

Marlborough District Council

Minutes of a Meeting of the ENVIRONMENTAL POLICY COMMITTEE held in the Council Chambers, District Council Administration Building, Seymour Street, Blenheim on FRIDAY, 8 FEBRUARY 2008 commencing at 9.00 am

Present

Clrs J Bunting (Chairperson), F D Maher (Deputy), C R Bowers, G A Hope and G Taylor.

Present as representatives of iwi were Jeffrey Hynes (Te Runanga A Rangitane O Wairau), Raewyn Soloman (Te Runanga O Kaikoura), Vennessa Ede (Te Atiawa Manawhenua Ki Te Tau Ihu Trust), Ben Hippolite and Allen Hippolite (Ngati Koata Trust), Raymond Smith (Te Runanga O Ngati Kuia), and Tracey Williams, Rayma-Lee Katu and Glenice Paine (Ngati Rarua Iwi Trust).

In Attendance

The Mayor A T Sowman, Clrs J L Andrews (for part of the meeting), W O Brice and P J O'Sullivan (for part of the meeting), and Messrs H R Versteegh (Manager, Regulatory Department), P J Hawes (Strategic Planner), and Mike Porter (Democratic Services Co-ordinator).

Apologies

The apologies for absence from Clrs A D Barker and E I Davidson were received and sustained. It was further noted that apologies from Clrs G S Barsanti and T R Harrison for not attending the meeting were received. An apology for lateness from Clr P J O'Sullivan was also received.

Apologies for absence from iwi representatives Paia Riwaka-Herbert (Ngati Apa Ki Te Waipounamu Trust) and Lorraine Eade (Ngati Toarangatira Manawhenua Ki Te Tau Ihu Trust) were also received and sustained.

E.07/08.394 *Iwi* **Working with Iwi on Policy Development** *M135-02, R425-02-13 & W045-02*

Members noted that Council's role and responsibilities for resource management in Marlborough are inextricably linked to and enriched by tangata whenua's traditional and continuing commitment to kaitiakitanga.

Staff reported that to reflect this important relationship, an Iwi Working Group was established in August 2007 to assist with the process of reviewing the Marlborough RPS. The group, involving a representative from each of Marlborough's eight tangata whenua iwi, met regularly to discuss the content of the discussion papers (prior to their public release), with an objective of identifying issues of significance to each of the iwi. Although significant progress has already been made in this respect, including the preparation of draft material, there is a need for further hui with the Iwi Working Group to progress the review.

There will also be a continuing need for iwi involvement in other policy development and review projects, particularly the review of the Marlborough Sounds Resource Management Plan and Proposed Wairau/Awatere Resource Management Plan.

To signal the Committee's commitment to working closely with tangata whenua throughout these review processes, each of the iwi have been invited to send representatives to attend this, the first meeting of the new Environmental Policy Committee. The meeting provides the opportunity to renew the relationship between the Council and each of the iwi and to discuss opportunities for the Council and iwi to work together in policy development and review projects.

Iwi representatives were invited to sit at the table and were afforded speaking rights on all items presented to the meeting.

The Mayor/Clr Bunting:

That Council recognises its special relationship with Tangata Whenua and will work in partnership with Iwi on policy development and review projects.

Carried

E.07/08.395 *Planning* **Environmental Policy Group Work Programme *M135-02, R425-02 & W045-02***

Staff reported the current work programme for the Environmental Policy Group. The report covered the current resource management framework, the review of it, the next steps and some other matters.

Clrs Bowers/Hope:

That the information be received.

Carried

E.07/08.396 *Legal* **Environmental Policy - Instrument of Delegation *L135-02***

Staff reported that Council has in place a schedule of delegations to help in the processing of a wide range of functions under the Resource Management Act 1991. The delegations assist in the smooth running of the day-to-day administration of resource management processes, and are particularly important with regard to the Council being able to meet statutory timeframes. Previously the schedule of delegations has been “rolled over” for each new term of Council, with any amendments being limited to updating the “Hierarchy of Delegations” to reflect changes in staff designations, and Committee titles. A new committee structure for this term of the Council requires the current delegations under the Resource Management Act 1991 to be reviewed.

Staff have undertaken a review of the “Resource Management Amendment Act 2003 Instrument of Delegation” to separate the delegations between the Environment Committee and the Environmental Policy Committee and to update the delegations to reflect changes to the Resource Management Act 1991. This delegation schedule covers those functions associated with the preparation of policy statements and plans including hearings, time extensions and administrative charges.

Clrs Taylor/Bowers:

- 1. That the “Resource Management Act 1991 Instrument of Delegation Environmental Policy” prepared in accordance with sections 34 and 34A of the Act be approved by the Council.**
- 2. That the instrument of delegation “Resource Management Amendment Act 2003 Instrument of Delegation – Aug 2004” be amended to remove any relevant delegations for policy statements and plans.**

Marlborough District Council

**Resource Management Act 1991 Instrument of Delegation
Environmental Policy**

1. This instrument is prepared in accordance with sections 34 and 34A of the Resource Management Act 1991 (Act).

2. This instrument shall come into force on 21 February 2008.

Hierarchy of Delegations

3. The instrument uses a hierarchy of delegations to establish the level to which delegations shall extend from the Marlborough District Council (Council) as follows:

Level 1	Environmental Policy Committee
Level 2	Chairperson, Environmental Policy Committee
Level 3	Manager, Regulatory Department
Level 4	Manager, Environmental Policy Group
Level 5	Strategic Planners District and Regional Policy Analysts

Schedule

4. This instrument uses a schedule to document the delegations.
5. Local authority, authority, territorial authority or regional council referred to in the schedule means the Marlborough District Council.
6. Delegations in this schedule have been specified to the lowest level considered appropriate, but a decision can be made at a higher level.
7. For delegations to Level 5, this means one individual at that level. Where there are two levels specified then it means one person from each level.
8. If no delegation is made through the schedule, then a decision has to be made by the full Council.
9. Clauses 16(1) and 16(3) in Schedule 1 of the Act direct or enable amendments to be made to planning documents without further formality. No specific delegation is required for these changes to be made under the Act, however, it has been recognised that there is a need for such changes to be formally documented. In these circumstances, the amendments are to be reported to the Environmental Policy Committee.
10. Where the Environmental Policy Committee is not able to carry out the functions, powers and duties under this instrument, then full Council must fulfil those roles.

Environment Court Proceedings

11. On appeals to policy statements and plans, consent orders may only be signed off by the District Solicitor or Manager, Regulatory Department in consultation with the Chairperson of the Environmental Policy Committee. Any changes shall be reported to the Environmental Policy Committee.

Decisions under Clause 10 of the First Schedule of the Act

12. Where the Council has made a decision on a submission to a policy statement or a plan, and that decision has been incorrectly recorded in the re-printed version of the policy statement or plan, then the policy statement or plan needs to be amended to reflect the correct decision. It is important that any such changes that are made are appropriately recorded and reported. There may be a need to obtain confirmation from the District Solicitor that any changes are appropriate. There is no requirement for a delegation in terms of the Act but any such changes must be reported to the Environmental Policy Committee for information.

Council's Activities and Projects

13. It is essential that the Council has in place practices and procedures that ensure that it is, and is seen to be fair, impartial and accountable in the way that it treats changes to policy statements and plans from

itself and from those organisations in which it has a pecuniary interest (MDC Holdings Limited, Marlborough Airport Limited a subsidiary of MDC Holdings Limited, Port Marlborough New Zealand Limited, Sounds Property Holdings Limited, a subsidiary of Port Marlborough New Zealand and Marlborough Regional Forestry).

14. On a case by case basis, where a proposed plan change/variation which the Council or organisations (and their subsidiaries) in which the Council has a pecuniary interest, then the Council will consider the delegation of a hearing (clause 8B, Schedule 1) and decisions (clause 10, Schedule 1) to a Commissioner(s). This delegation is not covered by this schedule and must be confirmed under a separate delegation by the full Council. Final consideration and approval under Clause 17, Schedule 1 must still be undertaken by the full Council.

The Schedule

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>36. Administrative charges—</p> <p>(3) Where a charge fixed in accordance with subsection (1) is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge, to also pay an additional charge to the local authority.</p> <p>(5) A local authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable.</p>	<p>Level 4</p>
<p>37. Power of waiver and extension of time limits—</p> <p>(1) A consent authority or local authority may, in any particular case,—</p> <p>(a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; or</p> <p>(b) waive a failure to comply with a requirement under this Act, regulations, or a plan for the time or method of service of documents.</p> <p>(2) If a person is required to provide information under this Act, regulations, or a plan and the information is inaccurate or omitted, or a procedural requirement is omitted, the consent authority or local authority may—</p> <p>(a) waive compliance with the requirement; or</p> <p>(b) direct that the omission or inaccuracy be rectified on such terms as the consent authority or local authority thinks fit.</p>	<p>Level 4 and Level 5</p>
<p>37A. Requirements for waivers and extensions—</p> <p>(2) A time period may be extended under section 37 for—</p> <p>(a) a time not exceeding twice the maximum time period specified in this Act; or</p> <p>(b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.</p>	<p>Level 4 and Level 5</p>
<p>40. Persons who may be heard at a hearing—</p> <p>(2) Notwithstanding subsection (1), the authority may, if it considers that there is likely to be excessive repetition, limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support.</p>	<p>Level 1</p>

Powers, Functions and Duties:	Delegated To:
<p>(3) If—</p> <p>(a) The applicant; or</p> <p>(b) Any person who made a submission and stated they wished to be heard at any such hearing—</p> <p>fails to appear at the hearing, the consent authority may nevertheless proceed with the hearing, if it considers it fair and reasonable to do so.</p>	Level 1
<p>41. Provisions relating to hearings—</p> <p>(4) At every hearing conducted in relation to a matter described in section 39(1), the authority may request and receive, from any person who makes a report under section 42A or who is heard by the authority or who is represented at the hearing, any information or advice that is relevant and reasonably necessary to determine the application.</p>	Level 1
<p>41A Control of hearings—</p> <p>An authority conducting a hearing on a matter described in section 39(1) may exercise a power under section 41B or section 41C, after considering whether the scale and significance of the hearing makes the exercise of the power appropriate.</p>	Level 1
<p>41B Directions to provide evidence within time limits—</p> <p>(1) The authority may direct the applicant to provide briefs of evidence to the authority before the hearing.</p>	Level 5
<p>(3) The authority may direct a person who has made a submission and who is intending to call expert evidence to provide briefs of the evidence to the authority before the hearing.</p>	Level 5
<p>41C Directions and requests before or at hearings—</p> <p>(1) Before or at the hearing, the authority may-</p> <p>(a) direct the order of business at the hearing, including the order in which evidence and submissions are presented;</p> <p>b) direct that the evidence and submissions be—</p> <p>(i) <i>recorded; or</i></p> <p>(ii) taken as read; or</p> <p>(iii) limited to matters in dispute; or</p> <p>(c) direct the applicant, when presenting evidence or a submission, to present it within a time limit; or</p> <p>(d) direct a person who has made a submission, when presenting evidence or a submission, to present it within a time limit.</p>	Level 2
<p>(2) Before or at the hearing, the authority may request a person who has made a submission to provide further information.</p>	Level 5
<p>(3) At the hearing, the authority may request the applicant to provide further information.</p>	Level 1

