

9. Public Access and Open Space

Introduction

Two regionally significant elements of community wellbeing in Marlborough are the ability for the public to gain access to our rivers, lakes, high country and coast (including the coastal marine area) and enjoy areas of open space for recreation and other purposes, whether in urban or rural environments.

Public access is very important in resource management terms, as Section 6(d) of the Resource Management Act 1991 (RMA) requires as a matter of national importance public access to and along the coastal marine area, lakes and rivers to be maintained and enhanced. Being able to enjoy and access marine, freshwater and high country areas is also important in maintaining and enhancing amenity values (Section 7(c) of the RMA).

The Walking Access Act 2008 also affects public access around New Zealand. This Act is intended to enhance and extend walking access throughout New Zealand. The New Zealand Walking Access Commission implements the Act and provides leadership on walking access issues. The Commission maps walking access routes, provides information to the public, has developed a code of responsible conduct, assists with dispute resolution and negotiates new walking access.

In Marlborough there is a high public expectation to be able to access and use coastal areas, as there are some 1,800 kilometres of coastline in the district, a large proportion of which occurs in the intricate waterways of the Marlborough Sounds. Public access to the coast in Marlborough is already relatively well established, with over 900 kilometres already accessible through Sounds Foreshore Reserve, legal road and esplanade reserves. Access is generally freely available, though in some areas is difficult because of land ownership or physical constraints. In some areas, public access is restricted for conservation or health and safety reasons.

In high country areas, public access is sometimes through legal routes on land administered by the Crown or the Council. However, often the areas for which access is sought, such as high country parcels, rivers and streams, can only be reached through private property and at the discretion of the landowner.

Areas of open space, including land administered by the Department of Conservation and reserves for recreation and other purposes, also contribute significantly to the quality of life experienced by Marlborough residents. These open space areas (both land and water) range from the relatively undeveloped to the highly modified and managed. Most are in public ownership or control, although some land is privately protected. Collectively or individually, open space areas are valued by people for ecological, amenity, landscape or recreational purposes.

Areas of open space that are more developed are usually readily accessible to the public and include public landscaped areas, playing fields, parks and play areas, legal roads, river reserves in towns. The degree of development is complementary, necessary or appropriate to the use and enjoyment of the open space. For example there may be community facilities that provide for or encourage recreation, such as halls, jetties, clubrooms or pavilions, courts and swimming pools. Other development may also provide amenity, such as footpaths, seating, lighting, monuments and plaques, or help in the management of an area, such as signs and bollards.

However, a significant part of Marlborough's open space comprises areas in a more natural or undeveloped state and include forests, wetlands, waterbodies and waterways. Areas of open space often show high levels of natural character. For example, the substantial open space resources that exist in the Marlborough Sounds and on Molesworth Station are significant

contributors to the wellbeing of both residents and visitors. Open space areas in these locations also provide protection for important habitats and ecosystems. Other areas of open space, such as the Wither Hills Soil Conservation Reserve provide a valued landscape backdrop to Blenheim, an important recreation resource for walking and mountain biking and fulfil an important soil conservation function.

There is a close relationship between providing for public access and areas of open space. This is particularly so where open space areas may only be able to be enjoyed by the wider community through some form of public access. To this extent there are close links between policies for public access and for open space.

Issue 9A – Trying to meet community expectations that public access will be available to rivers, lakes and the coast.

There is a history of community expectation in Marlborough that public access will be available to the coast, rivers, lakes and high country areas. Being able to meet those expectations is sometimes difficult, especially where access over private land is involved. (However, it is important to recognise that the public have no right of access across private land without express permission from the landowner.) Although public access is coordinated at a central government level through the Walking Access Commission, there are important issues to consider at the District level as well. This is because the effects arising from activities and the development of resources can physically impede public access, as well as affecting people's enjoyment and recreational use of rivers, lakes, the coast and public land.

Within the coastal marine area, structures such as jetties, marinas, moorings and boatsheds can enhance public access, especially in the Marlborough Sounds where substantial parcels of land are in private ownership. However, these structures do occupy public space and may in some locations detract from some people's experience of the Sounds' environment, or even affect access to land or areas in the coastal marine area. Activities such as marine farming, while bringing economic benefits to the District, can physically impede access over water and may also limit some people's interest in using an area for recreational purposes.

In some locations, public access can be physically difficult (e.g. coastal cliffs off the western side of Rangitoto - d'Urville Island) or even unavailable, as along some river margins and the coast, because of private ownership (riparian rights) or privately leased land. Public access may sometimes need to be restricted, for example for health and safety reasons in port areas, during forestry operations, in managing fire risk or to protect significant conservation values (such as those on some of the offshore islands of the Marlborough Sounds).

[RPS, R, C, D]

Objective 9.1 – The public are able to enjoy the amenity and recreational opportunities of Marlborough's coastal environment, rivers, lakes, high country and areas of historic interest.

Given the extensive nature of Marlborough's land, freshwater and coastal environments, there exists a wide range of recreational and amenity opportunities for people to experience. To enable many of these opportunities, there needs to be a reasonable level of public access provided to our rivers, lakes and coast. The maintenance and enhancement of public access to these areas is a matter of national importance under the RMA. The objective also identifies the importance of providing access to high country areas and places of historic interest.

Marlborough is fortunate to be served by networks of rivers, tributaries and streams that bring with them significant access opportunities. Many rivers have legal roads or other forms of public reserve running along their edges. This is particularly the case in the more populated area of the Lower Wairau Plain, where there has been a history of flood plain management with stopbanked river floodways. This has resulted in a high proportion of public ownership of riparian margins than in other areas of Marlborough, with public access more readily achieved. A fair amount of

Commented [1]: Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
ENV-2020-CHC-46

New objective: Enabling customary access
By consent order dated 25 March 2022

the land for which access is sought, such as high country parcels and river margins, can only be reached through private property.

