

**In the Environment Court
at Christchurch**

In the Matter	of the Resource Management Act 1991 (Act)
And	
In the Matter	of an appeal under Clause 14(1), Schedule 1 of the Act
Between	TE RŪNANGA O KAIKŌURA and TE RŪNANGA O NGĀI TAHU
	Appellant
And	MARLBOROUGH DISTRICT COUNCIL
	Respondent

**Notice of Appeal by Te Rūnanga o
Kaikōura and Te Rūnanga o Ngāi
Tahu on a decision on the Proposed
Marlborough Environment Plan**

Dated: 8 May 2020

To: The Registrar
Environment Court
Christchurch

Notice of Appeal

1. Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (**Ngāi Tahu**) appeals against parts of decisions of the Marlborough District Council (**Respondent**) on the Proposed Marlborough Environment Plan (**Proposed Plan**).
2. Ngāi Tahu made a submission on the Proposed Plan.
3. Ngāi Tahu is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. Ngāi Tahu received notice of the Respondent's decisions on 21 February 2020.
5. By Minute dated 26 March 2020 the Environment Court extended the date by which appeals of the Proposed Plan were to be lodged to 8 May 2020.
6. The parts of the decisions that Ngāi Tahu are appealing are (referred to collectively as **Decisions**):
 - (a) Topic 2: Marlborough's Tangata Whenua Iwi;
 - (b) Topic 3: Natural and Physical Resources;
 - (c) Topic 4: Water Allocation;
 - (d) Topic 7: Public Access and Open Space;
 - (e) Topic 8: Heritage and Notable Trees;
 - (f) Topic 11: Coastal Environment; and
 - (g) Topic 13: Resource Quality (Water).

Particular Reasons for the Appeal

Ngāi Tahu

7. Ngāi Tahu is an iwi authority in the Marlborough District, whose role is to ensure its takiwā is protected and enhanced for future generations. This role is recognised under the Ngāi Tahu Claims Settlement Act 1998 and exercised in accordance with the history of Ngāi Tahu and Ngāi Tahu environmental values. The environmental values of Ngāi Tahu include kaitiakitanga, intergenerational well being, mahinga kai and ki uta ki tai.
8. Kaitiakitanga embodies the responsible management of resources. It is necessary for Ngāi Tahu to be involved in RMA processes in order to exercise kaitiakitanga. Mō tātou, ā, mō kā uri ā muri ake nei – for us and our children after us – is a whakataukī that speaks to the need for resources to be left in the same or better condition for future generations. Mahinga kai is a value that extends beyond the customary gathering of food and natural materials. Mahinga kai is not limited to the species gathered but is a value which encompasses those species, the places they are gathered from and the associated social and economic activity; together mahinga kai is central to the Ngāi Tahu way of life. Ki uta ki tai (mountains to the sea) is an overall approach to resource management that is integrated and holistic.
9. These environmental values inform the relationship of Ngāi Tahu with their ancestral lands, water, sites, wāhi tapu and other taonga as well as their role as a kaitiaki iwi. As such, Ngāi Tahu seeks these environmental values be recognised and provided for under section 6(e) of the Act and, additionally, kaitiakitanga be given particular regard under section 7(a) of the Act.
10. Ngāi Tahu has a special relationship with the District of Marlborough, which comprises both an ancestral and contemporary relationship with the use, development and protection of the natural and physical resources of the wider Marlborough region. To the extent that the Marlborough District falls within the Ngāi Tahu rohe, the provisions in the Proposed Plan are essential to enabling Ngāi Tahu to exercise its relationship and its responsibility as a kaitiaki iwi. Consultation in accordance with Te Tiriti o Waitangi and integrated management are ways by which that relationship

and responsibility can be exercised pursuant to sections 8, 30 – 31 and 59 of the Act.

11. The Decisions fail to enable Ngāi Tahu to exercise this relationship and its responsibility as a kaitiaki iwi by:
 - (a) failing to take into account the principles of Te Tiriti o Waitangi in accordance with section 8 of the Act;
 - (b) failing to recognise and provide for the ancestral relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga under section 6(e) of the Act;
 - (c) failing to have particular regard to kaitiakitanga as required under section 7(a) of the Act; and
 - (d) failing to achieve integrated management of resources in accordance with sections 30, 31 and 59 of the Act.

Te Tiriti o Waitangi

12. The Decisions fail to take into account Te Tiriti o Waitangi in accordance with section 8 of the Act.
13. Two of the principles of Te Tiriti o Waitangi include the principle of partnership and the need for compromise between Māori and the wider community. The embodiment of these principles is consultation, which also ensures that Ngāi Tahu can exercise its role as a kaitiaki iwi. The Decisions fail to provide for consultation, in turn failing to take into account the principles of Te Tiriti o Waitangi. In particular the Decisions:
 - (a) attempt to provide for consultation through proposed implementation methods which have no legal effect;
 - (b) fail to adequately provide for consultation with iwi at a policy level; and
 - (c) fail to provide for the necessary consultation between resource applicants, Iwi and the Respondent to ensure cultural values are appropriately identified, recognised and protected.

14. In addition, the Decisions fail to take into account the principle of Te Tiriti o Waitangi that Ngāi Tahu and other iwi have rangatiratanga in the management of resources and other taonga according to cultural preferences. The Decisions fail to take into account this principle by:
- (a) failing to explicitly recognise this principle;
 - (b) failing to adequately provide for consultation as detailed above;
 - (c) suggesting iwi include wide heritage related matters within an Iwi Management Plan;
 - (d) relying on the Heritage New Zealand Pouhere Taonga framework to assess and protect cultural values rather than doing so within the Proposed Plan;
 - (e) failing to manage resources and taonga in accordance with Ngāi Tahu's environmental values, as further detailed in the following sections.

Ancestral Relationship

15. The ancestral relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga are acknowledged by the Ngāi Tahu Claims Settlement Act 1998 and Statutory Acknowledgements. In accordance with section 6(e) of the Act, it is the role of planning documents to recognise and to provide for the ancestral relationship, culture and traditions by incorporating it into plans.
16. The Decisions fail to recognise and provide for the relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. In particular the Decisions:
- (a) fail to enable tikanga Māori;
 - (b) fail to enable kaitiakitanga;
 - (c) fail to provide for sufficient consultation on the subject matter of section 6(e) of the Act;

- (d) fail to consider, evaluate or give a determination on all of the proposed relief by Ngāi Tahu contained in their submissions and further submission including in relation to:
 - (i) limited notification to Tangata Whenua Iwi for applications for water use, allocation or quality;
 - (ii) education regarding environmental issues and sustainable use, including traditional Māori perspectives;
 - (iii) nutrient management frameworks;
- (e) take a linear view to the articulation of iwi values, including the environmental values of Ngāi Tahu, for example by:
 - (i) seeking to rely on the expression of those values in Statutory Acknowledgements or Iwi management plans only;
 - (ii) failing to take a holistic approach when considering and applying the values, particularly mahinga kai when considering the species not the value;
- (f) imply that it is not for iwi to determine whether a plan change or resource consent is likely to affect iwi, their culture and tradition;
- (g) favour the interests of the resource user;
- (h) fail to include cultural values as Human Use Values;
- (i) fail to recognise and provide for water as Taonga that needs to be protected by:
 - (i) giving priority to the mauri of the resource over people, business and stock;
 - (ii) applying a precautionary approach;
 - (iii) using integrated management ki uta ki tai;
 - (iv) requiring limited notification to the tangata whenua iwi;

- (v) giving priority to the intergenerational wellbeing of the resource.
- (j) fail to understand the Te Mana o te Wai aims to have healthy water as a starting point, not through interventions such as the implementation of potentially harmful infrastructure like dams;
- (k) prematurely enable water transfers as a permitted activity without a notified process to determine the most appropriate mechanism to do so;
- (l) fail to explicitly require integrated management, consequently failing to provide for ki uta ki tai;
- (m) fail to provide for customary access; and
- (n) delegate the regulation of archaeological sites within Marlborough (that are not listed in Appendix 13, Schedule 3) to Heritage New Zealand Pouhere Taonga.

Kaitiakitanga

17. Kaitiakitanga is one of the environmental values of Ngāi Tahu and it is a matter to which particular regard must be had under section 7(c) of the Act. Kaitiakitanga denotes the responsible management of resources. It cannot be achieved without knowledge and input to the management of resources by the kaitiaki iwi, meaning that consultation with and notification to (which is post-application and therefore separate to consultation) the kaitiaki iwi is required.
18. The Decisions fail to have particular regard to kaitiakitanga in that they:
 - (a) fail to expressly enable kaitiakitanga;
 - (b) fail to adequately provide for consultation with the kaitiaki iwi (as described above in the *Te Tiriti o Waitangi* section);
 - (c) fail to require limited notification to the kaitiaki iwi for water take and use;
 - (d) fail to recognise and provide for water as taonga that needs to be protected by;

- (i) giving priority to the mauri of the resource over people, business and stock;
 - (ii) applying a precautionary approach;
 - (iii) using integrated management ki uta ki tai;
 - (iv) requiring limited notification to the tangata whenua iwi; and
- (e) delegate the regulation of archaeological sites within Marlborough (that are not listed in Appendix 13, Schedule 3) to Heritage New Zealand Pouhere Taonga.

19. Iwi management plans are also a means of implementing the role of tangata whenua iwi as kaitiaki. The Decisions fail to have regard to the Te Rūnanga o Kaikōura Environment Iwi Management Plan (**Kaikōura IMP**). This fails to have regard to kaitiakitanga under section 7(a) of the Act and fails to have regard to management plans in accordance with sections 61, 66 and 74 of the Act. In particular the Decisions fail to have regard to the requirements for consultation under the Kaikōura IMP.

Integrated Management

20. The Decisions fail to consider, evaluate or give a determination on the relief sought by Ngāi Tahu that relates to integrated management.
21. The Decisions fail to achieve integrated management of resources in accordance with sections 30, 31 and 59 of the Act. In particular:
- (a) integrated management is not explicitly required;
 - (b) some policies are inexplicit in their meaning;
 - (c) policies do not explicitly require consultation;
 - (i) between the Respondent and tangata whenua iwi; or
 - (ii) at the beginning of a development process (i.e. subdivision);
 - (d) some of the provisions are inconsistent:
 - (i) method of implementation 10.M.5 is inconsistent with Policy 10.1.11;

- (ii) together policies 15.1.18, 15.1.20 and rule 16.7.4 with policy 15.1.1;
- (e) there are inconsistencies between the Decisions and the Decisions Version which cause confusion; and
- (f) there are gaps in policy including:
 - (i) no recognition of the need for take and use applications to be considered together in a holistic matter;
 - (ii) inadequate regulation of discharges from ships into coastal water, in particular outside of the Marlborough Sounds;
 - (iii) no provision for customary access; and
 - (iv) failure to appropriately provide for cultural values in Appendix 5.

