

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

**Decision No. [2023] NZEnvC 250**

IN THE MATTER of the Resource Management Act 1991

AND an appeal under s120 of the Act

BETWEEN PHILIP JOHN WOOLLEY

(ENV-2020-CHC-123)

Appellant

AND MARLBOROUGH DISTRICT  
COUNCIL

Respondent

Court: Environment Judge P A Steven sitting alone pursuant to  
s279 of the Act

Hearing: On the papers

Last case event: 14 November 2023

Date of Decision: 15 November 2023

Date of Issue: 15 November 2023

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**FINAL DETERMINATION OF THE ENVIRONMENT COURT**

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A: In accordance with s 279(1) Resource Management Act 1991 water permit  
U060329.4 is granted as set out in Appendix 1.

B: The appeal is otherwise dismissed.

C: Costs are reserved, and a timetable is already in place.

WOOLLEY v MDC – FINAL DETERMINATION



## REASONS

### Introduction

[1] Mr Woolley appealed against the decision of the Marlborough District Council to decline an application to transfer Mr Woolley’s remaining interest in a resource consent for the take and use of water (U060329), comprising 4,273 m<sup>3</sup>/day. On 21 September 2023 an interim decision<sup>1</sup> was issued allowing the appeal to the extent that the transfer sought by Mr Woolley was granted. The court directed parties to confer and produce a final set of conditions to be imposed on the new water use resource consent.<sup>2</sup>

### The agreed conditions

[2] A memorandum dated 13 October 2023 was filed confirming that Mr Woolley and the Council had agreed on a set of conditions which also includes the agreed irrigation area.<sup>3</sup> The memorandum acknowledged the interests of the two s274 parties to this proceeding, recording:

- (a) Te Rūnanga a Rangitāne o Wairau Trust’s concerns were previously addressed by the joint memorandum dated 18 October 2021 and assurance is provided that those concerns are addressed in this new set of conditions;<sup>4</sup> and
- (b) Trustees Executors Limited (“TEL”) recorded its agreement in relation to volunteered conditions in its memorandum dated 6 December 2021, and those have also been addressed in this latest set of conditions. That memorandum records that rather than continuing to have an active role in the proceeding, TEL wishes to maintain “a watching brief” to ensure its interests are protected by either the

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<sup>1</sup> *Woolley v Marlborough District Council* [2023] NZEnvC 206.

<sup>2</sup> At [122] and Order B.

<sup>3</sup> Memorandum of counsel for Woolley, 13 October 2023 at [2].

<sup>4</sup> Memorandum of counsel for Woolley, 13 October 2023 at [3].

volunteered provisions or alternative provisions of equivalent effect.<sup>5</sup>

[3] In the 13 October 2023 memorandum, counsel for Mr Woolley, Mr Clark records that TEL has “additional issues with the wording of conditions 9 to 13” which “appear on their face to be Council’s standard lapse conditions that have been imported into the consent”.<sup>6</sup> TEL’s memorandum dated 16 October 2023 addresses its grounds for seeking those further modifications. Counsel, Ms Limmer, explained that TEL considers the modifications will provide greater clarity and certainty in the conditions, which is a matter of utmost importance to TEL given its position as landowner. Ms Limmer records also TEL’s understanding that the modifications suggested accord with the intent of the conditions.<sup>7</sup>

[4] On 18 October 2023 the Council advised by email that it agrees to the amendments to conditions sought by TEL.<sup>8</sup> This was later confirmed by memorandum dated 24 October 2023, in which counsel, Mr Maassen states that despite the Council being comfortable with the conditions presented by the appellant, it considers the refinements sought by TEL “are desirable and provide greater clarity and enforceability which are important given the history of the water permit”.<sup>9</sup>

[5] Mr Clark has since confirmed that based on the Councils agreement to the modification, Mr Woolley does not have any issue with the modifications sought to conditions 9-13.<sup>10</sup>

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<sup>5</sup> Memorandum of counsel for TEL, 6 December 2021 at [3].

<sup>6</sup> Memorandum of counsel for Woolley, 13 October 2023 at [5].

<sup>7</sup> Memorandum of counsel for TEL, 16 October 2023 at [3].

<sup>8</sup> Email of Glen Parker (Marlborough District Council) to the Registry (18 October 2023).

<sup>9</sup> Memorandum of counsel for the Council, 24 October 2023 at [1].

<sup>10</sup> Memorandum of counsel for Woolley, 19 October 2023 at [3].

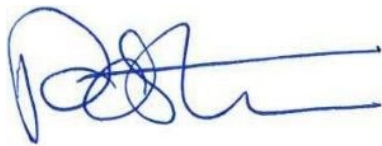
## Outcome

[6] Having reviewed the set of conditions provided for the new water use resource consent the court is satisfied it is appropriate that a direction be made to finally determine this aspect of the appeal.

