

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

Decision No. [2023] NZEnvC 235

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: 1 November 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 point is dismissed, and the appeal otherwise remains extant.

B: Under s285 of the 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 appeal concerns pol 15.1.29 and was allocated to Topic 13 Water Quality. EDS sought to amend the policy to control land disturbance activities so that increased sediment does not occur.

[2] The court has now read and considered the consent memorandum of the parties dated 26 October 2023. It sets out the agreement reached between the parties to resolve this appeal point by amending pol 15.1.29(a) to require control of land disturbance activities in order to avoid where practicable or otherwise mitigate the effects of increased sediment run-off. A further paragraph in the Explanation to the Policy has been added.

Other relevant matters

[3] Several parties have given notice of an intention to become a party to this appeal under s274 RMA, and have signed the memorandum setting out the relief sought.

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

[5] The consent memorandum records that this appeal point is 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

[R, C]

Policy 15.1.29 – To control land disturbance activities in order to:

- (a) avoid where practicable, or otherwise mitigate the effects of increased sediment runoff to fresh waterbodies or coastal water; and
- (b) avoid the potential for direct entry of contaminants into groundwater.

Controls will be applied to cultivation, excavation, filling and vegetation clearance to minimise the potential for sediment to reach rivers, lakes, wetlands and coastal waters. These controls will include the way in which the activity can be undertaken and the proximity of the activity to waterbodies or coastal water. Where there is certainty that activities undertaken in a particular way will not adversely affect water quality, the control can take the form of enabling rules. However, where there is uncertainty about the effect of the land disturbance activity on water quality and it is considered necessary to exercise discretion, then a discretionary activity rule will be used.

At times, natural sources of sediment can affect water colour and clarity. The reference to "where practicable" in (a) of the policy takes this occurrence into account. For example, the relevant standards for permitted activity land disturbance activities set an acceptable level of change relative to the existing state.

Where excavations intercept groundwater at the time of the works (or thereafter), there is a possibility of aquifer contamination. Controls will be applied to excavation to minimise the potential for any contaminant to reach groundwater. This includes the drilling of a well and the management of the well head once it is commissioned.

This policy assists to give effect to Policy 22 of the NZCPS.