For the coastal environment, public access is important from the land to the coastal edge, within the coastal marine area, from the sea to the land and along the foreshore itself. Although many public roads run near the coast, private ownership of land between the road and the coast can be a significant barrier to public access. Additionally, it is important that structures within the coastal marine area itself are not sited in areas or constructed in any way that creates an adverse effect on access.

General

[RPS]

Policy 9.1.1 – The following areas are identified as having a high degree of importance for public access and the Marlborough District Council will as a priority focus on enhancing access to and within these areas:

- (a) Wairau River from State Highway 63 bridge to the sea;
- (b) high priority waterbodies for public access on the Wairau Plain (as shown in the overlay map) and in close proximity to Picton, Waikawa, Havelock, Renwick, Seddon, Ward and Okiwi Bay;
- (c) coastal marine area, (excluding the Port Zone), particularly in and near Picton, Waikawa and Havelock, Kaiuma Bay, Queen Charlotte Sound (including Tory Channel), Port Underwood, Kenepuru Sound, Mahau Sound, Mahikipawa Arm and Croisilles Harbour, Rarangi to the Wairau River mouth, Wairau Lagoons, Marfells Beach and Ward Beach;
- (d) connections would be made with other public land (including esplanade reserves) or other land where esplanade strips or access strips already exist; and
- (e) the Queen Charlotte Track.

Some areas within Marlborough have historically had a high degree of importance for public access. This is because they are often near significant sources of population, such as the waterbodies on the Wairau Plain, or are coastal sites with a long history of public use. This policy provides a long term focus for the Council to enhance access in these areas. Enhanced access may result from the acquisition (or purchase) of esplanade reserves or esplanade strips through subdivision or development. There may also be opportunities, through physical works such as walking or cycling tracks or through liaison with landowners, to enhance access. In some cases, this may lead to the need for additional infrastructure to manage the effects of enhanced public access (e.g. the provision of public toilets).

[RPS, C, D]

Policy 9.1.2 – In addition to the specified areas in Policy 9.1.1, the need for public access to be enhanced to and along the coastal marine area, lakes and rivers will be considered at the time of subdivision or development, in accordance with the following criteria:

- (a) there is existing public recreational use of the area in question, or improving access would promote outdoor recreation;
- (b) connections between existing public areas would be provided;
- (c) physical access for people with disabilities would be desirable; and
- (d) providing access to areas or sites of cultural or historic significance is important.

In addition to the priority areas identified in Policy 9.1.1, there may be other locations where it is appropriate to enhance public access. This policy sets out those circumstances to be considered in any application where a land use activity or subdivision requiring resource consent adjoins the

Commented [2]: Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
ENV-2020-CHC-46

New policy: Enabling customary access
By consent order dated 25 March 2022

Commented [3]: Port Marlborough New Zealand Limited
ENV-2020-CHC-49
By consent order dated 10/11/21

coastal marine area, lakes or rivers. In some circumstances it may not be appropriate to enhance access in terms of (d) and the exclusion provided for in Policy 9.2.1 will be more applicable.

[D]

Policy 9.1.3 – Where public access is enhanced in priority locations, steps shall be taken to ensure this does not result in:

- (a) **cumulative adverse effects on the wider environment of that location from littering, trespassing, unsanitary disposal of human waste or damage to vegetation; or**
- (b) **conflicts between users that would detract from public enjoyment of the area.**

The cumulative effects of enhancing public access and resulting recreational use are potentially major. These effects arise from cumulative minor adverse effects of individual actions. It is considered that the most effective way to avoid, remedy or mitigate these cumulative effects is to influence the choices made by individuals through bylaws, public awareness programmes, provision of supporting facilities, use of signs, working with local communities and community groups etc.

[RPS]

Policy 9.1.4 – Acknowledge that public access to land held in private ownership can only be granted by the landowner.

Access to beaches, rivers and the high country frequently relies on landowner goodwill in allowing people to cross private land. This policy acknowledges that the Council respects the private property rights of the landowner and understands it is their prerogative to grant or refuse permission for people to cross their land.

[RPS, C, D]

Policy 9.1.5 – Acknowledge the importance New Zealander’s place on the ability to have free and generally unrestricted access to the coast.

The public has an expectation that access to coastal areas and use and enjoyment of our beaches, foreshore and the sea be free and in most cases, generally unrestricted. This policy recognises that expectation and in most circumstances, public access to Marlborough’s coastline will be unrestricted, particularly as a significant part of the District is within a coastal environment. However, it is important to acknowledge that there is no right of public access over private land to reach the coast and there are some circumstances where walking access is able to be restricted (see Policy 9.2.1). This policy also assists in giving effect to the NZCPS objectives and policies to maintain and enhance public walking access to, along and adjacent to the coastal marine area.

Providing/enhancing public access

[RPS, C, D]

Policy 9.1.6 – Continue to assess the need to enhance public access to and along the coastal marine area, lakes and rivers.

In some areas of Marlborough (such as in the Marlborough Sounds), good information is provided about where public access is available. In other parts of the District however, the same level of information is not apparent. Having records about where there is public access is important in terms of providing the public with information, but is also essential to establish which areas are in need of enhanced public access. Therefore, the Council needs to establish a comprehensive overview of the nature and location of existing means of public access. Having established this, the Council will undertake a gaps analysis to determine where there is a demand for further public access. From time to time the Council may also wish to review the conditions of an esplanade or access strip negotiated for public access to determine whether public access needs have changed.

[RPS, C]

Policy 9.1.7 – Recognise there is an existing network of marinas at Picton, Waikawa and Havelock, publicly owned community jetties, landing areas and launching ramps that make a significant contribution in providing access for the public to Marlborough’s coastal areas.

An existing network of marinas, jetties and launching ramps enable the public to access the coastal marine area. This includes substantial marinas in Havelock, Picton and Waikawa as well as access points across the foreshore at locations such as Wards Beach, Marfells Beach, the Wairau Diversion and Ohingaroa Bay in Mahau Sound. The policy recognises this significant contribution to public access and thereby gives effect to the matters of national importance in Section 6 of the RMA.