Te Mana o Te Wai

22. The concept of “Te Mana o te Wai” puts the mauri of the waterbody and its ability to provide for te hauora o te tangata, te hauora o te taiao, and te hauora o te wai, to the forefront of freshwater management. Te Mana o te Wai is fundamental to achieving an integrated and intergenerational framework for freshwater management in Marlborough. Ngāi Tahu is committed to this approach and wants to ensure that Te Mana o te Wai is appropriately incorporated into this plan.
23. Further to the specific reasons for appeal already set out above, the Decisions fail to appropriate incorporate Te Mana o Te Wai into the plan in that they:
- (a) apply Te Mana o Te Wai inconsistently; and
 - (b) fail to fully grasp the meaning and intent of Te Mana o Te Wai, particularly by not putting the mauri of waterbodies first.

General Reasons for the Appeal

24. The general reasons for the Ngāi Tahu appeal are that the Decisions on the Proposed Plan:

- (a) fail to achieve the functions of the Respondent under sections 30, 31 and 59 of the Act in respect of the integrated management of the effects of the use and development of land and physical resources, which is consistent with the ethic of ki uta ki tai;
- (b) fail to meet the requirements of section 32 of the Act;
- (c) fail to meet the requirements of sections 61, 66 and 74 of the Act, including to have regard to the Kaikōura IMP;
- (d) fail to meet the requirements of sections 61 – 62, 66 – 67 and 74 – 75 of the Act in that they do not give effect to the National Policy Statement for Freshwater Management 2014 and the New Zealand Coastal Policy Statement 2010;
- (e) fail to meet the requirement of section 80 of the Act relating to combined regional and district documents, including by failing to integrate the plans covered by the Proposed Plan;
- (f) do not preserve and protection the natural character of the coastal environment and its margins pursuant to section 6(a) of the Act;
- (g) do not recognise and provide for the ancestral relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga under section 6(e) of the Act;
- (h) fail to recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development in accordance with section 6(f) of the Act
- (i) do not represent an efficient use of land under section 7, in particular with regard to subsections (a), (d), (f) or (g) of the Act;
- (j) as detailed in the specific relief, fail to take into account the principles of Te Tiriti o Waitangi in accordance with section 8 of the Act; and
- (k) fail to promote sustainable management of resources and consequently will not achieve the purpose of the Act.

Relief Sought

25. Ngāi Tahu seek the primary relief detailed below (noting the provisions referred to are those as shown in the Decisions Version of the Proposed Plan) subject to the general relief in paragraphs 36 (a) – (b) below:

Primary Relief

26. As the primary form of relief Ngāi Tahu seek to make the following amendments to the Proposed Plan.

Marlborough's Tangata Whenua Iwi

27. Ngāi Tahu seek the following amendments to Volume 1, Chapter 3: Marlborough's Tangata Whenua Iwi:

- (a) The Decisions and the Decisions Version of Objective 3.2 are inconsistent. Ngāi Tahu seeks that Objective 3.2 reads pursuant to the Decisions Version as follows:

A strong relationship between the Council and Marlborough's tangata whenua iwi in the delivery of outcomes that enables iwi to exercise kaitiakitanga.

- (b) The Decisions and the Decisions Version of Objective 3.3¹ are inconsistent. Ngāi Tahu seeks that Objective 3.3 reads pursuant to the Decisions² as follows:

Natural and physical resources are managed in a manner that has particular regard to the spiritual and cultural values of Marlborough's tangata whenua iwi as kaitiaki and respects and enables tikanga Māori.

- (c) Amend Objective 3.6³ as follows:

Resource management decision making processes that involve Marlborough's Tangata Whenua iwi, and give particular consideration to recognise and reflect the cultural and spiritual values of Marlborough's tangata whenua iwi, and their relationship to lands, water, wāhi tapu and wāhi taonga

¹ Objective 3.2 notified version.

² Decisions by Topic on the PMEP, Topic 2: Marlborough's Tangata Whenua, at [58].

³ Objective 3.5 notified version.

- (d) Amend Policy 3.1.2 and reasons to the notified version, being:

An applicant will be expected ~~encouraged, as best practice~~ to consult early in the development of a proposal (for resource consent or plan change) so that cultural values of Marlborough's tangata whenua iwi can be taken into account.

Only in Marlborough's tangata whenua iwi can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga. This means that iwi are in the best position to determine whether a proposal will affect areas of significance for iwi. ~~Consultation undertaken~~ It is therefore important that consultation with iwi occurs early in the process of planning of a development (either by resource consent or plan change) to ensure impacts allows the effects on the cultural values to are be appropriately identified and addressed. Early consultation with Marlborough's tangata whenua iwi is therefore considered to be best practice when preparing an assessment of effects on cultural values

- (e) Amend Policy 3.1.3 as follows:

Where an application for resource consent or plan change is likely to affect the relationship of Marlborough's tangata whenua iwi and their culture and traditions, decision makers shall consult with, and notify resource consent applications to iwi and ensure that consider how:

...

- (f) Amend Policy 3.1.4 to remove sub section (c) as follows:

Encourage iwi to develop iwi management plans that may include:

...

~~(c) — sites places, areas and landscapes of historic and/or cultural significance;~~

...

- (g) Insert a new Policy 3.1.X as follows:

The Council will consult with Tangata Whenua iwi on applications that may have an impact on their relationship with land, water wāhi tapu or wāhi taonga, or otherwise on their cultural values.

- (h) Insert a new Policy 3.1.XX as follows:

Recognise and provide for through consultation with iwi and notification of applications the relationship of Marlborough's Tangata Whenua iwi where a proposed subdivision is likely to effect Marlborough's Tangata Whenua iwi, , with particular consideration of the following:

(a) Stormwater management

(b) Wastewater management

(c) Wāhi Tapu/Wāhi Taonga

(d) Mahinga kai

(e) Freshwater quality

(f) Indigenous biodiversity

(g) Coastal water quality and the coastal environment

Explanation: Subdivision, being the first stage of the development cycle, provides an opportunity to comprehensively plan development. In doing so, effects on Marlborough's Tangata Whenua iwi can be avoided or managed as appropriate.

- (i) Insert new Policy 3.1.XXX as follows:

Resource consents involving water use, allocation or quality may be limited notified to relevant tangata whenua iwi to determine whether iwi values will be affected by the proposal, the nature of those effects and any potential mitigation or remedy for those effects.

- (j) Revert the method of implementation to the notified version as follows:

3.M.3 Consideration of iwi management plans

Iwi management plans will be used and taken into account to:

- ...
- ~~assist the identification of heritage resources;~~

...

- (k) Add the following new method of implementation:

3.M.X Recognising and Promoting Awareness of Te Tiriti o Waitangi

In consultation with Marlborough's Tangata Whenua iwi, the Council will develop a training course for all Councillors and decision makers. This training course will cover the principles of the Treaty of Waitangi and the obligations on the Council and decision makers, and how to incorporate into decision making.

- (I) Add the following new method of implementation:

3.M.XX Recognising the Right of Iwi to State their Preferences to Environmental Management

The Council will work with iwi in developing Iwi Management Plans and to better enable iwi to participate in RMA processes. The Council will work with iwi in the development of, and in running workshops with users of the Marlborough Environment Plan on how to use IMP in resource management processes.

Sustainable Management of Natural and Physical Resources

28. Ngāi Tahu seek the following amendments to Volume 1, Chapter 4: Sustainable Management of Natural and Physical Resources:

- (a) Insert a new Objective 4.X under Issue 4A which reads as follows:

Objective 4.X – Integrate management of natural and physical resources within the Marlborough District.

- (b) Amend Policy 4.1.1 as follows:

Recognise the rights of resource users ~~by only intervening in the use of land~~ while protecting the environment, iwi rights and interest and wider public interests in the environment by controlling the use of land where it is justified to protect the environment.

- (c) Insert a new method of implementation under Issue 4A which reads as follows:

4.M.6 Education

Working with tangata whenua iwi and schools, or other education providers, education programmes will be encouraged about environmental issues and sustainable use, including traditional Māori perspectives.

Allocation of Freshwater Resources

29. Ngāi Tahu seek the following amendments to Volume 1, Chapter 5: Allocation of Freshwater Resources:

(a) Insert new Policy 5.1.3 as follows:

The assessment of separate consent applications for the take and use of water will be considered together, and where a hearing is required, the hearing will hear both applications together.

(b) Amend Objective 5.2 as follows:

Recognise Te Mana o te Wai and safeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining flows and/or levels required for the health of the resource as a first priority, followed by the natural and human use values (as defined by Appendix 5) supported by waterbodies.

(c) Amend Policy 5.2.1 as follows:

Maintain or enhance where degraded the natural and human use values supported by freshwater bodies by:

- *avoiding the damming of rivers;*
- *requiring applications to take, divert or dam water to avoid, remedy or mitigate adverse effects; and*
- *applying a precautionary approach to resource consents where there will be irreparable adverse effects on natural and human use values.*

(d) Supports the amendments to the explanation of Policy 5.2.1 as shown in the Decision and seeks to ensure that those changes are reflected in the Decisions Version, as they currently are not.

(e) Amend Policy 5.2.2 as follows:

Consistent with ~~Recognising~~ Te Mana o Te Wai, gives priority to the integrated and holistic well-being of freshwater and freshwater flows/levels, including protecting the mauri of the waterbody.

...

- (f) The Decisions and the Decisions Version of Policy 5.2.4(c) are inconsistent. Ngāi Tahu seeks that Policy 5.2.4(c) read pursuant to the Decisions Version, with additional amendment as follows:

...

(c) *maintain fish passage and fish spawning grounds, including sufficient velocity to accommodate native fish species;*

...

(g) *maintain amenity values; and*

(h) *enable natural flushes in rivers to occur.*

- (g) Amend Policy 5.2.9⁴ as follows:

Have regard to the importance of flow connection to maintaining natural and human use values when considering resource consent applications to take water from intermittently flowing rivers, including:

(a) *the timing and duration of that flow connection;*

(b) *any effects on mahinga kai;*

~~(b)(c)~~ *the physical extent of any disconnection in flow; ~~and~~*

~~(e)(d)~~ *any adverse effects on connected aquifers; and*

(e) *through monitoring flows.*

- (h) Amend Policy 5.2.19⁵ as follows:

Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered, including any effects from the mixing of waters.

- (i) Amend Policy 5.2.21⁶ as follows:

Where water is to be dammed to enable the storage of water, ~~encourage~~ require the construction and use of “out-of-river” dams as opposed to ~~in preference to~~ the construction and use of dams within the beds of perennially or intermittently flowing rivers.

⁴ Policy 5.2.10 in the notified version.

⁵ Policy 5.2.18 in the notified version.

⁶ Policy 5.2.20 in the notified version.

(j) Amend Policy 5.2.22⁷.

Ensure any new proposal to dam water within the bed of a river ~~provides for:~~

(a) avoids the damming of:

(i) the Waiau Toa/Clarence and Awatere Rivers, including their tributaries; or

(ii) the mainstream of a waterbody;

(b) provides for:

(i) cultural values associated with the waterbody;

~~(a)(ii)~~ effective passage of fish where the migration of indigenous fish species, trout and/or salmon already occurs past the proposed dam site, provided that if the purpose of the dam is for the restoration and/or establishment of only native species habitat then fish passage for trout and salmon is not required;

~~(b)(iii)~~ sufficient flow and flow variability downstream of the dam structure to maintain:

~~(i)A~~ existing indigenous fish habitats and the habitats of trout and salmon; and

~~(ii)B~~ permitted or authorised use of water;

~~(iii)C~~ flushing flows below the dam; and

~~(iv)D~~ mauri o te wai; and

~~(e)(iv)~~ the natural character of any waterbody downstream of the dam structure; and

have regard to the matters in ~~(a) to (e)~~ (b)(i) to (b)(iv) when considering any resource consent application to continue damming water.

