

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

Decision No. [2023] NZEnvC 234

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN FEDERATED FARMERS OF NEW
ZEALAND

(ENV-2020-CHC-58)

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: 1 November 2023

CONSENT ORDER

A: Under s279(1)(b) RMA,¹ the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that the Marlborough District Council is directed to amend the proposed Marlborough Environment Plan by making the changes set out in Appendix 1



¹ Resource Management Act 1991.

- attached to and forming part of this order; and
- (2) the relevant appeal points are dismissed, and the appeal otherwise remains extant.

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

REASONS

Introduction

[1] This proceeding concerns an appeal by Federated Farmers of New Zealand against part of the decision of the Marlborough District Council ('MDC') on the proposed Marlborough Environment Plan ('pMEP'). The appeal concerns rules, standards and other provisions regulating stock access to water bodies and was allocated to Topic 13: Water Quality.

[2] The court has now read and considered the consent memorandum of the parties dated 18 August 2023. It sets out the agreement reached between the parties. It also records that the parties have taken the opportunity to align the provisions with the Resource Management (Stock Exclusion) Regulations 2020 ('Regulations') where appropriate and where the scope of the appeal has afforded the opportunity. The parties agree to resolve these appeal points by:

- (a) amending provisions in order to highlight the effect of the Regulations;
- (b) adding exclusions to standards and rules as to stock being supervised and driven across a river;
- (c) adding additional restricted discretionary rules pertaining to stock entering or passing across a bed of a river.

Other relevant matters

[3] A number of parties have given notice of an intention to become a party to

this appeal under s274 RMA. Of those, seven had an interest that extends to the matters resolved by this order and have signed the memorandum setting out the relief sought.

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

[5] The consent memorandum records that these appeal points are sufficiently discrete and will not affect the resolution of any other appeals or topics. Further, it records the parties' assurance that there are no issues of scope or jurisdiction.

Orders

[6] 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 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.



J J M Hassan
Environment Judge



APPENDIX 1

Volume 2:

Multiple chapters

1. Add a note after Rules 2.7.9, 3.1.22, 4.1.20, 19.1.26 and 21.1.17 to highlight the effect of the Resource Management (Stock Exclusion) Regulations 2020, as follows:

Note:

The Resource Management (Stock Exclusion) Regulations 2020 require dairy cattle, pigs, dairy support cattle, intensively grazed beef cattle and deer, and beef cattle and deer on low slopes to be excluded from wide rivers.

2. Amend Standards 2.9.9.3, 3.3.22.3, 4.3.20.3 and 19.3.24.3 to read as follows:

X.X.X. Livestock entering onto, or passing across, the bed of a river.

X.X.X.3. After reasonable mixing, the entering onto or passing across the bed of a river by livestock (except sheep being supervised and actively driven across the bed of the river) must not result in the water quality of the river exceeding the following:

- (a) 2mg/l carbonaceous BOD₅;
- (b) 260 Escherichia coli (E. coli)/100ml.

3. Add an additional restricted discretionary Rule to 3.5 and 4.5, as follows:

[R]

3.5.3. Livestock entering onto or passing across the bed of a river that does not comply with 3.3.22.2 or 3.3.22.3.

Matters over which the Council has restricted its discretion:

3.5.3.1. The effects on the freshwater values of Marlborough's tangata whenua iwi (including mahinga kai), water quality, and aquatic and riparian ecosystems.

[R]

4.5.6. Livestock entering onto or passing across the bed of a river that does not comply with 4.3.20.2 or 4.3.20.3.

Matters over which the Council has restricted its discretion:

4.5.6.1. The effects on the freshwater values of Marlborough's tangata whenua iwi (including mahinga kai), water quality, and aquatic and riparian ecosystems.

And introduce a new restricted discretionary activity to Chapters 2 and 19 as follows:

2.9B. Restricted Discretionary Activities

2.9B.1. Livestock entering onto or passing across the bed of a river that does not comply with 2.9.9.2 or 2.9.9.3.

Matters over which the Council has restricted its discretion:

2.9B.1.1 The effects on the freshwater values of Marlborough's tangata whenua iwi (including mahinga kai), water quality, and aquatic and riparian ecosystems.

19.3B. Restricted Discretionary Activities

19.3B.1. Livestock entering onto or passing across the bed of a river that does not comply with 19.3.24.2 or 19.3.24.3.

Matters over which the Council has restricted its discretion:

19.3B.1.1 The effects on the freshwater values of Marlborough's tangata whenua iwi (including mahinga kai), water quality, and aquatic and riparian ecosystems.

4. Amend Rule 2.10.3, as follows:

[R]

2.10.3. Other than stock exclusion required by the Resource Management (Stock Exclusion) Regulations 2020, Llivestock entering onto or passing across the bed of a lake.

And add a note after Rule 2.10.3 to highlight the effect of the Resource Management (Stock Exclusion) Regulations 2020, as follows:

Note:

The Resource Management (Stock Exclusion) Regulations 2020 require dairy cattle, pigs, dairy support cattle, intensively grazed beef cattle and deer, and beef cattle and deer on low slopes to be excluded from lakes.

5. Amend Rules 3.6.13, 4.6.14 and 19.4.2, as follows:

[R]

X.X.XX Other than stock exclusion required by the Resource Management (Stock Exclusion) Regulations 2020, Llivestock entering into or passing across a Significant Wetland.

6. Amend Rules 2.11.4, 2.11.5, 3.7.3, 3.7.4, 4.7.4 and 4.7.5 to read, as follows:

[R]

2.11.4. Other than stock exclusion required by the Resource Management (Stock Exclusion) Regulations 2020, ~~From 9 June 2022,~~ permitting intensively farmed livestock to enter onto:

(a) the bed of a lake; or

(b) ~~or~~ the bed of a river when there is water flowing in the river, unless the stock are supervised and actively driven across the river, and do not cross the same river more than twice in any month.

[R]

2.11.5. Other than stock exclusion required by the Resource Management (Stock Exclusion) Regulations 2020, ~~From 9 June 2022,~~ permitting intensively farmed livestock to pass across:

(a) the bed of a lake; or

(b) ~~or~~ the bed of a river when there is water flowing in the river, unless the stock are supervised and actively driven across the river, and do not cross the same river more than twice in any month.

[R]

3.7.3. Other than stock exclusion required by the Resource Management (Stock Exclusion) Regulations 2020, ~~From 9 June 2022,~~ permitting intensively farmed livestock to enter:

- (a) onto the bed of a lake;
- (b) into a Significant Wetland; or
- (c) ~~or~~ onto the bed of a river when there is water flowing in the river, unless the stock are supervised and actively driven across the river, and do not cross the same river more than twice in any month.

[R]

3.7.4. Other than stock exclusion required by the Resource Management (Stock Exclusion) Regulations 2020, ~~From 9 June 2022,~~ permitting intensively farmed livestock to pass across:

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