

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

Decision No. [2024] NZEnvC70

IN THE MATTER of the Resource Management Act 1991

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

BETWEEN FRANK BURNS

(ENV-2023-CHC-86)

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: 9 April 2024

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 as set out in Appendix 1, attached to and forming



Resource Management Act 1991.

- part of this order; and
- (2) the appeal is otherwise dismissed.

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

REASONS

Introduction

[1] This proceeding involves an appeal by Mr Frank Burns against part of the decision of Marlborough District Council ('MDC') on Variation 1 of the proposed Marlborough Environment Plan ('Variation 1').

[2] The parties jointly filed a memorandum and a draft consent order on 15 November 2023 seeking to resolve Mr Burns appeal in its entirety.

Appeal

[3] The two appeal points of Mr Burns appeal against Variation 1 are:

- (a) failure to provide sufficient space for equivalent backbone in the Aquaculture Management Area for Marine Farm 8400 in East Bay, Queen Charlotte Sound/Totaranui; and
- (b) imposition of an additional matter of control for Benthic effects for two marine farms (MF 8400 and MF 8510).

[4] With regard to the two marine farms, the appeal sought to adopt the MFA/AQNZ HP-Draft Maps (yellow) AMA, MF 8400 and MF 8510 to be removed from Schedule 1 and any necessary consequential arrangements or other equivalent relief.

Agreement reached between the parties

[5] Since the appeal was filed, the parties have engaged in direct discussions

and have reached agreement to resolve the appeal in its entirety. I have read and considered the consent memorandum of the parties dated 15 November 2023 which explains the agreement to:

- (a) record that Variation 1 did not require further matters of control for benthic effects for these farms and inconsistency in the Panel's decision has occurred;
- (b) confirm that AMAs 8400 and 8510 are not to be included in Schedule 1; and
- (c) adopt the map for AMA 8400, as set out in Appendix 1.

[6] In the memorandum, the parties explain that the Panel incorrectly identified the two marine farms as having no multi-beam data to be able to accurately assess the benthic state under the farms. Based on the lack of multi-beam data, the Panel decided to include these farms in Schedule 1 requiring further benthic assessment at consenting. Both farms had been consented in recent years and had been assessed as being suitable for marine farming from a benthic point of view. The Panel's decision did not include these two farms in their version of Schedule 1. This creates an inconsistency between the decision and the amendments flowing from the decision to the provisions of the Variation. The provisions are correct and so no amendment to the PMEP provisions is necessary.

[7] The parties agree that these amendments are effective in ensuring that the proposal is appropriate, and the amended proposal will not be contrary to the objectives and policies of the Proposed Marlborough Environment Plan or any other appeal.

Other relevant matters

[8] No other party gave notice of an intention to become a party to the appeal under s274 of the Act.

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

Outcome

[10] 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 the present purposes that:

- (a) all parties to the proceeding have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters 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.

[11] The court orders, by consent, that:

- (a) the resource consent is granted subject to the removal of MF 8400 and MF 8510 from Schedule 1 and the inclusion of the map as set out in Appendix 1, attached to and forming part of this order;
- (b) the appeal is otherwise dismissed; and
- (c) there is no order as to costs.



J J M Hassan
Environment Judge



Appendix 1




Date: 15/11/2023



Legend

 AMA 8400

Legend

 Ammended layout for AMA 8400

