BEFORE THE ENVIRONMENT COURT **ENV-2020-CHC**

IN THE MATTER	of an appeal under Clause 14 of the First Schedule to the Resource Management Act 1991
AND	
IN THE MATTER	of the decisions of Marlborough District Council on the Proposed Marlborough Environment Plan
BETWEEN	**BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND Z ENERGY LIMITED** Appellant
AND	**MARLBOROUGH DISTRICT COUNCIL** Respondent

NOTICE OF APPEAL BY BP OIL NEW ZEALAND LIMITED, MOBIL OIL NEW ZEALAND LIMITED AND Z ENERGY LIMITED
DATED 8 MAY 2020

To: Environment Court
PO Box 2069
Christchurch 8140

Via email: Christine.McKee@justice.govt.nz

INTRODUCTION

1. BP Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited (***The Oil Companies***) appeal against parts of a decision of Marlborough District Council (***the Council***) on the Proposed Marlborough Environment Plan (***the MEP***).

2. The Oil Companies made submissions and further submissions on the MEP.

3. The Oil Companies are not trade competitors for the purposes of section 308D of the Resource Management Act 1991 (***the RMA***).

4. The Oil Companies received notice of the Council's decisions on 3 March 2020.

BACKGROUND

5. The Oil Companies receive, store and distribute refined petroleum products. Within Marlborough District, the Oil Companies own, operate and/or supply service stations and truck stops and other commercial customers including Blenheim Airport. These facilities provide an essential service to the residents and businesses of Marlborough.

THE PARTS OF THE DECISION BEING APPEALED

6. The parts of the decision that the Oil Companies' appeal relates to are:
   (a) Rule 2.2.12, which provides for the take of water for dewatering, but excludes dewatering associated with the replacement and installation of underground fuel storage tanks.
   (b) Rule 2.6.1, which sets a prohibited activity pathway for water takes that cause the water quantity limit for the relevant Freshwater Management Unit to be exceeded, and in particular that the rule appears to apply to temporary takes associated with construction dewatering which are not classified as permitted.

REASONS FOR APPEAL

7. The general reasons for the appeal are that the decision:
   (a) Does not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the RMA.
   (b) Does not enable people and communities of Marlborough to provide for their social and economic wellbeing and their health and safety.

(c) Is not consistent with the relevant objectives and policies of the Proposed Marlborough Environment Plan.

(d) Does not adequately address the matters set out in the submissions, further submissions and evidence of the Oil Companies on the Proposed Marlborough Environment Plan.

(e) Does not represent the most appropriate means of exercising the Council's statutory functions, having regard to the efficiency and effectiveness of other available options under section 32 of the RMA.

(f) Will potentially impose unnecessary and unjustified costs.

8. Without limiting the generality of the above, the specific reasons for the Oil Companies' appeal are set out in Sections 9 and 10 below.

9. **RULES 2.2.12 AND 2.6.1**

The Oil Companies' Submission

9.1. The Oil Companies sought to permit temporary dewatering takes associated with construction activities, in particular underground tank installation and replacement, as well as dewatering associated with general infrastructure and utilities, by amending permitted activity rule 2.2.12 as follows (submission 1004.025):

2.2.12. Take of water for dewatering ~~of a trench~~.

OR *2.2.12. Take of water for dewatering of a trench and/or tank pit associated with underground fuel tanks.*

9.2. The submission also suggested alternative relief of providing a definition of trench that specifically includes excavations to enable the maintenance, replacement or installation of underground utilities, infrastructure or fuel storage tanks.

The Council's Decision

9.3. The Council rejected submission 1004.025 for the reasons outlined in the Section 42A Report (Topic 4: Water Allocation and Use). In particular they were not comfortable extending the provision beyond activities such as regionally significant infrastructure, and stated that the Oil Companies' dewatering activities should be considered through a resource consent process. The decisions version of Rule 2.2.12 and the associated standards read as follows:

2.2. Permitted Activities
2.2.12. Take of water for dewatering of a trench by a network utility or for regionally significant infrastructure.

