

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

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*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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**FOR MARLBOROUGH DISTRICT COUNCIL: MEP-APPEALS  
CASE MANAGEMENT MEMORANDUM NO. 1  
DATED 31 JULY 2020**

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**MAY IT PLEASE THE COURT:**

**Part 1 – Overview and Housekeeping**

*Purpose Statement*

[1] The purpose of this first memorandum by Marlborough District Council ("the Council") is to:

- (a) Provide the Court and parties with an overview of the Council's proposed process and methods for delivering its functions concerning the resolution of appeals to the proposed Marlborough Environment Plan ("MEP"). These may change, but this memorandum sets out the Council's best assessment of the method it will adopt for the management of the appeals;
- (b) Address the matters identified in the Court's first Minute dated 16 June 2020; and
- (c) Respond to the Court's Minute dated 21 July 2020 concerning the Dominion Salt Limited consent memorandum.

[2] The Council's objectives in framing these proposed processes are:

- (a) To enable the efficient disposition of appeals as quickly as possible to provide certainty to the community about the Plan provisions and to avoid the costs and complexity of managing proposed and operative plans over an extended period;
- (b) Dispose of the appeals as cost-effectively as possible so that the financial impact on the community of resolving appeals is kept to a minimum while not comprising the Council's functions;
- (c) To ensure transparency and visibility in resolving appeals. That means ensuring that people who are interested in the content of the MEP, even if they do not participate in the Court's process,

can see the steps taken concerning the finalisation of their community plan;

- (d) To take leadership concerning managing the appeal process to ensure the Court's resources are devoted to the efficient resolution of matters rather than administration of the logistics better handled by the Council but always subject to the Court's preferences and requirements.

### *Terms*

- [3] There are several versions of the MEP. The terminology that the Council will use for these versions is as follows:
  - (a) NV-MEP = Notified Version of the proposed Marlborough Environment Plan;
  - (b) DV-MEP = Decisions Version of the proposed Marlborough Environment Plan by the Hearing Panel appointed by the Council;
  - (c) AV-MEP = Appeals Version of the proposed Marlborough Environment Plan, which is a working document recording changes to the DV-MEP made by resolution of appeals as determined by the Court.

### *Communications with the Council*

- [4] The Council has decided to operate a Single Point of Contact ("SPOC") method of engaging with the Court and parties.
- [5] The person authorised to be the SPOC is Kaye McIlveney, in-house counsel at the Council. Ms McIlveney's contact details will be on the front of all documents filed by the Council.

- [6] All communications to Ms McIlveney's should be sent to the two addresses below:
- (a) kaye.mcilveney@marlborough.govt.nz;
  - (b) mep@marlborough.govt.nz.
- [7] The Council proposes as far as possible to pursue a paperless process. The proposed strategy is to carry out electronic publishing to the Council's website of all documents produced by the Council or other parties in this process. That follows a similar methodology that was followed by the Council through the first phase of Schedule 1. The website will be maintained regularly so that all information provided by the website is current.
- [8] The Council will also keep a list of the parties and their contact details. Where an appeal is resolved that person will be deleted from the list by a strike-through notation to show progress in the appeal process.

*Council Document Formats and Referencing*

- [9] The Council's documents in this process will as far as possible hyperlink to published papers on the website. That will minimise the amount of content in its documents and limit the size of files.
- [10] Hyperlinking within documents will be signalled in one or more of the following ways:
- (a) Resources that are hyperlinked will be underlined;
  - (b) A sentence may identify the following resource as being "here";
  - (c) In the case of tables where documents are referenced, a column will include a link.
- [11] All documents from any party will be published on the Council website.

*Delegations/Privileged Communications*

[12] The Council gave officers who are responsible for the management of the Plan the appropriate delegations to resolve appeals at mediation and through counsel by direct negotiation. Those people are Pere Hawes, Environmental Policy Manager, and Hans Versteegh, Environmental Policy & Science Group Manager. These gentlemen will liaise with the appropriate members of the Council as required.

[13] The only people authorised to record a settlement on behalf of the Council are counsel appointed for the Council to engage with the Court. Those counsel are:

- (a) John Maassen;
- (b) Kaye McIlveney.

[14] Officers of the Council will be liaising with parties in various ways to narrow and resolve issues. All those communications will occur on the basis that these are preliminary communications only and the Council's authorised position can only be presented by counsel.

*Table of Electronic Resources*

[15] The website will contain the following resources:

Resource No.	Resource Description	Link
1.	Contact details of parties	<a href="#">List of Parties (16 June 2020)</a>
2.	Decisions of the MEP by the Council's Panel	<a href="#">Full Decision on the PMEP Decision by Topic</a>
3.	DV-MEP tracked changes version	<a href="#">Decision Version of the PMEP</a>
4.	AV-MEP tracked changes version <sup>1</sup>	<a href="#">Appeals Version of the PMEP</a>

<sup>1</sup> These are tracked changes after accepting as a result of the decisions of the Council's Panel in DV-MEP.

5.	Appeals received	<a href="#">Appeals Received</a>
6.	List of appeals by number	<a href="#">Appeal List by Lodgement Number</a>
7.	List of appeal points <sup>2</sup>	<a href="#">Appealed Provision List</a>
8.	List of topics and subtopics	<a href="#">List of Topic and subtopics (31 July 2020)</a>

### *Communication*

- [16] When the Council files a document, it will notify the affected parties that it has filed a document and give a location (URL) to find it on its website.
- [17] If any other party wants to follow the same process, then the Council is willing to provide the service whereby the document is placed on the website, and the party is provided with the link to notify others.
- [18] The exception will be that electronic copies of files will be provided to the Court of all Council documents and hard copies where the Court requires.

### *Dialogue*

- [19] The Council is very open to dialogue on—
- (a) its processes; and
  - (b) in narrowing points of difference.
- [20] The Council prefers to file joint memoranda where possible, and Kaye McIlveney is available to arrange that sort of documentation on an as-required basis and on short notice.