(k) Amend Policy 5.2.23⁸(g) as follows:

(g) ~~the positive effects of the damming any changes to rivers flows; and~~

(l) Amend method of implementation 5.M.1 as follows:

5.M.1 Setting community values – Te Mana o te Wai

Council will work with ~~communities, including Marlborough's~~ tangata whenua iwi, to identify values and use them to in for the setting of freshwater objectives and limits.

⁷ Policy 5.2.21 in the notified version.

⁸ Policy 5.2.22 in the notified version.

(m) Amend Policy 5.3.14 as follows:

The duration of water permits to take or divert water for consumptive purposes will reflect the circumstances of the take or the diversion and the actual and potential adverse effects, but should generally:

- (a) *not be ~~less~~ more than 15 years when the take or diversion of water for consumptive purposes is from a Freshwater Management Unit:

 - (i) *that has a water allocation limit specified in Schedule 3 of Appendix 6; and*
 - (ii) *that has a minimum flow or level specified in Schedule 3 of Appendix 6; and*
 - (iii) *that is not over-allocated; or**
- (b) *not be more than ten years when the take or diversion of water for consumptive purposes is from an over-allocated Freshwater Management Unit as specified in Policy 5.5.1; or*
- (c) *not be more than ten years, or longer than any limit setting process, whichever is shorter. when the take or diversion of water for consumptive purposes is from a Freshwater Management Unit that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.*

(n) Delete Policy 5.4.4 and replace with the following Policy 5.4.4:

In consultation with Marlborough's Tangata Whenua iwi, Council are to prepare and undertake a plan change that includes provisions to make best use of water through the utilisation of unused water permits.

Or, in the alternative amend Policy 5.4.4 as follows:

Investigate options to enable ~~Enable~~ access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.

(o) Delete Policy 5.4.5.

- (p) Insert a new Policy 5.7.2 as follows:

The assessment of separate consent applications for the take and use of water will be considered together, and where a hearing is required, the hearing will hear both applications together.

Public Access and Open Space

30. Ngāi Tahu seek the following amendments to Volume 1, Chapter 9: Public Access and Open Space

- (a) Insert new Objective 9.X as follows:

The relationship of tangata whenua iwi with their ancestral lands, water, sites of significance, wāhi tapu and wāhi taonga are enabled through opportunities to provide customary access.

Explanation: Customary access is a tool that is encouraged in the Marlborough Environment Plan. Customary access refers to access agreements, either informal or formal, that enable access by iwi to sites that are of significance (and are either listed in the plan or not), places of mahinga kai or other sites of cultural importance. Whether or not there are opportunities for customary access are encouraged to form part of discussions during resource consent or plan change applications.

- (b) Insert new Policy 9.X.X as follows:

Customary access to sites of significance, mahinga kai, customary material or harvesting areas is encouraged in subdivision and development through landowner agreements or through wider public access arrangements.

Explanation: Customary access is necessary to enable Tangata Whenua Iwi to exercise kaitiakitanga and to actively maintain their relationship with sites of significance, lands, waters, wāhi tapu and wāhi taonga. Where resources or sites are located on private land, access arrangements such as agreements or case by case permissions are essential before entry can occur. Permission to enter private land is entirely at the discretion of the landowner. This policy acknowledges this and highlights that the Council encourages such agreements to be considered as part of consenting or plan change processes.

- (c) Insert new method of implementation 9.M.X as follows:

9.M.X Customary Access

The MEP identifies that where appropriate, customary access should be enabled. Where there are sites of interest to Marlborough's tangata whenua iwi that they may wish to access, the Council will encourage Plan Change or resource consent applicants to consider whether or not customary access is possible. Formal access agreements between landowners and iwi will be encouraged by the Council to solidify arrangements.

Heritage Resources and Notable Trees

31. Ngāi Tahu seek the following amendments to Volume 1, Chapter 10: Heritage Resources and Notable Trees

- (a) Delete Policy 10.1.10⁹ so as to not delegate the protection of historic heritage from inappropriate subdivision, use and development exclusively to Heritage New Zealand Pouhere Taonga, and to ensure that Marlborough's tangata whenua iwi maintains a role in the regulation of archaeological sites within Marlborough.

- (b) Insert a new Policy 10.1.X as follows to ensure that sites which are not listed in Appendix 13, Schedule 3 are protected by the plan:

Avoid damage to or destruction of any site or place of significance to iwi which is not identified in this plan when applying for resource consents, plan changes, designations, and/or earthworks, building activities or other activities which may adversely affect a site or place of significance to iwi.

- (c) Insert a new Policy 10.1.XX as follows to ensure that sites which are not listed in Appendix 13, Schedule 3 are protected by the plan:

Facilitate the further identification and classification of sites and areas of cultural significance to Marlborough's tangata whenua iwi for inclusion in the district plan over time.

⁹ Policy 10.1.9 in the Notified Version.

- (d) Insert a new method of implementation as follows to ensure that sites which are not listed in Appendix 13, Schedule 3 are protected by the plan:

10.M.X Sites of Significance to Marlborough's tangata whenua iwi

Marlborough District Council shall work with Marlborough's tangata whenua iwi to identify those Sites of Significance to Marlborough's tangata whenua iwi, that those iwi wish to be listed, and to map and protect these through the Marlborough Environment Plan. In addition, the Council understands that the list of sites that will be identified in the plan is not exhaustive. As the potential effects to tangata whenua iwi values changes over time, or further information is discovered on existing or new sites, Marlborough's tangata whenua iwi may determine that additional sites are appropriate for protection through the Marlborough Environment Plan. If and when that occurs, the Council will work with iwi to draft and instigate plan changes.

- (e) Amend method of implementation 10.M.5 as follows:

In conjunction with Heritage New Zealand Pouhere Taonga, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi, the Council will develop, maintain and implement a discovery protocol for archaeological sites ~~where an archaeological authority has not been obtained~~. This will detail the procedures to be followed if any feature, artefact or human remains are discovered or are suspected to have been discovered. Information will be included within the protocol on the rohe of different iwi to enable people to make contact with the relevant iwi. The protocol will assist in ensuring that the relevant provisions of the Heritage New Zealand Pouhere Taonga Act 2014 can then be applied. The protocol will be included in Appendix 13 containing the Schedule of Archaeological Requirements.

- (f) Insert new Anticipated Environmental Result AER.10.X:

No loss of unidentified sites of significance to Marlborough's tangata whenua iwi.

A plan change to provide for additional sites to be added to Appendix 13, Schedule 3 commenced within 2 years of the plan becoming operative.

Resource Quality (Water, Air, Soil)

32. Ngāi Tahu seek the following amendments to Volume 1, Chapter 15: Resource Quality (Water, Air, Soil):

- (a) Amend Policy 15.1.1 as follows:

As a minimum, the quality of freshwater and coastal waters will be managed so that they are suitable for the following purposes:

- (a) *Coastal waters: protection of marine ecosystems; potential for contact recreation and food gathering/marine farming; ~~where identified as having these values~~; and for cultural and aesthetic purposes;*
- (b) *Rivers and lakes: protection of aquatic ecosystems; potential for contact recreation; ~~where identified as having these values~~; community water supply (where water is already taken for this purpose); and for cultural and aesthetic purposes;*
- (c) *~~Ground-Freshwater~~: drinking water supply; and*
- (d) *~~Significant w-~~Wetlands: protection of aquatic significant wetland ecosystems and the potential for food gathering.*

- (b) Delete Policy 15.1.3 and replace it with the following:

Establish limits by 2024, in consultation with Tangata Whenua, that avoid or mitigate the effects of cumulative contamination on freshwater bodies and have regard to the management purposes of Policy 15.1.1.

- (c) Amend Policy 15.1.10 as follows:

...

- (c) *the financial implications and effects on the environment of each option when compared with the other options; ~~and~~*
 (d) *the current state of technical knowledge and the likelihood that each option can be successfully applied; and*
 (e) *whether the contaminant should be released in water.*

- (d) Revert Policy 15.1.18 to the notified version as follows:

Avoid the discharge of untreated human sewage ~~from land based activities~~ to waterbodies or coastal waters.

- (e) Amend Policy 15.1.34(e) as follows:

- (e) *a nutrient management plan that has been drafted in consultation with tangata whenua iwi and approved by the Council, and includes nutrient inputs and limits from dairy effluent, animal discharges, fertiliser and any other nutrient input.*

- (f) Insert a new Policy 15.1.X as follows:

Marlborough District Council will undertake a plan change should the effects on water quality decline as a result of changing land use to introduce a nutrient management framework into the Marlborough Environment Plan.

General Rules

33. Ngāi Tahu seek the following amendments to Volume 2, Chapter 2: General Rules:

- (a) Amend Rule 2.4.1 and standards to restricted discretionary activity status, and amend restricted discretionary matters as follows:

Matters over which the Council has restricted its discretion:

- 2.4.1.2 *the matters in policies 5.2.21 and 5.2.22.*
 2.4.1.3 *Allocation limits.*
 2.4.1.4 *Interference effects on other water users.*
 2.4.1.5 *Permit terms and review periods.*
 2.4.1.6 *Monitoring requirements.*
2.4.1.7 *Rationing requirements.*

(b) Amend Rule 2.6.5 as follows:

Damming of water in the following waterbodies, including their tributaries:

- (a) *Awatere River ~~above Medway River (excluding tributaries not specified in this rule);~~*
- (b) *Waiau-toa/Clarence River;*
- ~~(c) *Grey River;*~~
- ~~(d) *Hodder River;*~~
- (e) *Waimea River above Box Stream;*
- ~~(f) *Winterborne River.*~~

This rule does not apply to a damming of water lawfully established prior to 9 June 2016.

(c) Amend Rule 2.11.1 as follows:

Construction of a dam on the following lakes and rivers, including their tributaries unless otherwise stipulated:

- (a) *Acheron River;*
- (b) *Awatere River ~~above Medway River (excluding tributaries not specified in this rule);~~*
- (c) *Branch River (including downstream of weir to the Wairau River confluence);*
- (d) *Waiau-toa /Clarence River;*
- (e) *Goulter River;*
- ~~(f) *Grey River;*~~
- ~~(g) *Hodder River;*~~
- (h) *Lake Alexander;*
- (i) *Lake Chalice;*
- (j) *Lake McRae;*
- (k) *Te Hoiere/Pelorus River above the Rai River confluence;*
- (l) *Rainbow River;*
- (m) *Tarndale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere;*
- (n) *Waimea River above Box Stream;*
- (o) *Wairau River upstream of the Hamilton River confluence;*
- ~~(p) *Winterborne River.*~~

Coastal Marine Zone

34. Ngāi Tahu seek the following amendments to Volume 2, Chapter 16: Coastal Marine Zone:

(a) Amend Rule 16.7.5¹⁰ as follows:

Discharge of treated or untreated human sewage ~~from land based activities~~ into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

Water Resource Unit Values and Water Quality Classification Standards

35. Ngāi Tahu seek the following amendments to Volume 3, Appendix 5: Water Resource Unit Values and Water Quality Classification Standards:

(a) Amend Appendix 5 to reflect cultural values in consultation with Marlborough's Tangata Whenua.

