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**BEFORE THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**I TE KOTIMATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**ENV-2020-CHC-56**

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**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**                                **THE NEW ZEALAND TRANSPORT**  
**AGENCY**  
**Appellant**  
**AND**                                        **MARLBOROUGH DISTRICT COUNCIL**  
**Respondent**

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**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 *the New Zealand Transport Agency 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.<sup>1</sup> NZDF is tasked with the defence of New Zealand<sup>2</sup> and used to provide public service or assist civil power in time of emergency.<sup>3</sup> That is, NZDF has both a security and civil defence role. Accordingly, NZDF must be able to operate in the Marlborough Region, including at 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 interest in part of the proceedings.
7. The part of interest is the New Zealand Transport Agency's (**NZTA**) appeal on the provisions relating to:
  - 7.1 Volume 2 Chapter 02 (General Rules), the addition of a new permitted activity rule and associated standards enabling the discharge of stormwater to land.

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<sup>1</sup> Section 7.

- 7.2 Volume 2, Chapter 02 (General Rules) Rule 2.16.3 and permitted activity standard 2.17.3.5.
- 7.3 Volume 2 Chapter 02 (General Rules) Sections 2.7 and 2.9, the addition of a new permitted activity rule and associated standards to provide for the construction of a temporary dam.
- 7.4 Volume 2, Chapter 2 (General Rules) Rule 2.11.1.
- 7.5 Volume 2, Chapter 25 (Definitions).
8. The Minister **supports** the relief sought in relation to paragraph 7.1 and 7.2 above, for the following reasons:
- 8.1 The Minister supports the addition of a new permitted activity rule to provide for the discharge of stormwater to land. Declining this relief would create uncertainty and result in unintended and unduly onerous outcomes for Plan users, for the reasons set out in the Minister's appeal.<sup>4</sup> In the alternative, the Minister supports amendments to Rule 2.16.3 and permitted activity standard 2.17.3.5 proposed by the Appellant in order to provide for discharges of stormwater to land as well as to water.
9. The Minister **supports in part** the relief sought in relation to paragraph 7.3 to 7.5 above, for the following reasons:
- 9.1 The Minister supports the addition of a new permitted activity rule providing for the construction of a temporary dam. 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. However, the Minister opposes the permitted activity standards proposed by the Appellant (2.9.X.), as they would unduly restrict NZDF's ability to construct temporary dams for the purposes of temporary military training.

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<sup>2</sup> Section 5.

<sup>3</sup> Section 9.

<sup>4</sup> *The Minister of Defence v Marlborough District Council* ENV-2020-CHC-76 at paragraphs 7.1 – 7.7.

- 9.2 The Minister supports in part the amendment of Rule 2.11.1, to exclude temporary coffer dams from the dams prohibited to be constructed on listed lakes and rivers and their tributaries. However the Minister considers that the exclusion should apply to all temporary dams, not just coffer dams.
- 9.3 The Minister supports in part the relief seeking to amend the definition of dam to exclude certain temporary dams and structures and to add a new definition of damming into Volume 2, Chapter 25 (Definitions), seeks that the definition of “dam” specifically excludes temporary dams associated with temporary military training activities. Currently, this is not explicit. If this relief is allowed, then the Minister considers that consequential amendments to the Proposed Plan are necessary, such as a new definition of “temporary damming” and an amendment to permitted activity Rule 2.2.17 (Damming water and the subsequent use of that water). This is because if temporary damming is not defined, the definition of “damming” could continue to apply whenever temporary damming is referred to. Further, Rule 2.2.17 currently allows for the damming of water and the subsequent use of that water as a permitted activity, and would need to be amended to include temporary damming.
10. The Minister agrees to participate in mediation or other alternative dispute resolution of the proceedings.

08 June 2020



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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
- (c) emailed to the solicitor at [rosemary.dixon@crownlaw.govt.nz](mailto:rosemary.dixon@crownlaw.govt.nz) or [natalie.julian@crownlaw.govt.nz](mailto:natalie.julian@crownlaw.govt.nz).