

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI**

Decision No. [2023] NZEnvC 108

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14 of the First
Schedule of the Act

BETWEEN ENVIRONMENTAL DEFENCE
SOCIETY INCORPORATED

(ENV-2020-CHC-67)

(... continued on separate page)

Appellants

AND MARLBOROUGH DISTRICT
COUNCIL

Respondent

Environment Judge J J M Hassan – sitting alone under s279 of the Act
In Chambers at Christchurch

Date of Consent Order: 24 May 2023

CONSENT ORDER

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

(1) the appeals are allowed to the extent that the Marlborough District

¹ Resource Management Act 1991.



Council is directed to amend the proposed Marlborough Environment Plan by making the changes set out in Appendix 1 attached to and forming part of this order;

(2) the appeals otherwise remain extant.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals by Environmental Defence Society Incorporated² and others³ on various provisions of the proposed Marlborough Environment Plan (‘pMEP’). The appeals relate to concern over the application of exemptions in the indigenous vegetation clearance provisions. These provisions apply across multiple zones within the pMEP and were allocated to the following Topics:

- (a) Topic 5 – Indigenous Biodiversity;
- (b) Topic 9 – Natural Character;
- (c) Topic 14 – Soil Quality and Land Disturbance.

[2] The court has now read and considered the consent memorandum of the parties dated 13 March 2023 which sets out the agreement reached between the parties to resolve the appeals across the topics to ensure consistency regardless of the zone. The agreed standards stem from appeals relating to Policy 8.2.2 and resolve in part those appeals.

² ENV-2020-CHC-67.

³ Federated Farmers of New Zealand ENV-2020-CHC-58, Trustpower Limited ENV-2020-CHC-50 and Royal Forest and Bird Protection Society of New Zealand Incorporated ENV-2020-CHC-64.

Other relevant matters

[3] Several parties gave notice of an intention to become a party to these appeals under s274 RMA and have signed the memorandum setting out the relief sought. The present consent order concerns aspects of Forest & Bird's appeal.⁴ The following parties who specified a general interest in all parts of that appeal did not participate in the mediation:

- (a) Te Rūnanga a Rangitāne o Wairau;
- (b) Ngāti Koata Trust; and
- (c) Ngāti Apa ki te Ra To Trust.

[4] The court previously invited those parties to withdraw or clarify their interest in the Forest & Bird appeal but the court did not receive a response. That was in a context in which they had not participated in mediation that resulted in other parties settling and seeking a consent order. It is the responsibility of a party to duly prosecute their interest in an appeal. In this context, the fair and appropriate course is to proceed on the basis that nothing in these parties' general interest in the appeal precludes the making of the order sought by the consent memorandum.

[5] I am satisfied all relevant s274 parties whose interest extends to this topic have signed the consent memorandum setting out the relief sought or have been afforded adequate opportunity to participate in this process.

Orders

[6] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

⁴ ENV-2020-CHC-64.

- (a) all relevant parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



J J M Hassan
Environment Judge



List of Appellants

ENV-2020-CHC-67	Environmental Defence Society Incorporated
ENV-2020-CHC-58	Federated Farmers of New Zealand
ENV-2020-CHC-50	Trustpower Limited
ENV-2020-CHC-64	Royal Forest and Bird Protection Society of New Zealand Incorporated

Appendix 1

Volume 2

1. In each of the Rural Environment Zone, Coastal Environment Zone, Coastal Living Zone, Port Zone, Open Space 1 Zone, Open Space 2 Zone, Open Space 3 Zone and Lake Grassmere Saltworks Zone, replace the indigenous vegetation clearance standards with the following:

X.3 Standards that apply to specific permitted activities

...

X.3.X Indigenous vegetation clearance.

...

X.3.X.1 Indigenous vegetation clearance must comply with Standards [see table in 2 below]

X.3.X.2 The clearance of indigenous vegetation can only occur in the following circumstances:

- (a) where the clearance is of indigenous vegetation under woodlot forest or shelter belt;
- (b) where the clearance is associated with the maintenance of existing signs, roads, forestry roads, harvesting tracks, farm tracks, fence lines, cycling tracks or walking tracks;
- (c) where the clearance is within the curtilage of a dwelling;
- (d) where the clearance is associated with operation and maintenance of the: National Grid, existing network utility operations, and existing electricity distribution activities;
- (e) where the clearance is associated with the maintenance of existing hydro-electricity generation activities connected to the National Grid or the distribution network;
- (f) where the clearance is associated with the maintenance of existing fire breaks;
- (g) where the clearance is within existing crop or pasture and is for the purpose of cultivation or pasture maintenance where the indigenous vegetation has grown from a previous lawful clearance carried out under the RMA and the indigenous vegetation is less than 10 years in age;
- (h) where the clearance is associated with the maintenance of an archaeological site where an authority has been obtained from Heritage New Zealand Pouhere Taonga.
- (i) where the clearance is associated with the maintenance of existing:
 - (i) farm buildings, where the clearance area is no further than 2 metres from the exterior wall of the existing building; or
 - (ii) farm water supply pipelines, where the total width of clearance is no greater than 2 metres at any point.
- (j) Clearance of indigenous vegetation where it has been planted as part of a domestic or public garden; or has been planted for amenity purposes; or planted as a shelterbelt;
- (k) Clearance of indigenous vegetation that is a danger to human life;
- (l) Clearance of indigenous vegetation that is a material risk to structures or utilities;
- (m) Clearance of indigenous vegetation that cannot be reasonably be avoided in the course of destroying pests required by any Regional Pest Management Plan made under the Biosecurity Act 1993, or as a result of a biosecurity response activity under the direction of an Authorised Person appointed in accordance with Section 103 of the Biosecurity Act 1993.

X.3.X.3 Clearance of indigenous vegetation permitted by X.3.X.2(g) within the coastal environment must not include the following habitats/species:

- (a) duneland vegetation;
- (b) coastal grassland;
- (c) coastal vegetation dominated by (making up >50% of the canopy cover) Phormium sp;
- (d) coastal broadleaved shrubland;
- (e) coastal small-leaved shrubland;
- (f) coastal salt turf;
- (g) coastal speargrass herbfield.

2. Insert the following Standard numbers into Standard X.3.X.1 for each of the Rural Environment Zone, Coastal Environment Zone, Coastal Living Zone, Rural Living Zone, Port Zone, Open Space 1 Zone, Open Space 2 Zone, Open Space 3 Zone, and Lake Grassmere Saltworks Zone, replace the indigenous vegetation clearance standards with the following:

Zone	Standards to be identified in Standards X.3.X.1
Rural	3.3.13.1-3.3.13.12
Coastal Environment	4.3.11.1-4.3.11.12
Coastal Living	7.3.8.1-7.3.8.12
Port	13.3.19.1-13.3.19.11
Open Space 1	17.3.3.1-17.3.3.4
Open Space 2	18.3.5.1-18.3.5.4
Open Space 3	19.3.4.1-19.3.4.6
Lake Grassmere Salt Works	22.3.9.1-22.3.9.8