2.3. Standards that apply to specific permitted activities
2.3.11. Take of water for dewatering of a trench by a network utility or for regionally significant infrastructure.
2.3.11.1. The take must not be within a Groundwater Protection Area.
2.3.11.2. The take must relate to a temporary trench excavated for the purposes of the installation or maintenance of infrastructure or geotechnical testing.

9.4. For completeness, the Oil Companies' service stations and truck stops do not fall under the definitions of "network utility" or "regionally significant infrastructure".

9.5. The alternate consenting pathways for dewatering in the decisions version of the MEP are copied below:

2.5. Discretionary Activities
2.5.1. Any activity provided for as a Permitted Activity or Controlled Activity that does not meet the applicable standards.
2.5.2. Any take of water not provided for as a Permitted Activity or Controlled Activity, or limited as a Prohibited Activity.

2.6. Prohibited Activities
2.6.1. Take of water that would cause the water quantity allocation limit for the relevant Freshwater Management Unit to be exceeded, unless the take is:
(a) provided for as a Permitted Activity;
(b) the subject of a resource consent application affected by section 124 of the RMA.

Reason for Appeal

9.6. The Oil Companies oppose the lack of a permitted pathway but note Council has recognised the issue and have enabled the scope of the permitted activity to be broadened to apply to their own activities. The consequence is that the Oil Companies will have to rely on a consenting pathway. However, that pathway does not adequately provide for the activity in all circumstances. There is an apparent and potential prohibited activity pathway for dewatering takes (if not permitted) for a take where an activity is located within a fully allocated Freshwater Management Unit. This means that there may be circumstances where there is no consent pathway to lawfully undertake dewatering activities (even for permitted activities where conditions are not met), thereby requiring that the Oil Companies delay or refrain from undertaking necessary tank replacement and maintenance activities. This in turn may result in other adverse effects. It is understood that at least two of the FMUs where the Oil Companies' service stations are located may currently be overallocated (Riverlands and Taylor). It therefore appears that construction dewatering activities requiring takes that are infrequent, temporary and short-term may be inadvertently captured by the provision. As such they have very limited potential effects on water allocation and it is not considered appropriate or reasonable for such construction takes to be subject to a prohibited pathway under any circumstance.

Relief Sought

9.7. The Oil Companies seek to ensure that dewatering takes associated with the installation or replacement of underground petroleum storage systems are provided for in the permitted activity rule and if a permitted activity condition is not met then a resource consent can be sought in every circumstance and will not be subject to a prohibited activity rule. This could be achieved by:

a) giving effect to the original submission and permitting temporary dewatering associated with excavations for the installation or replacement of underground fuel tanks, by amending permitted activity rule 2.2.12 and standard 2.3.11;

And as a consequential:

b) amending Rule 2.6.1 to ensure the intent of the provision (understood to be to apply only to long term ongoing takes rather than short term temporary takes) does not inadvertently capture short term temporary dewatering takes (including for underground storage tank installations). This could be achieved by making a change along the following lines to give effect to the original submission (additions in underline; deletions in strikethrough):

2.6. Prohibited Activities
2.6.1. Take of water that would cause the water quantity allocation limit for the relevant Freshwater Management Unit to be exceeded, unless the take is:
(a) provided for as a Permitted Activity;
(b) the subject of a resource consent application affected by section 124 of the RMA; or
(c) for the purpose of dewatering associated with the maintenance, upgrade or installation of existing utilities, infrastructure, or fuel storage tanks.