### *Assessment of Appeals and Appeal Points*

- [21] The Council has analysed the appeals and subdivided them into appeal points. Appeal points generally relate to individual DV-MEP provisions

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<sup>2</sup> Item 7 in the Table of Electronic Resources will, with the Courts, approval, be updated to identify the Topic & Sub-Topic for each appeal point.

(see Item 9 in the Table of Electronic Resources). Identifying the appeal points has three benefits:

- (a) It identifies the text in DV-MEP that is in issue;
- (b) Ensures that all issues that arise from an appeal are resolved;
- (c) Ensures there is no scope creep during the appeal resolution process.

### **Part 2 – Overview of MEP Process so far**

[22] The Council is a unitary authority with the planning functions of both a regional council and a district council. In this setting, the Council determined that it would utilise the opportunity under Section 80 of the RMA to combine its planning documents. The MEP contains the following RMA planning documents:

- (a) A Regional Policy Statement;
- (b) A Regional Coastal Plan;
- (c) Other regional plans reflecting the Council's functions under RMA, s 30;
- (d) A District Plan.

[23] Provisions are coded as to whether they are a regional policy statement, regional coastal plan, regional plan and/or district plan provisions.

[24] All of this means that the MEP provisions cover an extensive range of issues and the subsequent provisions give effect to all of the Council's section 30 and 31 functions. As a result, the subject matter of the appeals is broad as reflected in the topic list.



[25] The MEP comprises four volumes as follows:

- (a) Volume 1 – Policies and Objectives;
- (b) Volume 2 – Rules;
- (c) Volume 3 – Appendices;
- (d) Volume 4 – Maps.

[26] The structure of Volume 1 is as follows:

Volume 1 – Index

Chapter No.	Contents
1.	Introduction
2.	Background
3.	Marlborough's Tangata Whenua Iwi
4.	Sustainable Management of Natural and Physical Resources
5.	Allocation of Freshwater Resources
6.	Natural Character
7.	Landscape
8.	Indigenous Biodiversity
9.	Public Access and Open Space
10.	Heritage Resources and Notable Trees
11.	Natural Hazards
12.	Urban Environments
13.	Use of the Coastal Environment and the Allocation of Coastal Space
14.	Use of the Rural Environment
15.	Resource Quality (Water, Air, Soil)

16.	Waste and Discharges to Land
17.	Transportation
18.	Energy
19.	Climate Change <sup>3</sup>

[27] The contents of Volume 2 are set out in the table below:

Chapter No.	Contents
1.	Introduction
2.	General Rules <sup>4</sup>
3.	Rural Environment Zone
4.	Coastal Environment Zone
5.	Urban Residential 1 and 2 Zones
6.	Urban Residential 3 Zone
7.	Coastal Living Zone
8.	Rural Living Zone
9.	Business 1 Zone
10.	Business 2 Zone
11.	Business 3 Zone
12.	Industrial 1 and 2 Zones
13.	Port Zone
14.	Port Landing Area Zone

<sup>3</sup> The Hearings Panel determined that it would elevate Volume 1, Chapter 19 but that the reordering would not occur until the MEP is to be made operative to allow for ease of reference to provisions through the appeals process.

<sup>4</sup> The General Rules apply to any part of the District regardless of zoning and relate to Water take, use, damming and diversion; Activities in, on, over or under the bed of lakes or rivers; The drainage channel network; Discharges to water; Activities in the road and rail corridor; Heritage resources and notable trees; Transportation; Signs, Network Utilities; Temporary Military Training Activity; and Emergency Electricity Generation.

15.	Marina Zone
16.	Coastal Marine Zone
17.	Open Space 1 Zone
18.	Open Space 2 Zone
19.	Open Space 3 Zone
20.	Open Space 4 Zone
21.	Floodway Zone
22.	Lake Grassmere Saltworks Zone
23.	Airport Zone
24.	Subdivision
25.	Definitions

[28] Submissions made under the Schedule Plan on NV-MEP were heard by a Panel as follows:

- (a) Trevor Hook – Councillor (Chairperson);
- (b) David Oddie – Councillor;
- (c) Jamie Arbuckle – Councillor;
- (d) Rawiri Faulkner – Commissioner;
- (e) Ron Crosby – Commissioner;
- (f) Shonagh Kenderdine – Commissioner.

[29] The hearing process commenced on 20 November 2017 and was completed on 29 April 2019. The Hearings Panel structured the hearings by topic, and there were 22 topics heard in sequence over the 18 months.

- [30] A composite decision divided into the same topics was publicly notified on 21 February 2020. The introduction to the decision provides an overview of the decisions, including the Panel's approach to issuing decisions. A copy of the introductory decision is attached as Appendix 1.
- [31] The DV-MEP was released after the decision was publicly notified. It incorporates the decisions as tracked changes to the NV-MEP.
- [32] There were four interim decisions issued throughout the hearing; none of which have any consequences for the appeals.
- [33] The topic subdivision worked well because it created a manageable sequence of elements of the Plan and reflected the following:
- (a) Relevant resource domains;
  - (b) Relevant regional and district functions;
  - (c) Tangata whenua;
  - (d) Special considerations and specific activities such as forestry.

### **Part 3 – The Appeals**

- [34] There are 51 Appellants and 384 s274 notices from 61 distinct parties. The Council made an initial analysis of the appeal notices and has identified a large number of appeal points as they relate to specific provisions. There are over 1200 appeal points. The resulting table is available on the Council website [here](#).
- [35] A reasonable number of the appellants are not from Marlborough and include central government agencies and national organisations.
- [36] The number of appeals concerning the District Plan component of the MEP especially with respect to urban development is limited. That is positive because land use is a significant economic activity, and it helps

the community that the District Plan component of the plan can be treated as operative. Council proposes that appeals about the District Plan relating to urban development will be prioritised so that that component of the MEP can be put to one side as operative as soon as possible.