[RPS, C]

Policy 9.1.8 – Enable public use of jetties for the purposes of access to the Sounds Foreshore Reserve and legal road along the coast.

Consistent with recognising the importance of providing, maintaining and enhancing public access to and along the coast, there are many existing jetties in the Marlborough Sounds that can provide access to the Sounds Foreshore Reserve. This reserve is a strip of land generally 20 metres wide, which has as its main purpose the right for the general public to come ashore from the sea and traverse the reserve for any lawful reason. In some locations, legal road also runs along the foreshore. It is important that public access to the foreshore via jetties and along the beach is allowed in any area where access is not otherwise constrained under conditions of a coastal permit.

[RPS, D]

Policy 9.1.9 – Enhance public access through:

- (a) development of networks for cycling and walking in both rural and urban areas; and**
- (b) facilitating public access and recreational use of Marlborough District Council owned or administered land.**

In order to promote opportunities for walking and cycling in Marlborough, there need to be places available for people to undertake these activities. While in many cases these opportunities are evident within urban areas, in rural areas they are sometimes less evident. Improving public access for cycling or walking (including within the hills, plains, farms and vineyards and along rivers and coastal areas) will be important. In some cases this will extend to identifying new routes, but may also include seal widening or sealing shoulders on existing roads, or identification of specific cycle lanes.

In addition, there are areas of Marlborough that are served by networks of rivers, tributaries and streams with significant opportunities for access. Many of the rivers have legal roads or other forms of public reserve running along their edges. (In addition to being corridors into the landscape, rivers provide significant opportunities for the creation and/or enhancement of tracts of ecological habitat.)

The more populated area of the Lower Wairau Plain has a recorded history of flood plain management with stopbanked river floodways. Much of the floodway land is in Council ownership, thus public ownership of riparian margins is high and public access can be readily achieved.

[D]

Policy 9.1.10 – The creation of esplanade reserves, esplanade strips or access strips will be a significant means of enhancing public access to and along the coastal marine area, rivers and lakes.

By providing for public ownership, management of or access to the margins of the coast and other waterbodies, esplanade areas are an important mechanism for achieving the goals of the RMA in terms of public access. The RMA specifically provides for esplanade areas as one method of providing public access and enabling public recreational use of them. The RMA provides three tiers of esplanade areas: esplanade reserves, esplanade strips and access strips. Esplanade reserves or esplanade strips can be taken in accordance with Part 10 of the RMA (Subdivision and Reclamation) or as a financial contribution under Section 108 of the RMA. Access strips can be established at any time by agreement between the landowner and the Council.

[D]

Policy 9.1.11 – An esplanade reserve to be taken for public access purposes will be preferred to an esplanade strip or access strip in the following circumstances:

- (a) for those sites that adjoin existing esplanade reserves or other reserves vested in either the Marlborough District Council or Crown;
- (b) where the site adjoins the coastal marine area; or
- (c) where the site is or is likely to be a high use area.

There are some circumstances where the Council may believe, for public access purposes, that a greater level of control and management is warranted along the margins of the coast, lakes and rivers. This is particularly so where the Council may want to carry out enhancement works such as placement of tracks or landscaping. This will be easier to achieve if the Council has ownership of the land. The Council is also able to transfer ownership of an esplanade reserve to the Crown. This has occurred previously in the Marlborough Sounds, where esplanade reserves are largely owned by the Crown and managed by the Department of Conservation as the Sounds Foreshore Reserve. This ownership enables the Department to manage in an integrated manner access to the foreshore for the general public as well as for residents and bach owners with adjoining land.

[D]

Policy 9.1.12 – In considering whether to waive the requirement for, or to reduce/increase the width of an esplanade reserve or esplanade strip of 20 metres in width, the Marlborough District Council shall have regard to:

- (a) whether the application is in an area identified as having a high degree of importance for public access, as set out in Policy 9.1.1; and
- (b) the width required to effectively provide physical access along the waterbody; while taking into account the following special circumstances:
 - (c) whether significant ecological, conservation or cultural values exist that may be incompatible if general public access to the site is allowed;
 - (d) whether significant ecological or conservation values warrant a wider esplanade reserve or esplanade strip;
 - (e) whether topography renders the 20 metre width inadequate or excessive for public access;
 - (f) whether the site is in an urban zone, where a reduced width of esplanade reserves/strips to 8 metres is generally considered sufficient;
 - (g) whether the provision of public access along the esplanade reserve or esplanade strip would result in health or safety risks to the public using the reserve or strip; and

- (h) taking an esplanade reserve or esplanade strip would not enhance public access to or along the waterbody over time.
- (i) whether there is an existing legal mechanism in place that provides for public access.

Under the RMA (Section 230), esplanade reserves 20 metres wide are required where any allotment of less than 4 hectares is created when land is subdivided adjacent to the coast, lakes and rivers. The Council has the discretion to waive or vary the requirement for esplanade reserves or strips. The policy identifies those circumstances where in public access terms, a waiver or reduction in width may be appropriate. Regard should also be had to the special circumstances identified in policies in Chapter 8 – Indigenous Biodiversity, Chapter 11 - Natural Hazards and Chapter 15 - Resource Quality (Water, Air, Soil).

There are some locations adjacent to waterbodies in urban areas, for which there has been a practice adopted to reduce the width of esplanade reserve or esplanade strip. These include adjacent to waterbodies in urban areas where an 8 metre wide reserve or strip has been taken. This is because a 20 metre wide esplanade reserve or strip could effectively render any future development of an urban property impossible, as urban properties are generally smaller than rural properties.