10. **GENERAL RELIEF**

13.1. The Oil Companies also seek the following general relief:

13.2. Make any consequential amendments as a result of the above amendments.

13.3. Such other relief as the Court sees fit to give effect to the Oil Companies' submissions.

Signature of person authorised to sign on behalf of the Oil Companies

....
Kahlia Thomas
Planning and Policy Consultant

Dated this 8th day of May 2020

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Annexures:

A. A copy of the Oil Companies' submissions
B. A copy of the relevant parts of the decision

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

For instructions on how to become a party to the appeal, please refer to Minute of Environment Judge J Hassan dated 15 April 2020.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

ANNEXURE A

A copy of the Oil Companies' submissions

1.1 Dewatering and Retanking

Whilst the establishment of Service Stations as a land use is provided primarily through the zone rules, certain activities including retanking and associated dewatering, and discharges to stormwater are ongoing and occur on Service Stations no matter what their zoning. It is appropriate for the MEP to include the necessary provisions to ensure that these activities are provided for and appropriately managed.

The Oil Companies will from time to time undertake geotechnical investigations that may require investigative bores e.g. tank foundations. Again, this occurs irrespective of the underlying zoning. The Oil Companies consider that observation wells should be permitted. At some of their sites, the Oil Companies also have monitoring bores. These are distinct to the observation wells[1] required in accordance with HSNOCOP 44 (Below ground stationary container systems for petroleum – design and installation, May 2012) as part of the installation of an Underground Petroleum Storage System (***UPPS***).

Whilst management of stormwater is a day to day operational matter, the upgrading of existing infrastructure on Service Stations occurs on a periodic basis. Such activities include retanking, where temporary and short term dewatering is often required, and upgrading of drainage. Retanking activities usually occur for between 5-10 days and are likely to occur only once on each Service Station in a 20 year period. Effects associated with these activities are short term, temporary and with appropriate mitigation, less than minor. The comparatively minimal water take combined with the non-consumptive water use, and the discharge, following treatment, of the water take back into the immediate environment, ensures that adverse effects on groundwater users and flows, levels or quality of surface water, are minimised. It is therefore appropriate to provide for these activities through the general rules.

In terms of drainage, the Oil Companies seek to ensure that their service station and truck stop facilities comply with the "*Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand*" (MfE 1998). These guidelines represent best practise in terms of the management of operational stormwater at petroleum industry sites.

Accordingly, although a number of rules have been supported and the relief sought seeks to retain these rules as notified, additions to the rules are also being sought to more specifically provide for the taking, diverting and discharge of water (dewatering and operational stormwater) associated with Service Stations. In this regard the rules need amendment to provide for:

[1] An **Observation Well** means a well installed within the excavation for a below ground stationary container system for petroleum and which is capable of being used to detect any loss of hydrocarbons from the system.

Dewatering

Dewatering of a tank pit used for dewatering associated with re-tanking of fuel storage tanks, to be provided for as a permitted activity. Dewatering of the tank pit is usually required where groundwater enters the tank pit, in order to ensure that the foundations are safely and appropriately constructed. Dewatering undertaken by the Oil Companies involves the removal of groundwater encountered during earthworks associated with the installation, including replacement and sometimes with the removal of, an underground petroleum storage tank at various sites, including at service station, truck stop and airport sites. On average tanks are replaced once in every 20 years.

The process for dewatering typically involves the following:

- Installation of sheet piling to a depth of 6-8 metres to retain the walls of the tank pit. Sheet piling will restrict water ingress within the tank pit excavation from a horizontal plane. The tank pit is usually excavated to a depth of some 4.5m.
- Removal of groundwater from the tank pit. The usual practice is to pump from a low point in the tank pit (using a submersible pump or a well point).
  - During the removal of materials from the tank pit area any visibly hydrocarbon impacted soil that may be present around the tank is removed. If the water in the pit shows signs of hydrocarbon contamination, this is treated prior to discharge to ensure that there is no more than 15mg/l of hydrocarbons in the discharge[2].
  - The water is drained via a treatment train to assist with sediment removal.
- The groundwater from the tank pit is typically discharged to the stormwater network, although in some cases it is discharged to land (e.g.: at some airport sites where large land areas are available to discharge to).

The dewatering process usually occurs over approximately 3-5 days, but the Oil Companies typically allow 10 days to cover contingencies.

It is noted that the exact methodology for dewatering can vary depending on the ground conditions or the contactors undertaking the work, but the environmental outcomes sought from the process are the same.

