

**Before the Environment Court  
I Mua I Te Kooti Taiao o Aotearoa**

**Christchurch Registry**

**ENV CHC 2020**

**Under the** Resource Management Act 1991  
**In the matter** of an appeal under clause 14 of Schedule 1  
**Between** **Omaka Valley Group Inc.**  
**Appellant**  
**And** **Marlborough District Council**  
**Respondent**

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**Notice of appeal against decisions on the Marlborough Environment Plan**

**Topic 12: Rural Environments**

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To: The Registrar  
Environment Court  
Christchurch

1. The Omaka Valley Group Inc. (**OVG**), an incorporated society having its registered office at 203 Brookby Road, RD 2, Blenheim 7272 appeals against decisions/parts of decisions of the Marlborough District Council on the Marlborough Environment Plan (**MEP**), a combined regional policy statement, regional plan and district plan for the Marlborough District. The MEP was publicly notified on 9 June 2016 and decisions on submissions made on the MEP were released on 21 February 2020.
2. OVG made submissions and further submissions on the MEP.
3. OVG is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. OVG received notice of the decisions on 21 February 2020.
5. The decisions were made by the MEP Hearing Panel, acting under delegated authority from the Marlborough District Council.
6. The decisions/parts of the decisions that OVG is appealing and a summary of the reasons are set out in Table 1, attached to this notice of appeal.
7. By way of general summary, the decisions/parts of decisions that are the subject of this notice of appeal do not have sufficient regard to relevant matters prescribed in section 7 of the Act; there is inconsistency between matters that are included as part of regional planning provisions (regional policy statement and regional plan) and district planning provisions; do not give effect to relevant provisions of the regional policy statement, in particular objective 4.1 and its supporting policies; and the decisions are not in accordance with good planning practice. The decisions do not meet the purpose of the Act.
8. The relief sought by OVG is set out in Table 1. It is acknowledged that alternative wording or relief may be acceptable in relation to the particular relief sought, together with any necessary consequential relief.

Dated 6 May 2020

A handwritten signature in black ink, appearing to be the initials 'JB'.

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JC Ironside  
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## **Advice to recipients of copy of notice**

### *How to become party to proceedings*

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal. To become a party to the appeal, you must -

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submissions and the decisions appealed. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court in Christchurch.

**TABLE 1**

Appeal Point	Provision or Decision	Reason	Relief sought (tracked changes where relevant)
1.	Objective 14.3, Explanation.	<p>Additions were made to the final 3 sentences of the Explanation which accompany Objective 14.3 which are too black and white, given that the potential activities will generally require to be tested through a consent process. The wording does not indicate that some such activities, due to their nature, scale, proposed location or adverse effects may not be appropriate within the rural environment, or within some parts of the rural environment.</p> <p>The explanation, as reworded in the decision, has become inconsistent with the wording of the Objective (which is a regional policy statement provision which must be given effect to through the rest of the plan provisions).</p>	<p>Modify the last three sentences of the <b>Explanation</b> to Objective 14.3 to read:</p> <p><i>“There are some instances however where activities not related to primary production, are reliant on the rural resource, and <u>are may be</u> significant contributors to the economic and social wellbeing of the region. These activities, also need to be recognised as activities that <u>are may be</u> appropriate within the rural environment. The subsequent policies set out the circumstances when these activities <u>are may be</u> considered appropriate.”</i></p>
2.	New Policy 14.3.3	<p>The Omaka Valley Group does not seek the removal of this policy, as it recognises that Policy 14.3.2 on its own does not provide adequate guidance to matters which should be considered in relation to any activity which is not primary production or otherwise permitted in the district’s rural areas. However, the policy should not single out and refer to quarries, even as an example (this is poor drafting of policy).</p> <p>Further, as currently worded the policy as currently worded states that effects in any location should be “managed”. This wording is inconsistent with the RMA, as it does not include as management possibilities, in determining whether a location is suitable in terms of the matters listed, the three</p>	<p>(1) Reword Policy 14.3.3, as follows:</p> <p><b><i>“Policy 14.3.3 – Ensure that <del>quarrying and other</del> activities requiring a resource consent in a rural location are located in appropriate locations by <u>managing avoiding, remedying or mitigating adverse effects on:</u></i></b></p> <ul style="list-style-type: none"> <li><i>(a) the life supporting capacity of soils, water, air and ecosystems;</i></li> <li><i>(b) natural character of rivers, wetlands and lakes;</i></li> <li><i>(c) water quality and water availability;</i></li> <li><i>(d) areas with landscape significance, <u>and areas with specific amenity and rural character values;</u></i></li> <li><i>(e) areas with significant indigenous vegetation and</i></li> </ul>

