

IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH  
I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHĪ

Decision No. [2023] NZEnvC 142

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under clause 14 of the First  
Schedule of the Act

BETWEEN

HERITAGE NEW ZEALAND  
POUHERE TAONGA

(ENV-2020-CHC-36)

Appellant

AND

MARLBOROUGH DISTRICT  
COUNCIL

Respondent

Environment Judge J J M Hassan – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 5 July 2023

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**CONSENT ORDER**

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A: Under s279(1)(b) of the RMA,<sup>1</sup> the Environment Court, by consent, orders  
that:

- (1) the appeal is allowed to the extent that Marlborough District Council  
is directed to amend Policy 10.1.2 of the proposed Marlborough

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<sup>1</sup> Resource Management Act 1991.



Environment Plan as set out in Appendix 1, attached to and forming part of this order; and

(2) the appeal is otherwise dismissed.

B: Under s285 of the RMA, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] This proceeding concerns an appeal by Heritage New Zealand Pouhere Taonga against part of a decision of the Marlborough District Council in relation to Volume 1: Chapter 10 of the proposed Marlborough Environment Plan (‘pMEP’) that was allocated to Topic 7 – Heritage.

[2] Two consent orders have been issued for this topic dated 25 July 2022<sup>2</sup> and 3 November 2022.<sup>3</sup> I have now read and considered the consent memorandum of the parties dated 15 September 2022.<sup>4</sup> The memorandum records Policy 10.1.12 is classified in the pMEP as a district and a coastal policy. The parties have agreed to resolve this appeal point by extending the classification of Policy 10.1.12 so that the policy is also classified as a regional policy.

### **Other relevant matters**

[3] Of the parties who gave notice of an intention to become a party to this appeal under s274 of the RMA five had interest in this aspect of the appeal. Te Ātiawa o Te Waka-a-Maui withdrew its interest on 20 July 2021.

[4] Of the four remaining s274 parties Ngāti Koata Trust and Te Rūnanga a Rangitāne o Wairau have not signed the consent memorandum which notes they

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<sup>2</sup> [2022] NZEnvC 136.

<sup>3</sup> [2022] NZEnvC 223.

<sup>4</sup> Filed with the registry on 24 May 2023.

have not refused to sign. Nor have they provided any comment as to its contents. Ngāti Koata Trust did not participate in mediation, while Te Rūnanga a Rangitāne o Wairau attended mediation of this topic. Neither party has withdrawn its interest in the appeal. Registry records indicate both parties were included in the notice of mediation and registry emails.

[5] Given the general nature of the interest specified, the court previously invited Ngāti Koata Trust and Te Rūnanga a Rangitāne o Wairau to clarify their interest in Topic 7 but did not receive a response. It is the responsibility of a party to duly prosecute their interest in an appeal. In this context the fair and appropriate course is to proceed on the basis that nothing in these parties' interest in the appeal precludes the making of the order sought by the consent memorandum.

[6] I am satisfied all relevant appellants and s274 parties whose interest extends to this topic, have signed the consent memorandum setting out the relief sought or have been afforded adequate opportunity to participate in this process.

[7] No party seeks costs; all parties agreeing that costs should lie where they fall.

[8] The consent memorandum records that the appeal points resolved by this order are sufficiently discrete and will not affect the resolution of any other appeal. Further, it records the parties' assurance that there are no issues of scope or jurisdiction.

## **Orders**

[9] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all relevant parties to the proceedings have executed the memorandum requesting this order;

- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



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**J J M Hassan**  
**Environment Judge**



## Appendix 1

### Policy 10.1.12

**[R. C, D] Policy 10.1.12 – Control land disturbance activities in sites and places of significance to Marlborough’s tangata whenua iwi, identified in Schedule 3 of Appendix 13.**

Policies 10.1.10 and 10.1.11 guide how the Council will assist in the protection of archaeological sites in Marlborough. Policy 10.1.12 enables activities that potentially adversely affect sites identified in Schedule 3 to be assessed. Māori occupation of Marlborough in the past was extensive and not all sites of spiritual or cultural significance to Marlborough’s tangata whenua iwi will be known and/or recorded. It also means that the significance cannot necessarily be attributed to a discrete site. For this reason, the policy applies to identified sites and places of significance in Schedule 3. Land disturbance within these places is to be controlled through regional and district rules so that the potential impact of excavation, filling or vegetation removal on the mana of the relevant iwi can be assessed. This will enable Marlborough’s tangata whenua iwi to exercise kaitiakitanga through involvement in the resource consent process as affected parties.