**Part 4 – Possible Electronic Appeals Management and Other Management Details**

[37] The appeals raise disputes concerning the text of the MEP. It is, therefore, a text-focused process. The appeals relate to an integrated document. In addition to resource management questions, the management of the appeal process requires the following:

- (a) Appropriate management of document resources;
- (b) Project management.

[38] The Council proposes to manage issues according to topics as used by the Hearing Panel and subtopics prepared for this process. The Council will address appeals concerning those matters on multiple fronts simultaneously where feasible given the Council's resources.

[40] The Council is evaluating the option of using a version of the "Hearings Portal" for this purpose. The "Hearings Portal" was utilised during the hearing process to schedule hearing topics and hearing appearances; distribute the Section 42A reports for each topic to submitters, and to provide public access to all evidence.

[41] The appeals process equivalent would provide the following:

- (a) An information hub for each of the topics (split into subtopics when required);
- (b) Process updates;
- (c) Document management by topic;

- (d) Management of events;
- (e) Management of communications.

[39] Regular updating (at a frequency required by the Court) will be provided by case management memoranda to the Court and reflect the progress in advancing topics or subtopics.

[40] Where the Court is asked for or has directed assistance by mediation or a Court hearing, the Court and parties will be given a DRL table which is an acronym for Document Resource Locator table where links to relevant documents on websites are located. That will orientate users to the relevant resources.

#### **Part 5 – Addressing the Environment Court's Minute of 16 June**

##### *Topic Structure and Sequencing*

[41] Following the Council's Panel's decision structure, the Council proposes to divide topics according to the 22 topics (and hence 22 decisions) of the Hearings Panel. These are then divided into subtopics in tables that cross-reference to the appeals.

[42] The tables of topics and subtopics are available on Council's website, [here](#).

[43] The Council does not propose to choose a uniform sequencing methodology to resolve these appeals, such as taking a top-down approach to addressing provisions.

[44] The Council considers that because of the scope of the MEP and the scope of the appeals, a more nuanced approach is desirable.

[45] For particular domains, there may be some sense in a process that commences with objectives and policies. In the case of some appeals that are activity-based, addressing rules immediately is sensible where

they do not heavily depend on objectives and policies that are in dispute under other appeals.

[46] The idea is to focus on particular subtopics in a logical and pragmatic way simultaneously while ensuring the Plan remains well integrated.

[47] It is imperative for the Council to maintain an integrated planning instrument. Therefore, the Council proposes two ways of resolving an appeal point as follows:

- (a) A consent memorandum and draft consent order. In that case, the appeal is resolved if the Court decides to make the order, and the provision then becomes operative.
- (b) A joint memorandum. Any joint memorandum that does not include a draft consent order is subject in all cases to a reservation by the Council as follows:

This joint memorandum is subject to final approval of the Court that will be obtained only after completion of related appeals concerning the topic to which it relates. Therefore the Council's agreement is subject to the Council being satisfied that the MEP retains its consistency and coherence following resolution of other appeals and remains otherwise appropriate.

[48] Attached as Appendix 2 is an indication for particular subtopics that have been prioritised for resolution in the third quarter of 2020. There is a focus on urban development and infrastructure in the priorities as the resolution of these matters will assist in providing certainty when planning for Covid-19 recovery.

### *Mediation*

[49] The Council will benefit from the mediation resources of the Court.

- [50] The Council's preference in the first instance is to have meetings with parties and either resolve matters or narrow the matters in dispute. Also, talking will enable a common approach to unresolved issues.
- [51] Where mediation is required, the Council proposes to make a Request for Mediation.
- [52] When making a Request for Mediation or the Court directs mediation, the Council will provide the Court the following, with the co-operation of other parties:
- (a) A Document Resource Locator identifying for the mediator the location of the relevant document resources;
  - (b) A table showing the different positions on the text by the parties (where feasible).
- [53] At any mediation, the Council will have resources to amend and resolve text where possible as part of the mediation process.

*Elements of the MEP that are beyond challenge*

- [54] Significant portions of the MEP are beyond challenge. The Council has annotated the AV-MEP on its website. Those parts that are highlighted are under appeal. Those parts that are not highlighted are beyond challenge and, in the context of rules, can be treated as operative under Section 86F of the RMA.

*Jurisdictional Matters*

- [55] Some jurisdictional points arise from some of the appeals. There is only one jurisdictional matter that the Council wishes to raise at this stage. It concerns the appeal by Friends of Nelson Haven Tasman Bay Env-2020-CHC-33 (the Friends of Nelson Appeal). That appeal is on matters relating to Topic 5: Natural Character and Landscape and Topic 6: Indigenous



Biodiversity. Concerning Topic 5 the specific reasons for appeal are at [5]-[30]<sup>5</sup>. They set out the basis for a challenge to the methodology for the assessment of natural character and landscape by the Council.

- [56] In the case of both natural character and landscape, the Council undertook an extensive study with consultants Boffa Miskell Limited. In the case of landscape that work commenced with the release of the Marlborough Landscape Study in 2009. This Study was peer-reviewed and went through an extensive public consultation process. The Marlborough Landscape Study was completed in 2015 and contributed significantly to the NV-MEP. This included the identification of outstanding natural features and outstanding natural landscapes and landscapes with high amenity value.
- [57] In the case of natural character, that work commenced with the release of the document *Natural Character of the Marlborough Coast* in 2014. The process of development followed Department of Conservation guidance on giving effect to the NZCPS. As for landscape, the document contributed significantly to the NV-MEP, including the identification of areas with high, very high and outstanding natural character.
- [58] Mr Stevens, a landscape architect for the Appellant, proposed a different methodology for the assessment of landscape and natural character but was unable to identify to the Hearing Panel how that different methodology would translate into different provisions and different maps.
- [59] The relief sought in the Friends of Nelson Appeal is at their [31]-[35]. The relief does not seek changes to the provisions for maps. The relief at [35] suggests that the Court undertake under its supervision using a RMA s 293 process. A s 293 process would be a complicated process for the

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<sup>5</sup> Notice of Appeal, Friends of Nelson Haven Tasman Bay, Env-2020-CHC-33

Court to manage and would not be of value if the maps were not to be changed.

