

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

Decision No. [2023] NZEnvC 236

IN THE MATTER of the Resource Management Act 1991

AND an appeal under the First Schedule of the Act

BETWEEN NELSON-MARLBOROUGH FISH AND GAME COUNCIL

(ENV-2020-CHC-35)

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; and

Resource Management Act 1991.

NELSON-MARLBOROUGH FISH & GAME COUNCIL v MDC – pMEP TOPIC 13
WATER QUALITY



(2) 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 Nelson-Marlborough Fish and Game Council ('Fish & Game') against part of the decision of the Marlborough District Council ('MDC') on the proposed Marlborough Environment Plan ('pMEP'). The appeal was allocated to Topic 13 Water Quality. It concerns the Macroinvertebrate Community Index ('MCI') standards in Schedule 2 of Appendix 5.

[2] The court has now read and considered the consent memorandum of the parties dated 6 September 2023. It sets out the agreement reached between the parties to resolve the appeal by making changes to the Index. As Appendix 5 can be revisited when MDC updates the plan to give effect to the National Policy Statement Freshwater Management 2020, Fish & Game agreed to no longer pursue as relief amendments to increase MCI scores for specific rivers.

Other relevant matters

[3] Several parties to the appeal under s274 RMA who are recorded as having an interest in this topic have signed the memorandum. Ngāti Koata Trust and Te Rūnanga a Rangitāne o Wairau, each of whom are s274 parties who are recorded as having an interest in this topic, have not signed. Nor did they participate in mediation nor communicate any position to other parties or the court about the memorandum and proposed consent order. In accordance with the directions made to all parties by Minute dated 23 August 2023, I treat their interests in this Topic as having been abandoned. I am therefore satisfied that all parties who have and maintained interests in the matters sought to be resolved by consent

order 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 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



APPENDIX 1

Volume 3:

Appendix 5

Water Resource Unit Values & Water Quality Classification Standards

Amend the “Interpretation of Standard/Parameter” column for the MCI Standard/Parameter in Schedule 2, as follows

Standard/Parameter	Interpretation of Standard/Parameter	Classification																																																				
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Macroinvertebrate Community Index (MCI) – Stoney Bottom Streams	<p data-bbox="504 779 1225 869">- 80 Must be greater than or equal to the MCI score set for the receiving waters in the following list when river flow is < median flow.</p> <table border="1" data-bbox="568 878 1018 1939"> <tbody> <tr><td>Wakamarina River</td><td>≥ 110</td></tr> <tr><td>Branch River</td><td>≥ 110</td></tr> <tr><td>Opouri River</td><td>≥ 110</td></tr> <tr><td>Upper Wairau River</td><td>≥ 110</td></tr> <tr><td>Black Birch Stream</td><td>≥ 110</td></tr> <tr><td>Upper Pelorus River</td><td>≥ 110</td></tr> <tr><td>Linkwater Stream</td><td>≥ 110</td></tr> <tr><td>Mid Awatere River</td><td>≥ 110</td></tr> <tr><td>Ohinemahuta River</td><td>≥ 110</td></tr> <tr><td>Kenepuru Steam</td><td>≥ 110</td></tr> <tr><td>Ronga River</td><td>≥ 100</td></tr> <tr><td>Mid Waihopai River</td><td>≥ 100</td></tr> <tr><td>Lower Waihopai River</td><td>≥ 100</td></tr> <tr><td>Cullen Creek</td><td>≥ 100</td></tr> <tr><td>Waima River</td><td>≥ 100</td></tr> <tr><td>Waitohi River</td><td>≥ 100</td></tr> <tr><td>Mill Creek</td><td>≥ 100</td></tr> <tr><td>Rai River</td><td>≥ 100</td></tr> <tr><td>Kaituna River</td><td>≥ 100</td></tr> <tr><td>Graham River</td><td>≥ 100</td></tr> <tr><td>Lower Awatere River</td><td>≥ 90</td></tr> <tr><td>Lower Pelorus River</td><td>≥ 90</td></tr> <tr><td>Are Are Creek</td><td>≥ 90</td></tr> <tr><td>Omaka River</td><td>≥ 90</td></tr> <tr><td>Lower Wairau River</td><td>≥ 90</td></tr> <tr><td>Flaxbourne River</td><td>≥ 90</td></tr> </tbody> </table>	Wakamarina River	≥ 110	Branch River	≥ 110	Opouri River	≥ 110	Upper Wairau River	≥ 110	Black Birch Stream	≥ 110	Upper Pelorus River	≥ 110	Linkwater Stream	≥ 110	Mid Awatere River	≥ 110	Ohinemahuta River	≥ 110	Kenepuru Steam	≥ 110	Ronga River	≥ 100	Mid Waihopai River	≥ 100	Lower Waihopai River	≥ 100	Cullen Creek	≥ 100	Waima River	≥ 100	Waitohi River	≥ 100	Mill Creek	≥ 100	Rai River	≥ 100	Kaituna River	≥ 100	Graham River	≥ 100	Lower Awatere River	≥ 90	Lower Pelorus River	≥ 90	Are Are Creek	≥ 90	Omaka River	≥ 90	Lower Wairau River	≥ 90	Flaxbourne River	≥ 90	F
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