Impacts on public access

[C, D]

Policy 9.1.13 – When considering resource consent applications for activities, subdivision or structures in or adjacent to the coastal marine area, lakes or rivers, the impact on public access shall be assessed against the following:

- (a) whether the application is in an area identified as having a high degree of importance for public access, as set out in Policy 9.1.1;
- (b) the need for the activity/structure to be located in the coastal marine area and why it cannot be located elsewhere;
- (c) the need for the activity/structure to be located in a river bed and why it cannot be located elsewhere;
- (d) the extent to which the activity/subdivision/structure would benefit or adversely affect public access, customary access and recreational use, irrespective of its intended purpose;
- (e) in the coastal marine area, whether exclusive rights of occupation are being sought as part of the application;
- (f) for the Marlborough Sounds, whether there is practical road access to the site of the application;
- (g) how public access around or over any structure sought as part of an application is to be provided for;
- (h) whether the impact on public access is temporary or permanent and whether there is any alternative public access available; and
- (i) whether public access is able to be restricted in accordance with Policies 9.2.1 and 9.2.2.
- (j) whether there are restrictions on activities or access imposed by other legislation including the Submarine Cables and Pipelines Protection Act 1996.

These criteria provide a framework to assist decision makers in assessing the effects on public access to and along the coast, rivers and lakes arising through resource consent applications for subdivision, activities or structures.

[C, D]

Policy 9.1.14 – Where existing public access to or along the coastal marine area, lakes and rivers is to be lost through a proposed use, development or structure, alternative access shall be considered as a means to mitigate that loss.

In some cases public access may be lost as a consequence of a particular use or development. Where it is not possible to avoid this loss, environmental benefits may be obtained by imposing requirements to enhance public access, preferably in the same area or if this is not possible, in a different area with equivalent amenity value. The intent is that the person whose activities are responsible for the permanent loss of public access should consider, as a means of mitigating that loss, the provision of alternative or upgraded access in a reasonable and practical location.

Unformed legal road

[D]

Policy 9.1.15 – Recognise the benefits of the presence of unformed legal road as a means to enhance access to and along waterbodies (including the coast) and to public land.

The presence of unformed legal road that has not been formed or used for road purposes and to which the public have a right of access (often referred to as a paper road) potentially forms an important resource for public access purposes. Where possible, and appropriate in terms of public safety opportunities should be made to ensure that access over unformed legal roads, especially to areas identified as having a high priority for public access in Policy 9.1.1, is enhanced.

[D]

Policy 9.1.16 – In considering an application to stop any unformed legal road, the Marlborough District Council shall consider the following:

- (a) **current and future level of use, including whether the unformed legal road is:**
 - **the sole or most convenient means of access to any existing lot(s) that is public land or feature (for example, a river or the coast); or**
 - **used as a walkway or to access conservation land;**
- (b) **opportunities for future use, including whether the unformed legal road will be needed:**
 - **to service future residential, commercial, industrial or primary production developments; or**
 - **in the future, to connect existing roads;**
- (c) **alternative uses of the land, including its current or potential value for amenity or conservation functions, e.g. walkway, utilities corridor, esplanade strip or access way to features such as a river or the coast;**
- (d) **whether there is alternative and practical existing public access to the same end point of the unformed legal road; and**
- (e) **whether acceptable alternative access can be provided to offset the stopping of the unformed legal road.**

Regular requests are made to the Council from landowners wishing to purchase portions of unformed legal roads to be added to private land. However, there is a core principle that this land is owned by the public and has potential for high country, coastal and/or riparian access purposes. Although applications from the public to stop unformed legal roads are processed under the Local Government Act, it is important that regard is had to other legislation, such as the RMA where there are imperatives to recognise and provide for public access to and along the coastal marine area, lakes and rivers as a matter of national importance. Although the RMA does not make specific reference to high country areas in relation to public access, the Council has identified in Objective 9.1 the importance of the public being able to enjoy these areas. Given

these imperatives, the criteria in this policy have been included to provide guidance on when it may or may not be appropriate to stop legal unformed roads.

[D]

Policy 9.1.17 – Where an unformed legal road provides access:

- (a) to or from a public road or reserve;
- (b) to or along a waterbody or the coastal marine area; or
- (c) provides primary access to an esplanade reserve or other reserve land;

and there is no other access to the areas identified in (a) to (c), the Marlborough District Council will not stop an unformed legal road unless an equal or better alternative is provided.

This policy recognises the importance of the access links that unformed legal road can provide. If any of the situations described in (a) to (c) exist when the Council considers an application to stop unformed legal road, then there must be an offset of equal or better access provided. This will help to ensure the access links are not lost.

[RPS, C, D]

Objective 9.2 – Public access to and along the coast and the margins of lakes and rivers will only be restricted where necessary for security, health and safety, conservation, cultural or other similar reasons.

There are some situations where public access to the coast, lakes and rivers is already restricted, for example by natural physical restrictions like those imposed by the coastal cliffs on the western side of d'Urville Island. Public access is also restricted where land to the water's edge is in private ownership (riparian rights). However, there are other circumstances where access is or may need to be limited.

Public access is already restricted in some parts of the Marlborough Sounds to protect special values such as endangered wildlife. The restriction on public access to these locations (generally islands) is governed by legislation other than the RMA. Access can also be restricted to defence areas, including areas used for temporary military training activities, under the provisions of the Defence Act 1990 for security and safety reasons. Port operations in Picton and Havelock may result in restrictions on public access to protect public safety and for security reasons.

Given the imperatives regarding the maintenance and enhancement of public access in Section 6(d) of the RMA, it is important that any restrictions placed on public access to and along the coast and the margins of lakes and rivers are well justified.