[60] Appeals concerning a Plan should seek changes to provisions or documents incorporated by reference. Provisions in this context include maps. The Friends of Nelson Appeal does not do that.

[61] None of the provisions incorporates the methodology that established the maps or provisions. They are the product of that methodology to the extent accepted by the Hearing Panel. The Council does not want to spend money and time on debates concerning methodology that have no practical impact in terms of provisions or maps.

[62] The Court should only entertain a RMA, s 293 process as a last resort and it should not be identified as a primary method of relief.

[63] 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.

*Further Particulars*

[64] Many of the appeals are detailed as to the provisions affected, the reasons for the appeal and the relief required. However, many of the s 274 notices are not detailed as to the particular appeal points that the party is interested in. That is problematic for a range of reasons including coordinating discussions and managing the logistics of advancing settlement negotiations and mediation.

[65] The Council at this stage has not had the opportunity to analyse in great detail what further particulars are required. It would prefer to talk to the parties in the first instance to see if particulars can be provided voluntarily. However, the Council signals the need for the s 274 parties to use the List of Appeal points as a reference point to inform the Council what provisions they are interested in to secure their interest.

[66] The Council asks for leave to request further particulars in due course if required because there is a lack of voluntary co-operation in achieving appropriate particulars. In any such case it will lodge the request with the Court. The form of the request will follow the District Court Rules and may be a generic request that all s 274 parties provide a list of provisions they wish to address in accordance with Council's List of Appeal Points.

### **Part 5 – Other Matters**

#### *Leave and Waivers*

[67] The Council respectfully seeks:

- (a) Leave to the extent required for the process outlined in this memorandum;
- (b) Any waivers and directions to facilitate the process identified in this memorandum including the electronic methods of distribution.

#### *Designations*

[68] The Council has made decisions on designations. That process is different from decisions of the Hearing Panel. The Council made recommendations to the requiring authorities on the non-Council designations and decisions on the Council designations. The Council has received decisions from all requiring authorities. There is only one designation that involves a third party submitter, the Ministry of Education's designation for Whitney Street School (Ref C32). That person has been provided with the Ministry's decision and advised that the appeal period closes on 12 August 2020.

[69] There is therefore the possibility of an appeal on the decision regarding designation C32. If an appeal is received, it can be managed under the umbrella of the Court's MEP process.

#### *Variations*

[70] Council has three variations called 1A, 1B and 1C. These variations relate to the provision of aquaculture. A large number of deemed coastal permits are due for consenting in 2024. In accordance with the New Zealand Coastal Policy Statement, the Council is proposing a variation that will create aquaculture management areas to allocate specific appropriate locations for marine farms in the Marlborough Sounds. The Council's proposed variation will accommodate most existing marine farming in the Marlborough Sounds. The variation process followed the MEP process for two reasons:

- (a) The spatial identification of ONC, ONFL and Ecologically Significant Marine Sites needed to be advanced before it could be determined what were appropriate locations for marine farms following *King Salmon*<sup>6</sup>;
- (b) The Council preferred a consultative process. That took 18 months, leading to a high degree of consensus. The framework had its complexities.

[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

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<sup>6</sup> Environmental Defence Society Inc v King Salmon Company Limited (2014) NZSC at [24].

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.

- [73] The Council seeks more time to reflect on how to progress the appeals on natural character, landscape and ecologically significant marine sites.

#### *Other Influences*

- [74] The Council's resource management documents must give effect to national policy statements, and the rules cannot duplicate or conflict national environmental standards. Although it is a point of contention in some appeals (as identified in the relevant notices of appeal), the Council's position is that the MEP currently fulfils its statutory obligations as set out above.

- [75] The Council is aware that there is an ongoing programme of national direction. In particular, the proposed National Policy Statement for Freshwater Management is to be updated very shortly to implement the government's Essential Freshwater programme and the new National Policy Statement for Indigenous Biodiversity is expected early in 2021.

- [76] 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.

[77] The topics at particular risk in this regard are:

- (a) Water Allocation and Use;
- (b) Water Quality;
- (c) Indigenous Biodiversity in so far as the national policy statement relates to the Council's Significant Natural Areas Programme and indigenous vegetation clearance rules.

*Other matters*

[78] Several s 274 parties have withdrawn their notices, and a consent order has already been negotiated (see para [80]). The Council expects several consent order applications to be prepared and filed soon. The website will be updated as each withdrawal occurs or when consent orders are made.

*Approach to Evidence on Appeals*

[79] If appeals require hearings, then the Council's proposed approach to evidence, subject to the Court's requirements, is as follows:

- (a) To focus technical and evaluative evidence on the particular provisions under dispute following dialogue with the interested parties to ensure the scope of the argument is clear;
- (b) Cross-reference to s 42A reports, the Hearing Panel's decision and other relevant material that will be identified in a DRL.

*Dominion Salt Consent Memorandum*

[80] In its Minute of 21 July, the Court required the Council to provide formal advice as to whether there are any related appeals on the same topic/rule/policy/issue and, if so, whether:

- (a) The consent documentation should remain on file pending any related appeals/topics; or
- (b) The consent documentation can be progressed for issuing without any impact on any other appeal or topic.