		<p>approaches to adverse effects in the RMA – “avoid, remedy, mitigate” - any of which may be appropriate in any specific location for which an application is made. Also, there is no explanation provided for this policy, which is inconsistent with policies throughout the proposed plan, and is likely to result in this policy receiving a different emphasis or interpretation from other policies in the plan.</p>	<p><i>significant habitats of indigenous fauna;</i>  <i>(f) the safe and efficient operation of the land transport network and Marlborough's airports;</i>  <i>(g) the character and amenity of the rural environment (including: noise, dust, visual, traffic, vibration and amenity effects);</i>  <i>and</i>  <i>(h) the relationship of Marlborough's tangata whenua iwi with lands, waters, sites, wāhi tapu and wāhi taonga, and the ability of Marlborough's tangata whenua iwi to exercise kaitiakitanga.”</i></p> <p>(2) Add an explanation to the policy (in accordance with the approach in other policies) that refers to the Omaka Valley Area as an area with specific amenity and rural character values.</p>
3.	Objective 14.4	<p>The original wording of Objective 14.4 was supported by the Omaka Valley Group (and others). The changes made to this regional policy statement and district plan policy are inconsistent with the RMA and with Policy 4.1.3 of the regional policy statement. Other decisions made by the Hearing Panel rely on the original wording of this Objective (see decisions issued in Topic 12 on Policy 14.4.4 and Policy 14.4.12), and the change to Objective 14.4 brings the integrity of those decisions into question.</p>	<p>Reinstate the original wording of Objective 14.4, as follows:  <b>“Objective 14.4 – Rural character and amenity values are maintained and <del>or</del> enhanced <del>where appropriate</del> and reverse sensitivity effects are avoided.”</b></p>
4.	Policy 14.4.12(f)	<p>The description of the roads within the Omaka Valley is incomplete and should be augmented by descriptive characteristics that are in accordance with policy 14.4.1.</p>	<p>Add to policy 14.4.12(f) so that it reads as follows:  <b>Policy 14.4.12(f) –</b>  <i>Recognise that the Omaka Valley is characterised by the following...</i>  ...  <i>(f) the presence of roads servicing both the Omaka Valley and rural areas to the south, <u>with narrow and irregular width carriageways, low speed geometry including one lane bridges, wide road reserves,</u></i></p>

			<i>and with no through road to other localities;</i>
5.	Policy 14. 4.13	<p>The decision added a reference to Policy 14.1.3 in Policy 14.4.13(f). As notified, the policy required that activities not included within the relatively narrow scope of Policy 14.3.1 and 14.5.4 and not related to primary production are to be avoided.</p> <p>By adding a further reference, to Policy 14.1.3 (as modified by the Hearing Panel decisions), the exclusions which were intended to protect the valley’s character have been extensively modified. This is because the additional cross-reference means that any activity which claims to require a rural location (other than primary production activities which are already referred to in (f)) need not be avoided within the mapped valley area.</p> <p>The decision report indicates that this change was made to address quarry traffic passing through the valley from outside the mapped area. This traffic is referred to in changes made to the Explanation, so is adequately covered.</p> <p>The decision is incorrect in regarding traffic as an “activity” – it is an effect.</p> <p>The decision is inconsistent with the overall policy direction relating to the Omaka Valley (Policy 14.4.12 and the remainder of Policy 14.4.13), and the resultant change is unreasonable and unnecessary.</p> <p>The decision is inconsistent with the wording of the final paragraph of the Explanation of the policy.</p>	<p>Remove the reference to Policy 14.1.3 in Policy 14.4.13, as shown below:</p> <p><b>“Policy 14.4.13 – The Omaka Valley has been recognised as having specific amenity and rural character values that are to be maintained and enhanced as follows:</b></p> <p>(a) enabling primary production activities as provided for in the underlying Rural Environment Zone;</p> <p>(b) requiring resource consent for plantation forestry, to enable an assessment of this activity on the confined nature of the valleys in the Omaka Valley Area;</p> <p>(c) including the ridgelines along the valleys within the Wairau Dry Hills Landscape;</p> <p>(d) avoiding development in the form of buildings on the ridgelines surrounding the valleys;</p> <p>(e) reducing the potential for ‘industrialisation’ within the Omaka Valley Area through controls on the height and scale of buildings associated with primary production activities;</p> <p>(f) other than as provided for in <del>Policy 14.1.3, Policy 14.3.1 and Policy 14.5.4</del>, other activities not related to primary production in the Omaka Valley Area are to be avoided;</p> <p>(g) retain a low volume traffic environment to maintain a peaceful and quiet environment within the Omaka Valley Area;</p> <p>and</p>

			<p>(h) avoiding subdivision below eight hectares to help retain primary production options and a sense of openness within the Omaka Valley Area.”</p>
6.	Chapter 25 - Definition of Quarrying	<p>While the definition is generally appropriate, the inclusion of the activities in (d) are not a normal part of a quarry activity as they involve importation of material to a quarry site and on-site processing activities which may have a range of effects not associated with normal quarry extraction and processing. Should such activities be intended, they should be specified in an application and subject to specific conditions rather than incorporated in a blanket definition of quarrying.</p> <p>The terminology in (h) is not technically correct for a quarry activity and raises the possibility that a quarry site could also operate as a cleanfill site, involving importation of material and a range of effects not associated with normal quarry extraction and processing. Should such activities be intended, they should be specified in an application and subject to specific conditions rather than incorporated in a blanket definition of quarrying.</p>	<p>Remove (d) in its entirety and modify (h) to exclude imported cleanfill, as shown below:</p> <p><b>“Quarrying means the use of land, buildings and plant for the purpose of extraction of natural sand, gravel, clay, silt and rock and the associated processing, storage, sale and transportation of those same materials and quarry site rehabilitation. It may include:</b></p> <p>(a) earthworks associated with the removal and storage of overburden;</p> <p>(b) extraction of natural sand, gravel, clay, silt and rock materials by excavation or blasting;</p> <p>(c) processing of aggregate materials by screening, crushing, washing and/or mixing them together;</p> <p><del>(d) the addition of additives such as clay, lime, cement and recycled/recovered aggregate to extracted materials;</del></p> <p>(e) workshops required for the repair of equipment used on the same property;</p> <p>(f) site management offices;</p> <p>(g) landscaping;</p> <p>(h) quarry site rehabilitation and any associated <del>clean-filling</del> <u>disposal of overburden from the quarry activity.</u>”</p>