General Relief

36. Ngāi Tahu seek the following general relief:

- (a) that the Proposed Plan be amended in a similar or such other way as may be appropriate to address the matters raised in this appeal; and
- (b) any other similar, consequential, alternative, or other relief as is necessary to address the issues raised in this appeal or otherwise raised in the submission and further submission by Ngāi Tahu.

¹⁰ Rule 16.7.4 in the notified version.

Attached Documents

37. The following documents are **attached** to this notice:
- (a) a copy of the submission and further submission by Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (**Annexure A**);
 - (b) the relevant parts of the Respondent's decisions (**Annexure B**);
and
 - (c) a list of the names and addresses of the persons to be served with a copy of this notice of appeal (**Annexure C**).

Dated this 8th day of May 2020



Joshua Leckie
Counsel for Te Rūnanga o Ngāi Tahu

Address for Service for the Appellant:

Lane Neave
Level 1
2 Memorial Street
Queenstown 9300
Phone: 03 372 6307
Email: joshua.leckie@laneneave.co.nz

Advice to Recipients of Copy of Notice of Appeal

How to become a 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 this appeal you must, within 20 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 in accordance with the requirements below.

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).

Service Requirements in Accordance with the Minute dated 15 April 2020

Section 274 notices must be lodged with the court electronically by email to Christine.McKee@justive.govt.nz and the requirement to lodge a signed original and one hard copy of any section 274 notice with the court is waived.

The section 274 notice must specify an email address for service.

The requirements relating to the service of section 274 notices have been altered to the effect that:

- Section 274 notices must be served on the Council electronically by email to Kaye.McIlveney@marlborough.govt.nz and on the appellant electronically at the email address provided in the notice of appeal;
- The requirement for section 274 parties to serve their notice/form 33 on all other parties has been waived; and
- Service of section 274 notices on all other parties will be deemed to be effected by Marlborough District Council uploading copies of section 274 notices onto its website within 10 working days after the section 274 notice is received.

ANNEXURE A – Copy of submissions by Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu

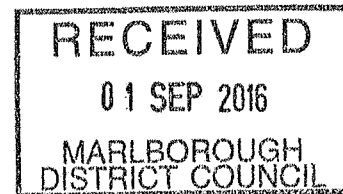


Te Rūnanga o NGĀI TAHU

SUBMISSION ON THE PROPOSED MARLBOROUGH ENVIRONMENT PLAN

1 September 2016

To: Attention: Planning Technician
Marlborough District Council
PO Box 443
Blenheim 7240
Submission lodged by email – MEP@marlborough.govt.nz



Name of person making submission:

Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu.

These are submissions in support or opposition on: The proposed Marlborough Environmental Plan.

1. Introduction and Background

- 1.1 Ngāi Tahu are tangata whenua of parts of Marlborough. Ngāi Tahu means “people of Tahu”. Ngāi Tahu is the iwi comprised of Ngāi Tahu Whānui; that is the collective of the individuals who descend from the five primary hapū; Ngāti Kurī, Ngāti Irakehu, Kati Huirapa, Ngāi Tūāhuriri and Ngāi Te Ruahikihiki. The Ngāi Tahu takiwā extends over 80 per cent of Te Waipounamu, beginning at Te Parinui o Whīti (White Bluffs) in Marlborough district. Te Waipounamu has been home to Ngāi Tahu for over 800 years, and are therefore Ngāi Tahu hold mana whenua over these lands.
- 1.2 Te Rūnanga o Ngāi Tahu (Te Rūnanga) is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act).
- 1.3 We note for the Marlborough District Council the following relevant provisions of our constitutional documents:

Section 3 of the Act States:

“This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.”

Section 15(1) of the Act states:

“Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.”

Te Rūnanga o Ngāi Tahu
Te Whare o Te Waipounamu
15 Show Place, Addington, Christchurch 8042
PO Box 13-046, Christchurch, New Zealand
Phone + 64 3 366 4344, 0800 KAI TAHU
Email: info@ngaitahu.iwi.nz
Website: www.ngaitahu.iwi.nz

- 1.4 The Charter of Te Rūnanga o Ngāi Tahu constitutes Te Rūnanga as the kaitiaki of the tribal interests.
- 1.5 Te Rūnanga respectfully requests that Marlborough District Council accord this response the status and weight due to the tribal collective, Ngāi Tahu whānui, currently comprising over 55,000 members, registered in accordance with section 8 of the Act.
- 1.6 Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui "for all purposes", Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.
- 1.7 It should be noted that in Section 15 (2) of the Act, the provision provides for; where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngai Tahu Whānui, be held with Te Rūnanga o Ngai Tahu. Section 15 (3) of the Act requires that in carrying out any consultation Te Rūnanga o Ngāi Tahu shall in turn consult with Papatipu Rūnanga. In practice, Te Rūnanga takes into account the views of Papatipu Rūnanga when determining its position. In the case of issues of local significance only, Te Rūnanga may defer a response completely to Papatipu Rūnanga.
- 1.8 Papatipu Rūnanga are defined in section 9 of the Act. This includes Te Rūnanga o Kaikōura.

2. Mana Whenua Statement

- 2.1 This is a submission from the representative body of the Ngāi Tahu tangata whenua who hold mana whenua in their traditional takiwā of Marlborough, to which this proposed replacement district plan relates: Te Rūnanga o Kaikōura.
- 2.2 This is a joint submission made by Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu.
- 2.3 For ease, the remainder of the submission refers to Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu collectively as **Ngāi Tahu**.

3. Te Rūnanga and Papatipu Rūnanga Interests in the Proposed Marlborough Environmental Plan

- 3.1. Te Rūnanga notes the following particular interests in the Proposed Marlborough Environmental Plan:

Treaty Relationship

- Te Rūnanga o Ngāi Tahu have an expectation that the Crown will honour Te Tiriti o Waitangi (the Treaty) and the principles upon which the Treaty is founded. All persons undertaking duties and responsibilities in accordance with the purpose this document shall recognise and respect the Crown's responsibility to give effect to principles of the Treaty of Waitangi.

Kaitiakitanga

- In keeping with the kaitiaki responsibilities of Ngāi Tahu whānui, Te Rūnanga has an interest in ensuring sustainable management of natural resources, including protection of taonga and mahinga kai for future generations
- Ngāi Tahu whānui are both users of natural resources, and stewards of those resources. At all times, Te Rūnanga is guided by the tribal whakataukī: “mō tātou, ā, mō kā uri ā muri ake nei” (*for us and our descendants after us*).

Whanaungatanga

- Te Rūnanga has a responsibility to promote the wellbeing of Ngāi Tahu whānui and ensure that the management of Ngāi Tahu assets and the wider management of natural resources supports the development of iwi members.

- 3.2 Te Rūnanga has a specific interest by virtue of the Ngāi Tahu Claims Settlement Act 1998 (the NTCSA). The Act provides for Ngāi Tahu and the Crown to enter an age of co-operation. An excerpt of the Act is **attached** as Appendix One, as a guide to the basis of the post-Settlement relationship, which underpins this response.
- 3.3 The Crown apology to Ngāi Tahu is a recognition of the Treaty principles of partnership, active participation in decision-making, active protection and rangatiratanga.
- 3.4 With regards to the Ngāi Tahu takiwā, Section 5 of the Te Rūnanga o Ngāi Tahu Act 1996 statutorily defines the Ngāi Tahu takiwā as those areas “south of the northern most boundaries described in the decision of the Māori Appellate Court ...” which in effect is south of Te Parinui o Whiti on the East Coast and Kahurangi Point on the West Coast of the South Island.
- 3.5 Section 2 of the Ngāi Tahu Claims Settlement Act 1998 statutorily defines the Ngāi Tahu claim area as being:

“the area shown on allocation plan NT 504 (SO 19900), being—
(a) the takiwā of Ngāi Tahu Whānui; and
(b) the coastal marine area adjacent to the coastal boundary of the takiwā of Ngāi Tahu Whānui; and
(c) the New Zealand fisheries waters within the coastal marine area and exclusive economic zone adjacent to the seaward boundary of that coastal marine area;—
and, for the purposes of this definition, the northern sea boundaries of the coastal marine area have been determined using the equidistance principle, and the northern sea boundaries of the exclusive economic zone have been determined using the perpendicular to the meridian principle from the seaward boundary of the coastal marine area (with provision to exclude part of the New Zealand fisheries waters around the Chatham Islands).”

(See the map **attached** as Appendix Two)

- 3.6 The Ngāi Tahu Claims Settlement Act 1998 sets out the following areas within Marlborough District as places of particular cultural, spiritual, historic, and traditional association. These sites have been afforded special statuses (indicated in brackets), which have certain requirements and considerations listed within NTCSA. These locations are:
- Te Tai o Marokura (Coastal Marine Area)
 - Te Tapuae o Uenuku (Tōpuni)

- o Waimā / Ure River (Nohoanga site)

4. Submission – General

The specific provisions our submission relates to are:
Proposed Marlborough Environment Plan

Our submission is:

We support the plan provisions except where we ask for specific amendments or additions as listed below and in the attached.

Our reasons are:

4.1 The amendments and additions we seek to this plan are to better incorporate the broader interests and aspirations of Ngāi Tahu in the Marlborough District. The submitters consider these changes are necessary to:

- Better achieve the purpose of the Resource Management Act 1991 (RMA), including matters under s6, having particular regard to kaitiakitanga as required under s7(a) of the RMA, and taking into account the principles of Te Tiriti o Waitangi (Treaty of Waitangi) as required under s8 of the Act;
- Take into account the relevant iwi management plans, in particular Te Pōhā o Tohu Raumati 2007– Te Rūnanga o Kaikoura Environmental Iwi Management Plan as required under s74(2A) of the RMA; and
- Consequently discharge the council's duties under s32 of the RMA.

4.2 These reasons apply to every decision requested in this submission, along with any additional specific reasons listed under each submission point.

Decisions sought:

4.3 The specific decisions sought are listed in Schedule 1 by chapter. Text to be deleted is either described narratively or shown as ~~striketrough~~ (except where whole sections are to be replaced). Replacement text is either described narratively or shown in **bold underlined**.

4.4 We also seek any consequential amendments necessary to give effect to the decisions sought.

4.5 In addition to the above, the reasons for our support or opposition are also set out in Schedule One.

We do wish to be heard in support of our submission.

Signature of person (s) making submission
(or person authorised to sign on behalf of person (s) making submission)



Kara Edwards
General Manager, Te Ao Tūroa
Te Rūnanga o Ngāi Tahu



Henare Manawatu
Chairperson
Te Rūnanga o Kaikōura

Date: 1 September 2016

Address for service:

Tanya Stevens
Te Rūnanga o Ngāi Tahu
PŌ Box 13 046
Ōtautahi
Christchurch 8021

Email: Tanya.Stevens@ngaitahu.iwi.nz

APPENDIX ONE: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 6 Text in English

The text of the apology in English is as follows:

- 1 The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb 'He mahi kai takata, he mahi kai hoaka' ('It is work that consumes people, as greenstone consumes sandstone'). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

"This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name."

