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Record No: 19241082
File Ref: File Reference
Ask For: Barbara Mead

Michelle Ward
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Climate, Land and Oceans

By Email: Gen.Hewett@epa.govt.nz

Joint Request by Interest Groups seeking Direction to Call In Application U190438

Introduction

- 1.0 Thank you for your letter dated 22 October 2019 addressed to the Consent and Compliance Group Manager, Gina Ferguson. This response is prepared upon instruction of Ms Ferguson and Chief Executive (Mark Wheeler).
- 2.0 Council accepts application U190438 meets several of the threshold factors set out in s142 of the Resource Management Act 1991 (the RMA 1991). Council is however comfortable at this stage that the processing and hearing of U190438 can be properly and effectively administered by Council. However it will continue to monitor its position and ability to do so.
- 3.0 Council has carefully considered in consultation with the applicant a variation in the usual hearing process given the nature of the application, the volume of evidence and the community interest. To date that proposed variation includes:
 - 3.1 An extension of time (to almost double the usual submission period) for submitters to file a response.
 - 3.2 The instruction by Council of eleven experts to peer review the evidence provided in support of the application.
 - 3.3 The provision of several expert 'hot tub' meetings prior to hearing. These are to be chaired by an independent chair, conducted in accordance with a written agenda and the Code of Conduct for Expert Witnesses and a summary report provided to the decision panel and all persons as part of the hearing package. The intention is to refine the issues in contention and evidence to be determined. (s99 and s41A to s42A of the RMA 1991 will be utilised).
 - 3.4 If there are several inexperienced submitters or simply a large number of submitters a similar pre-hearing meeting will be held as outlined in paragraph 3.3 above to enable refinement of the issues in contention and evidence to be tested.

3.5 The funding of the process steps outlined in 3.3 and 3.5 is yet to be agreed but the applicant has indicated some agreement to funding these steps. They have also indicated but yet to confirm that an independent panel of commissioners will be required and funded at their cost in accordance with the RMA 1991. Funding matters are yet to be finalised but given the logistical, evidential and process matters in this application do impact upon a Council's capacity to properly process and hear the application.

Response to the questions in your letter

Whether the matter (the application for resource consent lodged with your council) is, or is part of, a proposal of national significance and why, particularly in respect of the factors set out in section 1423(a) of the RMA.

4.0 Please see table attached as Annexure 1.

Whether the Minister should call in the matter and why.

5.0 With reference to our paragraph 2.0 and 3.0 of this letter, presently although this matter may be eligible for Call In with respect to the threshold hold matters being met, at this stage Council is comfortable that it may properly and effectively process and hear the application.

If the matter is called in, whether the Minister should direct the matters to be heard and decided by a board of inquiry or the Environment Court and why.

6.0 Should the Minister direct the application be called in Council would support the matter being heard by the Environment Court as an experienced and skilled Judge would be best to determine these. In particular Council notes:

6.1 Findings of fact with respect a large volume of complex and contentious scientific, landscape and cultural evidence must be made; and

6.2 There are several legal issues some of which have been litigated previously and others which will be newly litigated given the nature of this application, the location in the commons, the impact upon Iwi and precedent effect.

7.0 Presently Council has identified several possible and highly competent panel members that collectively should be able to consider and determine these issues and findings of fact.

Your Council's capacity to process this matter

8.0 It is acknowledged by Council that this is a novel, complex and onerous application for a Council to process and hear. Our Council however is very experienced in the area of aquaculture and much of the principle case law that has developed in this area. The cost of processing and hearing this application is significant but the applicant has indicated they that a share of this will lie with them. Should such an application be lodged with a less experienced or inadequately resourced Council it would be appropriate to make a Direction to Call In.

Any other information you consider may be relevant to the Ministers Decision

9.0 Prior to receiving your letter Council had been asked by the Applicant to inform the EPA of the expected tonnage this farm will process. The applicant takes the view that the farm is a study farm and the discharge of 80,000 tonnes is a maximum not an intended target used to assist in assessing adverse effect. Attached is a copy of the letter dated 2 October 2019 which Council agreed to forward with the planners comments to the EPA.

10.0 The planner views the question of the extent of maximum development as open and has sought further information from the applicant (s92 of the RMA 1991) as the position remains unclear in the application and evidence. Specifically he has asked:

“Please clarify the maximum extent of development that resource consent is sought for in the current application. The AEE states that the current projection is that discharge of up to 40,000 tonnes is possible, whereas the landscape report identifies up to 4 stages totalling 80,000 tonnes.”

11.0 The exact extent of development should be clarified in responding to this information request. In any event, any decision maker will need to consider the adverse effects of the maximum development which at this point in time may be as much as 80,000 tonnes per annum as subject to condition requirements this will be the maximum the consent holder could operate within.

Conclusion

12.0 In conclusion Council considers that this application meets several factors to merit a direction to Call In however given the experience and resourcing (with the applicant's support) of this Council a direction is not necessary to ensure the proper and effective processing and hearing of this application. It is acknowledged that Council will continue throughout this process (prior to setting down for hearing) evaluate its capacity to do so.



**BARBARA MEAD
ADVOCACY & PRACTICE INTEGRATION MANAGER
MARLBOROUGH DISTRICT COUNCIL**

Annexure 1: Assessment of s142(3)(a) Factors

S142 Factor	Is the threshold met	Comment (if required)
Has the application aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment)?	Yes – threshold met	The request for Direction to Call In made by these interest groups. The balance of public interest is yet to be tested as the submission period has only recently commenced.
Does the application involves or is likely to involve significant use of natural and physical resources?	Yes – threshold met	The farm itself will involve a significant portion of the Common Coastal Marine Area in addition to the Halo effect area.
Does the application affect or is it likely to affect a structure, feature, place, or area of national significance	Yes – threshold met	Landscape evidence presently available suggests this is so.
Does the application give effect to a national policy statement and is one that is specified in any of paragraphs (c) to (f) of the definition of matter in section 141	No – threshold met	The New Zealand Coastal Policy Statement must be considered when determining this application. In particular Policies 2, 3,8, 11, 13, 18, 23.
Does the application affect or is likely to affect or is relevant to New Zealand’s international obligations to the global environment;	Possibly – threshold may be met	The manner in which farming will be carried out and any adverse effects are yet to be fully identified within the evidence.
Does the application result or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment);	Possibly– threshold may be met	There is clear evidence as to the environmental features in this area which require consideration and protection. Presently the experts are seeking to identify these features, the degree of impact and how this may be avoided or managed.
Does the application involve or is it likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment;	Possibly – threshold may be met	The area is proposed to be a study area and seeks the ability to vary the manner in which it is carried out given the novel nature of off shore marine farming in this area.
Is the application likely to be significant in terms of section 8 ; or	Yes – threshold met	There are several Iwi with a connection to this space. Further there are issues regarding customary and

		commercial fishing rights, Tikanga, Taonga, Whanaungatanga and Kaitiakitanga.
Will the application assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions; o	No – threshold not met	
Does the application affect more than 1 region or district?	No – threshold not met	
Does the application relate to a network utility operation that extends or is proposed to extend to more than 1 district or region?	No – threshold not met	