[7] In accordance with s279(1) RMA, water permit U060329.4 is granted as set out in Appendix 1.

[8] Costs are reserved, and a timetable is already in place. For completeness the timetable is repeated here:

- (a) the appellant is to file an application for costs by **Thursday 9 November 2023**;
- (b) the respondent is to file any response by **Thursday 30 November 2023**;
- (c) should the appellant wish to reply to matters raised by the respondent, the appellant is to file a response by **Thursday 7 December 2023**.



**P A Steven**  
**Environment Judge**



## **Appendix 1**

Agreed set of conditions

# Certificate of Resource Consent

**Consent Holder:** Philip John Woolley

**Consent Type:** Water Permit (Use Water)

**Consent Number:** U060329.4

**Lapse Date:** This consent will lapse on 1 November 2028 unless given effect to prior to that date.

**Establishment Conditions:** Conditions 5, 6, 8, 9, 10, 11, 12, 13, 20 & 21

**Expiry Date:** If this consent is given effect to, the consent will expire on 1 February 2030.

**Part 3, Section:** 14(2)

Pursuant to sections 34A(1) and 104B and after having regard to Part 2 matters and section 104 of the Resource Management Act 1991, the Marlborough District Council **grants** consent to use water for the irrigation of up to 240 hectares of vineyard on Lot 2 DP 420743, Lot 4 DP 520936, Lot 3 DP 520936, Lot 13 DP 7750, Section 9 Marshlands Run North Bank of Wairau District and Section 4 Sq 28 North Boulder Bank District, subject to the following conditions imposed under section 108 of the Resource Management Act 1991.

## Conditions

1. Except insofar as required to comply with other conditions of this consent, the activity must be undertaken and remain in accordance with the application to transfer water from resource consent U060329, received by the Marlborough District Council on 4 September 2020.
2. Water may be used up to the maximum monthly rate (cubic metres per month) set out in the table below:

January	February	March	April	May	June
141,600	122,400	79,200	21,600	0	0

July	August	September	October	November	December
0	0	0	4,800	84,000	132,000

3. The maximum cumulative annual usage shall not exceed 486,240 cubic metres.
4. Water shall only be used in the areas shown on the Irrigation Areas site plan in Attachment 1.
5. The consent holder shall install and maintain a meter at the property boundary to measure water used under this consent, that is able to provide data in a form suitable for electronic storage. The meter is to exclusively record all water taken pursuant to this consent with an accuracy of plus or minus 5 percent. The ~~meter~~renewell shall have the ~~meter~~ number 3454. The meter shall be installed and operational before any water is used as per this consent.

6. Within three months of the new meter installation, the meter shall be verified by a certified installer. A copy of the verification certificate shall be provided to the Marlborough District Council within one month of the verification.
7. The meter~~s~~ shall at all times be maintained in a fully workable condition.
8. The consent holder shall install and maintain a data logger on the meter to record and store water abstraction data at daily intervals. Data recorded is to be provided to the Marlborough District Council by a telemetry system at daily intervals. The telemetry system must be installed and operational before any water is used as per this consent.
9. The consent holder must provide Council, before the lapse date, with [photographic](#) evidence ~~and a date by which~~ the water meter, datalogger and telemetry system is operational and confirm the date upon which it became operational.
10. The consent holder shall provide to the Compliance Manager, Marlborough District Council, before the lapse date, [photographic](#) evidence ~~and a date by which~~ the pipeline from the abstraction wells to the 240 hectares has been constructed and is operational (i.e. capable of providing water for the use specified in this permit) and confirm the date upon which it became operational.
11. The consent holder shall provide the Compliance Manager, Marlborough District Council, before the lapse date, [photographic](#) evidence ~~and a date by which~~ the irrigation system has been installed to the extent required to use water for the purpose specified in this consent and confirm the date upon which it became operational.
12. The consent holder shall provide to the Compliance Manager, Marlborough District Council, before the lapse date, evidence ~~and a date by which~~ the proposed use (as specified in this consent) can be undertaken, i.e. some or all of the vines planted and some or all of the vineyard infrastructure installed and confirm the date upon which it became operational.
13. The consent holder must surrender the s136 consent which allows for the transfer of water to the Chaytor property for the irrigation of 200 hectares of pasture and crop ([numbered U060329.1 and granted under Council decision](#) dated 2 February 2023), before this consent can be given effect to.