The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.

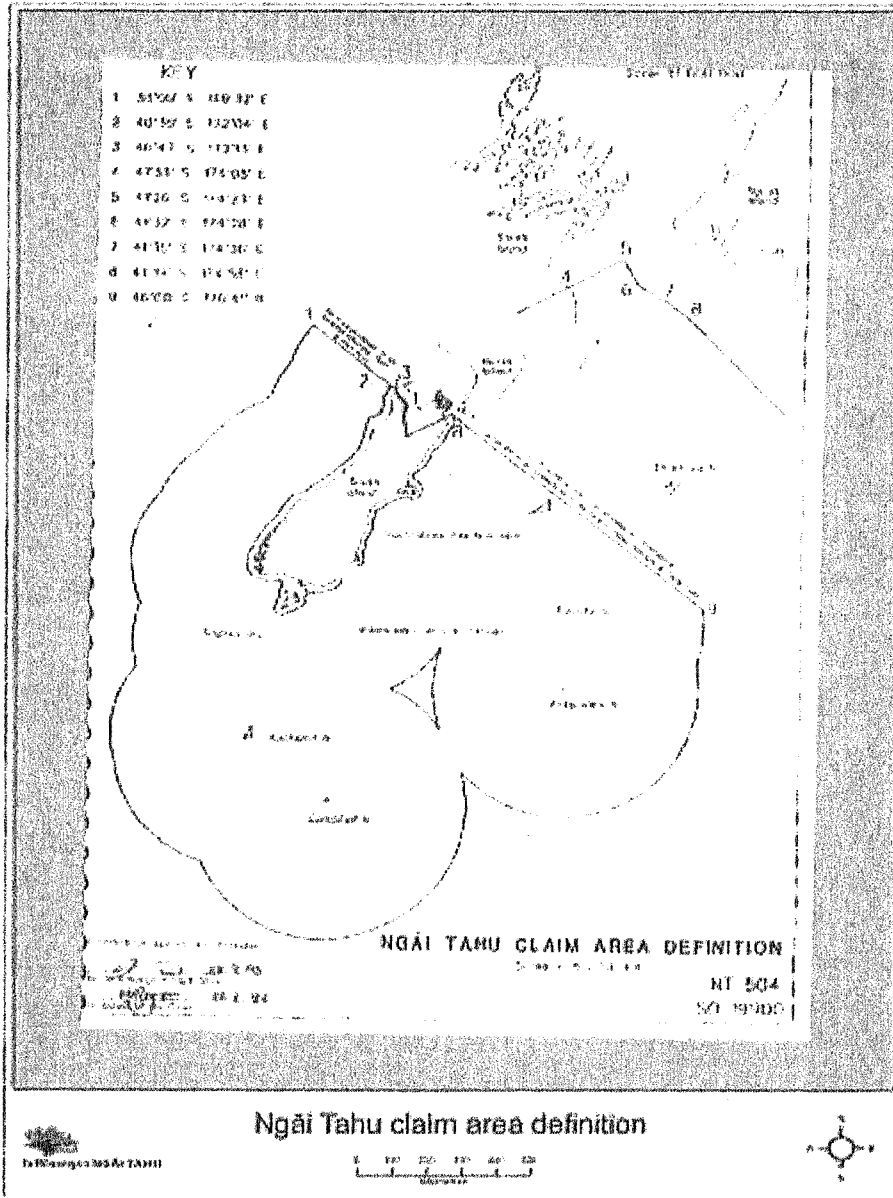
- 2 The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.
- 3 The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.
- 4 The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying 'Te Hapa o Niu Tirenī' ('The unfulfilled promise of New Zealand'). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').
- 5 The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.
- 6 The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu

and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

7. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged Injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu.”

APPENDIX TWO: NGĀI TAHU TAKIWĀ



SCHEDULE 1: DETAILED SUBMISSION

Schedule 1: Proposed Marlborough Environment Plan

Submission by Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu

1 September 2016

#	Volume, Section	Page	Section/Provision	Support or Oppose	Reasons	Decision sought
						<i>Note: consequential amendments are sought as required for all submission points, including consequential amendments to methods and rules as a consequence of submission points on objectives and/or policies. In some instances, submission points on objectives or policies may require new methods including rules.</i>
1.	n/a	n/a	Combining RMA plans	Support	<p>The combined approach taken by the Council is appropriate in this Region, and the District Council is well placed to implement a combined RMA document.</p> <p>Importantly, Ngāi Tahu sees this as a real opportunity to achieve integrated management of resources consistent with the ethic Ki uta ki tai – from mountains to sea.</p> <p>Ngāi Tahu has included submission points below seeking greater use of the opportunity to achieve integrated management. Other amendments which have not specifically been sought by Ngāi Tahu, may also contribute to achieving this outcome.</p>	Accept with amendments as necessary to achieve integrated management.
2.	1,3	3-1 –	Tangata Whenua	Support	Section 3 sets out relevant	Accept

		3-19			<p>issues and considerations in relation to Marlborough's Tangata Whenua iwi. Ngāi Tahu supports the inclusion of a section in the Environment Plan which will assist readers in understanding the value system of tangata whenua iwi.</p> <p>Ngāi Tahu consider that it is equally important for the issues and values stated in Section 3, to flow through the remainder of the proposed Plan.</p>	
3.	1, 3	3-8 – 3-13	Issues 3A – 3J	Support	Ngāi Tahu broadly agrees with the issues stated in section 3. In particular, Issue 3J Cross boundary issues is of a particular concern in relation to the management of the Clarence River.	Accept
4.	1,3	3-14	Objective 3.1 and reasons 'The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are taken into account in the exercise of the functions and powers under the Resource Management Act 1991.'	Support	This objective is consistent with the requirements of s8 of the RMA.	Accept
5.	1,3	3-14	Objective 3.2 and reasons 'Natural and physical resources are managed in a manner that takes into account the spiritual and cultural values of Marlborough's tangata whenua iwi and respects and accommodates tikanga Māori.'	Support with amendments	Ngāi Tahu support this objective and explanation. Amendments are proposed to strengthen this objective and align more closely to s7 of the RMA. The explanation states that	Accept with the following amendments: Natural and physical resources are managed in a manner that has particular regard to takes into account the spiritual and cultural values of Marlborough's tangata whenua iwi as

					taking into account tikanga is part of the exercise of kaitiakitanga. As such the amendments seek to make this clearer, thus also clarifying that this objective relates to s7 (a).	<u>kaitiaki</u> and respects and <u>enables</u> <u>accommodates</u> tikanga Māori.
6.	1,3	3-14	Objective 3.3 and reasons 'The cultural and traditional relationship of Marlborough's tangata whenua iwi with their ancestral lands, water, air, coastal environment, waahi tapu and other sites and taonga are recognised and provided for.'	Support	Objective 3.3 appropriately reflects s6(e) of the RMA in the local context.	Accept
7.	1,3	3-14	Objective 3.4 and reasons 'Opportunities for development on Māori land that meet the needs of the landowners and respects the relationship of Marlborough's tangata whenua iwi with land, water, significant sites and waahi tapu.'	Support	Ngāi Tahu support the aspirations and rights of Tangata Whenua iwi to develop on their ancestral land. This is consistent with s6(e), 7(a) and 8 of the RMA.	Accept
8.	1,3	3-15	Objective 3.5 and reasons 'Resource management decision making processes that give particular consideration to the cultural and spiritual values of Marlborough's tangata whenua iwi.'	Support with amendments	The intent of this objective and explanation is supported. Amendments are suggested to the objective based on the explanation to provide greater clarity to plan users. The amendments also provide greater practical clarity on the outcome sought through this objective. The wording 'involve Marlborough's Tangata Whenua iwi' has been proposed as without their	Accept with amendments: 'Resource management decision making processes that <u>involve Marlborough's Tangata Whenua iwi, and</u> give particular consideration to <u>recognise and reflect</u> the cultural and spiritual values of Marlborough's tangata whenua iwi, <u>and their relationship to lands, water, waahi tapu and waahi taonga.</u> '

					involvement, it will be difficult to give consideration to/recognise and reflect their cultural and spiritual values. Wording on their relationship with lands and water is also included as many key decisions will relate to s6(e) matters which will require the insight, views, and guidance of iwi.	
9.	1,3	3-15	<p>Policy 3.1.1 and reasons</p> <p>'Management of natural and physical resources in Marlborough will be carried out in a manner that:</p> <p>(a) takes into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, including kāwanatanga, rangatiratanga, partnership, active protection of natural resources and spiritual recognition.</p> <p>(b) recognises that the way in which the principles of the Treaty of Waitangi/Te Tiriti o Waitangi will be applied will continue to evolve;</p> <p>(c) promotes awareness and understanding of the Marlborough District Council's obligations under the Resource Management Act 1991 regarding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi among Council decision makers, staff and the community;</p> <p>(d) recognises that tangata whenua have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the Resource Management Act 1991 accords iwi a status distinct from that of interest groups and members of the public; and</p>	Support with amendments	<p>The intent of this policy is supported, with minor amendment proposed to increase the clarity of the policy for plan users and to increase the ease of use of the policy. Currently, the drafting lends itself more to an objective and as such the wording is amended slightly to assist.</p> <p>It is suggested that further amendment should be provided by the Council to indicate what methods they will use to implement this policy. In particular: (c) – how will the Council promote awareness of the obligations under the RMA? E.g., will it be through education and training programmes?</p> <p>(d) – how will the Council recognise tangata whenua rights protected by Te Tiriti o Waitangi? E.g., will it be through decision making and</p>	<p>Management of natural and physical resources in Marlborough will be carried out <u>by in a manner that:</u></p> <p>(a) <u>takinges</u> into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, including kāwanatanga, rangatiratanga, partnership, active protection of natural resources and spiritual recognition.</p> <p>(b) <u>recognisinges</u> that the way in which the principles of the Treaty of Waitangi/Te Tiriti o Waitangi will be applied will continue to evolve;</p> <p>(c) <u>promotinges</u> awareness and understanding of the Marlborough District Council's obligations under the Resource Management Act 1991 regarding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi among Council decision makers, staff and the community;</p> <p>(d) <u>recognisinges</u> that tangata whenua have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the Resource Management Act 1991 accords iwi a status distinct from that of interest groups and members of the public; and</p> <p>(e) <u>recognisinges</u> the right of each iwi to define their own preferences for the sustainable management of natural and</p>