[RPS, C, D]

Policy 9.2.1 – Public access to and along the coastal marine area and the margins of lakes and rivers may be restricted to:

- (a) ensure a level of security consistent with the purpose of a resource consent or designation;
- (b) protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;
- (c) protect cultural values of Marlborough's tangata whenua iwi;
- (d) allow for foot access only;
- (e) protect public health and safety and animal welfare and to manage fire risk;
- (f) protect heritage, natural or cultural values;
- (g) protect regionally significant infrastructure and network utilities;

- (h) to support a biosecurity response by an agency using powers under the Biosecurity Act 1993 or, where applicable, the RMA; and
- (i) in other exceptional circumstances sufficient to justify the restriction, notwithstanding the national importance of maintaining that access.

Marlborough's river and coastal environments are in constant use by many locals and tourists. In coastal environments particularly, development pressures for activities such as marine farming and coastal structures (jetties, boatsheds and moorings) have the potential to affect public access. The NZCPS sets out circumstances in which a restriction on public walking access can be considered, notwithstanding the national importance of maintaining public access to the coast. Policy 9.2.1 is an extension of this and recognises the priority to be afforded unrestricted public access to and along the coastal marine area, while also acknowledging that a number of exceptions account for other matters, which the RMA and practicality suggest should take priority when the circumstances arise.

Despite there being no equivalent national policy statement about public access to freshwater bodies, the RMA still requires public access to and along the margins of lakes and rivers to be recognised and provided for as a matter of national importance. As there is a high level of public use of Marlborough's waterbodies, it is similarly appropriate to identify the circumstances where access can be restricted. In particular, exception (a) is necessary to exclude the public from areas to which they would otherwise have access in order to protect the security of operations that have resource consents granted in respect of, or designations operating in, those areas. This is particularly relevant to activities that extend across the land/water interface, e.g. within the port area where health and safety issues may occur.

Exception (i) recognises the difficulty of foreseeing all circumstances in which a restriction may be necessary. However, circumstances need to be exceptional at a national level, as mandated by legislation or otherwise sufficient to override the national importance of unrestricted public access.

The potential adverse effects on or adjacent to the foreshore by motorised vehicles is addressed in Chapter 13 Use of the Coastal Environment.

[RPS, C, D]

Policy 9.2.2 – Aside from the circumstances in Policy 9.2.1 above, constraints on public access shall not be imposed unless:

- (a) there is no practical alternative; and
- (b) the effects on public access would be no more than minor.

The policy is included in recognition that the RMA has placed a high priority on maintaining and enhancing public access to the coast, and to the margins of lakes and rivers.

Issue 9B – Ensuring the provision and management of suitable open space meets the present and future recreational, conservation and landscape needs of the community.

Open space and recreation areas serve a wide variety of purposes in Marlborough and vary in terms of significance to residents and visitors. Some areas have only local significance, while others assume regional, national or even international significance.

Most areas of reserve, open space and publicly owned land fulfil one or more of the following purposes.

- Amenity value (e.g. gardens, areas of indigenous vegetation, landscape views)
- Children's play (e.g. playground equipment, neighbourhood parks)

Commented [4]: Clause 16

Commented [5]: Marine Farming Assn Inc & Aquaculture NZ
ENV-2020-CHC-74
By consent order dated 10/11/21

Commented [6]: Marine Farming Assn Inc & Aquaculture NZ
ENV-2020-CHC-74

- Active outdoor activities (e.g. team sports, physical fitness, water sports, skiing, golf, tramping, fishing and hunting)
- Low impact use of open space (e.g. picnicking)
- Access (e.g. especially to the coast, waterways and the high country)
- Linkages (e.g. walking tracks, cycleways)
- Built facilities (e.g. halls, clubrooms, pre-schools, swimming pools, libraries)
- Historic sites and features
- Conservation (e.g. ecological values, water margins, wetland, indigenous habitats, fauna and flora)
- Public utilities (e.g. toilets, reticulated services)
- Commercial opportunities (e.g. rafting, four wheel drive tours)
- Cultural values

Given the wide range of purposes, it can be challenging at times to ensure there are suitable open space areas available to meet all of the needs of the community. Influences that can affect the ability to ensure there is adequate open space include urban intensification, with smaller section size potentially resulting in the loss of environmental quality, including opportunity for large trees and recreation areas. Changing recreation patterns through increased population can also result in changes in the type, location and number of open space areas required.

Marlborough is fortunate to have vast areas of open space in public ownership, such as those in the Marlborough Sounds or along the major rivers on the Wairau Plain, with relatively easy access for most in the community. However, it is important to ensure the public open space network is well managed so that the characteristics of these open spaces remain highly valued by the community in terms of particular conservation, recreation and/or landscape values. In this regard it is important to acknowledge the significant community resource that is provided through the open space network of reserves around Marlborough.

An equally important factor in managing open space areas is that other statutes, such as the Reserves Act 1977, also have a significant role in the control of land with reserve status. The Council recognises that the management of reserve land is a responsibility under the RMA. However, because management of the resources contained within reserve land also comes under the control of both the Conservation Act 1987 and the Reserves Act 1977, it is important that management processes are not repeated in the Marlborough Environment Plan (MEP). To this end, the management framework within the MEP deals with those matters not covered by other legislation. This includes management of the following:

- any off-site effects of land uses extending beyond the boundary of the reserve area;
- significant on-site effects of activities such as discharges, water takes and disturbance to the beds of lakes and rivers;
- the effects on the values of reserve land from activities on neighbouring lands; and
- the use of reserve land for activities not related to the reserves purpose.

[RPS, C, D]

Objective 9.3 – A wide range of reserves and open space areas are available that contribute to the social and economic wellbeing of residents and visitors.

The existing network of reserves of varying types and open space areas, including the coastal marine area, make a significant contribution to the social and economic wellbeing of residents and visitors to Marlborough. It is important to ensure that this continues to be the case for future generations.

[RPS, C, D]

Policy 9.3.1 – Ensure that open space areas and recreational facilities are equitably distributed and conveniently located throughout Marlborough.

Accessibility and distribution of open spaces and recreational facilities around the District is important. An equitable distribution to reflect the needs of the local community is important in achieving convenience of access to open space and recreational opportunities, recognising the particular role or function of the open space or recreational facility in meeting the differing needs of the community.