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>(4) At the hearing, the authority may commission a consultant or any other person employed for the purpose to prepare a report on any matter on which the authority requires further information, if all the following apply:</p> <p>(a) the activity that is the subject of the hearing may, in the authority's opinion, have a significant adverse environmental effect; and</p> <p>(b) the applicant is notified before the authority commissions the report; and</p> <p>(c) the applicant does not refuse to agree to the commissioning of the report.</p>	Level 1
<p>(6) At the hearing, the authority may direct a person presenting a submission not to present –</p> <p>(a) the whole submission, if all of it is irrelevant or not in dispute; or</p> <p>(b) any part of it that is irrelevant or not in dispute.</p>	Level 1
<p>(7) Before or at a hearing, the authority may direct that the whole, or part of a submission be struck out if the authority considers –</p> <p>(a) that the whole submission, or the part, is frivolous or vexatious; or</p> <p>(b) that the whole submission, or the part, discloses no reasonable or relevant case; or</p> <p>(c) that it would otherwise be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.</p>	Level 2
<p>42. Protection of sensitive information—</p> <p>(1) A local authority may, on its own motion or on the application of any party to any proceedings or class of proceedings, make an order described in subsection (2) where it is satisfied that the order is necessary—</p> <p>(a) To avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu; or</p> <p>(b) To avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information,—</p> <p>and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.</p>	Level 3
<p>(2) A local authority may make an order for the purpose of subsection (1)—</p> <p>(a) That the whole or part of any hearing or class of hearing at which the information is likely to be referred to, shall be held with the public excluded (which order shall, for the purposes of subsections (3) to (5) of section 48 of the Local Government Official Information and Meetings Act 1987, be deemed to be a resolution passed under that section):</p> <p>(b) Prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to any proposal, application, or requirement.</p>	Level 3

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>42A. Reports to local authority—</p> <p>(1) At any reasonable time before a hearing or, if no hearing is to be held, before the decision is made, a local authority may require an officer of a local authority as defined in section 42(6), or may commission a consultant or any other person employed for the purpose, to prepare a report on information provided on any matter described in section 39(1) by the applicant or any person who made a submission.</p>	Level 4
<p>(2) Any report prepared under subsection (1) may be considered at any hearing conducted by the local authority.</p>	Level 1
<p>(4) The local authority may waive compliance with subsection (3) if it is satisfied that there is no material prejudice, or is not aware of any material prejudice, to any person who should have been sent a copy of the report under subsection (3).</p>	Level 4
<p>49. Submissions to board of inquiry—</p> <p>(1) Any person may make a submission to the board of inquiry about a proposed national policy statement which is notified in accordance with section 48.</p>	Level 3
<p>82. Disputes—</p> <p>(2) A Minister or local authority responsible for a relevant national policy statement, New Zealand coastal policy statement, policy statement, plan, or order may refer a dispute to the Environment Court for a decision resolving the matter.</p>	Level 3
<p>170. Discretion to include requirement in proposed plan—</p> <p>If a territorial authority is given notice of a requirement under section 168, and proposes to publicly notify a proposed plan under clause 5 of Schedule 1 within 40 working days of receipt of that requirement, the territorial authority may, with the consent of the requiring authority, include the requirement in its proposed plan instead of complying with section 169.</p>	Level 5
<p>267. Conferences—</p> <p>(2) Any party may request an Environment Judge to convene a conference under subsection (1).</p>	Level 3
<p>280. Powers of Environment Commissioner sitting without Environment Judge—</p> <p>(2) Any party may, within 15 working days of the exercise of any power under this section, apply in writing to an Environment Judge for leave to make an application for a review of the exercise of that power by a fully constituted Environment Court.</p>	Level 3
<p>(3) If leave is granted by an Environment Judge, the party may, within a further 7 working days, apply in writing for a review of the exercise of that power by a fully constituted Environment Court.</p>	Level 3