[81] The Council is of the view that the Dominion Salt appeal deals with discrete issues not affecting any other appeals. The appeal is technical and is confined to activities within or near the Lake Grassmere Salt Works Zone (the "Zone"). No third parties have joined this appeal under s 274. The appellant and the Council are the only parties.

[82] There are no related appeals on the same topic, rule, policy or issue. The appeal is related exclusively to activities in the Zone and to the extent of the Zone.

[83] There are some other appeals affecting rules in the Zone. These appeals are unrelated to the Dominion Salt appeal. They are general (in that the appeals also apply in other zones) and relate to vegetation clearance (*Environmental Defence Society*), discharges from cooling towers (*Minister of Defence*) and noise restrictions (*Waka Kotahi New Zealand Transport Agency*). None of these appeals would be affected by the proposed consent order.

[84] The proposed extension of the Zone is confined to narrow strips of land surrounded by the Zone but currently not in any zone.

[85] The Council considers that the consent documentation can be progressed without impacting any other appeal or topic.

Handwritten signatures in blue ink. The first signature is 'John Maassen' and the second is 'Kaye McIlveney'. They are written in a cursive style.

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John Maassen/Kaye McIlveney  
Counsel for the Marlborough District Council



**Appendices**

List of Appendices

Appendix No.	Description
1.	MEP Hearing Panel Decision- Introductory Chapter
2.	Priorities for resolution
3.	List of Appellants

## Appendix 1 – Decision of MEP Hearing Panel

Introduction

**Decision was made under delegation (Minute D.15/16.133) from the Marlborough District Council:**

### Introduction to Decisions

#### **14 Background Procedural Matters**

##### **1.0 Delegation**

**1.1** At the meeting of the Regional Planning and Development Committee (now Planning, Finance and Community Committee) on 8 October 2015, the Committee delegated the power to the Hearing Panel to hear submissions and make decisions on the Proposed Marlborough Environment Plan (PMEP) (as per Minute D.15/16.133, ratified by minute C.15/16.166). Councillor Hook was also appointed as Chair of the hearings panel at this time.

**1.2** At its meeting on 1 December 2016, the Planning, Finance and Community Committee resolved to appoint a hearings panel for the PMEP consisting of four councillors and three independent commissioners, one of whom would have experience in Mātauranga Māori (Minute number A.16/17.202, ratified by Minute number C.16/17.222.).

**1.3** The four councillors appointed as commissioners were Councillors Hook, Oddie, Arbuckle and Shenfield.

**1.4** The independent commissioners for the MEP hearings panel, Shonagh Kenderdine and Ron Crosby, were appointed by the Planning, Finance and Community Committee at its meeting on 23 March 2017 (A.16/17.e.51). That decision was ratified by the Council on 6 April 2017 (C.16/17.e.54). At its meeting on 29 June 2017, the Council appointed Rawiri Faulkner as commissioner with experience in Mātauranga Māori, to the PMEP hearings panel (Minute number C.16/17.467).

##### **2.0 Clauses 10 and 16 of the First Schedule**

**2.1** Clause 10 of the First Schedule sets out that the Council and therefore the Panel (operating under delegation) must give a decision on the PMEP provisions and matters raised in submissions. Clause 10(2) stipulates that the decision is to include the reasons for accepting or rejecting the submissions, and for that purpose may group them according to the provisions or matters to which they relate, and may include consequential alterations and other relevant matters. Clause 10(3) confirms that a local authority is not required to give a decision that addresses each submission individually.

### **3.0 Clause 16 of the First Schedule**

**3.1** By Clause 16(2) of the First Schedule, the Council and therefore the Panel (operating under delegation) is empowered to make amendments to alter information, where the alteration is of minor effect, and to correct minor errors. The Panel has taken the opportunity to make such changes where appropriate.

### **4.0 Procedural Minutes**

**4.1** Prior to the hearings commencing, the MEP Hearing Panel issued two minutes (Minutes 1 and 2) setting out the procedure for the hearings. Minute 1 set out the proposed procedure and requested feedback from submitters. After consideration of the feedback provided, the Panel made amendments where appropriate before confirming the procedure in Minute 2.

**4.2** If submitters were unable to meet the specified procedures they were asked to set out their requests in writing. These requests were considered by the Panel each on its own merits and a minute issued setting out its decision. These minutes were recorded and distinguished by an alphanumeric, being Minute 3 and a sequential letter.

**4.3** These initial procedural minutes included the setting of timeframes for the pre-circulation of evidence, legal submissions and restrictions on time available for speaking at hearing, among other aspects.

**4.4** These constraints were necessary to allow for the efficient use of time and resources while maintaining submitters' ability to appropriately address their submission points for any given topic. Often discussions during the hearings between the Panel and submitters led to longer sessions occurring. These were

productive and the Panel found that the clarification provided by the discussion contributed to their understanding of specific issues. This, however, would often affect timetabling of subsequent submitters and the Panel extend their appreciation to submitters for their patience while they explored these issues.

- 4.5** Due to the scale of the hearing process, the requirement for pre-circulation of evidence and legal submissions was found to be invaluable to the Panel as it enabled pre-reading of those materials. Questioning of submitters and their experts was highly beneficial to the understanding of the relief requested by submitters and pre-circulation provided a platform from which this could be achieved.
- 4.6** The Panel wish to commend submitters for their part in adhering to the procedures as set out in Minutes 1 and 2.
- 4.7** On 4 April 2018, the Panel issued another procedural minute, Minute 11. The need for this Minute arose from several submitters seeking changes to PMEP provisions that fell outside the bounds of their original submission. Minute 11 addressed the increasing trend of 'scope creep' and requested submitters carefully consider the content of their evidence and/or legal submissions to ensure no relief beyond the scope of the relief sought in a submission was being requested, prior to presenting to the Panel, as inclusion of such material unduly wasted time.
- 4.8** A final procedural minute, Minute 51, was issued on 11 March 2019 providing submitters an opportunity to identify any submission points that had not been previously subject of a hearing notice throughout the MEP hearing process. One request for a further appearance was received in response to this Minute but it was not accepted as the matters identified had been the subject of earlier hearing notices.
- 5.0 Substantive Minutes**
- 5.1** Regularly during the PMEP hearing process, the Panel issued minutes to submitters and Section 42A report writers, and occasionally to Council staff or to other parties, to seek further information. This information typically sought to aid the Panel's understanding of the nature of the relief requested in evidence

or to gain insight into the implications of granting the relief requested. A total of 56 minutes on substantive matters were issued over the course of the hearing process. The minutes and responses to the minutes were posted on the Council website in a timely fashion.

