

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

Decision No. [2023] NZEnvC 227

IN THE MATTER of the Resource Management Act 1991

AND an appeal under clause 14 of the First
Schedule of the Act

BETWEEN ENVIRONMENTAL DEFENCE
SOCIETY INCORPORATED

(ENV-2020-CHC-67)

Appellant

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: 31 October 2023

CONSENT ORDER

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

- (1) the appeal is allowed to the extent that the Marlborough District Council is directed to amend the proposed Marlborough Environment Plan by making the changes set out in Appendix 1

¹ Resource Management Act 1991.



- attached to and forming part of this order; and
- (2) the relevant appeal points are dismissed, and the appeal otherwise remains extant.

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

REASONS

Introduction

[1] This proceeding concerns an appeal by Environmental Defence Society Incorporated ('EDS') against part of the decision of the Marlborough District Council ('MDC') on the proposed Marlborough Environment Plan ('pMEP'). The appeals concern policies 6.2.1 and 6.2.2 of the pMEP and were allocated to Topic 3 Natural Character. EDS sought to expand the scope of pol 6.2.1 to apply to all wetlands, lakes, and rivers (not only those in coastal environments). The relief sought included a consequential replacement of pol 6.2.2

[2] The court has now read and considered the consent memorandum of the parties dated 7 September 2023. It sets out the agreement reached between the parties to resolve these appeal points explaining that the outstanding relief is mostly satisfied by the insertion of pol 8.2.8B into the pMEP as was required by the National Policy Statement for Freshwater Management 2020. The parties agree to resolve these appeal points by amending pol 6.2.1 by adding a reference to the significance factors in Appendix 4 and through amendments to pol 6.2.2 as follows:

- (a) change the words 'significance criteria' to 'factors' to align with the terminology used in Appendix 4;
- (b) replace 'significance' with 'natural character' in the second sentence of the second paragraph of the explanation;
- (c) add a note that MDC is yet to identify outstanding water bodies; and
- (d) include a cross reference to pol 8.2.8B in the explanation.

Other relevant matters

[3] Several parties have given notice of an intention to join this appeal under s274 RMA. Of these, all parties whose interest extends to these appeal points, with the exception of Wakatū Incorporation, have signed the memorandum. Wakatū Incorporation's s274 notice records that it agrees to participate in mediation or other ADR and Court records indicate that it did so on this Topic. The memorandum records Wakatū Incorporation has not refused to sign nor provided any comment on the memorandum. I am satisfied that it has been afforded adequate opportunity to comment on it and proceed on the basis that its lack of comment signals it does not oppose what the consent memorandum proposes. Accordingly, I am satisfied all relevant parties whose interest extends to this topic, have signed the consent memorandum setting out the relief sought or do not oppose that relief.

[4] No party seeks costs, all parties agreeing that costs should lie where they fall.

[5] The consent memorandum records that these appeals points are sufficiently discrete and will not affect the resolution of any other appeal. Further, it records the parties' assurance that there are no issues of scope or jurisdiction.

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:

- (a) all 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



APPENDIX 1

Volume 1

Chapter 6. Natural Character

1. Amend Policy 6.2.1, as follows:

[RPS, R, C, D]

Policy 6.2.1 – Avoid the adverse effects of subdivision, use or development on the characteristics that contribute to areas of the coastal environment with outstanding natural character, [having regard to the factors in Appendix 4.](#)

Where the natural character of the coastal environment is outstanding, Section 6(a) of the RMA indicates that this level of preservation should be retained, particularly when coupled with the similar direction in Policy 13 of the NZCPS. This means that any adverse effects on natural character characteristics should be avoided. That is not to say that no subdivision, use or development can occur within the coastal environment – activities may not adversely affect the natural character of the surrounding environment, or may include features or benefits that maintain the existing levels of natural character.

2. Amend Policy 6.2.2, as follows:

[RPS, R, C, D]

Policy 6.2.2 – Avoid the significant adverse effects of subdivision, use or development, and otherwise avoid, remedy or mitigate adverse effects on the characteristics that contribute to natural character, having regard to the ~~significance criteria~~[factors](#) in Appendix 4, within:

- (a) all areas of the coastal environment outside of areas of outstanding natural character; and
- (b) lakes and rivers, and their margins of high and very high natural character.

The degree of adverse effects on coastal natural character is an important consideration under Policy 13(1)(b) of the NZCPS. Where the extent of change in the coastal environment from subdivision, use or development causes significant adverse effects on natural character, the NZCPS states those effects should be avoided.

For freshwater bodies there is also a requirement in Section 6(a) to preserve the natural character of wetlands, lakes and rivers and their margins and to protect this natural character from inappropriate subdivision, use and development. Having regard to Policy 6.1.5, the Council has assessed the attributes of rivers and lakes and their level of ~~significance~~[natural character](#) in order to give effect to Section 6(a). In undertaking this assessment, the Council has determined that where the freshwater attributes are high or very high, then significant adverse effects on these attributes should also be avoided. [\(The Council has not yet identified outstanding water bodies\).](#)

[The NPSFM 2020 and Policy 8.2.8B of the Plan also require that the loss of river extent and values is avoided unless specific exceptions apply, in which case effects of the activity must be managed by applying the effects management hierarchy. The values of rivers \(as set out in the NPSFM\) will often include characteristics that contribute to a river's natural character. In this circumstance, the NPSFM 2020 and Policy 8.2.8B requirements apply in addition to Policies 6.2.1 and 6.2.2.](#)

There is therefore a threshold in these areas beyond which remediation and/or mitigation of adverse effects is not an appropriate management option. That threshold will be determined on a case-by-case basis through the resource consent or plan change process. The significance of the adverse effect will depend on the nature of the proposal, the natural character context within which the activity is proposed to occur and the degree of change to the attributes that contribute to natural character in that context. Where adverse effects are not assessed as significant, then adverse effects should otherwise be avoided, remedied, or mitigated.

In addition to using information in the appendices on the degree of natural character at particular locations, consideration should also be given to other chapters of the MEP, which help to inform how adverse effects should be avoided. For example, the policies in Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity and Chapter 13 - Use of the Coastal Environment and the Allocation of Coastal Space, target the individual components of natural character and therefore provide a framework on how to avoid significant adverse effects on natural character characteristics.