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>281. Waivers and directions—</p> <p>(1) A person may apply to the Environment Court to—</p> <p>(a) Waive a requirement of this Act or another Act or a regulation about—</p> <ul style="list-style-type: none"> (i) The time within which anything shall be served; or (ii) the time within which an appeal or submission to the Environment Court must be lodged; or (iia) the time within which a person must give notice under section 274 that the person wishes to be a party to the proceedings; or (iii) The method of service; or (iv) The documents that shall be served; or (v) The persons on whom anything shall be served; or (vi) The information, or the accuracy of information, that shall be supplied; or <p>(b) Give a direction about—</p> <ul style="list-style-type: none"> (i) The time within which or the method by which anything is to be served; or (ii) What shall be served, whether or not the direction complies with this Act or any other Act or a regulation; or (iii) The terms, including terms as to adjournment, costs, or other things, on which any information shall be supplied. 	<p>Level 3</p>
<p>294. Review of decision by Environment Court—</p> <p>(2) Any party may apply to the Environment Court on any of those grounds for a rehearing of the proceedings; and in any such case the Environment Court, after notice to the other parties concerned and after hearing such evidence as it thinks fit, shall determine whether and (if so) on what conditions the proceedings shall be reheard.</p>	<p>Level 3</p>
<p>299. Appeal to High Court on question of law—</p> <p>(1) A party to a proceeding before the Environment Court under this Act, or any other enactment may appeal on a point of law to the High Court against any decision, report, or recommendation of the Environment Court made in the proceeding.</p>	<p>Level 3</p>
<p>305. Additional appeals on points of law—</p> <p>(1) When a party to an appeal other than the appellant wishes to contend that the decision or report and recommendation of the Environment Court is in error on other points of law, that party may lodge a notice to that effect with the Registrar of the High Court....</p>	<p>Level 3</p>
<p>311. Application for declaration—</p> <p>(1) Subject to subsections (2) and (3), any person may at any time apply to the Environment Court in the prescribed form for a declaration.</p>	<p>Level 3</p>
<p>SCHEDULE 1</p>	
<p>1. Interpretation and time limits—</p> <p>(2) Where any time limit is set in this Schedule, a local authority may extend it under section 37.</p>	<p>Level 4 and Level 5</p>

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>2. Preparation of proposed policy statement or plan— (1) The preparation of a policy statement or plan shall be commenced by the preparation by the local authority concerned, of a proposed policy statement or plan.</p>	Level 1
<p>3. Consultation — (2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.</p>	Level 5
<p>4. Requirements to be inserted prior to notification of proposed district plans— (6) A territorial authority may include in its proposed district plan – (a) Any requirement for a designation or heritage order which the territorial authority has responsibility for within its district; and (b) Any existing designations or heritage orders, with or without modifications, which the territorial authority has responsibility for within its own district.</p>	Level 2
<p>5. Public notice and provision of document to public bodies— (1A) A territorial authority shall, not earlier than 60 working days before public notification or later than 10 working days after public notification of its plan, either— (a) Send a copy of the public notice, and such further information as the territorial authority thinks fit relating to the proposed plan, to every ratepayer for the area of the territorial authority where that person, in the local authority's opinion, is likely to be directly affected by the proposed plan; or (b) Include the public notice, and such further information as the territorial authority thinks fit relating to the proposed plan, in any publication or circular which is issued or sent to all residential properties and Post Office box addresses located in the affected area— and shall send a copy of the public notice to any other person who, in the territorial authority's opinion, is directly affected by the plan.</p>	Level 5
<p>(1B) Notwithstanding subclause (1A), a territorial authority shall ensure that notice is given of any requirement or modification of a designation or heritage order under clause 4 to land owners and occupiers who, in the territorial authority's opinion, are likely to be directly affected.</p>	Level 5
<p>(1C) A regional council shall, not earlier than 60 working days before public notification or later than 10 working days after public notification, send a copy of the public notice and such further information as the regional council thinks fit relating to the proposed policy statement or plan to any person who, in the regional council's opinion, is likely to be directly affected by the proposed policy statement or plan.</p>	Level 5
<p>8AA. Resolution of disputes — (1) For the purposes of clarifying or facilitating the resolution of any matter relating to a proposed policy statement or plan, a local authority may, if requested or on its own initiative, invite anyone who has made a submission on the proposed policy statement or plan to meet with the local authority or such other person as the local authority thinks appropriate.</p>	Level 4
<p>(3) The local authority may, with the consent of the parties, refer to mediation the issues raised by persons who have made submissions on the proposed plan or policy statement.</p>	Level 4

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>8B Hearing by local authority—</p> <p>A local authority shall hold a hearing into submissions on its proposed policy statement or plan, and any requirements notified under clause 4, and give at least 10 working days notice of the dates, times, and place of the hearings to—</p> <p>(a) Every person who made a submission or further submission, and who requested to be heard (and has not since withdrawn that request); and</p> <p>(b) In the case of a district plan, every authority which made a requirement under clause 4.</p>	<p>Level 1</p>
<p>8D. Withdrawal of proposed policy statements and plans—</p> <p>(1) Where a local authority has initiated the preparation of a policy statement or plan, the local authority may withdraw its proposal to prepare, change, or vary the policy statement or plan at any time—</p> <p>(a) if an appeal has not been made to the Environment Court under clause 14, or the appeal has been withdrawn, before the policy statement or plan is approved by the local authority; or</p> <p>(b) if an appeal has been made to the Environment Court, before the Environment Court hearing commences.</p>	<p>Level 1</p>
<p>10. Decision of local authority—</p> <p>(1) Subject to clause 9, whether or not a hearing is held on a proposed policy statement or plan, the local authority shall give its decisions, which shall include the reasons for accepting or rejecting any submissions (grouped by subject-matter or individually).</p>	<p>Level 1</p>
<p>(2) The decisions of the local authority may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.</p>	<p>Level 1</p>
<p>14. Appeals to Environment Court—</p> <p>(3) The following persons may appeal to the Environment Court against any aspect of a requiring authority's or heritage protection authority's decision:</p> <p>(a) any person who made a submission on the requirement that referred to that matter;</p> <p>(b) the territorial authority.</p>	<p>Level 2</p>
<p>16. Amendment of proposed policy statement or plan—</p> <p>(2) A local authority may make an amendment, without further formality, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.</p>	<p>Level 2</p> <p>Amendments to be reported to Level 1.</p>
<p>16A. Variation of proposed policy statement or plan—</p> <p>(1) A local authority may initiate variations (being alterations other than those under clause 16 to a proposed policy statement or plan, or to change, at any time before the approval of the policy statement or plan.</p>	<p>Level 1</p>
<p>18. Consideration of a regional coastal plan by regional council—</p> <p>(1) A regional council shall adopt a proposed regional coastal plan for reference to the Minister of Conservation once it has made amendments under clause 16 or variations under clause 16A (if any).</p>	<p>Level 1</p>
<p>(4) A regional council may adopt part of a proposed regional coastal plan if all submissions or inquiries relating to that part have been disposed of.</p>	<p>Level 1</p>

