

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

Decision No. [2023] NZEnvC 145

IN THE MATTER

of the Resource Management Act 1991

AND

appeals under clause 14 of the First
Schedule to the Act

BETWEEN

MANAWA ENERGY

(ENV-2020-CHC-50)

NEW ZEALAND TRANSPORT
AGENCY

(ENV-2020-CHC-56)

FEDERATED FARMERS OF NEW
ZEALAND

(ENV-2020-CHC-58)

HORTICULTURE NEW
ZEALAND

(ENV-2020-CHC-71)

THE MINISTER OF
DEFENCE

(ENV-2020-CHC-76)

Appellants

AND

MARLBOROUGH DISTRICT
COUNCIL

Respondent



pEMP TOPIC 15 WASTE & DISCHARGES TO LAND – CONSENT ORDER

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

In Chambers at Christchurch

Date of Consent Order: 5 July 2023

CONSENT ORDER

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

- (1) Marlborough District Council amend the proposed Marlborough Environment Plan (pMEP) by making the changes as set out in Appendix 1 attached to and forming part of this order; and
- (2) the remaining appeal points under Topic 15 are adjourned, to be considered following the resolution of Topic 2 – Water.

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

REASONS

Introduction

[1] This proceeding concerns discrete appeals by Manawa Energy, New Zealand Transport Agency, Federated Farmers of New Zealand, Horticulture New Zealand and the Minister of Defence against part of a decision of the proposed Marlborough Environment Plan that was allocated to Topic 15 – Waste and Discharges to Land.

[2] The court has read and considered the consent memorandum of the parties

¹ Resource Management Act 1991.

dated 31 March 2023 which proposes to resolve some points in these appeals.

Other relevant matters

[3] This order concerns appeal points on the application of fertiliser to land. Consideration of the remaining appeal points in this topic are adjourned pending the related appeal points in Topic 2 – Water.

[4] A number of parties gave notice of an intention to become a party to these appeals under s274 RMA. Some parties withdrew their interests in relation to the relevant appeal points. All relevant s274 parties have signed the consent memorandum setting out the relief sought.

[5] No other person has given notice of an intention to become a party under s274 of the Act.

[6] There are no issues of scope or jurisdiction.

[7] The appeal points deal with discrete issues of application of fertiliser to land, and the parties are of the view that the consent order can be progressed without affecting any other aspects of the appeals or other appeals or topics.

Outcome

[5] 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.



J J M Hassan
Environment Judge



Volume 2

Chapter 3 – Rural Environment Zone

1. Amend Standard 3.3.24.5 as follows:

3.3.24. Storage and application (involving a discharge) of fertiliser or lime into or onto land.

...

3.3.24.5. All reasonable care must be exercised with the application of fertiliser, including compliance with Sections 5.2 and 5.3 of the Fertiliser Association of New Zealand's Code of Practice for Nutrient Management 2013, must not result to ensure that the in-fertiliser does not passing beyond the legal boundary of the area of land on which the fertiliser is being applied.

And add Sections 5.2 and 5.3 of the Fertiliser Association of New Zealand's Code of Practice for Nutrient Management 2013 to the Plan as a document incorporated by reference.

2. Add an additional restricted discretionary Rule to 3.5, as follows:

[R]

3.5.2. The application of fertiliser (involving a discharge) into or onto land for arable land use or horticultural land use that does not comply with Standard 3.3.24.3 (exceeding a total cumulative nitrogen (N) loading of 200kg N/ha/year)

Matters over which the Council has restricted its discretion:

3.5.2.1. The reasonable crop demand for N.

3.5.2.2 The total cumulative Nitrogen (N) loading on the areal extent of land used for the application.

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

3.5.2.4 The extent of compliance with Sections 5.2 and 5.3 of the Fertiliser Association of New Zealand's Code of Practice for Nutrient Management 2013.

Chapter 4 – Coastal Environment Zone

3. Amend Standard 4.3.22.5 as follows:

4.3.22. Storage and application (involving a discharge) of fertiliser or lime into or onto land.

...

4.3.22.5. All reasonable care must be exercised with the application of fertiliser, including compliance with Sections 5.2 and 5.3 of the Fertiliser Association of New Zealand's Code of Practice for Nutrient Management 2013, must not result to ensure that the in-fertiliser does not passing beyond the legal boundary of the area of land on which the fertiliser is being applied.

And add Sections 5.2 and 5.3 of the Fertiliser Association of New Zealand's Code of Practice for Nutrient Management 2013 to the Plan as a document incorporated by reference.

Chapter 25 – Definitions

4. Add a new definition of horticultural land use, as follows:

<u>Horticultural land use</u>	<u>means the use of land to grow food or beverage crops for human consumption (other than arable crops), or flowers for commercial supply.</u>
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5. Add a new definition of arable land use, as follows:

<u>Arable land use</u>	<u>means the use of land to grow any of the following crops for harvest:</u> <u>a) Grain cereal, legumes or pulse grain;</u> <u>b) Herbage seed;</u> <u>c) Oilseed;</u> <u>d) Maize grain, maize silage, cereal silage, or mangels;</u> <u>e) Crops grown for seed multiplication;</u>
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