

**ENVIRONMENT COURT OF NEW  
ZEALAND CHRISTCHURCH REGISTRY**

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

<b>IN THE MATTER</b>	of the Resource Management Act 1991 (RMA)
<b>AND</b>	appeals under Clause 14, Schedule 1 of the Act
<b>Between</b>	<b>KUKU HOLDINGS LIMITED</b>  (ENV-2023-CHC-38)  (and all other Appellants listed on the attached Appendix 1)  Appellant
<b>And</b>	<b>MARLBOROUGH DISTRICT COUNCIL</b>  Respondent

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**CASE MANAGEMENT MEMORANDUM OF MARLBOROUGH  
DISTRICT COUNCIL-VARIATION 1 APPEALS**

**21 December 2023**

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Judicial officer: Judge Hassan

Solicitor and co-counsel acting:  
Kaye McIlveney/ Kim Lawson

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### **May it please the Court**

- [1] This Memorandum is in response to the Court Minute of 23 August 2023 directing Council to file a case management memorandum to report on progress and recommend mediation dates for the Proposed Marlborough Environment Plan (**pMEP**) Variation 1 appeals.
- [2] There are a total of 680 appeal points to the decision on Variation 1.

### *Progress on Informal mediation in 2023*

- [3] In its previous Memorandum, Council advised that it intended to concentrate at first on informal discussions on appeals - where there are no or few s274 parties.
- [4] Six appeals have been resolved, or partially resolved, and consent memoranda filed with the Court-
- (a) Frank Burns filed 15 November 2023 (entire appeal)
  - (b) Scott Madsen Family Trust filed 18 December 2023 (entire appeal)
  - (c) Aroma (NZ) Limited and Aroma Aquaculture Limited filed 19 December 2023 (partial resolution)
  - (d) Tory Channel Aquaculture Limited filed 20 December 2023 (entire appeal)
  - (e) P H Redwood Company Limited and PHR Processing Limited filed 21 December 2023 (partial resolution)
  - (f) Apex Marine Farm Limited filed 21 December 2023 (partial resolution)
- [5] Council is also in discussion with the Appellants on further appeals in this category.

### *Schedule 1 appeals*

- [6] There are a number of appeals seeking removal of farms from Schedule 1. Those seeking to re-consent Schedule 1 farms are required to assess effects on the benthic environment as a matter of control. Many farms included on Schedule 1 are located in parts of the coastal marine area that have not had the benefit of multi-beam echosounder survey (or 'MBES').<sup>1</sup>
- [7] A workstream is being developed with expert input into determining what benthic information will be necessary to satisfy Council as to the potential effects on the benthos from the siting of a marine farm. Section 274 parties have not yet been involved in this exercise to date, but will be sent the initial outcome of the expert discussions for feedback, in approximately late March 2024.
- [8] There are fifteen appellants who seek to remove their farms from Schedule 1. Most appellants have multiple farms in this position. There are 125 appeal points seeking removal of a marine farm from Schedule 1.
- [9] Once the benthic experts have provided their advice, all parties will commence discussions on potential resolution for individual farms. This work will continue into 2024.

### *Formal mediation*

- [10] Except for Schedule 1 appeals (see above), there are characteristically two types of appeal points on Variation 1. The first set of appeal points relate to the management framework and these typically apply to the provisions in pMEP Volumes 1 and 2. The second set of appeal points relate to the discrete Aquaculture Management Areas (**AMA**) and could be described as spatial appeals (in that they relate to the presence or absence

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<sup>1</sup> The Council has undertaken extensive multi beam survey work in many parts of the Marlborough Sounds. The data gained from this survey work is publicly available from the Council website and Smart Maps system. The data can provide valuable insight into the presence of hard biogenic habitat. Land Information New Zealand has also recently undertaken further multi-beam work in areas not covered by the earlier multi-beam work and the data is expected to be available before Christmas.

of an AMA, or the boundaries of an AMA).

[11] Council proposes that formal mediation commence in March 2024 with the management framework appeal points. This would cover the following topics-

- Objectives, policies and rules
- Allocation method
- Transition
- Wording/Miscellaneous
- Updates to underlying PMEP provisions
- Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (Ngāi Tahu's) appeal (ENV-2023-CHC-67)

[12] Attached is a proposed mediation schedule as Appendix 2. This proposed mediation schedule addresses 349 appeal points.

[13] Council considers the parties should pause after this first block of mediations to consider the implications of the mediation outcomes on the spatial appeal points. Council's Environmental Policy Manager, Pere Hawes, is also on leave and unable to attend mediation between 14 May and 18 June 2024.

[14] Council would then, in late June, propose a mediation schedule for the balance of the appeals that need formal mediation.

*Deferred appeal points*

[15] Council proposes that the remaining deferred appeal points from the pMEP appeals be mediated following the Variation 1 mediations. This would occur after or concurrent with the spatial appeals and will be scheduled at that time.

