

**ENVIRONMENT COURT OF NEW
ZEALAND CHRISTCHURCH REGISTRY**

**I TE KŌTI TAIAO O
AOTEAROA ŌTAUTAHI ROHE**

ENV-2023-CHC-38

IN THE MATTER of the Resource Management Act 1991
(RMA)

AND appeals under Clause 14, Schedule 1 of
the Act

Between **HORI TURI ELKINGTON**
Appellant

And **MARLBOROUGH DISTRICT COUNCIL**
Respondent

**CASE MANAGEMENT MEMORANDUM OF MARLBOROUGH
DISTRICT COUNCIL-VARIATION 2 APPEAL**

Dated 27 September 2024

Judicial officer: Judge Hassan

Solicitor and co-counsel acting:
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May it please the Court

[1] This Memorandum is in response to the directions of the Environment Court on 3 September 2024 directing Council to file a memorandum setting out:

- (a) A list of the issues; and
- (b) Whether parties seek mediation and/or time to undertake informal discussions (if so, setting out their reasons/positions and a time estimate);
- (c) If mediation is not sought, counsel should propose an evidence timetable (and set out the potential witnesses to be called by each party and an estimate of the hearing time required).

Parties

[2] Hori (George) Turi Elkington appealed in part against the Marlborough District Council's (**Council**) Decision on Variation 2 to the Proposed Marlborough Environment Plan (**PMEP**). The Minister of Conservation has joined the appeal as a s 274 party.

List of the Issues

[3] The appeal relates to Variation 2 to the PMEP, which added 64 new ecologically significant marine sites (**ESMS**) to the PMEP, amended 45 existing ESMS sites and added one ESMS site to permitted activity standard 16.3.16.1.

[4] The Appellant in its appeal seeks to withdraw the following ESMS sites from being classified as A and B sites:

- (a) 2.5 Bonne Point
- (b) 2.6A Rangitoto Passage
- (c) 2.6B Rangitoto Passage
- (d) 2.6C Rangitoto Passage

(e) 2.6D Rangitoto Passage

(f) 2.10A Trio Islands

(g) 2.10B Trio Islands

[5] The grounds for the relief sought in the appeal are that the areas are not dredged and trawled, the decision is in breach of the Treaty provisions, and that the relief needs to be based on tikanga, matauranga, science and Treaty objectives.

[6] The issues raised by the appeal include:

(a) Scope to withdraw ESMS sites, particularly those sites not added by Variation 2. Only one site under appeal, Site 2.5 Bonne Point, was a new ESMS site added through Variation 2. Sites 2.6A-D Rangitoto Passage and Sites 2.10A and B were existing ESMS sites identified in the PMEP that Variation 2 sought to adjust or reclassify.

(b) Whether the Decision on Variation 2 to the PMEP:

- (i) Gives effect to Policy 11(a) of the New Zealand Coastal Policy Statement so as to recognise and provide for the protection of areas of significant habitats of indigenous fauna under s 6(c) of the Act;
- (ii) Recognises and provides for the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu and other taonga under 6(e) of the Act and the protection of customary rights under 6(f) of the Act;
- (iii) Has particular regard to kaitiakitanga under s7(a) of the Act; and
- (iv) Takes into account the principles of the Treaty of Waitangi under s 8 of the Act.

Mediation

- [7] The Council and the Minister agree to participate in mediation.
- [8] Council seeks for mediation to be set down in March 2025, due to its current commitments in other Court mediation and hearing processes in the second half of this year.
- [9] Mediation in the New Year will also enable informal discussions to take place between the parties in the interim.



John Maassen/Kim Lawson
Counsel for Respondent