

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER

of the Resource Management Act 1991 (Act)

AND

of appeals under clause 14 of the First  
Schedule of the Act

BETWEEN

**ALL APPELLANTS**

concerning the proposed Marlborough  
Environment Plan as set out in Appendix 3  
attached

Appellants

AND

**MARLBOROUGH DISTRICT COUNCIL**

Respondent

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**MEMORANDUM OF COUNSEL FOR ENVIRONMENTAL DEFENCE  
SOCIETY INCORPORATED FOR PRE-HEARING CONFERENCE**

13 August 2020

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## **May it please the Court**

1. There are three matters arising in the Memorandum of Counsel for Marlborough District Council that the Environmental Defence Society Inc (“EDS”) wishes to comment on in advance of the pre-hearing conference.<sup>1</sup>

### **Jurisdictional point concerning Friends appeal**

2. The Council has raised a jurisdictional point concerning the appeal by Friends of Nelson Haven Tasman Bay Env-2020-CHC-33 (“Friends”). The Council says that Friends has challenged the methodology for landscape and natural character mapping but has not challenged the relevant maps, and says further that if Friends of Nelson does not identify the provisions it wants to be changed then the Council may consider applying to strike out the appeal.<sup>2</sup> Counsel for Friends has filed a memorandum in response.<sup>3</sup>
3. EDS only seeks to record that it is a s 274 party to Friends appeal and supports in part and opposes in part the relief sought by the Appellant. EDS wishes to be involved in any re-consideration of the natural character and landscape methodologies. It does not support the Council’s jurisdictional challenge to this aspect of Friends’ appeal.

### **Marine farming**

4. The Council refers to its three variations relating to marine farming, and says:

[71] It is evident from the Council’s proposed topics and sub-topics that there are a significant number of appeal points on ONC, ONFL and ecologically significant marine sites. Most of these appeals are from marine farming interests.

[72] At this stage, the Council does not consider that appeals on natural character and landscape (some of which have an eye to marine farm issues) and ecologically significant marine sites should be delayed because the marine farm provisions are following through a variation. The reason for that is that under the Council's proposed Plan, there is only a very small cohort of existing marine farms that are within ONCs, ONFLs or ecologically significant marine sites.

5. The Council seeks more time to reflect on how to progress the appeals on natural character, landscape and ecologically significant marine sites.<sup>4</sup>
6. EDS has appeal points relating to the relationship between the current PMEP provisions and the marine farming variations to come. The PMEP states that “At this time, the PMEP does not include the provisions relating to marine farming, which are still subject to review.” EDS contends that the decision is inconsistent with integrated management and that relevant PMEP provisions (e.g. landscape and ecological overlays and associated policies) should apply even if provisions specific to marine farming policies and rules are still being developed. It seeks to amend the statement to: “At this time, the PMEP does not include policies and rules relating specifically to marine farming, as this chapter is still being developed. However, PMEP objectives, policies and overlays apply to marine farming.” EDS submits

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<sup>1</sup> In accordance with the opportunity afforded by the Court’s Minute of 16 June 2020.

<sup>2</sup> Paragraph [63].

<sup>3</sup> Dated 6 August 2020.

<sup>4</sup> Paragraph [73].

that this aspect of its appeal should be progressed notwithstanding the marine farming variations to come.

### **New national direction**

7. The Council refers to gazettal of the National Environmental Standard for Freshwater 2020 (“NES:F”), the National Policy Statement for Freshwater Management 2020 (“NPSFM”) and the National Policy Statement for Indigenous Biodiversity (“NPSIB”).<sup>5</sup>

8. The council proposes that on gazettal, the Council will be required to consider the extent to which the PMEP provisions give effect to the national direction. The reasons given are that:<sup>6</sup>

On gazettal, the Council will be required to consider the extent to which the MEP provisions give effect to the national direction. Any requirement to amend the MEP content will necessitate a plan variation. That plan variation has the potential to apply to provisions subject to appeal. As such, there may be merit in considering whether certain topics or subtopics are placed in a temporary hiatus until such time as the Council, and any relevant party, has had the opportunity to consider the content of those two specific national policy statements (and the implications for relief sought in appeals). Otherwise, substantial effort may go into resolving appeals on provisions that may be subject to change as a result of the requirements of the national policy statements.

9. The NES:F and NPSFM were gazetted on 6 August 2020. The PMEP will now need to give effect to them. The Resource Management Amendment Act 2020 provided for a new process to create freshwater plans<sup>7</sup> however that process does not apply to a planning instrument gazetted prior to the commencement date of the Amendment Act or to any post-commencement variation to a pre-commencement planning instrument.<sup>8</sup>

10. EDS’s position is that while a period of time should be allowed for the Council and parties to consider the implications of the NES:F and NPSFM, affected topics (Water Allocation and Use and Water Quality) should proceed so that the MEP can give effect to these instruments to the extent possible without a requirement for a variation. If a variation is also required, that will need to be progressed separately.

11. The NPSIB has not been gazetted and has been deferred again by Government. The Ministry for the Environment now advises that it will likely be gazetted in April 2021. EDS considers that progression of appeal points relating to indigenous biodiversity should not be delayed while the NPSIB is awaited, as the progress of this instrument is too uncertain.



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Sally Gepp/Cordelia Woodhouse  
Counsel for EDS

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<sup>5</sup> At [75]

<sup>6</sup> At [76]

<sup>7</sup> Schedule 4 RMA

<sup>8</sup> Clause 19, Part 3, Schedule 12 RMA.