The current provisions 2.2.12, 2.3.11.1, 2.2.11.2 need to be amended to provide greater certainty that this activity is permitted.

- **Refueling and fuel storage within 20m of ground water.**

  The current rules 2.8.1.1 and 2.13.1.1 restricting refueling and fuel storage from taking place within 20m of water is unworkable. When the term 'water' is used it has the same meaning as in Section 2 of the RMA. Accordingly, it includes ground water. It is considered

[2] 15mg/l is the acceptable standard adopted in the Ministry for the Environment (MfE) Guidelines: Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand, MFE, 1998 and is easily identified through visual observation

The exemption for free standing signs from the setback from road boundaries is supported (Rule 2.35.1.7), however it is unnecessary to apply the height in relation to boundary control to signs in the front yard (Rule 2.35.1.6).

1.8 Definitions

A number of definitions are supported in that they provide for the land use activities undertaken by the Oil Companies. These include the specific definitions mentioned elsewhere in this submission, and also the definitions of Bore, Dewatering, Excavation, Fill, Filling and Fill Material, Service station, and Vehicle Orientated Activity.

A new definition is sought for 'drive through facility' that excludes Service Stations. This will ensure that the transportation rules in regard to parking and access, and in particular queuing spaces, are appropriate to the use of Service Station sites, which have a different queuing configuration and requirement to drive through services.

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2. RELIEF SOUGHT (Additions in underline, deletions in strike~~through~~).

WATER TAKES

A. 2.2 Permitted Activities

Permit dewatering (water take) activities associated with underground tank installation and replacement at service stations, and in respect of utilities as well as infrastructure. This could be achieved by amending Rule 2.2.12 as follows:

2.2.12. Take of water for dewatering ~~of a trench.~~

OR

2.2.12. Take of water for dewatering of a trench and/or tank pit associated with underground fuel tanks~~.~~

OR

By providing a definition for trench that specifically includes an excavation to enable the maintenance, replacement or installation of underground utilities, infrastructure or fuel storage tanks.

AND

B. 2.3 Standards applying to specific permitted activities

Amend the standards that apply to specific permitted activities to ensure that dewatering activities associated with maintenance upgrading or installation of underground tanks at service stations, utilities and infrastructure is a permitted activity. This could be achieved by making the following changes:

Amend the heading of Rule 2.3.11 in accordance with the relief sought to Rule 2.2.12 or the definition of trench in A, above.

AND

C. **Amend Rule 2.3.11.1. to exempt short term, shallow, non-consumptive takes relating to the maintenance, upgrading (including replacement) or installation of existing infrastructure within a Groundwater Protection Area. This could be achieved by making the following change:**

The take must not be within a Groundwater Protection Area <u>unless the take is being carried out for maintenance or upgrading or installation of existing utilities, infrastructure or fuel storage tanks, is non consumptive, is from an excavation not exceeding 5m in depth and will not exceed a total of 10 days</u>.

AND

D. ***Amend Rule 2.3.11.2. to delete the reference to "trench excavated" and replace it with a reference to "excavations", and to refer to upgrading, as well as installation and maintenance.***

The take must relate to a temporary ~~trench excavated~~ <u>excavation</u> for the purposes of the installation or maintenance <u>or upgrade</u> of infrastructure.

AND

E. **2.5 Discretionary Activities**

Retain 2.5.1 as notified

2.5.1. Any activity provided for as a Permitted Activity or Controlled Activity that does not meet the applicable standards.

AND

REFUELLING

F. **2.8 Standards that apply to all permitted activities**

Amend Rules 2.8.1.1 and 2.13.1.1 to control those activities within the vicinity of 'surface' water bodies, such as streams, lakes and rivers, and, specifically, not to control those activities in the vicinity of groundwater. This could be achieved as follows:

2.8.1.1 No refuelling or fuel storage or the storage or placement of any hazardous substance, including but not limited to oil, hydraulic fluid or other fluid lubricants, must take place within 20m of <u>surface</u> water.