With respect to local parks, distribution is especially important as these areas are particularly used by the less mobile sectors of the community, including young children and the elderly. Sports areas also need to be accessible, though it is recognised that part of the organised sport experience involves travelling to different areas of the District to compete.

[RPS, C, D]

Policy 9.3.2 – Seek diversity in the type and size of open spaces and recreational facilities to meet local, district, regional and nationwide needs, by:

- (a) identifying areas with conservation value;
- (b) enabling a wide range of organised sports, recreation and community activities;
- (c) enabling low-key, everyday recreation and community activities to serve local communities; and
- (d) recognising and protecting the value of open space in the coastal marine area, high country environments and river beds.

To achieve Objective 9.3, it is important to recognise different types of open space/recreational facilities are needed. Sub clause (a) of this policy sets the framework for the creation of zones to accommodate different types of open space areas or recreational facilities, ranging from land administered by the Department of Conservation through to neighbourhood reserves, sports fields, walkways, indoor sports facilities, swimming pools and other recreation facilities.

Sub clause (d) acknowledges the significant contribution made by the coastal marine area and river beds to open space in Marlborough. Protecting these open space values may see some activities being regulated in specified areas. This policy also gives effect to the NZCPS by recognising the value of open space in the coastal marine area. The existing open space areas used for skiing activities in Marlborough's high country environment also add to the diversity and range of open space areas available.

[D]

Policy 9.3.3 – Support the management of reserves through strategies and reserve management plans prepared under the Conservation and Reserves Acts.

Integrated management of the resources contained within reserve land comes under the control of the Conservation Act 1987 and the Reserves Act 1977. Generally, the types of activities and consequently the acceptable effects within a reserve are indicated by management plans under the above legislation. (For example, the Conservation Management Strategy provides the management framework for land administered by the Department of Conservation.) The general intent of the MEP is therefore to only take on those matters requiring management or control under the RMA because they are not covered under other legislation.

[D]

Policy 9.3.4 – Identify those areas of Marlborough where there are or are likely to be deficiencies in the provision of open space and recreational facilities.

Demand for recreation facilities in particular changes constantly with new activities arising or existing activities becoming more popular. The number, quality and type of reserves and facilities

Commented [7]: Marine Farming Assn Inc & Aquaculture NZ
ENV-2020-CHC-74

Commented [8]: One Forty One (previously Nelson Forests)
ENV-2020-CHC-54

available is regularly reassessed and surveyed to ensure the needs of all sections of the community are being met.

[C, D]

Policy 9.3.5 – Ensure the community is adequately informed about areas of open space, reserves and recreational facilities and the opportunities available to access them.

The Council and the Department of Conservation are responsible for the management of considerable areas of open space and reserve land in Marlborough. Educating the public about the ability to access these areas is important and already occurs to a significant extent through publicly available information on the Council's website and through visitor centres.

[D]

Policy 9.3.6 – Explore opportunities to use Marlborough District Council owned or managed river reserve land to enhance areas for recreational activities to take place.

The Council owns and/or manages a considerable area of floodway land on the Wairau, Taylor, Ōpaoa and other rivers, primarily for flood control purposes. However, much of this land poses an opportunity for secondary land uses including public access, amenity and recreational use. For example, currently the Taylor River floodway land through Blenheim is intensively used by the public for recreational and amenity purposes and low-key recreational land use occurs along the Wairau River between the Tuamarina and Waihopai Rivers and along the Wairau Diversion.

This policy aims to consider how use of river reserve land for the public can be enhanced, as many recreational activities do not conflict with the primary flood control purpose. Where river reserve land has been leased for commercial activity, it is appropriate that at the time for reviewing the lease, opportunities to improve public access and recreation use are assessed as part of the review.

[D]

Policy 9.3.7 – Provide walking and cycling linkages between reserves and areas of open space in, around and between towns where appropriate, and maintain and enhance these areas.

Opportunities exist for the development of linkages for cycling and walking in, around and between towns as a means of increasing recreational opportunities and enhancing the quality of the environment.

[D]

Policy 9.3.8 – Provide for the creation of allotments to enable protection of outstanding natural features including bush, riparian lands, wetlands, headlands, heritage features and ridges, which collectively contribute to open space values.

The policy reflects a need to provide for the creation of allotments that protect natural features including bush, riparian lands, wetlands, headlands, heritage features and ridges where such protection contributes to open space values. Whilst accepting the potential impacts of subdivision and associated developments on natural features, it is also acknowledged that as a land management tool, subdivision can be an appropriate mechanism for protection in terms of contributing to open space values. Allotments should be able to be created for this express purpose.

[D]

Policy 9.3.9 – In assessing the impacts of subdivision or development through resource consent applications, consideration shall be given to the need for public open space and recreation areas to provide for:

- (a) additional neighbourhood parks needed as a result of additional residential and visitor accommodation across Marlborough;
- (b) additional open space necessary for visual relief and plantings amongst the built environment; and

- (c) the development of neighbourhood parks and open space areas that are [safe useable and enjoyable](#).

The subdivision and development of land creates opportunities for various activities to be established. If communities continue to grow through subdivision and building development without providing for the recreation and open space needs of the community, adverse environmental effects may arise. This could occur through a lack of neighbourhood parks in new subdivisions or in areas where infill housing and redevelopment is taking place, reduced accessibility to parks and a lack of visual relief in the form of open space amongst the built environment. The policy therefore directs that when subdivision and development activities are to be assessed through a resource consent that the need for open space and recreation areas is considered.

[RPS, C, D]

Objective 9.4 – The establishment or development of open space areas and recreational activities does not have adverse effects on the environment.