[16] We understand that Aquaculture Interests agree with the proposal for mediating remaining deferred points after Variation 1 mediations, and that Aquaculture Interests will provide the Court with a further update on deferred appeal points by 29 February 2024.

*Housekeeping*

[17] Council proposes to run a process for these appeals similar to that used for the substantive pMEP appeals.

[18] In summary, Council will prepare a Preliminary Position Paper (**PPP**) for all of the matters identified at paragraph 11 above and circulate this to appellants and s274 parties at least 10 working days prior to mediation on that topic commencing. Appellants and s 274 parties will then have 5 working days to respond to Council's PPP. All responses will be added to the PPP and this consolidated version will be circulated to the parties and the Court mediator before the mediations commence.

[19] As for the substantive pMEP mediation, it is proposed to use the PPP as the basis for conducting mediation. Council understands that all parties involved in Variation 1 appeals were also involved in the substantive pMEP mediations and will therefore be familiar with the process summarised above. It is considered to have been an efficient and useful way to run the mediations, from our perspective.

[20] Council's preference is to have face to face mediation in Blenheim.

[21] Council has created a dedicated web portal for Variation 1 containing appeals, contact lists, Minutes of the Court and mediation schedules.

*Directions*

[22] No further directions are sought by the Council at this stage.

A handwritten signature in black ink, appearing to read 'Kaye McIlveney', with a large, stylized loop at the end of the name.

Counsel for the **Respondent**  
Kaye McIlveney

## **Appendix 1-Variation 1 Appellants**

ENV-2023-CHC-38 Kuku Holdings Limited v Marlborough District Council

ENV-2023-CHC-39 Smith v Marlborough District Council

ENV-2023-CHC-47 Clova Bay Residents Association Incorporated v Marlborough District Council

ENV-2023-CHC-48 Kenepuru and Central Sounds Residents Association Incorporated v Marlborough District Council

ENV-2023-CHC-49 Apex Marine Farm Limited v Marlborough District Council

ENV-2023-CHC-50 Aroma (N.Z.) Limited and Aroma Aquaculture Limited v Marlborough District Council

ENV-2023-CHC-51 Tester & Hughes v Marlborough District Council

ENV-2023-CHC-52 Talley's Group Limited v Marlborough District Council

ENV-2023-CHC-53 Canantor Mussels Limited & others v Marlborough District Council

ENV-2023-CHC-54 McCarthy v Marlborough District Council

ENV-2023-CHC-55 Port Gore Partnership & others v Marlborough District Council

ENV-2023-CHC-56 Carl Elkington & others v Marlborough District Council

ENV-2023-CHC-57 Kapua Marine Farms Limited v Marlborough District Council

ENV-2023-CHC-58 P H Redwood Company Limited and PHR Processing Limited v Marlborough District Council

ENV-2023-CHC-59 KPF Investments Limited and United Fisheries Limited v Marlborough District Council

ENV-2023-CHC-60 Ngāti Rārua Ātiawa Iwi Trust Board v Marlborough District Council

ENV-2023-CHC-61 Aquaculture New Zealand and Marine Farming Association Inc v Marlborough District Council

ENV-2023-CHC-62 Marine Farming Association Incorporated v Marlborough District Council

ENV-2023-CHC-63 Clearwater Mussels Limited v Marlborough District Council

ENV-2023-CHC-64 Hogg v Marlborough District Council

ENV-2023-CHC-65 MacLab (NZ) Limited and MacLab (NZ) Marine Assets Limited v Marlborough District Council

ENV-2023-CHC-66 Marlborough Aquaculture Limited v Marlborough District Council

ENV-2023-CHC-67 Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu v Marlborough District Council

ENV-2023-CHC-68 Ngāi Tahu Seafood Resources Limited v Marlborough District Council

ENV-2023-CHC-69 Pooley v Marlborough District Council

ENV-2023-CHC-70 Scott Madsen Family Trust v Marlborough District Council

ENV-2023-CHC-71 Tester & Bothwell v Marlborough District Council

ENV-2023-CHC-72 Tory Channel Aquaculture Limited v Marlborough District Council

ENV-2023-CHC-73 Sanford Limited v Marlborough District Council

ENV-2023-CHC-74 (Hori (George)) Elkington v Marlborough District Council

ENV-2023-CHC-76 Ayakulik Limited v Marlborough District Council

ENV-2023-CHC-84 Beleve Limited & others v Marlborough District Council

ENV-2023-CHC-86 Frank Burns v Marlborough District Council

## Appendix 2 – Proposed Mediation Schedule

Topic	Subtopic	Estimated duration	Preferred dates
Objectives, policies, rules		6 days	5 - 7 March and 12 - 14 March 2024
Allocation method		3 days	19 - 21 March 2024
			<i>Easter</i>
Transition		3 days	9 - 11 April 2024
Wording/Miscellaneous, Update pMEP, Ngai Tahu's appeal		3 days	17 - 19 April 2024