BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KOTIMATUA O AOTEAROA
ŌTAUTAHI ROHE **ENV-2020-CHC-46**

IN THE MATTER OF	**the Resource Management Act 1991 (RMA)**
AND IN THE MATTER OF	**an appeal pursuant to Clause 14, Schedule 1 of the RMA in relation to a decision on the Proposed Marlborough Environment Plan**
BETWEEN	**TE RŪNANGA O KAIKŌURA AND TE RŪNANGA O NGĀI TAHU**
	Appellant
AND	**MARLBOROUGH DISTRICT COUNCIL**
	Respondent

NOTICE OF INTENTION BY THE MINISTER OF DEFENCE TO BE A PARTY TO THE PROCEEDINGS

8 June 2020

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To The Registrar
Environment Court
Christchurch

1. **THE MINISTER OF DEFENCE** (the **Minister**) gives notice under section 274 of the RMA that he wishes to be a party to these proceedings, being *Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu v Marlborough District Council* (**the appeal**).

2. The appeal is in respect of decisions of Marlborough District Council on its proposed Marlborough Environment Plan (**MEP**).

3. The Minister made a submission on the proposed MEP about the subject matter of the proceedings.

4. The Minister has an interest in the proceedings that is greater than the interest of the general public as the Minister has the power of control of the New Zealand Defence Force (**NZDF**), under the Defence Act 1990.[1] NZDF is tasked with the defence of New Zealand[2] and used to provide public service or assist civil power in time of emergency.[3] That is, NZDF has both a security and civil defence role. Accordingly, NZDF must be able to operate in the Marlborough Region, including at its RNZAF Base Woodbourne, without breaching the MEP.

5. The Minister is not a trade competitor for the purposes of section 308C or 308CA of the RMA.

6. The Minister has an in interest in part of the proceedings.

7. The part of interest is Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu's (**Ngāi Tahu**) appeal on the provisions relating to:

    7.1 Volume 1, Chapter 5, Allocation of Freshwater Resources, Policy 5.2.1;

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1 Section 7.
2 Section 5.
3 Section 9.

7.2 Volume 1, Chapter 5, Allocation of Freshwater Resources, Policy 5.2.22;

7.3 Volume 1, Chapter 5, Allocation of Freshwater Resources, Policy 5.3.14; and

7.4 Volume 2, Chapter 16, Coastal Marine Zone, Rule 16.7.5.

8. The Minister **opposes** the relief sought, for the following reasons:

8.1 The Minister opposes the additional wording in the first bullet point of Policy 5.2.1 that seeks to avoid the damming of rivers. NZDF is often required to construct temporary dams across a watercourse in order to allow the pooling of sufficient water to enable the use of its potable water treatment units. In his appeal, the Minister has requested that a new rule be inserted into the Proposed Plan providing for temporary dams associated with temporary military training activities (**TMTA**) as a permitted activity, subject to certain standards being met.

8.2 As there is currently no definition of damming in the proposed plan, the relief sought by the Appellant could result in a policy direction that seeks to avoid all damming of rivers, including temporary damming for the purposes of TMTA. This could result in a restrictive activity status that is disproportionate to the minor effects caused by temporary damming activities.

8.3 An avoidance approach to damming rivers is inconsistent with the human use values the policy seeks to provide for.

8.4 The Minister opposes the changes sought to Policy 5.2.22 that seek to ensure that any new proposal to dam water within the bed of a river avoids the damming of the Waiau Toa/Clarence and Awatere Rivers, including their tributaries or the mainstream of any waterbody, insofar as the changes relate to temporary dams and/or damming, for the reasons set out in paragraphs 8.1 and 8.2 above.

8.5 The Minister opposes the changes to Policy 5.3.14(a) that seek to reduce the duration of water permits from a Freshwater Management Unit (FMU) that is not over-allocated, where it has an allocation limit and minimum flow specified in the Plan. Longer consent durations are appropriate where there is more certainty surrounding a particular water resource, in order to provide surety of supply. Further, there are factors within specific proposals that may influence duration, such as where the take is for municipal and private domestic water supplies. A duration of not *more* than 15 years in Policy 5.3.14(a) is therefore inappropriate and inconsistent with the approach of the National Policy Statement on Freshwater Management

8.6 The Minister opposes the deletion of the words "from land based activities" from Rule 16.7.5. This amendment would prohibit the discharge of any treated or untreated sewage from ships in the Coastal Marine Area. The Resource Management (Marine Pollution) Regulations 1998 allow any ship to discharge Grade A or B treated sewage in the Coastal Marine Area as long as the discharge does not occur within 100m of a marine farm (for Grade A treated sewage)[4] or within 500m of a marine farm or mataitai reserve (for Grade B treated sewage).[5] A rule may only be included in a proposed regional coastal plan regulating discharges of sewage from ships in limited circumstances. In relation to Grade A treated sewage, any rule included in a proposed regional coastal plan must not relate to vessels operated by the New Zealand Defence Force.[6] Rule 16.7.5 should remain as currently drafted in the decisions version of the Proposed Plan.

9. The amendments sought by the Appellant are at risk of interfering with NZDF's ability to meet its obligations under the Defence Act 1990.

10. The Minister agrees to participate in mediation or other alternative dispute resolution of the proceedings.

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4 Resource Management (Marine Pollution) Regulations 1998, Section 12(1).

5 Resource Management (Marine Pollution) Regulations 1998, Section 12A(2).

6 Resource Management (Marine Pollution) Regulations 1998, Section 12(2)(c).

08 June 2020

Rosemary Dixon
Counsel for the Minister of Defence

The address for service of the Minister is Crown Law, Level 3, Justice Centre, 19 Aitken Street, Wellington 6011. Documents for service on the Minister may be left at this address for service or may be:

(a) posted to the solicitor at PO Box 2858, Wellington 6140; or

(b) left for the solicitor at a document exchange for direction to DX SP20208, Wellington Central; or

(d) emailed to the solicitor at rosemary.dixon@crownlaw.govt.nz or natalie.julian@crownlaw.govt.nz.