Activities associated with open space and recreational facilities can have a range of adverse environmental effects. Potential adverse effects include: noise, resulting from recreational activity and the social activity of clubrooms and their hours of operation; glare, particularly from flood lighting; attraction of increased numbers of people and vehicles into an area; the impacts of building scale or shading of adjoining properties; and damage to vegetation including trees, waterways or sensitive habitats upon development. Other effects can include a loss of openness and tranquillity, pest control for ecological management purposes or competition for space between exclusive-use sports and the general public. The objective aims to avoid these activities occurring through subsequent policy and rules to be applied to such areas.

[D]

Policy 9.4.1 – Manage the scale, size, design and location of buildings so as to avoid, remedy or mitigate any adverse effects on the amenity of surrounding areas and the function and character of the open space.

The open space character of reserves and other areas of open space, their amenity and natural and environmental values need to be carefully managed. It is important that buildings are designed and sited to complement the function and character of the reserve and minimise any nuisance to neighbouring properties. Through the use of zoning, it is intended that buildings will be clustered together rather than scattered across sites to ensure retention of open space. This policy establishes the basis for setting permitted activity standards for buildings in open space areas, as well as considering the situations in which consents are required for buildings and structures, and where mitigation may be required to address adverse effects.

[D]

Policy 9.4.2 – Manage activities on open spaces to ensure that adverse effects of activities on the surrounding environment are minimal and/or temporary.

Open spaces provide a valuable function to communities and are available for a range of recreational activities. Recreational facilities such as clubrooms and associated activities can result in adverse effects such as night time noise, light spill, late night vehicle manoeuvring, [increased fire risk](#), parking and accessing of the reserve and the adjacent roading pattern. These effects need to be avoided, remedied or mitigated to ensure the purpose of the RMA is achieved. However, it is appropriate to provide for other activities with low-key impacts within reserves.

[R, C, D]

Policy 9.4.3 – Ensure the recreational activities that use river and coastal margins do not create significant adverse effects such as diminished natural value or increased bank instability.

Marlborough's rivers and coastline are a valuable resource, providing recreational opportunities that enhance community wellbeing. However, some recreational activities can affect the margins

Commented [9]: One Forty One (previously Nelson Forests)
ENV-2020-CHC-54

of the rivers and coast, e.g. bank stability, ecological values (including interfering with wildlife habitat) and public safety. These effects need to be avoided, remedied or mitigated and in some cases, activities will need to be controlled to limit adverse impacts on safety, amenity and ecological values.

[R, C, D]

Policy 9.4.4 – When determining applications for resource consent to carry out activities on reserves, the following matters must be considered:

- (a) the existing character and amenity of the reserve and the locality in which the site is set;
- (b) the location and design (including colour) of any proposed structure on the reserve itself;
- (c) the effect of the proposed activity regarding daylight, shading, ~~and light spill~~ **and fire risk** on adjoining properties and the reserve itself;
- (d) the effects of traffic flow to and from the reserve site and the locality in which the reserve is set;
- (e) the effects of noise from the proposed activity on adjoining properties;
- (f) access points onto the reserve;
- (g) any historical **heritage**, conservation, ~~or~~ ecological, **archaeological or waahi tapu values, or spiritual and cultural values of Marlborough's tangata whenua iwi** associated with the reserve;
- (h) design and location in terms of enabling people to provide for their safety, either at the reserve or on adjoining properties; and
- (i) the effect on other users of the reserve.

This policy contains criteria against which applications for activities on reserve land can be considered. It will allow for the different aspects of a proposal to be considered in relation to the particular characteristics of the reserve on which the activity is proposed **and impacts on the adjacent land and community.**

[R, C, D]

Policy 9.4.5 – When determining applications for resource consent to carry out activities in the Open Space 4 Zone, the following matters must be considered:

- (a) the sensitive alpine character of the Open Space 4 Zone and how the proposed activity will avoid or mitigate any adverse effects on this character;
- (b) the location and design (including colour) of any proposed structure; and
- (c) any other policies of the Marlborough Environment Plan related to discharges to water, land or air, land disturbance, the clearance of indigenous vegetation and the taking and use of water.

The Open Space 4 Zone has been established to accommodate the activities of Marlborough's two ski fields - the Rainbow Ski Area, located high in the St Arnaud Range and operating under a licence from the Department of Conservation, and the Mount Lyford Ski Area, which is a privately owned and operated resort development with access off the Inland Kaikoura Road. Both ski fields are important recreation/tourism attractions for Marlborough but are located in sensitive alpine environments with only limited ability to absorb change and development. It is important that development in these areas is carefully managed to ensure the values of these high country environments is protected.

Methods of implementation

The methods listed below are to be implemented by the Council unless otherwise specified.

Commented [10]: One Forty One (previously Nelson Forests)
ENV-2020-CHC-54

[C, D]

9.M.1 Zoning

The MEP identifies four specific open space zones, which along with the Coastal Marine Zone and Floodway Zone are important in providing for public access. The Open Space 1 Zone generally applies to smaller areas of open space that provide for the amenity of residential areas. These areas provide for amenity because of their open character and the local recreation and community activities they accommodate. Children's play areas are often found in the Open Space 1 Zone. The Open Space 2 Zone applies to those areas of open space that cater to active recreation, including sports fields, tennis courts, indoor recreation/ leisure pursuits and a number of other recreation and community activities.

The zone for conservation purposes (Open Space 3 Zone) applies to open space intended to be retained largely in its natural state. Included in this zone are areas of native vegetation, natural ecosystems and important habitats, riparian margins and areas of outstanding landscape value that are in public ownership. An important aim for this zone is also the promotion of public access to and along the coast, lakes and rivers with the exception of the privately owned islands of Rangitoto/d'Urville Islands. The Zone will therefore be applied to areas identified as Sounds Foreshore Reserve, esplanade reserve or unformed road reserve that abuts the coastline.

The Open Space 4 Zone provides for activities in Marlborough's alpine environments where skiing takes place in winter months and other activities, such as mountain biking and walking, occur during summer. This Zone has been applied to Rainbow Skifield and the Mount Lyford Ski Area.