			(e) recognises the right of each iwi to define their own preferences for the sustainable management of natural and physical resources, where this is not inconsistent with the Resource Management Act 1991.		consultation? (e) – when/how will iwi have the opportunity to define their own preferences for environmental management?	physical resources, where this is not inconsistent with the Resource Management Act 1991.
10.	1,3	3-15	Policy 3.1.2 and reasons. 'An applicant will be expected to consult early in the development of a proposal (for resource consent or plan change) so that cultural values of Marlborough's tangata whenua iwi can be taken into account.'	Support	From experience Ngāi Tahu finds that early consultation is the best way to identify issues and solutions, at an early stage of development.	Accept.
11.	1,3	3-15	Recommended new policy	n/a	A new policy is suggested to clarify that the Council will also have a responsibility for consulting with iwi. Whilst this is implicit in the framework of objectives and policies in the proposed plan, a policy specifically about this will make this explicit.	Insert a new policy either before or after 3.15 as follows: <u>The Council will consult with Tangata Whenua iwi on applications that may have an impact on their relationship with land, water wāhi tapu or wāhi taonga, or otherwise on their cultural values.</u>
12.	1,3	3-16	Policy 3.1.3 and reasons. 'Where an application for resource consent or plan change is likely to affect the relationship of Marlborough's tangata whenua iwi and their culture and traditions, decision makers shall ensure: (a) the ability for tangata whenua to exercise kaitiakitanga is maintained; (b) mauri is maintained or improved where degraded, particularly in relation to fresh and coastal waters, land and air; (c) mahinga kai and natural resources used for customary purposes are maintained or enhanced and that these resources are healthy and	Support with amendments	The intent of the policy and explanation is supported. As drafted the policy does not provide any indication of the methods that will be used to achieve the intent of the policy. Consultation and notification of resource consents is implicit in this policy, but making it explicit provides greater direction in terms of understanding how the policy will be implemented.	'Where an application for resource consent or plan change is likely to affect the relationship of Marlborough's tangata whenua iwi and their culture and traditions, decision makers shall <u>consult with, and notify resource consent applications to iwi, and ensure that:</u> (a) the ability for tangata whenua to exercise kaitiakitanga is maintained; (b) mauri is maintained or improved where degraded, particularly in relation to fresh and coastal waters, land and air; (c) mahinga kai and natural resources used for customary purposes are maintained or enhanced and that these resources are healthy and accessible to tangata whenua; (d) for waterbodies, the elements of

			<p>accessible to tangata whenua;</p> <p>(d) for waterbodies, the elements of physical health to be assessed are:</p> <p>i. aesthetic and sensory qualities, e.g. clarity, colour, natural character, smell and sustenance for indigenous flora and fauna;</p> <p>ii. life-supporting capacity, ecosystem robustness and habitat richness;</p> <p>iii. depth and velocity of flow (reflecting the life force of the river through its changing character, flows and fluctuations);</p> <p>iv. continuity of flow from the sources of a river to its mouth at the sea;</p> <p>v. wilderness and natural character;</p> <p>vi. productive capacity; and</p> <p>vii. fitness to support human use, including cultural uses.</p> <p>(e) how traditional Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakāinga and taonga raranga are to be recognised and provided for.</p>			<p>physical health to be assessed are:</p> <p>i. aesthetic and sensory qualities, e.g. clarity, colour, natural character, smell and sustenance for indigenous flora and fauna;</p> <p>ii. life-supporting capacity, ecosystem robustness and habitat richness;</p> <p>iii. depth and velocity of flow (reflecting the life force of the river through its changing character, flows and fluctuations);</p> <p>iv. continuity of flow from the sources of a river to its mouth at the sea;</p> <p>v. wilderness and natural character;</p> <p>vi. productive capacity; and</p> <p>vii. fitness to support human use, including cultural uses.</p> <p>(e) how traditional Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakāinga and taonga raranga are to be recognised and provided for.</p>
13.	1,3	3-16	<p>Policy 3.1.4 and reasons.</p> <p>'Encourage iwi to develop iwi management plans...'</p>	Support	<p>Iwi management plans are essential tools to the management of natural and physical resources.</p>	Accept
14.	1,3	3-16	<p>Policy 3.1.5 and reasons.</p> <p>'Ensure iwi management plans are taken into account in resource management decision making processes.'</p>	Support	<p>The Kaikoura IMP is comprehensive, and provides insight and detail to inform resource management processes.</p> <p>This policy usefully makes the expectations of the Council in this regard, explicit, and the proposed amendment</p>	<p>Accept with amendments:</p> <p>Ensure iwi management plans are <u>given particular regard to</u> taken into account in resource management decision making processes.</p>

					recognises that the IMP is an expression of kaitiakitanga, as provided for by s7(a) of the RMA.	
15.	1,3	3-16	Policy 3.1.6 and reasons. 'Enable opportunities for marae and papakāinga development on Māori land that provides for a range of functions including living, working, cultural activities and recreation where it is of a scale, extent and intensity that is determined by the physical characteristics of the site, surrounding environment and tikanga Māori.'	Support	This policy is consistent with s6, 7 and 8 of the RMA.	Accept
16.	1,3	3-17	Policy 3.1.7 and reasons. 'Foster a principle of partnership between Marlborough's tangata whenua iwi, the Marlborough District Council and statutory management agencies on an ongoing basis to give effect to Policies 3.1.1 to 3.1.6.'	Support	The principle of partnership is a key tenant of the Treaty of Waitangi. Embedding this direction into the Proposed Plan through Policy 3.1.7 is supported.	Accept
17.	1,3	n/a	New Policy	n/a	Subdivision is at the very start of the development process. It is in many cases, the most effective opportunity to ensure that opportunities and constraints are designed into or managed as part of development. Key concerns for Ngāi Tahu in subdivision, can include potential effects on waahi tapu or waahi taonga, mahinga kai, fresh water and coastal water. A new policy is sought to ensure that these concerns form part of the consideration at subdivision stage.	insert a new policy or policies to avoid or manage from the outset, potential effects on Tangata Whenua iwi cultural values particularly with regards to wāhi tapu and wāhi taonga, mahinga kai, freshwater and coastal water.

18.	1,4	4-1	Objective 4.1 and reasons. 'Marlborough's primary production sector and tourism sector continue to be successful and thrive whilst ensuring the sustainability of natural resources.'	Support	While it is understood that primary production is important, it should not be at the expense of natural resources.	Accept
19.	1,4	4-3	Policy 4.1.1 and reasons. 'Recognise the rights of resource users by only intervening in the use of land to protect the environment and wider public interests in the environment.'	Support with amendments	The intent of the policy is understood, however the drafting implies that the rights of landowners to use resources is more important than the environment. The inclusion of 'iwi rights and interests' seeks to pull through into the plan the matters set out in Section 3.	Accept with amendments: Recognise the rights of resource users by <u>only intervening in the use of land to while protecting</u> the environment, <u>iwi rights and interests</u> , and wider public interests in the environment.'
20.	1,4	4-3	Policy 4.1.3 and reasons. 'Maintain and enhance the quality of natural resources.'	Support with amendments	The intent of this policy is supported, however further detail within the policy itself is suggested to improve the clarity of the policy and implementation of the policy.	Accept with amendments to indicate how this policy will be implemented. Maintain and enhance the quality of natural resources, <u>recognising and reflecting:</u> a) <u>That a precautionary approach may be required to maintain the quality of natural resources.</u> b) <u>The intergenerational needs for the quality of natural resources.</u>
21.	1,4	4-3	New Policy	n/a	The introductory and background text for the proposed Plan places a lot of emphasis on the integrated management of natural resources. This is supported by Ngāi Tahu, and is consistent with the ethic – ki uta ki tai. A policy to pull this	After Policy 4.1.3 insert the following policy and reason. Policy 4.3.1 – Integrate management of the natural and physical resources within the Marlborough District. There are very strong connections between land and marine environments in the Marlborough district. This means that

					through into the plan itself is sought.	activities occurring in one locality can easily affect the surrounding environment and other activities occurring in that environment. As a unitary authority, the Council is well placed to achieve integrated management of natural and physical resources through its policy making and consenting functions. The policies in the MEP ensure that all of the effects of the use, development and protection of resources are identified and managed in a consistent manner.
22.	1,4	4-4	Methods of implementation	n/a	One of the most effective means of promoting sustainable use of resources, and an understanding of different perspectives on the environment is through education. This would be a non-regulatory method.	Add a new method of implementation: 4M6 Education Working with tangata whenua iwi and schools, or other education providers, education programmes will be encouraged about environmental issues and sustainable use, including traditional Māori perspectives.
23.	1,5	5-1	Introduction	Support with amendments	Water for Ngāi Tahu, water is a taonga and is essential as a life source. Water is also essential for mahinga kai, one of the 9 tall trees of the Ngāi Tahu settlement. These points are sought to be included in the introduction. From a Ngāi Tahu perspective, a healthy economy must be premised on a healthy environment. Water is key to primary production in Marlborough, and as such amendments to the introduction section are sought to provide context.	Accept with amendments: <u>Water is a taonga and is essential to all as a life-source. Water is also essential for mahinga kai, and holds particular significance to Tangata Whenua Iwi.</u> The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers. [...]Any significant reduction or change in approach to resource use could have significant implications for Marlborough's economic, cultural and social wellbeing. However, a healthy economy which

						<u>relies on the environment, must be premised on a healthy environment.</u> The three main [...]
24.	1,5	5-2	Policy 5.1.2 and reasons: 'Recognise that the taking of water and the use of water are two distinct activities and where resource consent application is to be granted, separate water permits for each activity will be granted.'	Support with amendments	Ngāi Tahu support this approach, on the proviso that applications are linked and considered together. While the activities of taking and using water will have different effects, there will be cumulative effects arising from the combination of the activities. Considering applications to take and use together is consistent with the holistic approach by Ngāi Tahu to environmental management. To provide for the linking of separate consents, a new policy is proposed. This is consistent with s91 of the RMA.	Accept with the addition of a new policy: Recognise that the taking of water and the use of water are two distinct activities which and where resource consent application is to be granted, separate water permits for each activity will be granted. Add a new policy: The assessment of separate consent applications for the take and use of water will be considered together, and where a hearing is required, the hearing will hear both applications together.
25.	1,5	5-2	Use of term – human use values	Oppose	Natural and human use values is slightly ambiguous in that it lends itself to interpretation, and differing views about natural and human use values. The term is retained in amended provisions in the interests of consistency with the wider section; however Ngāi Tahu records its issues with the phrase.	Reject, or accept with amendments: Include a new policy to identify the natural and human use values in the district.
26.	1,5	5-2	Objective 5.2 and reasons. 'Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels for the	Support with amendments	The intent of the objective is largely supported however the outcome of the objective is not clear. The objective also	Accept with amendments: Safeguard the life-supporting capacity of freshwater resources by retaining sufficient

