

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

IN THE MATTER of the Resource Management Act 1991

AND appeals under clause 14 of the First
Schedule of the Act

BETWEEN KUKU HOLDINGS LIMITED

(ENV-2023-CHC-38)

(and all other appellants involved
in the pMEP and Variation 1
proceedings)

Appellants

AND MARLBOROUGH DISTRICT
COUNCIL

Respondent

**MINUTE OF THE ENVIRONMENT COURT
(23 August 2023)**

Introduction

[1] The court has received:

- (a) updating memorandum of counsel for several aquaculture interests regarding deferred appeal points dated 28 July 2023;
- (b) case management memorandum for MDC dated 11 August 2023;
- (c) application for waiver of time to file an appeal on behalf of F Burns dated 11 August 2023;



- (d) application for leave to amend an appeal by Apex Marine Farm Ltd (ENV-2023-CHC-49).

[2] MDC has confirmed they do not oppose the interlocutory applications listed above and no s274 parties/submitters have opposed the application by Apex Marine Farm Ltd. Given the proceedings are still at an early stage, I consider they can all be granted as sought and I will put in place an extended period for any submitters to join.

Case management

[3] MDC has helpfully set out an update for all the pMEP topics, a list of appeal points deferred pending Variation 1 which are still being pursued, and proposed directions to progress the outstanding matters, together with the new appeals on Variation 1.

[4] MDC has advised it needs more time to assess the deferred appeal points against the Variation 1 appeals and to consult with the relevant appellants on how to progress them. Counsel have proposed to focus the remainder of 2023 on informal mediations where possible with the aim to propose formal mediation dates for the New Year.

[5] I consider the proposed directions are appropriate in the meantime but will reserve leave for any party to apply for alternative directions, via memorandum, if necessary. I will also put in place some general case management directions around withdrawals.

[6] To date in this review, there have been a number of instances of a s274 party (and in some cases an appellant) not attending mediation and then not signing the consent memorandum nor providing any reasons or explanation for not doing nor as to their position concerning the agreement reached. That is even in the face of proactive inquiry by the court following receipt of agreed consent memoranda. It is observed that such conduct (often by repeat offenders) imposes

costs and delays on other parties and is an **unacceptable abuse of process**.

[7] Given the frequency with which this has occurred in these proceedings, I consider it should be proactively addressed by a direction. That would be to the effect that any party who abuses process in this way would be treated as having abandoned their relevant interests such that the court would proceed to process any consent order or determination so agreed without further recourse to the offender (subject to reserving costs). I invite responses to that in the following directions.

Directions

[8] Accordingly, I direct:

Interlocutory applications

- (a) MDC having advised that it does not oppose the waiver sought dated 12 August 2023, and being otherwise satisfied that no one will be unduly prejudiced in granting it, the application for waiver is hereby granted and the appeal by F Burns is accepted as lodged;
- (b) the application by Apex Marine Farm Ltd for leave to file its amended notice of appeal to include an additional point is granted, since no party has opposed and I am satisfied that no one will be unduly prejudiced since it is still early in the appeal process;
- (c) it is directed that the period for submitters to join those appeals under s274 is extended until **11 September 2023**;
- (d) counsel for MDC are directed to serve a copy of these directions (with the associated appeals) on the relevant submitters that are not already served with this Minute.

Withdrawn appeals (or appeal points)

- (e) I consider general directions can be put in place for any withdrawals

to avoid excessive email communications. Accordingly, it is directed that any party who wishes to raise an issue (including as to costs) with a notice of withdrawal of appeal/appeal point(s) or s274 notice/interest, should advise the court and parties, in writing, within 5 working days of receipt of the withdrawal notice;

- (f) if no party raises an issue with the withdrawal, the court record will be updated to the effect that the appeal/appeal point(s)/s274 notice is withdrawn without further notice.

Case management

- (g) MDC is to file case management memoranda as proposed, setting out:
 - (i) a further report on the link between the Variation 1 appeals and the appeal points deferred from the pMEP appeals by **15 September 2023**;
 - (ii) how it proposes to progress the Variation 1 appeals, including the deferred appeal points, by **13 October 2023**; and
 - (iii) an update on progress of informal mediation/discussions being held and recommended mediation dates by **22 December 2023**.

Default position where party fails to abide duty to inform

- (h) any party who wishes to may file submissions by memorandum by **13 September 2023** as to the appropriately fair and efficient course for the court to take where an agreed memorandum seeking consent order is filed but an appellant or s274 party has not attended mediation nor signed the consent memorandum nor provided reasons for not signing or any explanation of that party's position concerning the agreement reached;
- (i) should no submission(s) be received, the court will assume there is no opposition and the following direction will stand for all future consent memoranda:

if a party fails to participate in mediation or communicate with other parties and the court concerning their interests in it, the court will treat the relevant interest as abandoned or able to be struck out without further notice (subject to reserving costs).

[9] Leave is reserved for any party to apply for further (or other) directions.



J J M Hassan
Environment Judge

Issued: 23 August 2023