#### Archaeological Conditions

14. Prior to any soil disturbance of 75mm or more, the consent holder shall:
  - a) Apply for and do all things reasonably necessary to obtain an archaeological assessment of the area to be irrigated by a Heritage New Zealand appointed archaeologist ("the Archaeological Assessment");
  - b) Do all things reasonably necessary to obtain a cultural impact assessment by Te Runanga a Rangitane o Wairau of the area to be irrigated ("the Cultural Impact Assessment"); and
  - c) Provide a copy of the Archaeological Assessment and Cultural Impact Assessment to the Compliance Manager, Marlborough District Council.
15. The consent holder shall ensure that no land disturbance occurs in any part of the irrigation ~~area~~[site](#) identified by the Archaeological Assessment and/or the Cultural Impact Assessment that is a site of significance which disturbance of the land would adversely affect.
16. If any artefact, as defined in the Heritage New Zealand Pouhere Taonga Act 2014, and/or any historical, cultural or archaeological material of Māori origin or likely to have significance

to Māori is found or uncovered whilst undertaking work authorised by this consent, the following must be complied with:

- a) Work must cease immediately, the area must be secured and any uncovered material must remain untouched.
- b) Advice of the discovery must be given, within 48 hours of the discovery, to the resource management officer of relevant local iwi, to Council, and to Heritage New Zealand Pouhere Taonga.
- c) Work may not recommence until the approval of the relevant local iwi, Heritage New Zealand Pouhere Taonga, and Council, are all obtained.

#### Wetland Effects Conditions

17. All vineyards, associated structures and excavations must be set back from all wetlands by a minimum of 10 metres.

#### Registered Proprietor Condition

18. The consent shall not be exercised or, if already exercised, shall cease being exercised, if and when the registered proprietor of the Chaytor Land:
- a) Obtains a Resource Consent to apply (or can otherwise lawfully apply) water to all or any part of the ~~irrigable~~ ~~A~~area;
  - b) Advises the Consent Holder (by written notice, contemporaneously copying to Council) of its intention to apply water to the ~~irrigable~~ ~~A~~area (or part of it); and
  - c) Requires the Consent Holder (on not less than 10 working days notice in writing, contemporaneously copying Council) to cease (or not commence) applying water within the ~~irrigable~~ ~~A~~area to the extent the registered proprietor intends applying water to the same land as the Consent Holder is or could.

19. “Chaytor Land” means:

That land further described in record of title identifiers MB5A/609, 822844, 822845, 822846 being situated at 272 Chaytors Road together with any other area land included or formerly included in the following legal descriptions: Lot 2 DP 420743, Lot 4 DP 520936, Lot 3 DP 520936, Lot 13 DP 7750, Section 9 Marshlands Run North Bank of Wairau District, Section 4 Sq 28 North Boulder Bank District.

20. “Irrigable Area” means:

Any area of the Chaytor Land the consent holder may irrigate pursuant to Resource Consent U060329 as may be varied, renewed or extended by the Marlborough District Council.

#### Review Condition



21. In accordance with section 128 of the Resource Management Act 1991, from the date of consent until expiration, the Marlborough District Council may review the conditions of the consent at any time from 1 June to 31 August in each year for the following purposes:
- a) Bring the consent conditions in line with any regional plan which is made operative, which sets rules or guidelines relating to rates of water usage;
  - b) To deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage;
  - c) To review the effectiveness of the consent conditions in avoiding or mitigating any adverse effects on the environment and arising from the exercise of this consent and, if necessary, to avoid, remedy or mitigate such effects by way of further or amended conditions;
  - d) To review the adequacy of and necessity for monitoring the effects of the activity on the environment.

### **Advice Notes**

- 1. A reminder to the consent holder that in the event of relinquishing the water permit to a new owner, notification of the transfer must be lodged with the Marlborough District Council on the appropriate forms, containing signatures of both parties and with payment of the appropriate fee. Further, all conditions of consent must have been complied with, in particular any requirement for water flow meter installation.
- 2. Pursuant to section 36 of the Resource Management Act 1991 and the Marlborough District Council's schedule of fees, the consent holder will be responsible for all actual and reasonable costs associated with the monitoring of this resource consent.
- 3. Data shall be provided to Council in a format and to a standard approved by the Compliance Manager, Marlborough District Council. Acceptable formats for data are XML (eXtensible Markup Language) or CSV (Comma Separated Value). XML is the preferred format. Data provided in CSV format may incur additional programming and processing costs under section 36 of the Resource Management Act 1991.
- 4. A reminder to the consent holder that the Resource Management (Measurement and Reporting of Water Takes) Regulations 2010 require that the water meter device or system must be verified every five years.
- 5. The consent holder may require further and other approvals from the registered proprietor of the Chaytor Land in order to fulfil the conditions of this resource consent and/or to establish irrigation. For the avoidance of doubt, if approvals are required from the registered proprietor of the Chaytor Land, this resource consent does not (expressly or impliedly) constitute any such approvals.

Attachment 1

