

**Before the Marlborough District Council**

**IN THE MATTER** of the Resource Management Act 1991

And

**IN THE MATTER** of the Proposed Marlborough  
Environment Plan

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**Interim Decision of the MEP Hearing Panel  
as to Ground Protection Area within Woodbourne**

**Dated this 15<sup>th</sup> day of November 2018**

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**1. Introduction**

- 1.1 This interim decision relates to a discrete issue in respect of the protection of the groundwater resources utilised for human drinking water purposes at Woodbourne.
- 1.2 In a recent interim decision on another subject, which was entirely discrete from and did not have impacts on other provisions of the proposed Marlborough Environment Plan (PMEP), the Hearing Panel made the following introductory observations. Those considerations remain similarly relevant to this interim decision so we commence this decision by repeating those observations:

*The Proposed Marlborough Environment Plan is a proposed plan for a unitary council managing a wide range of resources in Marlborough, located in interrelated environments. As such the PMEP is a comprehensive plan, providing in the one*

*document a regional policy statement, regional plan, regional coastal plan and district plan.*

*Because of the comprehensive nature of the PMEP the various objectives, policies, methods and rules comprising it are interwoven, and are designed to work as a whole. For that reason the Hearing Panel does not wish to separate out any parts of the Plan from other parts by issuing any interim decisions on submissions until all submissions have been heard on all aspects of the PMEP.*

*However, where some demonstrable particular special reason exists for an interim decision, then consideration needs to be given to that possibility, if a proper sustainable management purpose is being served by the issue of an interim decision. That will only be appropriate in those rare settings where the particular subject matter can be regarded as entirely discrete from other subject matter in the PMEP, and where in addition there are particular important sustainable resource management reasons why an interim decision should issue.*

- 1.3 For reasons set out below, the Hearing Panel has decided that it should issue an interim decision in respect of the submission by the New Zealand Defence Force (NZDF) seeking to add to the Groundwater Protection Areas overlay maps three groundwater areas to the west of Woodbourne airbase<sup>1</sup>.
- 1.4 The Hearing Panel accepts that the general purpose of the Groundwater Protection Areas overlay maps and related rules serve a function of significant importance in human health terms in protecting the underlying groundwater resources from water quality degradation. However, in order to achieve that protection the applicable rules do impose restraints on uses of the land above.
- 1.5 The significance of those rules or potential rules is best illustrated by a list of those rules which currently exist in the notified PMEP and a list of those potential rules being considered as part of the submission process some of which may become part of the PMEP:

#### Notified rules

Standards not allowing the discharge of human effluent (e.g., 3.3.30.6) or farm rubbish (e.g., 3.3.31.3) within a Groundwater Protection Area.

#### Rules recommended by Section 42A Report

Standards be added to the rules providing for:

- Application of compost or solid agricultural waste;

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<sup>1</sup> Submission 992.103

- Making compost or silage or storing agricultural solid waste;
- Storage of compost;
- Discharge of agricultural liquid waste;
- Discharge of dairy farm effluent;
- Disposal of offal or a carcass.

- 1.6 Because of those potential initial restraint effects on overlying landowners or occupiers, the Groundwater Protection Areas shown in the PMEP were precisely mapped based on best available technical information. That detailed mapping as to the land areas above the groundwater sources sought to be protected enabled those landowners or occupiers to be identified who might be potentially affected and for consultation as to those effects to be conducted with them. They would then also have an opportunity to lodge any opposing submission if they so wished.
- 1.7 In considering the request in the submission made by the NZDF, however, the problem was that no detailed maps were provided by the submitter with its submission.
- 1.8 In procedural terms the Hearing Panel regards that omission as being a fatal flaw to the request for Groundwater Protection Areas to now be defined as part of the decision-making process on submissions on the PMEP.
- 1.9 There are three reasons for reaching that conclusion.
- 1.10 The first two reasons are that potentially affected landowners or occupiers would not have been informed or consulted, or had the opportunity to lodge further submissions in opposition as they would not have known through the submission process that their land was potentially affected.
- 1.11 The final point is that without detailed identification of the proposed Groundwater Protection Areas sought in the submissions, the Hearing Panel had insufficient information before it to be able to identify such detailed areas in the overlay plans. It is inappropriate for it to make decisions based on inadequate information as to the boundaries of areas which might be said to be warranted.
- 1.12 The NZDF itself obviously realised that potential problem prior to the hearing and produced detailed plans of the areas involved for the hearings, and it has also undertaken initial consultation with potentially affected landowners. However, whilst helpful in that the new mapping means the Groundwater Protection Areas advanced by the submitter have now been precisely defined, and initial consultation as to effects has occurred, the basic procedural flaw has not been able to be addressed satisfactorily as

potentially affected parties have had no opportunity to become involved in the planning process for those proposed areas identified in that very late way.