AND

G. **2.13 Standards that apply to all permitted activities**

2.13.1.1. No refuelling or fuel storage or the storage or placement of any hazardous substance including but not limited to oil, hydraulic fluid or other fluid lubricants must take place within 20m of <u>surface</u> water.

AND

ANNEXURE B

A copy of the relevant parts of the decision

Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel[1].

2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.

3. Where the PMEP provisions **remain as notified**, it is because:

   (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.

4. Where there is a **change to a provision** within the plan it is because:

   (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or

   (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

   (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

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[1] (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

(d) A consequential change has been necessary following on from a decision in either a), b) or c).

5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.

6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.

7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

1055. This Rule was drafted as an enabling provision for a specific circumstance as it was considered that if trenching for cable laying was a Permitted Activity for network utilities, then any dewatering associated with that should also be permitted. It was not intended to be a broad enablement and the potential consequences of permitting anyone to dewater a trench for any purpose were not considered. I can potentially see merit in extending it to regionally significant infrastructure, as that would likely be consistent with the approach elsewhere in the MEP. Based somewhat on the content of other submissions lodged by the Oil Companies as well as its further submission, this provision was not intended to permit dewatering associated with underground tank installation and replacement, and I maintain my position that these activities should require a resource consent.

1056. Based on the intent of the provision, Mr Davidson's advice on other submissions on these provisions and the further submissions received, I recommend that the relief sought is accepted and that, if there is scope from a further submission (or as a consequential change of NZTA's submissions on the network utility provisions), reference is added to regionally significant infrastructure. The specific amendments are in the Recommended section below.

1057. The Oil Companies submissions (1004.025) seeks an amendment of the Rule as follows –

"Take of water for dewatering ~~of a trench~~"; or

"*Take of water for dewatering of a* ***trench and/or tank pit associated with underground fuel tanks***"*; or*

By providing a definition for trench that specifically includes an excavation to enable the maintenance, replacement or installation of underground utilities, infrastructure or fuel storage tanks.

1058. The Oil Companies submission (1004.026) seeks an amendment of the Standard 2.3.11.1 as follows –

"*The take must not be within a Groundwater Protection Area* ***unless the take is being carried out for maintenance or upgrading or installation of existing utilities, infrastructure or fuel storage tanks, is non-consumptive, is from an excavation not exceeding 5m in depth and will not exceed a total of 10 days.***"

1059. The Oil Companies submission (1004.027) seeks an amendment of the Standard 2.3.11.2 as follows –

"*The take must relate to a temporary ~~trench excavated~~* ***excavation*** *for the purposes of the installation or maintenance* ***or upgrade*** *of infrastructure.*"

1060. These amendments are sought to permit dewatering (water take) activities associated with underground tank installation and replacement at service stations, and in respect of utilities as well as infrastructure. The submission contains extensive information, much of which has already been covered elsewhere in this report, so only discussion quite specific to dewatering is referenced at this time. The submitter states that retanking, where temporary and short term dewatering is often required, usually occurs for between 5-10 days and is likely to occur only once on each Service Station in a 20 year period. The effects associated with these activities are short term, temporary and with appropriate mitigation, less than minor. The comparatively minimal water take combined with the non-consumptive water use, and the discharge, following treatment, of the water take back into the immediate environment, ensures that adverse effects on groundwater users and flows, levels or quality of surface water, are minimised. It is therefore appropriate to provide for these activities through the general rules.

1061. This submission has been considered by Peter Davidson and his advice is that he is not comfortable extending this provision beyond activities such as regional significant infrastructure, therefore he does not support dewatering in relation to fuel storage tanks. Peter notes that MDC are regulating the take of groundwater here, and it is not appropriate to widen it to include the disposal or discharge of the same water as it will normally be of lower quality, and this is the main issue as we know from experience at Springlands. If dewatering is needed, it needs to demonstrates there is no shortage of water, and water quality is a key consideration in Peter's experience.