<i>Powers, Functions and Duties:</i>	<i>Delegated To:</i>
<p>20A. Correction of operative policy statement or plan— A local authority may amend, without further formality, an operative policy statement or plan to correct any minor errors.</p>	<p>Level 2</p> <p>Amendments to be reported to Level 1.</p>
<p>23. Further information may be required— (1) Where a local authority receives a request from any person under clause 21, it may within 20 working days, by written notice, require that person to provide further information necessary to enable the local authority to better understand—</p> <p>(a) The nature of the request in respect of the effect it will have on the environment, including taking into account the provisions of Schedule 4; or</p> <p>(b) The ways in which any adverse effects may be mitigated; or</p> <p>(c) The benefits and costs, the efficiency and effectiveness, and any possible alternatives to the request; or</p> <p>(d) The nature of any consultation undertaken or required to be undertaken—</p> <p>if such information is appropriate to the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change or plan.</p>	<p>Level 5</p>
<p>(2) A local authority, within 15 working days of receiving any information under this clause, may require additional information relating to the request.</p>	<p>Level 4 and Level 5</p>
<p>(3) A local authority may, within 20 working days of receiving a request under clause 21, or, if further or additional information is sought under subclause (1) or subclause (2), within 15 working days of receiving that information, commission a report in relation to the request and shall notify the person who made the request that such a report has been commissioned.</p>	<p>Level 4 and Level 5</p>
<p>(6) To avoid doubt, if the person who made the request declines under subclause (5) to provide the further or additional information, the local authority may at any time reject the request or decide not to approve the plan change requested, if it considers that it has insufficient information to enable it to consider or approve the request.</p>	<p>Level 1</p>
<p>24. Modification of request— As a result of further or additional information, commissioned reports, or other relevant matters, the local authority may, with the agreement of the person who made the request, modify the request.</p>	<p>Level 5</p>

Powers, Functions and Duties:	Delegated To:
<p>25. Local authority to consider request—</p> <p>(2) The local authority may either—</p> <p>(a) Adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—</p> <p>(i) The request must be notified in accordance with clause 5 of this Schedule within 4 months of the local authority adopting the request; and</p> <p>(ii) The provisions of Part I of this Schedule must apply; and</p> <p>(iii) The request has effect once publicly notified; or</p> <p>(b) Accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26</p>	Level 1
<p>(3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.</p>	Level 1
<p>4) The local authority may reject the request in whole or in part, but only on the grounds that—</p> <p>(a) The request or part of the request is frivolous or vexatious; or</p> <p>(b) The substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or</p> <p>(c) The request or part of the request is not in accordance with sound resource management practice; or</p> <p>(d) The request or part of the request would make the policy statement or plan inconsistent with Part 5; or</p> <p>(e) In the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.</p>	Level 1
<p>28. Withdrawal of requests—</p> <p>(2) Where any local authority has reasonable grounds to consider that a person who made a request under clause 21 no longer wishes to continue with the request, the local authority may send a notice to that person at their last known address.</p>	Level 5
<p>(5) Where notice of withdrawal is given under subclause (1) or is deemed to be given under subclause (4), preparation of the policy statement or plan or change shall cease, unless the local authority determines to proceed with the request itself under this Part.</p>	Level 1
<p>29. Procedure under this Part—</p> <p>(1) Except as provided in subclauses (2) to (9), Part I of this Schedule, with all necessary modifications, shall apply to any plan or change requested under this Part and accepted under clause 25(2)(b).</p>	As per the delegations for those sections of the Act

Carried

E.07/08.397

Planning

**Report - Residential Land Availability
Renwick and Blenheim**

E225-B03

Christine Foster, of Environmental Management Services, attended the meeting to present the report as attached to the agenda. Christine reported that this report follows on from similar studies in 2004, 2005 and 2006. It represents a milestone in the understanding of residential growth and the adequacy of available

residential land in Blenheim and Renwick; firstly, because it has a hindsight view of three years of analysis, and, secondly, and significantly, it is based upon recent census information, the 2006 New Zealand Census.