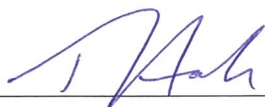
- 1.13 Moreover, while the First Schedule of the Resource Management Act 1991 (RMA) does not specifically require consultation with affected landowners or occupiers or the general public, it does enable such consultation, and the whole RMA process at the very least envisages information sharing through the notification of the proposed Plan to enable submissions to be made.
- 1.14 Where others' rights are potentially significantly adversely affected, and now additionally so by the recommended additional restraints, it would be normal to expect some sort of informative process to be followed by a council. That could occur either through some level of consultation prior to the proposing of a new resource management plan or plan variation containing such restrictions, or at the very least by the proposed plan or variation itself containing the restrictions, and providing opportunity in that way for submissions to be made in opposition.
- 1.15 There is an opportunity by issue of an interim decision to enable the NZDF to address the omissions in the process which have occurred as well as the consultation on the additional recommended restraints, if it wishes to pursue that course by making a request for Council to consider a plan variation. The NZDF itself has actually specifically sought that opportunity by inviting the Hearing Panel to issue an interim decision if it was to reach the conclusions that it has in fact reached.
- 1.16 A considerable period of time is yet to elapse during the course of hearing other submissions on the PMEP, with a final decision document unlikely to issue until some time during the first half of 2019. That provides a window of opportunity after an interim decision issued now, to enable the undertaking of the more complete public consultation processes warranted in this situation for a proposed Variation to the PMEP before final decisions are issued on this current plan review process.
- 1.17 The protection of Groundwater Protection Areas has been identified as an important concept in the PMEP already. It is obviously important both for Council and potentially affected parties that the issue is resolved in resource management plan terms at much the same time as this current plan review process is under way.
- 1.18 Any such Variation that might result, may then be able to meld in with the process of hearing submissions on the PMEP, and decisions in respect of such a Variation might be able to issue as part of the overall PMEP decisions.

- 1.19 No other parts of the PMEP are affected by such a variation process which can genuinely be described as stand-alone and discrete from other PMEP issues.
- 1.20 In making that point the Panel wishes to record it is not overlooking the requests made in submissions by the Rarangi Residents Association and North Rarangi Water Supply Inc. for Groundwater Protection Areas at Rarangi. However, those requests are at such an early stage that distinct water protection areas have yet to be identified. Considerable technical work would be required before any mapping could even be attempted. That would also need to involve considerations such as the needs of other community water supply sources in that area. That would need further investigation and consideration in respect of areas like the Clervaux Estate subdivision and the more recent subdivisions in the southern Rarangi area.
- 1.21 For all those reasons the Hearing Panel has decided to issue this interim decision declining the relief requested by the NZDF, so as to enable a valid appropriately informative or consultative process to be undertaken in respect of a Variation as to the proposed additional Groundwater Protection Areas if the Council is requested to do so, and decides to do so.
- 1.22 Because this interim decision is essentially one related to ensuring a valid, fair and proper process has occurred, it would be inappropriate for the Hearing Panel to express any views as to merits of the relief requested in respect of any particular Groundwater Protection Areas.
- 1.23 Any such decisions on the merits must await the hearing of any submissions which may be filed in respect of the possible Variation.

## **2. Decision**

- 2.1 The relief requested by the NZDF seeking additional Groundwater Protection Areas in submission numbered 992.103 is rejected.


Dated in Blenheim this 15<sup>th</sup> day of November 2018



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Commissioner T Hook  
Chair of the MEP Hearing Panel




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Commissioner R Crosby




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Commissioner R Faulkner



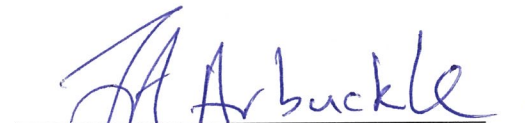
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Commissioner S Kenderdine



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Commissioner D Oddie



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Commissioner J Arbuckle