1062. As discussed elsewhere in this report, and taking into consideration the advice of Mr Davidson, in my view, the activities described by the submitters should be considered through a resource consent process. I find it especially unpalatable that the submitters seek an exemption for their activity in a GPA, these areas have been established to protect drinking water supplies, and I do not find it to be an unreasonable proposition that the submitter should have to obtain a resource consent once every 20 years when they want to retank in a GPA. The amendments to Standard 2.3.11.2 are similar to those sought by others and will be considered below.

1063. The NZTA submission (1002.112) seeks amendment of Rule 2.2.12 and Standard 2.3.11.2 as follows –

Rule 2.2.12 – "*Take of water* ***and associated diversion and discharge of that water*** *for* ***the purpose of*** *dewatering* ***a site*** ~~*of a trench*~~."

Standard 2.3.11.2 – "*The take must relate to a temporary* ***excavation*** ~~*trench excavated*~~ *for the purposes of the installation or maintenance of infrastructure* ***or geotechnical testing***."

1064. The submitter states that it may be required to dewater excavation sites during road construction and maintenance projects, and it is appropriate to have a Permitted Activity rule for dewatering associated with excavations. However, 'trench' is not defined in the MEP (nor in the RMA) and it is unclear whether the submitter's excavation activities (which are generally temporary) are covered by Rule 2.2.12 and the Standards. While NZTA's work in maintaining or constructing State Highways constitutes the 'installation or maintenance of infrastructure', there are no other rules in the MEP relating to dewatering. It would be appropriate for the rule to relate to all excavations for the purposes of the installation or maintenance of infrastructure, or geotechnical testing. This Rule only authorises the taking of groundwater, but it would be good plan making if it also related to the associated diversion and discharge of the water.

1065. This submission has been considered by Peter Davidson and he is comfortable with replacing "trench" with excavation so long as there is no opportunity for the excavation to be of any size as scale does come into it. He is also comfortable with extending the activity to include geotechnical activities where for regionally significant infrastructure. In Peter's view it would not be appropriate to widen the Rule to include the disposal or discharge of the same water as it will normally be of lower quality and this is the main issue as we know from experience at Springlands.

1066. With regards to adding the diversion and discharge, this is either unnecessary or inappropriate. There is a take of water and then a "discharge" of that water onto ground, I do not see the need to add a diversion in there. As discussed earlier in relation to bore pump tests, the "discharge" of the water from dewatering onto ground is not a discharge as its just water being released onto land. And, if somehow, there was a discharge of contaminants, then a resource consent should be required (as alluded to by Mr Davidson).

1067. In my view, there is some level of comfort in amending the provision to be more generally for temporary excavation sites then specifically trenching. This is not exactly the intent of the

Rule as it is a companion provision for Rule 2.38.3 in the Network Utility provisions, however in the context of only applying to network utilities, and perhaps regionally significant infrastructure, it may be reasonable. The concern however, as raised by Mr Davidson, is that it will lead to the dewatering of sites that are of a much larger scale than that anticipated when the Rule is limited to dewatering trench sites. At this stage I have not recommended wording changes regarding excavation versus trench, as I would like to hear evidence regarding Mr Davidson's concerns. Based on the advice of Mr Davidson, I am comfortable with the addition of geotechnical testing to Standard 2.3.11.2.

1068. The Transpower submission (1198.041) seeks amendment of Standard 2.3.11.2 as follows –

"*The take must relate to a temporary trench excavated for the purposes of the ~~installation or~~ maintenance**, upgrade or development** of **utilities or** infrastructure.*"

1069. The submitter seeks minor amendments of the Standard to clarify that the it applies to the development and upgrading of utilities. 'Infrastructure' is not defined in the MEP, and therefore it is considered appropriate, and less ambiguous, to clearly reference utilities in the proposed Standard.

1070. This submission is not inconsistent with the MDC submission, which also seeks to clarify that the provision applies to network utilities. My preference is for the clarification to be in the Rule as sought by MDC, but it would appear this would address the submitters concerns. I see no need for the other changes sought, and I find there to be no persuasive discussion in the submission. Although the change sought was to a Standard, and I am recommending the amendment is to the Rule, I have recorded the recommendation in Appendix 1 as accepted in part.