**5.2** The information provided in response to these substantive minutes proved invaluable to the Panel's deliberations. The Panel thanks those that responded to the substantive minutes for their prompt response and the additional effort required post hearing to compile the information requested.

## **6.0 Conflicts of Interest**

**6.1** During the hearing, there were 16 instances where a commissioner or commissioners declared an actual or perceived conflict of interest on matters raised in submissions.

**6.2** In most instances, the Commissioners were aware of the potential conflict through the pre-circulated evidence and raised the issue at the beginning of the hearing of the relevant topic and again at the time of hearing from the relevant submitter.

**6.3** In cases of clear conflict once a formal statement was made, the Commissioner stood down from their duties on that particular submission point.

**6.4** In some cases it was not clear whether or not a perceived or actual conflict of interest arose. In these situations the commissioner or the chairperson would detail the issue and provide the affected submitter and/or further submitter an opportunity to respond. If the submitter had no issue with the situation that commissioner remained involved.

**6.5** For each perceived or actual conflict of interest, the commissioner provided a statement outlining the issue. A record of these statements has been compiled which is attached as an appendix (Appendix 1) to this decision. At the commencement of each topic decision any relevant declaration of potential conflict is listed. Anybody interested can obtain the detail from the appendix.

## **7.0 Section 32**

**7.1** Section 32 of the RMA directs a local authority making a proposed plan to carry out an evaluation, both before it is publicly notified, and before making a

decision on submissions. The evaluation is to examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act, and whether, having regard to their efficiency and effectiveness, the policies, rules and other methods are the most appropriate for achieving the objectives. For the purpose of those examinations, the evaluation is to take into account the benefits and costs of policies, rules or other methods; and also the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods. The local authority is to publish a report summarising the evaluation and giving reasons.

**7.2** The Panel notes that in compliance with Section 32, the Marlborough District Council carried out an evaluation of the PMEP before it was publicly notified, and published a sequence of reports summarising the results of the evaluation. The Panel's evaluation with respect to Section 32 is inherent within its consideration of the relief requested by submitters and its decision making process.

## **8.0 Section 42A Report**

**8.1** The Panel had the benefit of a Section 42A report prepared for each topic. The reports addressed the points of relief requested in submissions on the PMEP provisions within each topic, evaluated the relief requested and provided recommendations to the Panel on whether to accept or reject the relief requested. The volume of documentation involved in the hearing and deliberation process for the PMEP has been immense. There were some 17,000 submission points from over 1300 submitters.

**8.2** In accordance with procedural Minutes 1 and 2, this report was provided to submitters who wished to be heard at least 10 days prior to evidence falling due.

**8.3** The report writer also attended the hearing, either in person or via Skype to present their Section 42A report to the Panel. The report writer was available to answer questions and provide advice during the hearing. On hearing the evidence presented to the Panel in person or in writing, the report writer also prepared a Reply to Evidence. This set out whether their initial

recommendations had changed after hearing the evidence and/or legal submissions and why.

- 8.4 The Panel is appreciative of the valuable input that the Section 42A report writers have made to the hearing process and the effort to provide both the Section 42A reports and the Rights of Reply in a timely fashion.

## **9.0 Hearing Structure**

- 9.1 It was evident to the Panel at an early stage that the combination of the extensive nature of the PMEP (being a regional policy statement, regional coastal plan, regional plan and district plan) and the large number of submitters would present a challenge to hearing evidence. The Panel decided to use a topic based approach to hearing submitters as this would allow all submitters on a topic to be heard at the same time. This decision was recorded in procedural Minutes 1 and 2. As it transpired, a topic-by-topic approach allowed the Panel to consider and evaluate the evidence efficiently and effectively. It also allowed the Panel to deliberate on the evidence as the hearing proceeded.

- 9.2 The Panel understood that topic-by-topic hearings meant that some submitters had to appear on more than one occasion in order to present their submissions on multiple topics (though in some cases they provided written submissions as an alternative to appearing in person due to financial restrictions or time constraints). The Panel would like to pass on their appreciation for the extra effort and expense that the submitters undertook to provide evidence on a topic-by-topic basis. Several submitters made requests to ease this burden, such as to be heard on matters out of turn, and the Panel accommodated this, where it could, to assist.

- 9.3 To keep its decision to a manageable size, the Panel has also taken a topic-by-topic approach to structuring the decision on the PMEP. A separate and distinct decision has been made on each topic heard. In the case of the "miscellaneous" topics heard on 29 April 2019, the decisions have been incorporated into the relevant earlier topic.

## **10.0 Panel attendance**

**10.1** As can be expected with such a long process, there were times when not all panel members were able to attend to hear submissions on a given topic. Where this was the case, the panel member did not take part in the deliberation process on that topic. Generally, health reasons were behind the absence.

10.2 However, of substantial note, was the departure of Commissioner Laressa Shenfield. In October 2018, Mrs Shenfield stood down from her role as a Councillor for the Marlborough District Council. However, the Council determined that Mrs Shenfield could continue as a commissioner to complete the deliberations only on those topics she had already heard (Minute Cncl-118-166). Mrs Shenfield subsequently advised the Panel that as she now lived in Australia she would be logistically unable to continue in the role. The Panel would like to thank Mrs Shenfield for her contribution to the process.