			natural and human use values supported by waterbodies.'		presumes a philosophical approach whereby freshwater resources need to only be protected to a sufficient level that will support human use. As indicated in the introductory section, Ngāi Tahu is of the view that allowance needs to be made for the resource itself not to just function and survive, but to maintain healthy levels, at the same time as providing for the sustainable use of the resource. This is consistent with Policy 5.2.2.	flows and/or levels <u>for the health of the resource as a first priority, followed by</u> natural and human use values supported by waterbodies
27.	1,5	5-3	Policy 5.2.1 and reasons. 'Maintain or enhance the natural and human use values supported by freshwater bodies.'	Support with amendments	'Maintain or enhance' may achieve different levels of protection for resources, to that intended by the use of the phrase 'safeguard' in Objective 5.2, and Objective B1 of the NPS Freshwater. Amendments are proposed to rectify this and to provide greater clarity in the interpretation of the policy.	Accept with amendments: Maintain or enhance <u>where degraded</u> the natural and human use values supported by freshwater bodies, <u>by:</u> <ul style="list-style-type: none"> - <u>prohibiting the damming of rivers</u> - <u>requiring applications to take or divert water to avoid, remedy or mitigate adverse effects</u> - <u>applying a precautionary approach to resource consents where there will be irreparable adverse effects on natural and human use values.</u>
28.	1,5	5-3	Policy 5.2.2 and reasons. 'Give priority to protecting the mauri of freshwater and freshwater flows/levels.'	Support	This policy is supported. The policy provides a strong thread from the amendments proposed to Objective 5.2.	Accept.
29.	1,5	5-4	Policy 5.2.3 and reasons. 'Protect the significant values of	Support with amendments	The proposed policy is supported with amendments.	Accept with amendments:

			specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.'		The amendments are intended to provide a clear relationship with Objective B4 of the NPS – Freshwater.	Protect the significant values of specifically identified outstanding freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.
30.	1,5	5-4	Policy 5.2.4 and reasons 'Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to: (a) protect the mauri of the waterbody; (b) protect instream habitat and ecology; (c) maintain fish passage and fish spawning grounds; (d) preserve the natural character of the river; (e) maintain water quality; (f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and (g) maintain amenity values.'	Support with amendments	Policy 5.2.4 captures the key considerations required in the setting of environmental flows/levels. In particular, the protection of the mauri of water is supported. Amendments are proposed to ensure the protection of habitat for mahinga kai species.	Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to: (a) protect the mauri of the waterbody; (b) protect instream habitat and ecology; (c) maintain fish passage and fish spawning grounds, <u>including sufficient velocity to accommodate native fish species;</u> (d) preserve the natural character of the river; (e) maintain water quality; (f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and (g) maintain amenity values, <u>and</u> <u>(h) enable natural flushes to occur.</u>
31.	1,5	5-5	Policy 5.2.10 and reasons. 'Have regard to the importance of flow connection to maintaining natural and human use values when considering resource consent applications to take water from intermittently flowing rivers, including: (a) the timing and duration of that flow connection; (b) the physical extent of any disconnection in flow; and (c) any adverse effects on connected aquifers.'	Support with amendments	Amendments are proposed to ensure that effects on mahinga kai are considered, to pull through into the policy, relevant matters from Section3.	Accept with amendments: Have regard to the importance of flow connection to maintaining natural and human use values when considering resource consent applications to take water from intermittently flowing rivers, including: (a) the timing and duration of that flow connection; <u>(b) Any effects on mahinga kai;</u> (b) <u>(c)</u> the physical extent of any disconnection in flow; and (c) <u>(d)</u> any adverse effects on connected aquifers, <u>and</u> <u>(e) through monitoring flows.</u>

32.	1,5	5-7	Policy 5.2.13 –and reasons. 'Limit the total amount of water available to be taken from any freshwater management unit and avoid allocating water (through the resource consent process) beyond the limit set.'	Support	Consistent with NPS-FW	Accept
33.	1,5	5-7	Policy 5.2.15 and reasons. Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.	Support	This is acceptable so long as flow sharing puts the needs of the rivers before other uses of the resource. This is essential to protecting habitat for, and species of mahinga kai.	Accept provided that the needs of the river come first.
34.	1,5	5-8	Policy 5.2.16 and reasons. For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.	Support with amendments	Ngāi Tahu is concerned that a flow monitoring site should be located at the river mouth, as well as upstream. Ngāi Tahu is concerned that information on water take is not sufficiently accurate relying solely on an upstream monitoring location. As an interim measure the approach set out in Policy 5.2.16 is supported, but the concerns of Ngāi Tahu outlined above remain. The Awatere is of particular concern.	Add a new policy: For rivers that utilise an upstream flow monitoring site, the Council will investigate and put in place downstream monitoring sites at suitable locations, in consultation with Tangata Whenua iwi.
35.	1,5	5-9	Policy 5.2.18 and reasons. Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered.	Support with amendments	Policy 5.1.18 is consistent with the proposed amendments to Policy 5.2.1. The diversion of water is a particular concern to Ngāi Tahu, and effects on cultural values are likely. As such, it is appropriate to signal at a policy level that applications for diversions will be notified to the relevant	Accept with amendments Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered, <u>including the any effects from the mixing of waters.</u>

				<p>Tangata Whenua iwi.</p> <p>Section 3.2.4 of the Kaikōura IMP sets out a number of issues in regard to water diversion, and potential impacts of diversion both positive and negative and include mahinga kai values, ecology, natural character. The potential mixing of waters is also a concern to Kaikōura Rūnanga.</p>	
36.		<p>Policy 5.2.19 and reasons.</p> <p>'Have regard to the following matters in determining any resource consent application to divert water:</p> <p>(a) the purpose of the diversion and any positive effects;</p> <p>(b) the volume or proportion of flow remaining in-channel and the duration of the diversion;</p> <p>(c) the effect of the diversion on environmental flows set for the waterbody;</p> <p>(d) the scale and method of diversion;</p> <p>(e) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;</p> <p>(f) any adverse effects on permitted or authorised uses of water; and</p> <p>(g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.'</p>	Support	<p>Policy 5.1.19 is consistent with the proposed amendments to Policy 5.2.1. The diversion of water is a particular concern to Ngāi Tahu, and effects on cultural values are likely. As such, it is appropriate to signal at a policy level that applications for diversions will be notified to the relevant Tangata Whenua iwi.</p> <p>Section 3.2.4 of the Kaikōura IMP sets out a number of issues in regard to water diversion, and potential impacts of diversion both positive and negative and include mahinga kai values, ecology, natural character</p>	<p>Accept with amendments</p> <p>Have regard to the following matters in determining any resource consent application to divert water:</p> <p>(a) the purpose of the diversion and any positive effects;</p> <p>(b) the volume or proportion of flow remaining in-channel and the duration of the diversion;</p> <p>(c) the effect of the diversion on environmental flows set for the waterbody;</p> <p>(d) the scale and method of diversion;</p> <p>(e) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;</p> <p>(f) any adverse effects on permitted or authorised uses of water; and</p> <p>(g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance</p> <p><u>(h) any adverse effects on the Tangata Whenua iwi values associated with the waterbody, including mahinga kai.</u></p>

37.	1,5	5-9	<p>Policy 5.2.20 and reasons. 'Where water is to be dammed to enable the storage of water, encourage the construction and use of "out-of-river" dams in preference to the construction and use of dams within the beds of perennially or intermittently flowing rivers.'</p>	Oppose	<p>As outlined in Policy 5.2.20, 5.2.21 and 5.2.22 damming rivers can result in significant adverse effects. Often these effects are impossible or difficult to reverse – for example, effects on indigenous fish species.</p> <p>Ngāi Tahu support and encourage the use of storage dams out of river (as also encouraged by the policy) where adverse effects can be appropriately remedied or mitigated.</p>	<p>Reject. Replace with the following.</p> <p>Where water is to be dammed to enable the storage of water, encourage require the construction and use of "out-of-river" dams as opposed to in preference to the construction and use of dams within the beds of perennially or intermittently flowing rivers.'</p>
38.	1,5	5-9	<p>Policy 5.2.21 and reasons 'Ensure any new proposal to dam water within the bed of a river provides for: (a) effective passage of fish where the migration of indigenous fish species, trout and salmon already occurs past the proposed dam site; (b) sufficient flow and flow variability downstream of the dam structure to maintain: (i) existing indigenous fish habitats and the habitats of trout and salmon; and (ii) permitted or authorised uses of water; and (iii) flushing flows below the dam; (c) the natural character of any waterbody downstream of the dam structure; and have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.'</p>	Oppose	Please see reasons above	Reject

39.	1,5	5-10	<p>Policy 5.2.22 and reasons.</p> <p>' In the determination of any resource consent application, have regard to the following effects of damming of water:</p> <p>(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;</p> <p>(b) changes in river bed levels and the effects of those changes;</p> <p>(c) any downstream effects of a breach in the dam wall;</p> <p>(d) interception of groundwater or groundwater recharge; and</p> <p>(e) interception of surface water runoff.'</p>	Support in part	<p>The considerations for damming out of river are supported. In line with the submission points above the consideration of effects for damming in river should be deleted.</p> <p>Amendments are also proposed to the matters included in the policy to ensure that issues from Section 3 are carried through into policies. The additions are consistent with issues raised in section 4.2.3 of the Kaikōura IMP.</p>	<p>Accept with amendments.</p> <p>In the determination of any resource consent application, have regard to the following effects of damming of water:</p> <p>(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;</p> <p>(b) changes in river bed levels and the effects of those changes;</p> <p>(c) any downstream effects of a breach in the dam wall;</p> <p>(d) interception of groundwater or groundwater recharge; and</p> <p>(e) interception of surface water runoff; <u>and (f) loss of indigenous biodiversity and opportunities to replace.</u></p>
40.	1,5	5-10	<p>Policy 5.2.24 and reasons.</p> <p>' Impose conditions on water permits to take water requiring users to reduce and cease the authorised take when specified flows and/or levels are reached.'</p>	Support	<p>This protects the water resource.</p>	Accept
41.	1,5	5-10/11	<p>Policy 5.2.25 and reasons.</p> <p>'Where necessary, review the conditions of existing water permits authorising the taking of water within 24 months of the Marlborough Environment Plan (or any subsequent plan changes) becoming operative to ensure that relevant environmental flows and levels are met.'</p>	Support in part.	<p>It is supported that the Council will review conditions of existing water permits within 24 Months of the Marlborough Environment Plan becoming operative, and subsequent plan changes.</p> <p>Ngai Tahu is of the view that this should work in tandem with appropriate consent durations. Ngāi Tahu considers that a consent duration of 10-15 years for new resource consents is often most appropriate, depending</p>	Accept

					on the pressure that the particular water resource is under. Please see amendments and comments to Policy 5.2.14.	
42.	1,5	5-16	Policy 5.3.14 – The duration of water permits to take water will reflect the circumstances of the take and the actual and potential adverse effects, but should generally: (a) not be less than 30 years when the take is from a water resource: (i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and (ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and (iii) that is not over-allocated; or (b) not be more than ten years when the take is from an over-allocated water resource as specified in Policy 5.5.1; or (c) not be more than ten years when the take is from a water resource that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.	Oppose	The Kaikōura IMP opposed water take permits of 35 years, and states that ' The duration of water permits must reflect potential risk to surface and groundwater health. Sustainable management of water resources cannot be ensured in applying 35 year durations to consents, as there is no way of knowing what the availability of water will be in 35 years time, or what the long term effects of an abstraction will be. Policy 5.3.14 states that the duration of water permits shall for the most part be not less than 30 years. Whilst criteria for such permits are stated in the policy, the policy is inconsistent with the above statement from the Kaikōura IMP. Consistent with s74(2A) a territorial authority must take into account any relevant planning document recognised by an iwi authority.	Reject. Replace with a policy that is in line with the IMP, and guides the decision maker to issue permits for 10-15 years maximum. An even shorter period may be suitable in some instances, and this should be provided for.
43.	1,5	5-17	Policy 5.3.15 and reasons. ' Require land use consent for the planting of new commercial forestry in flow sensitive areas.'	Support	This is consistent with the proposed amendments to Policy 5.2.1.	Accept

