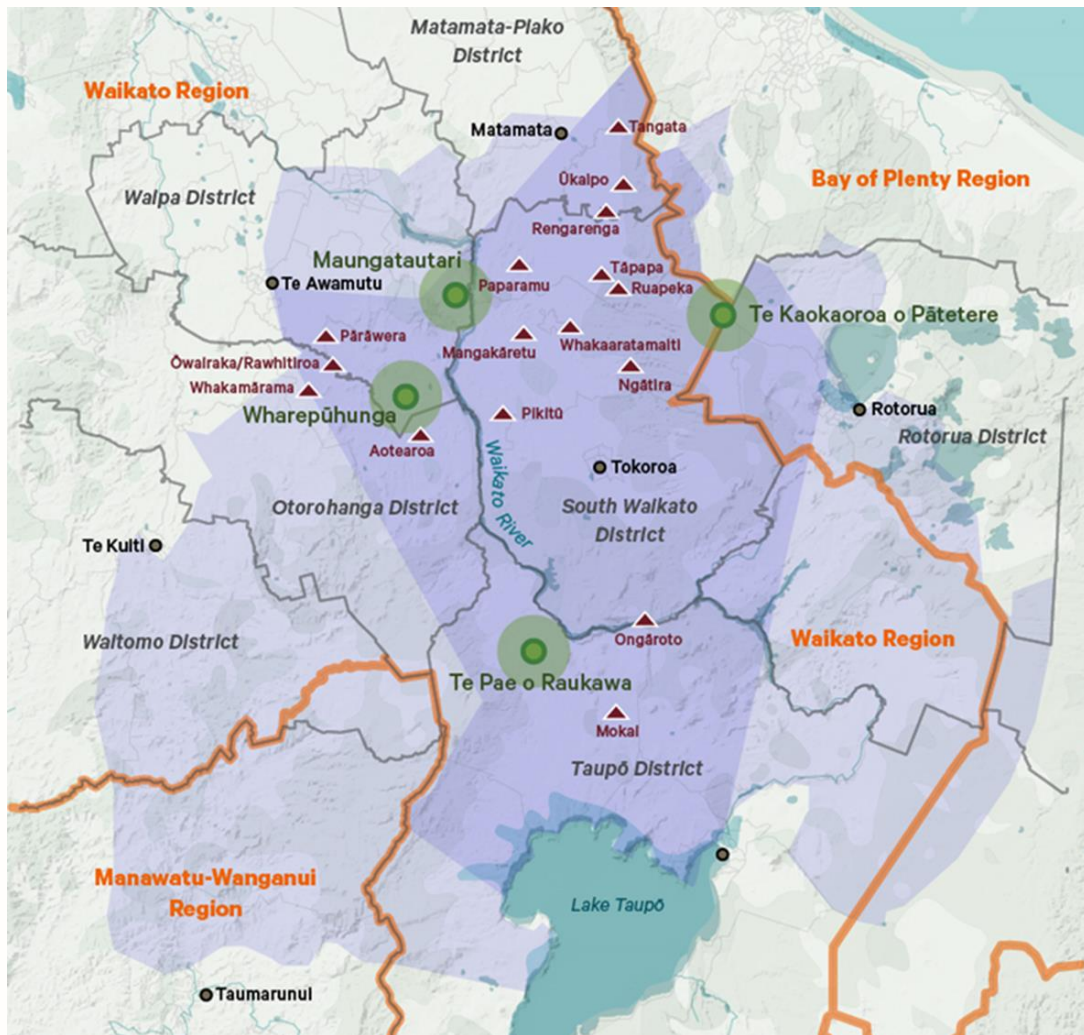
Kataraina Hodge

**Chair**

**Raukawa Settlement Trust and the Raukawa Charitable Trust**



# Raukawa



Appendix One: Raukawa Takiwā and area of association