#### **11.0 Submitter Appearances**

**11.1** The submitters who appeared at the hearing to provide evidence to the Panel in support of their submissions at each hearing block are set out in Appendix 2.

**11.2** The Panel wish to commend submitters on the constructive manner in which they conducted themselves. The provision of succinct evidence and legal submissions, combined with the efficient use of time afforded to them during their presentations, provided the Panel with more time to question and discuss the evidence and submissions with the submitter, their experts and/or their counsel. The Panel found that exchange particularly useful for testing the evidence and/or submissions.

**11.3** In some cases, submitters did not attend the hearing but lodged legal submissions or written evidence instead. The parties who lodged legal submissions and/or evidence for each hearing block are identified in Appendix 3.

#### **12.0 Interim Decisions**

**12.1** From the outset of hearings, the Panel agreed not to issue interim decisions unless the submissions met specific criteria. The criteria were restricted to matters with a limited setting, where a sustainable management purpose would be served and where a particular subject matter could be



regarded as entirely discrete from other subject matter in the PMEP. In total, four interim decisions were issued during the hearing process. These are available on the Council website and where appropriate, are incorporated into the final decision document.

### **13.0 Structure of Decisions**

- 13.1 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. (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.)
- 13.2 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.
- 13.3 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.
- 13.4 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
  - d) A consequential change has been necessary following on from a decision in either a), b) or c).
- 13.5 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.
- 13.6 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.
- 13.7 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.

#### **14.0 Topic Decision**

**14.1** Each topic has a separate decision. Those topics are as follows:

Topic 1:	General
Topic 2:	Marlborough's Tangata Whenua Iwi
Topic 3:	Natural and Physical Resources
Topic 4:	Water Allocation and Use
Topic 5:	Natural Character
Topic 5:	Natural Character – Technical mapping
Topic 5:	Landscape
Topic 6:	Indigenous Biodiversity
Topic 7:	Public Access and Open Space
Topic 8:	Heritage Resources and Notable Trees
Topic 9:	Natural Hazards
Topic 10:	Urban Environments
Topic 11:	Coastal Environments
Topic 12 & 22:	Rural Environments, Woodlot Forestry, Conservation Planting and Carbon Sequestration Forestry
Topic 13:	Resource Quality (Air)
Topic 13:	Resource Quality (Water)
Topic 13 & 19:	Resource Quality (Soil) and Land Disturbance

Topic 14:	Waste and Discharges to Land
Topic 15:	Transportation and Signage
Topic 16:	Climate Change
Topic 16:	Energy
Topic 17:	Subdivision
Topic 18:	Nuisance Effects & Temporary Military Training
Topic 20:	Designations and Utilities
Topic 21:	Zoning and Definitions
Topic 22:	Commercial Forestry
Misc	Addressed in relevant topic decision

## **15 15.0 Provision codes**

- 15.1 The MEP uses a system of codes to identify whether the notified provisions are RPS, regional plan, regional coastal plan and/or district plan provisions. The codes appear immediately prior to the statement of the relevant provision.
- 15.2 During the course of the hearings, the Panel considered the recommendations of report writers for new objectives, policies, methods and rules. We also heard evidence from submitters seeking new provisions.
- 15.3 The report writer/submitter did not always identify what code or codes should precede the provision. In these circumstances, and where the Panel has decided to add a new provision, a code has been inserted as a consequential change. In most cases, the relevant code or codes were relatively obvious. The codes appear in the tracked changes version of the Plan.

## **16.0 Numbering changes**

- 16.1 All of the notified provisions of the Plan have a unique identifier (in the form of a provision number). In the Panel's opinion, this is a necessary aspect of any plan prepared under the RMA. It is essential that users of the Plan can reference any relevant provision.

**16.2** The Panel's decisions can involve the addition of new provisions or the deletion of notified provisions. The provision numbers in the Plan run in sequence. Where addition or deletion does result from the Panel's decision, it obviously affects the sequence of numbers as a necessary consequence. The Panel has directed that these numbering changes are made as necessary as a consequential change created by the addition or deletion. Typically, this consequential change is not specifically addressed in the following Topic decision documents. This text records the Panel's directed approach to consequential numbering changes in order to avoid the need to repeat the decision in multiple locations.

### **17.0 Third Party Documents**

**17.1** A number of requests were made in submissions by outside third party organisations other than Council for their Codes, standards (either mandatory or non-mandatory), practice manuals or other controlling instruments to be included by specific standards requiring compliance with them. If that is done it means the Council would be incorporating those documents in the PMEP.

**17.2** In almost all those submissions the request made is for a standard to be inserted requiring 'compliance' with the whole document, and commonly those are complex, detailed or lengthy volumes. The Panel considered that for such an approach to pass the reasonable expectations of adequate public consultation would have required public notification of the volume and its contents, so that submitters had the opportunity to respond. In most, if not all, cases that has not occurred, with the submission request itself being the first time the compliance request has been made. The Panel is most concerned that such a process of inserting what can be costly or onerous obligations is not appropriate.

**17.3** Moreover, incorporation within the Plan carries with it the risk of loss of control of what then become statutory Plan provisions as such codes, standards, or practice manuals are commonly updated or amended by their own controlling organisation – which strictly would require a plan change process to be undertaken to comply with the RMA. How that process is to be managed with an outside organisation 'owning' or 'controlling' the base document raises real practical problems at law. For that reason, too, the

Panel's view has been that these sorts of documents should not be broadly incorporated without compelling reason.

17.4 Finally, in respect of third party documents of that nature which are made mandatory by other statutory provisions, the Panel was not persuaded that anything is added to an already existing statutory obligation of compliance by incorporation of those documents into the Plan, when they already have their own statutory effect.

