

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14 of the First Schedule of the Act

BETWEEN MARGARET AND STEPHEN THOMPSON

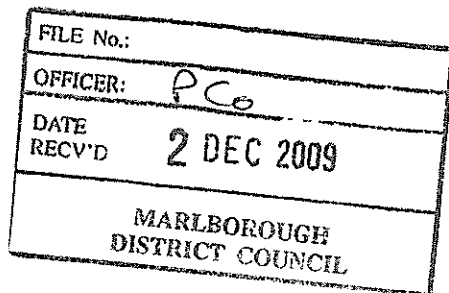
(ENV-2006-WLG-38)

Appellants

AND

MARLBOROUGH DISTRICT COUNCIL

Respondent



BEFORE THE ENVIRONMENT COURT

Environment Judge J R Jackson (sitting alone under section 279 of the Act)

IN CHAMBERS at CHRISTCHURCH

CONSENT ORDER

Introduction

[1] The Court has read and considered the appeal, the respondent's reply and the memorandum of the parties dated 16 November 2009.

[2] The New Zealand Marine Farming Association Incorporated has given notice of an intention to become a party under section 271A (as it then was) and has signed the memorandum setting out the relief sought.

[3] The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. 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 relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Order

[4] Therefore the Court orders, by consent, that the appeal is allowed to the extent that Variation 2 to the Marlborough Sounds resource Management Plan is amended in accordance with the proposed changes attached as Annexure 1 and forming part of this order.

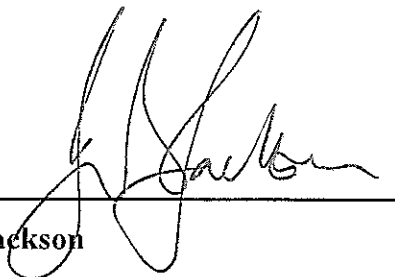
[5] The appeal is otherwise dismissed.

[6] Any application for costs is to be lodged by 18 December 2009. Any reply is to be lodged by 22 January 2010.

DATED at CHRISTCHURCH

29

November 2009.



J R Jackson

Environment Judge

Issued:

30 NOV 2009



Annexure 1

Proposed Variation 2 to Marlborough Sounds Resource Management Plan

Statement on Coastal Occupancy Charges

9.1.1 Coastal Occupancy Charges

The Resource Management Amendment Act 1997 gave regional councils the opportunity of introducing a charging regime for the occupation of coastal space within the coastal marine area. The amendment placed a responsibility on councils to place a statement in their Regional Coastal Plans, either to set out a charging regime or to say they will not do so. The Act also specified that any money so collected must be spent on the sustainable management of the coastal marine area.

Section 64A of the Act requires Council to have regard to both public and private benefits in determining whether or not a coastal occupation charging regime should apply. Council must consider the extent to which:

- Public benefits from the coastal marine area are lost or gained; and
- Private benefit is obtained from the occupation of the coastal marine area.

The premise underlying coastal occupation charges is that exclusive occupation of the coastal marine area is a privilege not a right - it is public space over which everyone has a right of access, and if used so as to exclude others a similar option of use, the public should be compensated for that exclusion and loss of opportunity.

Most occupations will result in elements of both public and private benefit, and the extent to which they are exclusive will vary. The identification of benefits (public/private) is limited to those directly arising from a structure which is occupying the space, not the associated activity that is facilitated by that structure being present. The benefits or otherwise of the associated activity are assessed through the coastal permit process.

Council has carried out an exercise to assess the relative benefits associated with different types of occupation. This has allowed a comparative assessment in terms of where the principal benefit lies. If charges are to offset the loss of public opportunity as a consequence of exclusive occupation, they should apply in principle wherever there is a net private benefit to the occupier.

In carrying out this exercise Council considers that it is justified in principle in charging for occupation of coastal space in circumstances where net private benefit is greater than net public benefit. In these circumstances the Council is committed to introducing a coastal occupancy charging regime.

Council has completed an information database on the various occupations within the Coastal Marine Area and is satisfied that it now has adequate information in that database to enable the implementation of a coastal occupancy charging regime. However, further work is required to determine the circumstances in which charges will be imposed (and possibly waived), the level of charges and use of monies received, as well as preparing plan provisions, including objectives, policies and methods, to implement such a regime.

~~However there are a number of issues that need to be dealt with before a charging regime is introduced. There are some gaps in the information database Council holds on the various occupations, particularly for moorings. Council is also concerned at some of the inequities of the charging regime prescribed by the Act, particularly in relation to marine farm leases/licences issued prior to the introduction of the Act. The coastal occupancy charges are not applicable to these marine farms but are applicable to marine farms granted permission by way of resource consent.~~



In determining an appropriate regime for charging for the occupation of coastal space, the Council will take account of the scale of the occupancy, such as the amount of coastal space occupied, as well as the private versus public benefit discussed above.

~~Once these issues are addressed the Council will introduce a charging regime by way of future variation plan change. Prior to charges being introduced the Council will carry out further investigatory work and undertake consultation (as required by the Act) with the community and other affected parties on the following:~~

~~When a charge will be imposed;~~

~~..... When charges may be waived;~~

~~..... How the charges would be collected;~~

~~..... What the level of charges would be;~~

~~..... What the money would be spent on; and~~

~~..... How the regime would be administered.~~

The Council is committed to this process and proposes to introduce provisions dealing with coastal occupation charges into the Marlborough Regional Policy Statement. A new regional policy statement is scheduled to be notified in December 2009. These provisions would then be implemented through plan change or plan review processes

The Act requires that any money received by the Council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area. Through the Marlborough Regional Policy Statement, this Resource Management Plan and State of the Environment Monitoring, the Council has already set out some of the issues for sustainably managing the coastal marine area.

In the context of the Plan, issues concerned with promoting the sustainable management of the coastal marine area can be found in many of the chapters of the Plan, given the integrated nature of the document. However those chapters of specific relevance include the following: Natural Character (2); Indigenous Flora and Fauna and their Habitats (4); Landscape (5); Tangata Whenua and Heritage (6); Public Access (8); and Coastal Marine (9).

~~This Section is subject to a reference to the Environment Court [RMA140/01 (6,7,8)] and subsequently is not operative.—“~~