Christine further reported that the information the report delivers is sobering and timely. It clearly indicates that the sustained growth experienced in Marlborough in recent years has taken up much of the residentially zoned land in Blenheim and Renwick, and that this matter needs to be addressed with some urgency. It is timely because it dovetails in with the current review of the Marlborough Regional Policy Statement and Marlborough's resource management plans, and it will make a valuable, informed, contribution to those processes.

Clrs Bunting/Hope:
That the information be received.

Carried

**E.07/08.398 *Planning* **Marlborough Townships' Project – Report
on Feedback from Consultation Round****

E225-M01

Christine Foster, of Environmental Management Services, attended the meeting to present the report as attached to the agenda. Christine reported that the output from the First Phase of this project was the "Statement of Position" report describing district-wide patterns and issues and profiling each of the townships and settlements. The report, which was considered by the Environment Committee in February 2007, was released for public consultation as a draft (work in progress) over a 2-month period from early August until 28 September 2007.

Public notices were placed in the Marlborough Express, Seaport News and the newsletter published by Awatere Community Activities. The document was placed on the Council's web site and copies were made widely available for public viewing. Feedback was received from 63 individuals and organisations. This was an informal process, with the feedback received representing the voluntary views of the respondents. All responses have been individually acknowledged, and all of the respondents went into a draw to win a copy of the book "Marvellous Marlborough". The purpose of this report is to present a summary of the feedback received and to indicate how the feedback will be used.

Clrs Bunting/Hope:
That the information be received.

Carried

**E.07/08.399 *Planning* **Proposed Marlborough Sounds Resource
Management Plan Appeals****

M135-12-10 & M135-12-05

Staff reported that the Environment Court has recently released decisions on two outstanding references (appeals) to the Proposed Marlborough Sounds Resource Management Plan regarding port noise and shipping activity in the Sounds.

Following the release of decisions on the Proposed Marlborough Sounds Resource Management Plan in 1998 the Environment Court received three references regarding Port noise. The referrers, in summary, sought the imposition of the Port Noise Standard or amendments to the noise provisions to enable the continued operation of the ports. The references have recently been resolved by way of consent order. The consent order sought changes to Volume One so that it more clearly recognized that Marlborough's ports were noisy, but were vital for the economic wellbeing of the community and needed to be provided for. Volume Two, Port Zone, was also amended so that port type activities were excluded from the noise provisions, subject to them not exceeding specific noise levels, at specified monitoring sites. The consent order was signed off by the Environment Court on 18 December 2007.

Following the release of decisions on the Proposed Marlborough Sounds Resource Management Plan (the Plan) in 1998, the Environment Court also received a reference regarding the shipping provisions from Tranz Rail New Zealand Limited. The Marlborough District Council responded to the reference and community concerns regarding the effects of shipping activity on the environment, by varying the Plan. Variation 3 – Shipping Activity in the Marlborough Sounds introduced provisions to control the effects of shipping activity in the Marlborough Sounds. The Variation was introduced in November 2002 and following decisions on submissions, appeals were lodged with the Environment Court. The appeals were heard in late 2005 and early 2006. The Court issued an interim decision in May 2006, which found that it was appropriate to have a framework in the Plan for dealing with the effects of shipping activity based on an energy rule. The Court made some modification to the energy rule and then directed that the parties to the appeal meet to determine how other aspects of the appeals to the variation might be resolved. Following a second interim decision (see agenda item 7) the Environment Court released its final decision on 22 January 2008.

Once provisions in a Plan are beyond appeal the Resource Management Act 1991 requires the Council to make the provisions operative. There are two processes by which the Council may do this, depending on whether the provisions are in the regional coastal plan or the regional/district plans. In most cases once the provisions are beyond appeal it is a simple matter of the Council approving the provisions, with the new provisions in the regional/district plan becoming operative on a publicly notified date. However, where the provisions affect the regional coastal plan, i.e. fall within the coastal marine area, then the Council can only adopt the provisions, with the final approval being given by the Minister of Conservation. Once approval is received then Council makes the provisions operative on a publicly notified date. Both the Port Noise Consent Order and the Environment Court decision on shipping activity amend the provisions in the regional coastal plan, and subsequently the Council is required to adopt the changes, request the Minister's approval and then make the changes operative. In addition, the provisions within the Port Noise Consent Order affect the Regional and District Plans and also need to be approved by the Council and made operative.

Clrs Hope/Bowers:

- 1. That the Marlborough District Council adopt the provisions contained in the separately attached "Appendix A of the Environment Court decision W1/2008 (relating to Variation 3 – Shipping Activity in the Marlborough Sounds)", and send those provisions to the Minister of Conservation for approval in accordance with Clause 18 of the First Schedule, Resource Management Act 1991.**
- 2. That the Marlborough District Council adopt the provisions contained in the separately attached "Schedule of Changes to the Proposed Marlborough Sounds Resource Management Plan" as appended to the Environment Court order dated 19 Dec 2007 (relating to port noise), and send those provisions to the Minister of Conservation for approval in accordance with Clause 18 of the First Schedule, Resource Management Act 1991.**
- 3. That the Marlborough District Council approve the provisions contained in the separately attached "Schedule of Changes to the Proposed Marlborough Sounds Resource Management Plan" as appended to the Environment Court order dated 19 Dec 2007 (relating to port noise), in accordance with Clause 17 of the First Schedule, Resource Management Act 1991.**
- 4. That the provisions be made operative in accordance with Clause 20 of the First Schedule, Resource Management Act 1991, as soon as possible after the Minister's approval has been received, subject to no amendments being required by the Minister.**