17.5 For all of those reasons the approach preferred by the Panel, with few exceptions, has been to provide when expressly directed by the RMA for the incorporation of National Policy Statement or National Environmental Standard provisions, but otherwise to adopt an information approach by way of a Method drawing attention to the existence of those third-party documents.

## **18.0 Mapping Changes**

**18.1** The Panel's decision makes changes to the zoning maps and the overlay maps contained in Volume 4 of the PMEP. Volume 4 of the Plan has been updated to reflect these decisions.

**18.2** A mapping comparison tool is also available via the Council's website so that any submitter can ascertain changes to any zoning map or overlay map as a result of the Panel's decision on submissions.

## **Appendix 2 – Priorities for 2020**

1. Port Marlborough appeal
2. Urban appeals
3. Minor zoning appeals
4. Flood hazard overlay appeals
5. Coastal occupancy charge appeals
6. The Okiwi Bay Residents Association appeal
7. Utilities appeals
8. Transportation appeals
9. Most Heritage appeals

## Appendix 3 – Schedule

### List of Appeals by Lodgement Number

Lodgement Number	Appeal
ENV-2020-CHC-21	Dominion Salt Limited v Marlborough District Council
ENV-2020-CHC-30	Timberlink New Zealand Limited v Marlborough District Council
ENV-2020-CHC-31	GJ Gardner v Marlborough District Council
ENV-2020-CHC-32	Talley's Group Limited v Marlborough District Council
ENV-2020-CHC-33	Friends of Nelson Haven & Tasman Bay (Inc) & others v Marlborough District Council
ENV-2020-CHC-34	Omaka Valley Group Incorporated v Marlborough District Council
ENV-2020-CHC-35	Nelson-Marlborough Fish and Game Council v Marlborough District Council
ENV-2020-CHC-36	Heritage New Zealand Pouhere Taonga v Marlborough District Council
ENV-2020-CHC-37	Chorus New Zealand Limited & Spark New Zealand Trading Limited v Marlborough District Council
ENV-2020-CHC-38	Okiwi Bay Ratepayers Association v Marlborough District Council
ENV-2020-CHC-39	Te Runanga a Rangitane o Wairau v Marlborough District Council
ENV-2020-CHC-40	Haro Partnership v Marlborough District Council
ENV-2020-CHC-41	KPF Investments Limited & United Fisheries Limited v Marlborough District Council
ENV-2020-CHC-42	Minister of Conservation v Marlborough District Council
ENV-2020-CHC-43	Te Atiawa o Te Waka-a-Maui Trust v Marlborough District Council
ENV-2020-CHC-44	Beleve Limited, RJ Davidson Family Trust and Treble Tree Holdings Limited v Marlborough District Council
ENV-2020-CHC-45	Aroma (N.Z.) Limited & others v Marlborough District Council
ENV-2020-CHC-46	Te Runanga o Kaikoura & Te Runanga o Ngai Tahu v Marlborough District Council
ENV-2020-CHC-47	Goulding Trustees Limited & Shellfish Marine Farms Limited v Marlborough District Council
ENV-2020-CHC-48	McGuinness Institute v Marlborough District Council
ENV-2020-CHC-49	Port Marlborough New Zealand Limited v Marlborough District Council
ENV-2020-CHC-50	Trustpower Limited v Marlborough District Council
ENV-2020-CHC-51	The New Zealand King Salmon Company Limited v Marlborough District Council
ENV-2020-CHC-52	M B Broughan v Marlborough District Council
ENV-2020-CHC-53	JS Cochran v Marlborough District Council
ENV-2020-CHC-54	OneFortyOne v Marlborough District Council
ENV-2020-CHC-55	Clearwater Mussels Limited & Talley's Group Limited v Marlborough District Council
ENV-2020-CHC-56	New Zealand Transport Agency v Marlborough District Council
ENV-2020-CHC-57	KiwiRail Holdings Limited v Marlborough District Council
ENV-2020-CHC-58	Federated Farmers of New Zealand v Marlborough District Council



<b>Lodgement Number</b>	<b>Appeal</b>
ENV-2020-CHC-59	Colonial Vineyard Limited v Marlborough District Council
ENV-2020-CHC-60	Sanford Limited v Marlborough District Council
ENV-2020-CHC-61	Villa Maria Estate Limited v Marlborough District Council
ENV-2020-CHC-62	Oldham & others v Marlborough District Council
ENV-2020-CHC-63	Apex Marine Farm Limited v Marlborough District Council
ENV-2020-CHC-64	The Royal Forest and Bird Protection Society of New Zealand Incorporated v MDC
ENV-2020-CHC-65	Levide Capital Limited v Marlborough District Council
ENV-2020-CHC-66	Brentwood Vineyards Limited & others v Marlborough District Council
ENV-2020-CHC-67	Environmental Defence Society Incorporated v Marlborough District Council
ENV-2020-CHC-68	Transpower New Zealand Limited v Marlborough District Council
ENV-2020-CHC-69	JV Meachen v Marlborough District Council
ENV-2020-CHC-70	Te Runanga o Ngati Kuia Trust v Marlborough District Council
ENV-2020-CHC-71	Horticulture New Zealand v Marlborough District Council
ENV-2020-CHC-72	BP Oil New Zealand Limited & others v Marlborough District Council
ENV-2020-CHC-73	AJ King Family Trust & SA King Family Trust v Marlborough District Council
ENV-2020-CHC-74	Marine Farming Association Incorporated & Aquaculture New Zealand v Marlborough District Council
ENV-2020-CHC-75	Delegat Limited v Marlborough District Council
ENV-2020-CHC-76	The Minister of Defence v Marlborough District Council
ENV-2020-CHC-77	Just Mussels Limited & others v Marlborough District Council
ENV-2020-CHC-78	East Bay Conservation Society Incorporated v Marlborough District Council
ENV-2020-CHC-79	R Light v Marlborough District Council