

1. Introduction

Volume 2 of the Marlborough Environment Plan (MEP) contains rules that control activities occurring in the Marlborough environment. The rules are a combination of district-wide rules and zone-based rules. In some cases, rules also apply as a result of specific management overlays. Volume 2 also contains a definitions section that defines the words, terms and phrases used in the MEP.

General duty to comply

All rules within the MEP have the force and effect of a statutory regulation, which means they are legally binding.

Compliance with rules of the MEP does not remove the need to comply with any other relevant Act, regulation, bylaw or rule. It is the resource user's responsibility to identify and understand all requirements they are required to comply with. Conversely, activities that may be allowed or permitted under other regulatory requirements, such as the Building Act 2004, may still require resource consent.

Under Section 17 of the Resource Management Act (RMA), every person has a general duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is carried out in accordance with existing use rights under the RMA (Sections 10, 10A, 10B, and 20A) or a national environmental standard, a rule, a resource consent, or a designation.

Activities

One of the Council's functions is to implement rules in order to achieve the sustainable management purpose of the RMA. The rules are intended to implement the objectives, policies and methods of Volume 1. The matters on which rules can be applied are outlined in Sections 30 and 31 of the RMA. They include the following:

- to manage the effects of land use and development;
- to encourage the efficient use and development of natural and physical resources;
- to maintain and enhance the quality of the environment;
- to allocate public resources;
- to ensure appropriate development on land subject to natural hazards;
- to control the subdivision of land;
- to control the emission of noise and to mitigate the effects of noise;
- to maintain and enhance amenity values.

Activity status

The rules determine whether a proposed activity is permitted (and therefore does not require resource consent to undertake the activity) or whether a person needs to apply for a resource consent to authorise the proposed activity. The rules also make some activities prohibited.

The RMA classifies activities into the following types:

- permitted activities
- controlled activities

- restricted discretionary activities
- discretionary activities
- non-complying activities
- prohibited activities.

The MEP uses all these activity classifications, except for non-complying activities.

Permitted activities

Resource consent is not required for a permitted activity if it complies with all the specified standards. If an activity does not comply with one or more of the specified standards, it is not a permitted activity. In those instances the activity will fall into one of the activity categories below and will require resource consent except those activities that are prohibited. There are standards that generally apply to all permitted activities and standards that apply to specific permitted activities which are set out in separate lists. The standards that apply to specific permitted activities have the same headings as the permitted activities to allow for ease of identification.

Controlled activities

Resource consent is required for a controlled activity and an application for resource consent must be granted. The MEP provides for controlled activities where the adverse effects of an activity can be managed through consent conditions. Conditions can be imposed but only for those matters over which control has been reserved, which are set out in the MEP.

Restricted discretionary activities

Resource consent is required for a restricted discretionary activity. The Council may approve or refuse an application for a restricted discretionary activity. The MEP specifies the matters over which the Council has restricted its discretion. The Council's consideration of the application, and the ability to refuse the application and impose conditions, is restricted to these matters. These matters are set out within the MEP.

Discretionary activities

Resource consent is required for a discretionary activity. The Council may approve or refuse an application for a discretionary activity. In assessing the proposed activity, the Council can consider all relevant objectives and policies within the MEP, all potential environmental effects, and any matters outlined in Section 104 of the RMA without limitation in decision-making. In most cases the Council uses a discretionary activity status for any activity that it not otherwise provided for in other statuses.

Prohibited activities

Certain activities are expressly prohibited in the MEP. Applications for resource consent cannot be made for a prohibited activity. Prohibited activities are clearly identified throughout the relevant General Rules and zone-based rules.

Structure of Volume 2

Volume 2 of the MEP contains both General Rules and zoned-based rules. Resource users may need to refer to both sets of rules to determine the status of a proposed activity, depending on the nature of the activity.

There is a separate chapter of rules applying to the subdivision of land (Chapter 24).

Appendix 16 also contains additional rules for specific sites. The sites are identified in the appendix and are mapped in Volume 4.

General Rules

The General Rules in Chapter 2 of Volume 2 apply to activities irrespective of zoning. The rules control the following activities:

- The taking, use, damming and diversion of water;
- Activities in, on, under or over the beds of lakes and rivers;
- Drainage works undertaken by the Council;
- Discharges to water;
- Discharges to air for road and railway corridors;
- Heritage resources;
- Notable trees;
- Transportation;
- Signage;
- Utilities; and
- Temporary Military Training Activities.

Zone-based rules

The Council utilises zoning to enable a specific set of rules to apply to an identified area. With the exception of rivers, formed road and the railway corridor, all land in Marlborough is zoned. All coastal space is also zoned. Volume 4 of the MEP provides information on the various zonings. In addition to the General Rules, the zone-based rules apply to the relevant zones identified in Volume 4.

Depending on the nature of the environment to which the zone applies, the zone-based rules control the following activities:

- Land use activities;
- The discharge of contaminants onto or into land, and into air;
- Activities in the coastal marine area.

Identifying regional policy statement, regional plan, regional coastal plan and district plan provisions

Volume 2 contains a combination of the regional coastal plan, regional plan and district plan rules. Section 80 of the RMA requires the Council to identify within a combined document the provisions that are the regional coastal plan, the regional plan or the district plan. The Council has identified each rule in the MEP with one of the following notations: C (regional coastal plan), R (regional plan) or D (district plan).

In some cases, the Council is exercising both regional council and district Council functions to control the effects of the use of land. The relevant rules therefore have both an R and a D notation. In other cases, where a zone includes both land and water (e.g. Port Zone), some rules have both a 'D' notation and a 'C' notation, depending on whether the activity spans the land/water interface.

Interpretation of lists

Many sections of the MEP contain lists. These lists should be regarded as cumulative, except where indicated otherwise by the use of 'and' or 'or'.

~~Identifying those rules in the RMP that have immediate legal effect~~

~~Under Section 86B of the RMA, a rule in a proposed plan has legal effect only when a decision on submissions relating to that rule has been made and publicly notified by the Council. Exceptions to this are where the rule:~~

- ~~• protects or relates to water, air or soil (for soil conservation); or~~
- ~~• protects areas of significant indigenous vegetation; or~~
- ~~• protects areas of significant habitats of indigenous fauna; or~~
- ~~• protects historic heritage; or~~
- ~~• provides for or relates to aquaculture activities.~~

~~In these circumstances, a rule in a proposed plan has legal effect from the date of notification.~~

~~The rules and/or standards that have immediate legal effect from 9 June 2016 are identified in a table at the start of the General Rules and at the start of each chapter of zone rules. The associated definitions and appendices applicable to those rules also have immediate legal effect.~~

Comment [1]: Clause 16

Definitions

The Council has used a number of terms and/or words throughout the MEP, some of which are defined in the RMA and many of which are not. Words that are already defined within Section 2 of the RMA, such as 'effect' or 'contaminant' have established meanings and over time have been interpreted through the Courts; these definitions are not included within the MEP. Words or terms not given meaning through the RMA may be given meaning through the MEP definition section (see Chapter 25) or, where they are not so defined, should be read for their normal dictionary definition.