1071. The Fish and Game submissions (509.226 and 509.227) do not seek specific relief for which an assessment or recommendation can be made, it only seeks clarification. The submitter seeks clarity over the need for specific provisions for such a Permitted Activity, particularly in relation to the provision for temporary trenches for the purposed of the installation or maintenance of infrastructure. In the submitters view, it is not clear what the Council considers to be a temporary trench, there is no definition included in the plan for this. There are also no limits included in the Plan on the size of any "temporary trench". Any definitions sought on trenching would have been considered in the network utilities hearing, which I was not involved in so I am not able to provide this information to the submitters.

Recommendation

1072. It is recommended that Rule 2.2.12 and Heading 2.3.11 are amended as follows –

"*Take of water for dewatering of a trench **by a network utility or for regionally significant infrastructure**.*"

1073. It is recommended that Standard 2.3.11.2 is amended as follows –

*"The take must relate to a temporary trench excavated for the purposes of the installation or maintenance of infrastructure**, or geotechnical testing**."*

Standard 2.3.13.3

1074. Standard 2.3.13.3 (associated with Rule 2.2.14) is a standard on a Permitted Activity rule, which received no submissions itself, and reads as follows (Rule 2.2.14 text provided for context) –

"Take and use of water for a recreational hut up to 1m^3 per day per hut…..

[R]

2.2.6. Take and use of water for dairy shed wash water down or ancillary milk cooling up to 15m^3 per day per dairy shed.

Comment [5]: Topic 4

[R]

2.2.7. Take and use of water from the Wairau Aquifer Freshwater Management Unit up to 15m^3 per day for any purpose until 9 June 2017 .(Deleted)

Comment [6]: Topic 4

[R]

2.2.7 Take and use water for the purposes of dust suppression on gravel roads up to 20m^3 per water body per day.

Comment [7]: Topic 4

[R]

2.2.8. Take and use of water for fire-fighting purposes and firefighting training by Fire and Emergency New Zealand and the New Zealand Defence Force.

Comment [8]: Topic 4

[R]

2.2.9. Take of water for the purposes of calibrating a water meter.

[R]

2.2.10. Take of water for the purposes of completing a bore test required to determine the yield of a bore and interference effects on other users.

[R]

2.2.11. Take and use of water for road, rail or river control construction, maintenance, repair or upgrade works up to 50m^3 per day per construction site.

Comment [9]: Topic 4

[R]

2.2.12. Take of water for dewatering of a trench by a network utility or for regionally significant infrastructure.

Comment [10]: Topic 4

[R]

2.2.13. Take and use of water from Significant Wetland W599 for skifield facilities and snowmaking at Rainbow Skifield.

[R]

2.2.14. Take and use of water for a recreational hut up to 1m^3 per day per hut.

[R]

2.2.15. Take, use and discharge of surface water for non-consumptive use.

[R]

2.2.16. Take and discharge of water to land for the purposes of purging water supply infrastructure or in emergency circumstances.

[R]

2.2.17. Damming water and the subsequent use of that water.

[R]

2.2.18. Diversion of water associated with the operation of the Drainage Channel Network existing on 9 June 2016, and permitted activities in the Floodway Zone.

[R]

2.2.19. Diversion and discharge of water by pumping or floodgated gravity outfalls associated with the operation of the Drainage Channel Network existing on 9 June

2.3.10.3. The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland.

2.3.10.4. Road, rail or river control construction works must be undertaken by, or on behalf of, the Marlborough District Council, the rail network operator or the road controlling authority.

2.3.11. Take of water for dewatering of a trench by a network utility or for regionally significant infrastructure.

2.3.11.1. The take must not be within a Groundwater Protection Area.

2.3.11.2. The take must relate to a temporary trench excavated for the purposes of the installation or maintenance of infrastructure or geotechnical testing.

