

**IN THE MATTER** of an appeal under clause 14(1) of  
the First Schedule of the Resource  
Management Act 1991

**AND IN THE MATTER OF** the Marlborough Environmental  
Plan

**BETWEEN** **Te Rūnanga o Kaikōura and Te  
Rūnanga o Ngāi Tahu**

Appellant

**AND** **Marlborough District Council**

Respondent

**NOTICE PURSUANT TO SECTION 274  
OF THE RESOURCE MANAGEMENT ACT 1991**

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To: The Registrar  
Environment Court  
Christchurch

Federated Farmers of New Zealand (Inc) gives notice pursuant to s274 of the Resource Management Act 1991 that it wishes to appear as a party to the above proceedings.

This Notice is made upon the following grounds:

1. Federated Farmers of New Zealand (Inc) lodged a submission and Further submission to the Plan to which this appeal relates and/or has an interest in these proceedings that is greater than the public generally.
2. Federated Farmers of New Zealand (Inc) is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the Act).

**Extent of interest**

3. Federated Farmers has an interest in the following aspect of the appeal:

**a. Policy 3.1.2**

- We oppose the appellant's relief sought.
- The appellant seeks relief that would require an applicant (rather than encourage), as best practice to consult early in the development of a proposal (for resource consent or plan change) so that cultural values of Marlborough's tangata whenua iwi can be taken into account.
- Consultation with iwi takes time and comes at a financial cost. Some consent applications have no impact on iwi interests and to require compulsory consultation is unnecessary.
- Iwi interest in RMA processes are ensured via a number of mechanisms, i.e. sections in the Act, s95 assessments, Memorandums of Understanding with Council on pre-circulating consent applications lodged, and Iwi Management Plans. It is unlikely consents would be assessed without iwi input when a legitimate interest exists.

**b. Policy 3.1.3**

- We oppose the appellant's relief sought.
- Council should retain the ability to consider the scale of any potential effect on iwi interests rather than a default mandatory position where they are automatically considered affected.

**c. New Policy 3.1.X - Subdivision**

- We oppose the appellant's relief sought.
- A blanket consultation provision will take additional time and cost to any subdivider, and in most cases no impacts on iwi interests would be likely.
- To direct consultation to iwi for subdivision is unnecessary when a number of other rules, policies and mechanisms exist to introduce iwi into the consenting process where and when this is appropriate.

**d. New Policy 3.1.XX - Water**

- We oppose the appellant's relief sought.
- A blanket consultation provision for all water takes and use will take additional time and cost. Many takes are well understood, are efficiently used and are only small volumes. In many cases no impacts on iwi interests would be likely.
- To direct consultation to iwi for all takes and uses is unnecessary when a number of other rules, policies and mechanisms exist to introduce iwi into the consenting process where and when appropriate.

**e. Method 3.M.X Recognising and Promoting the Treaty**

- We oppose the relief sought.
- There is no need for Council to spend ratepayer money on developing a course in consultation with iwi for Councillors and decision makers to understand the Treaty.
- All Councillors are required to sit the Making Good Decisions Hearing Commissioners course which covers treaty principles. All decision makers are required to attend iwi and Treaty related training through the NZPI as part of their ongoing development.

**f. Policy 4.1.1**

- We oppose the relief sought in this provision and seek to retain the decisions version wording.
- This policy seeks to provide some confidence in the rights of resource users. It is implicit that iwi rights and interests, protecting the environment and the wider public are considered in any consenting process.
- It remains unclear what iwi interests are as proposed, and whether that includes economic interests and the potential for trade competition issues to arise.

- The proposed relief undermines the rights of private resource users.

g. **Policy 5.1.3**

- We oppose the relief sought in this provision.
- This policy seeks to require that separate consent applications for water be heard together. Not all water takes expire concurrently and any delay in assessing an application may impact the ability to renew permits under s124.
- The proposed policy is an unnecessary burden to Council administrators to co-ordinate.
- Hearing a number of permits together may cross the threshold where applications may introduce effects that are more than minor resulting in a notified consenting process with additional time and cost to water users.
- Hearing a number of permits together may result in an objective and policy assessment be found to be inconsistent or contrary resulting in a perverse outcome, which could be avoided if each consent application is heard in isolation.
- Each consent should be assessed on its own merits.

h. **Objective 5.2**

- We oppose the relief sought in this provision.
- This Objective seeks to recognise Te Mana o te Wai and safeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining flows and/or levels required for the health of the resource as a first priority, followed by the natural and human use values (as defined by Appendix 5) supported by waterbodies.
- The underlying principle of Te Mana o te Wai is to put the health of the river and water resource as a first priority. The proposed wording seeks to repeat the concept hierarchy which is embedded in the objective's intent.

i. **Policy 5.2.21**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- This policy seeks to require 'out of river' storage of water rather than the construction of dams in the waterbody proper. The proposed relief

provides little opportunity for dams in waterbodies irrespective of their merits.

- The proposed relief will result in assessments of objectives and policies being inconsistent or contrary which may preclude a development irrespective of its merits. It could effectively prohibit consents stepping through the 104D process.
- We prefer the phrasing encouraging out of river storage, whilst retaining policy that allows for in-river schemes and that each consent is assessed on its merits.