Carried

E.07/08.400 *Planning* Request for Variation to the Marlborough Sounds Resource Management Plan

E225-25

Members noted that Variation 3 to the Marlborough Sounds Resource Management Plan introduced provisions to control the effects of shipping activity in the Marlborough Sounds. The variation was

introduced in November 2002 and ultimately came before the Environment Court in late 2005 and early 2006. The Court issued an interim decision in May 2006, which found that it was appropriate to have a framework in the Plan for dealing with the effects of shipping activity based on an energy rule. The Court made some modification to the energy rule and then directed that the parties to the appeal meet to determine how other aspects of the appeals to the variation might be resolved.

Since that time there have been extensive discussions with the parties including Environment Court mediation. Substantial agreement had been reached by all parties with the exception of the grandfathering provisions. The grandfathering provisions enabled the ships 'Aratere', 'Arahura' and 'Kent' to operate as they had been prior to the introduction of Variation 3 in November 2002. The consequence of this is that these ships are permitted to travel in the National Transport Route up to 20 knots maximum speed without being subject to the energy rule in the Plan. These provisions continue to be opposed by Friends of Nelson Haven and Tasman Bay Inc. A second interim decision by the Court (reported to the Environment Committee in July 2007) found that it was not within the scope of the appeals for the Court to consider whether:

- there should be a sunset clause applicable to the grandfathering provision consistent with Toll's evidence at the initial hearing as to the phasing out of the Arahura and Aratere in 2008; or
- the grandfathering provision contained in Variation 3 should remain in its initial form (i.e. with no sunset clause).

All parties, aside from Friends of Nelson Haven and Tasman Bay Inc insofar as the grandfathering provisions are concerned, have now agreed on the changes and all appeals are able to be resolved. A final decision on the appeals was issued by the Environment Court on 22 January 2008. The Court has confirmed the variation as agreed between the parties, and has re-iterated its position that the grandfathering issues are outside the scope of the appeals. Just prior to Christmas 2007, a request was received from Friends of Nelson Haven and Tasman Bay Inc (FONH) to initiate a variation to the Plan relating to the provisions that deal with ship wake issues. Essentially what has been sought is a variation to cap the grandfathering provisions by a fixed date. A copy of the request was attached. Mr Beech representing FONH, spoke to the Committee on the request for the variation.

Clrs Taylor/Hope:

That in recognition of the partnership role in managing ship wake issues expressed in Variation 3 to the Marlborough Sounds Resource Management Plan, that Te Atiawa are to form part of the discussions in determining whether or not the request for the variation should be accepted.

Carried

E.07/08.401 *Planning* **Proposed Wairau/Awatere Resource Management Plan Appeals *W045-12-01***

Staff reported that a real effort has gone into resolving the outstanding appeals to the Proposed Wairau/Awatere Resource Management Plan over the past 12 months. Negotiated agreements (13) have led to the resolution almost all appeals to the Plan. When progress was last reported to the Environment Committee in July 2007, there were still five outstanding appeals. Three of those appeals have subsequently been resolved through consent orders:

- Federated Farmers' appeal on the permitted activity rule for the discharge of agrichemicals in the rural zones;
- Federated Farmers' appeal on hazardous facilities provisions in the rural zones; and
- Wine Institute's appeal on rural policies and rules as they relate to viticultural activities.

The Nelson/Marlborough Fish and Game Council's appeal on the Para Swamp provisions has been formally withdrawn.

This now leaves just one outstanding appeal, the Nelson/Marlborough Fish and Game Council's appeal on specific water allocation provisions, including the Sustainable Flow regime for the Wairau River and tributaries. Two organisations, TrustPower Ltd and the Marlborough branch of Federated Farmers, are party to this appeal. The most contentious appeal points are probably the point at which minimum flows on the Wairau and Branch Rivers apply and a prohibition on damming the Wairau River. Informal discussions have been held with Nelson/Marlborough Fish and Game Council staff. Partly as an outcome of these discussions, a report has now been prepared in respect of the appeal and is currently being considered by all parties. It is anticipated that attempts to resolve this appeal will require mediation.

With only one outstanding appeal, the Council is approaching the point where it might be able to make the Proposed Wairau/Awatere Resource Management Plan operative (in accordance with Clause 20 of the First Schedule of the RMA). Although a review of the resource management plans is underway (see agenda item 2), it is still considered appropriate to make the plan operative given the timeframe for the review. The Nelson/Marlborough Fish and Game Council's appeal is limited in scope and only affects specific parts of the General Rules section of Volume 2 of the plan. If resolving the appeal becomes protracted or is likely to proceed to an Environment Court hearing, the Council also has the option of making the plan operative in part. This approach was used when making the Marlborough Sounds Resource Management Plan operative.

The Minister of Conservation must approve the part of the Plan that constitutes a regional coastal plan. There are no outstanding appeals on these provisions.