2.3.12. Take and use of water from Significant Wetland W599 for skifield facilities and snowmaking at Rainbow Skifield.

2.3.12.1. The take must only be during the ski season.

2.3.12.2. The take must not cause the water level of the wetland to decrease by greater than one metre, as measured relative to a fixed reference point.

2.3.12.3. The instantaneous rate of the take must not exceed ~~20l~~100l/s.

2.3.12.4. Each take must be recorded, including the wetland water level before and after water is taken, the volume of water taken and the duration of the take. The records of all takes during each ski season must be provided to the Council by 1 December of the same year, or at other times when requested.

2.3.13. Take and use of water for a recreational hut up to 1m^3 per day per hut.

2.3.13.1. The recreational hut must be in the Open Space 3 Zone.

2.3.13.2. Where the take is from a river, except an ephemerally flowing river, the instantaneous take rate must not exceed 5% of river flow at the point of take at any time.

2.3.13.3. The take must not be from ~~a Water Resource Unit with a Natural State water quality classification, or~~ a Significant Wetland.

2.3.13.4. The take must not be otherwise provided for by a permitted activity or a resource consent.

2.3.14. Take, use and discharge of surface water for non-consumptive use.

2.3.14.1. The instantaneous take rate must not exceed 5% of river flow at the point of take at any time.

2.3.14.2. The take and discharge must not be from or into a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland.

2.3.14.3. The water must be returned into the same surface waterbody from which it was taken, at the same or similar rate and in the same or better quality.

2.3.14.4. The water taken must be discharged back into the same surface waterbody within 250m of the point of take.

2.3.15. Take and discharge of water to land for the purposes of purging water supply infrastructure or in emergency circumstances.

2.3.15.1. The take and discharge must be conducted by the Marlborough District Council.

Comment [27]: Topic 4

Comment [28]: Topic 4

Comment [29]: Topic 4

Comment [30]: Topic 4

Comment [31]: Topic 4

Comment [32]: Topic 4

Comment [33]: Topic 4

The following are Prohibited Activities for which no application can be made:

[R]

2.6.1. Take of water that would cause the water quantity allocation limit for the relevant Freshwater Management Unit to be exceeded, unless the take is:

- **(a) provided for as a Permitted Activity;**
- **(b) the subject of a resource consent application affected by section 124 of the RMA.**

[R]

2.6.2. Take of water from the Omaka Aquifer Freshwater Management Unit, Benmorven Freshwater Management Unit or the Brancott Freshwater Management Unit for use on land in another Freshwater Management Unit.

[R]

2.6.3. Take of water for frost fighting purposes between 1 January and 30 April in each calendar year.

[R]

2.6.4. Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

- **(a) Acheron River;**
- **(b) Branch River (including downstream of weir to the Wairau River confluence) provided that the rule does not apply to a take, use or diversion of water associated with the maintenance or upgrade of the State Highway 63 road bridge over the Branch River;**
- **(c) Chaytor Significant Wetlands - W127, W128 and W129;**
- **(d) Goulter River;**
- **(e) Goulter Significant Wetland - W35;**
- **(f) Kauauroa Bay Significant Wetland - W1026;**
- **(g) Lake Alexander;**
- **(h) Lake Chalice;**
- **(i) Lake Elterwater (not including its tributaries);**
- **(ij) Lake McRae;**
- **(jk) Te Hoiere/Pelorus River upstream of confluence with the Scott Creek;**
- **(kl) Pipitea Significant Wetland - W55;**
- **(lm) Possum Swamp Stream Significant Wetland - W116;**
- **(mn) Rainbow River;**
- **(o) Rarangi Wetland Complex – Significant Wetlands W128, W129, W130, W131 and W139;**
- **(np) Tarndale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere and Island Lake;**
- **(oq) Upper Wairau Significant Wetland - W580;**
- **(pr) Wairau Lagoons Significant Wetland - W1076;**
- **(qs) Wairau River upstream of the Hamilton River confluence.**

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