**j. Policy 5.2.22**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- This policy is too directive and prohibits damming in any main stem irrespective of the merits of any proposal.
- Cultural values are already contemplated as part of any damming consent application.
- It is curious why the appellant would seek to encourage fish passage for trout when they act like a pest species decimating galaxiid taonga species to existing where populations co-exist.

**k. Policy 5.2.23**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- Positive effects are a relevant consideration when assessing a consent application and decision maker or hearing panel should retain the ability to consider the positive effects of a development as part of the overall suite of assessment considerations.

**l. Method 5.M.1**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- The community including iwi should have the right to participate in considering the values, and use them for the setting of freshwater objectives. To exclude the wider community would lack natural justice and is inconsistent with the NPSFM.

**m. Policy 5.3.14**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- This policy seeks to limit the term of water permits to no more than 15 years. We consider each consent should be assessed on its merits and in some cases the effects of any take are minimal and can warrant a longer term. To force a consent holder through the cost and stress of replacement permits for little benefit is unnecessary.
- We seek the deletion of the relief sought for appeal point (m)(c) as it forces a water user into the consenting process within a shorter time irrespective of the effects.

**n. Policy 5.4.4**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- The policy relief seeks to confiscate water users that have given effect to their consents but take water only intermittently but still relies on that permit.
- All plan changes are required to be prepared in consultation with iwi. There is no need for a policy directing that process when it is already enshrined in the Act.

**o. Policy 5.4.5**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- Federated Farmers support a streamlined system for the transfer of water permits.

**p. New Objective 9.X and Policy 9.X.X and Method 9.M.X**

- We oppose the relief sought.
- The objective seeks to provide a mechanism whereby iwi can gain leverage over a landowner in order to secure an unrelated access to private land.
- For controlled or restricted discretionary activities this will introduce matters of discretion issues.
- Issues of access should be resolved on a case by case basis between the landowner and third party.

q. **Policy 10.1.10 and New Policy 10.1.X and New Policy 10.1.XX**

- We oppose the relief sought in this provision and seek the retention of the decision versions for Policy 10.1.10.
- Whilst Heritage NZ is the organisation who oversees the legal protection of historic heritage, iwi retain the opportunity to promote their interests in any consent hearing. Neither party has exclusive rights to submitting in a consenting process, and the existing wording of Policy 10.1.10 does not delegate the management to one party over the other.
- Federated Farmers opposed the suggested new Policy 10.1.X on the basis the Heritage NZ Act already provides the legal protection to identified and unidentified sites. The proposed phrasing seeks to avoid any damage or destruction, which is in effect a prohibition. Any application should be assessed on its merits in conjunction with iwi and HNZ and an archaeological authority can (where appropriate) authorise the damage or destruction of a site.
- We oppose the inclusion of new Policy 10.1.XX on the basis that iwi and Heritage NZ should do their own assessments and classification of cultural sites at their own time and cost.
- New Method 10.M.X seeks to force the Council to carry out work that should be done by iwi and Heritage NZ. Once identified and a level of significance attributed to that site, iwi can then seek any new site be incorporated into the following Plan update. Until that time, the site will retain the protections set out in the HNZ Act.

r. **Policy 15.1.1(a)(b) and (d)**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.
- The introduction of the term 'potential for' in limbs (a) and (b) are inconsistent with and do not give effect to the NPSFM.
- Not all wetlands are suitable for food gathering given the spatial constraints. We seek that the policy relate to significant wetlands as any cluster of obligate wetland species may get caught in the policy.

s. **Policy 15.1.3**

- We oppose the relief sought in this provision and seek the retention of the decision versions phrasing.

- It is unlikely limits can be locked in by 2024, and it is certain limits will be established in conjunction with Tangata Whenua.
- With respect to proposed policy 15.1.3(e) Federated Farmers opposes any nutrient management plan being drafted in consultation with iwi and then approved by Council. This approach is ultra vires. A nutrient management plan should be between the landowner and the Council who gives effect to the Plan, of which iwi has activity participated in its drafting.
- We oppose new Policy 15.1.X. The Plan in conjunction with higher order documents set out a process for managing nutrient management and water quality.

t. **Rule 2.4.1**

- We oppose the relief sought in this provision.
- The introduction of the matters set out in policies 5.2.21 and 5.2.22 are overly restrictive for C-class waters. The matters of discretion is sufficient robust to allow a thorough assessment of effects.

u. **Volume 3, Appendix 5**

- We oppose the relief sought in this provision.
- Appendix 5 sets out the water resource unit values and classification standards. We oppose amending Appendix 5 in consultation with iwi to reflect cultural values. Any amendments should be made via the Plan Change process where the community gets to particulate and comment on whether the amendments are appropriate or not.
- The proposed relief lacks due process.

4. Federated Farmers of New Zealand (Inc) agrees to attend mediation and/or dispute resolution in regard to these proceedings.

Dated the 4<sup>th</sup> of June 2020



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Kim Reilly  
South Island Regional Policy Manager  
Federated Farmers of New Zealand (Inc)