Clrs Maher/Bunting:

- 1. That the Committee adopt the following provisions of the Proposed Wairau/Awatere Resource Management Plan as the regional coastal plan:**
 - 1.1. Volume One: Chapter 9, Coastal Marine; Chapter 10 Natural Character; Chapter 17.4, Coastal Hazards;**
 - 1.2. Volume Two: Coastal Marine Zone; Port Zone; Appendix D – Areas of Significant Conservation Value; and**
 - 1.3. Volume Three**
- 2. That the regional coastal plan component of the Proposed Wairau/Awatere Resource Management Plan be referred to the Minister of Conservation for approval.**

Carried

E.07/08.402 *Planning* **Proposed Wairau/Awatere Resource Management Plan: Variations 42, 49 & 50**

W045-15-42, W045-15-49 & W045-15-50

Staff reported that on 14 June 2007 Council notified Variations 42 (Review of Central Business Zone), 49 (Industrial 2) and 50 (Neighbourhood Business Zone- Springlands) to the Proposed Wairau Awatere Resource Management Plan.

Submissions were called for the above Variations with the closing date on the 10 August 2007. 44 submissions were received for Variation 42, 28 submissions for Variation 49 and 37 submissions for Variation 50. A summary of submissions was subsequently prepared, and further submissions were called for the above Variations with a closing date on the 7 December 2007. 47 further submissions were received for Variation 42, 4 further submissions for Variation 49 and 87 further submissions for Variation 50. Work has started on preparing the officer report and it is proposed to set the Variations down for a four day hearing, by the Environmental Policy Committee, commencing on the 25 March 2008.

With regard to the hearings the Council has received a request from Foodstuffs for Variation 42- Review of the Central Business Zone, to be heard by external commissioners. Foodstuffs believe that given the Council is a landowner within the Central Business Zone and the promoter of the Variation, they believe that a panel of external commissioners would be more appropriate in the circumstances. In particular they consider such a step would avoid any perception of bias on behalf of the Council as decision maker.

Cirs Maher/Bowers:

1. — ~~That the hearing panel for Variation 42 comprise a Commissioner with Councillors.~~

2. — That the hearing panel for Variations[42,] 49 and 50 comprise Councillors only. [amended at the Council meeting on 21 February 2008]

Carried

**E.07/08.403 *Planning* **Review of the Marlborough RPS –
Feedback on Discussion Papers *R425-02*****

Members noted that as part of the process of reviewing the Marlborough RPS, the Council prepared and publicly released 12 discussion papers in late September 2007. The objective of releasing the discussion papers was to confirm the issues to go into a draft of the new Marlborough RPS and to encourage debate about the ways in which those issues can be addressed. Feedback has been received from 133 people or organisations. The organisations reflect a good cross section, including iwi, residents groups, industry groups, environmental groups and government departments. Although Discussion Paper 3: Rural Issues (68 submissions) and Discussion Paper 4: The Future of the Marlborough Sounds (70 submissions) received the greatest number of responses, all of the discussion papers attracted at least 40 responses, demonstrating wide interest in all of the issues raised.

The responses have been summarised and summaries of the feedback received on each of the discussion papers were separately attached to the Agenda. By and large, there was agreement with the issues included in the discussion papers. In some cases there was also agreement with the actions for addressing the issues, while for other issues there were a wide range of views expressed on the actions. Additional issues were also highlighted, including some that are outside the scope of a RPS. Of particular note were concerns that air quality and heritage issues have been excluded from the discussion papers. More detail is included in the summaries.

Cirs Maher/Taylor:

- 1. That the separately attached summaries of feedback on the Marlborough RPS review discussion papers be approved for public release.**
- 2. That the summaries be included on the agenda of the next Marlborough RPS review Councillor workshop.**

Carried

**E.07/08.404 *Planning* **RMA Efficiency and Effectiveness Review
and State of the Environment Report
*D090-02-01 & E225-11*****

Staff reported on the need for Council to undertake a review of the efficiency and effectiveness of its regional policy statement and resource management plans and how this information can be used to help in the preparation of a comprehensive state of the environment report for Marlborough. This item has been reported to both the Environmental Policy Committee (in terms of the efficiency and effectiveness review) and the Environment Committee (for reporting on the state of Marlborough's environment).

Section 35 of the Resource Management Act 1991 (RMA) currently sets out the requirement to gather information, monitor and keep records. Although there is no specific requirement in the RMA to report annually or otherwise on the state of the environment, over the past ten years, the Council has prepared an annual state of the environment report. A commitment for an annual report is set out in the current Marlborough Regional Policy Statement (Marlborough RPS). The report has always been well received in the community. Section 35 also requires the Council to monitor the efficiency and effectiveness of policies, rules, or other methods in a regional policy statement and resource management plans and to report on this no less than five yearly. This provision was introduced into the RMA in 2003 and to date the Council has not prepared a report as envisaged by the RMA.

A project has been commenced that will firstly fulfil the statutory requirement in section 35 of the RMA for the Council to undertake a review of the efficiency and effectiveness of its regional policy statement and resource management plans, and secondly will report on the state of Marlborough's environment. The outcomes of the efficiency and effectiveness review will be reported separately from the state of the environment report. It is expected that work on the two reports (one on the efficiency and effectiveness review and one on the state of Marlborough's environment) will be completed by the end of the financial year. Publication of the reports will likely occur some time in July/August 2008.

Clrs Bunting/Bowers:

That the information be received.

Carried

E.07/08.405 *Council* **Information Package** -

Clrs Taylor/Bowers:

That the Environmental Policy Information Package dated 8 February 2008 be received and noted.

Carried

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