[D]

9.M.2 District rules

District rules permit activities based on the particular value associated with the reserve or type of reserve, subject to standards where these are necessary. The activities permitted in Open Space 1, 2, and 3 zones are largely based on activities that are allowed in management plans prepared for the reserve under the Conservation or Reserves Acts. Standards address matters to ensure open space areas are used and developed in a manner compatible with the amenities of adjoining areas, e.g. noise, car parking, building setbacks, etc.

District rules will set out the circumstances when the setting aside of esplanade reserves or esplanade strips will be required.

District rules also enable a range of activities to occur within the Open Space 4 Zone, particularly in relation to skifield activities.

[C, R]

9.M.3 Regional rules

Riparian margins will be protected through controls on activities on rivers, lakes and streambanks. The Council may include conditions on resource consents that restrict the rights of public access in accordance with Policy 9.2.1 and 9.2.2.

Regional rules may regulate activities in specified areas to assist in protecting amenity values, public access, recreational values and areas of open space in the coastal environment. Regional rules also regulate activities relating to discharges to land, air and water and to activities taking place in sensitive high country environments.

[RPS, R, C, D]

9.M.4 Long Term Plan

Provision and maintenance of open space and recreational areas and facilities is provided for through the Long Term Plan, including funding arrangements.

Commented [11]: Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu
ENV-2020-CHC-46

New method: Enabling customary access
By consent order dated 25 March 2022

[D]

9.M.5 Walking and Cycling Strategy for Marlborough

A Walking and Cycling Strategy for Marlborough has been prepared. The Council, together with the New Zealand Transport Agency, has developed this strategy with the help of many agencies and interest groups. This strategy aims to ensure that all people feel they have the choice to walk and cycle if they wish, and to reverse the New Zealand-wide downward trends in the numbers of people cycling and walking to work. The Marlborough Walking and Cycling Action Plan, which implements the Strategy, sets out locations and actions where cycling and walking opportunities can be enhanced for both urban and rural areas.

[RPS, R, C, D]

9.M.6 Other legislation

The Council currently prepares reserve management plans under the Reserves Act. These reserve plans are important as they provide the basis for activities able to be undertaken in the three open space zones and so there is a close relationship with these documents and the MEP. Other legislation also exists by which the Council can manage activities, including for example controlling freedom camping in public places through the Freedom Camping Act 2011, or the abatement and control of litter through the Litter Act 1979.

The Council also takes part in the development of management plans or strategies for reserves prepared by the Department of Conservation, e.g. the Conservation Management Strategy. This Strategy provides an overview of conservation issues and gives direction for the management of public conservation land, waters and species for which the Department of Conservation has responsibility. Its purpose is to implement general policies and establish objectives for the integrated management of natural and historic resources, recreation, tourism and any other conservation purposes.

[C, D]

9.M.7 Investigation

The Council will carry out investigations to assess the need for enhancement of physical access to and along the coastal marine area, lakes and rivers.

[C, D]

9.M.8 Information

The Council's website provides information on the location of parks and reserves, swimming and boating locations, cycling and walking opportunities and recreation centres. This information is updated regularly and when new reserve or recreational facilities or opportunities become available. Much of this information is also available in map form through visitor centres. The Walking Access Commission website also provides information on walking access routes and the Council provides guidelines for holding recreational and special events in Marlborough.

The Council will make available information on the location and area of esplanade reserves, esplanade strips and access strips taken on subdivision and development or through negotiation, as required by Section 35 of the RMA.

[C, D]

9.M.9 Liaison

The Council will liaise with Marlborough's tangata whenua iwi, the Department of Conservation, coastal landowners and interest groups to identify areas along Marlborough's coastline where the use of vehicles on the foreshore and seabed is not appropriate.

The Council will liaise with Marlborough's tangata whenua iwi, the Department of Conservation, coastal landowners and interest groups to assess the need for additional or upgraded public

facilities for areas identified in Policy 9.1.1 as having a high degree of importance for public access.

Anticipated environmental results and monitoring effectiveness

The following table identifies the anticipated environmental results of the public access and open space provisions of the MEP. The anticipated environmental results are ten year targets, unless otherwise specified. For each anticipated environmental result, a series of indicators will be used to monitor the effectiveness of the public access and open space provisions.

| Anticipated environmental result | Monitoring effectiveness |
|---|---|
| <p>9.AER.1</p> <p>The public has improved access to Marlborough's lakes, rivers, high country and coastal environment.</p> | <p>The areas identified as having a high priority for enhanced public access have an improved level of access as measured against a 2016 baseline.</p> <p>The number of esplanade reserves/strips available for access purposes is increased as measured against a baseline of esplanade reserves/strips available for access existing as in 2016.</p> <p>Ongoing development and improvement of walkways and/or cycleways through the actions of the Marlborough Walking and Cycling Strategy.</p> <p>Review of areas identified as having a priority focus for enhancing public access five years after the MEP becomes operative, including a review of the purpose of esplanade strip agreements in place in these high priority areas.</p> |
| <p>9.AER.2</p> <p>A variety of pleasant and quality recreation and open space areas throughout Marlborough that are well used and provide a focus for a wide range of activities.</p> | <p>Survey the public to determine the level of satisfaction with the open space, recreation and reserve areas provided or managed by the Council.</p> <p>Monitor complaints from land owners and the public about the management, use and creation of reserves and recreation areas.</p> |
| <p>9.AER.3</p> <p>The public is aware of where and how they can access Marlborough's lakes, rivers and coastal environment and where Council managed open space areas are.</p> | <p>Information is available on the Council's website and reviewed annually, about:</p> <ul style="list-style-type: none"> (a) the location of esplanade reserves/strips taken on subdivision and development; (b) the location of and opportunities for use of reserves, parks and sports grounds owned or managed by the Council; and |

(c) the location of walkways and cycling routes.

Appeal Version

Appeal Version