44.	1,5	5-17	Policy 5.3.16 and reasons. 'When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with other commercial forestry and carbon sequestration forestry (nonpermanent) established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.'	Support	This is consistent with the proposed amendments to Policy 5.2.1.	Accept
45.	1,5	5-18	Objective 5.4 and reasons. 'Improve the utilisation of scarce water resources.'	Support	Ngāi Tahu supports increased use of sustainable and efficient water utilisation.	Accept
46.	1,5	5-19	Policy 5.4.4 and reasons. 'Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.'	Oppose	Ngāi Tahu fundamentally do not believe that water should become a tradable commodity. Ngāi Tahu is concerned that trading of water will become increasingly used, if water permits of at least 30 years are issued – instances of unused allocation will likely be higher. Transfers of unused allocation can however provide for an efficient means to manage over allocated resources, however, in the absence of detailed provisions relating to the implementation of this system it is difficult to understand what measures will be proposed to ensure that the system is managed appropriately and does not	The reasons beneath this policy state that the provisions to implement this policy and policy 5.4.5 will be introduced via a Plan Change. Ngāi Tahu considers that the full framework is required to form a complete view on this proposal.

					create perverse and unanticipated outcomes.	
47.	1,5	5-19	<p>Policy 5.4.5 – When an enhanced transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:</p> <p>(a) the respective takes are from the same Freshwater Management Unit;</p> <p>(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;</p> <p>(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or the Riverlands Freshwater Management Unit;</p> <p>(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;</p> <p>(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;</p> <p>(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and</p> <p>(g) the transferee holds a water permit to use water.</p> <p>The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.</p>	Oppose	<p>The same concerns and comments raise above apply.</p> <p>However, Ngāi Tahu does support the requirements for metered use which is transferred to the Council in real time. It also supports the requirement to hold a water permit to use the water.</p>	Reject until such time as the full package of provisions is available.

48.	1,5	5-20	Objective 5.5 and reasons. 'Phase out any over-allocation of water resources.'	Support	Consistent with NPS - FW	Accept
49.	1,5	5-22	Objective 5.6 and reasons, 'Ensure that the taking of groundwater does not cause significant adverse effects on river flow.'	Support	River flow is essential to mahinga kai species and for the overall well-being of the water resource.	Accept
50.	1,5	5-22	Policy 5.6.1 and reasons. 'Unless there is an identified aquifer dominant Freshwater Management Unit, all water within a catchment will be managed as a surface water resource. This means that the minimum flow, management flow and allocation limit established for the river dominant Freshwater Management Unit will also apply to groundwater takes.'	Support	Ground water forms an essential component to many rivers and take should consider the cumulative effect of take from ground water on surface water.	Accept
51.	1,5	5-23	Objective 5.7 and reasons. 'The allocation and use of water do not exceed the rate or volume required for any given water use.'	Support	This is a sensible approach to ensuring sustainable take and use of water.	Accept
52.	1,5	5-24	Policy 5.7.1 and reasons. 'When resource consent is to be granted to use water, every proposed use will be authorised by a separate water permit. Categories include municipal, irrigation, industrial, residential, commercial and frost fighting.'	Support with amendments	Consistent with submission points made above on Policy 5.1.2. Ngāi Tahu support this approach, on the proviso that applications are linked and considered together. While the activities of taking and using water will have different effects, there will be cumulative effects arising from the combination of the activities. Considering applications to take and use together is consistent with the holistic approach by Ngāi Tahu	Accept with the addition of a new policy: Add a new policy: The assessment of separate consent applications for the take and use of water will be considered together, and where a hearing is required, the hearing will hear both applications together.

					to environmental management. To provide for the linking of separate consents, a new policy is proposed. This is consistent with s91 of the RMA.	
53.	1,5	5-23	Policy 5.7.2 and reasons. 'To allocate water on the basis of reasonable demand given the intended use.'	Support with amendments	Ngāi Tahu supports the allocation of water based on actual demand and use. Amendments are proposed to provide clear expectations about the requirements of this policy.	Accept with amendments: To allocate water on the basis of reasonable demand given the intended use by requiring resource consent applicants to provide detailed information on the intended use as part of applications.
54.	1,5	5-24	Policy 5.7.4 – Require water permit holders to measure their water take with a pulse emitting meter, to record water take and use with a data logger, and to transfer the recorded water take and use information by the use of telemetry. Alternative methods of measurement, recording or transfer that provide the Marlborough District Council with accurate water take and use data may be considered.	Support	This is consistent with the Kaikōura IMP (Policy 11 Page 157)	Accept
55.	1,5	5-25	Policy 5.7.6 and reasons. 'Have regard to the efficiency of the proposed method of distribution and/or irrigation in determining resource consent applications to use water for irrigation purposes.'	Support	This is consistent with the Kaikōura IMP (Policy 7,9 page 156).	Accept
56.	1,5	5-25	Policy 5.7.8 and reasons. 'Approve applications to take and use water for frost fighting purposes only where there are no effective alternative methods for frost control on the property.'	Support	Ngāi Tahu encourages the consideration of alternative methods to fight frost.	Accept

57.	1,5	5-26	Policy 5.7.10 and reasons. 'Avoid taking water for frost fighting purposes during periods of peak irrigation demand (1 January to 30 April in any calendar year).'	Support	Ngāi Tahu supports the strong policy direction to manage water use during times of high demand.	Accept
58.	1,5	5-26	Objective 5.8 and reasons. 'Maximise the availability of water within the limits of the resource.'	Support	Ngāi Tahu encourages measures such as storage, which enable the greater maximisation of the resource over time.	Accept
59.	1,5	5-27	Policy 5.8.1 and reasons. 'Encourage the storage of water as an effective response to seasonal water availability issues.'	Support with amendments	While Ngāi Tahu supports the use of measures to maximise water availability, this must be done in a manner that does not create any unacceptable adverse effects on the environment,	Accept with amendments. Encourage the storage of water as an effective response to seasonal water availability issues, <u>while also remedying and mitigating any adverse effects on the environment created by storage.</u>
60.	1,7	7-1/2	Introduction	Support with amendments	Ngāi Tahu have historic and contemporary relationships with landscapes in the District, in particular the southern part of the East Coast, the Mountains Inland, and Awatere River. Acknowledgement of this should be incorporated into the introduction. The settlement, occupation and use of landscape areas by other iwi is also acknowledged.	Accept with amendments to acknowledge Ngāi Tahu settlement, occupation and use within landscapes.
61.	1,7	7-3	Policy 7.1.1 – When assessing the values of Marlborough's landscapes, the following criteria will be used: (a) biophysical values, including geological and ecological elements; (b) sensory values, including aesthetics, natural beauty and visual perception; and	Support with amendments	The criteria are generally supported however consistent with case law, the criteria regarding cultural values should be amended to tangata whenua values. In Wilkinson v Hurunui the	Accept and amend as follows Policy 7.1.1 – When assessing the values of Marlborough's landscapes, the following criteria will be used: [...] (c) Tangata Whenua values

			(c) associative values, including cultural and historic values and landscapes that are widely known and valued by the immediate and wider community for their contribution to a sense of place.		<p>following criteria were formed and are now commonly used in New Zealand for the purposes of defining outstanding natural landscapes:</p> <ul style="list-style-type: none"> - Natural science - Legibility - Transient features - Aesthetic features - Shared and recognised values - Tangata whenua. <p>Ngāi Tahu seeks amendments to ensure that it is clear that tangata whenua values form part of the assessment of landscape value.</p>	
62.	1,7	7-3	<p>Policy 7.1.2 and explanation 'Define the boundaries of significant landscapes using the following methods:</p> <p>(a) land typing; (b) contour line; (c) contained landscape features; (d) visual catchment; and/or (e) land use.'</p>	Support with amendments	<p>Consistent to the above consultation with Tangata Whenua iwi should occur to assist in determining outstanding natural landscapes.</p>	<p>Accept with amendments: Define the boundaries of significant landscapes using the following methods:</p> <p>(a) land typing; (b) contour line; (c) contained landscape features; (d) visual catchment; and/or (e) land use, <u>and</u> <u>(f) consultation with Tangata Whenua Iwi.</u></p>
63.	1,7	7-6	<p>Policy 7.2.1 and reasons. 'Control activities that have the potential to degrade those values contributing to outstanding natural features and landscapes by requiring activities and structures to be subject to a comprehensive assessment of effects on landscape values through</p>	Support with amendments	<p>This is consistent with s6(b) of the RMA.</p>	<p>Accept with amendments to note that assessments of effects on landscape values, may include consultation with Tangata Whenua Iwi. This is particularly the case where a landscape has tangata whenua values.</p>

			the resource consent process.'			
64.	1,7	7-7	Policy 7.2.4 and reasons. 'Where resource consent is required to undertake an activity within an outstanding natural feature and landscape or a landscape with high amenity value, regard will be had to the potential adverse effects of the proposal on the values that contribute to the landscape.'	Support with amendments	In order to protect the values identified, it is sensible that potential effects on those values should be considered.	Accept with amendments to note that assessments of effects on landscape values, may include consultation with Tangata Whenua Iwi. This is particularly the case where a landscape has tangata whenua values.
65.	1,7	7-7	Policy 7.2.5 and reasons. 'Avoid adverse effects on the values that contribute to outstanding natural features and landscapes in the first instance. Where adverse effects cannot be avoided and the activity is not proposed to take place in the coastal environment, ensure that the adverse effects are remedied.'	Support	'Avoid' is consistent with achieving the protection of the values within these landscapes.	Accept
66.	1,7	7-7/8	Policy 7.2.6 and reasons. Where the following activities are proposed to take place in an area with outstanding natural features and landscapes, then any adverse effects on the values of those areas can be mitigated, provided the overall qualities and integrity of the wider outstanding natural feature and landscape are retained: (a) activities involving the development and operation of regionally significant infrastructure; (b) activities that enhance passive recreational opportunities for the public where these are of a smaller scale; and (c) activities involving the development and operation of renewable electricity generation schemes within	Support in part	In some instances, any development may be inappropriate. The policy as drafted may not provide sufficient protection for outstanding natural landscapes or features.	Accept with amendments to clarify how outstanding natural landscapes and features will be protected.

			Marlborough where the method of generation is reversible.			
67.	1,8	8-14	New Policy	n/a	<p>Customary harvesting of natural resources is currently not provided for in the plan. To make it explicit that this is provided for by the plan, a policy is proposed to enable this activity to occur.</p> <p>Customary harvesting is a sustainable practice, that is controlled by tikanga.</p> <p>The ability to customary harvest resources is part of exercising kaitiakitanga, and provides for the relationship between Māori and their culture, lands, water and taonga.</p>	<p>Insert new policy and explanation: <u>Policy 8.X.X Customary Harvest in protecting and enhancing indigenous biodiversity, enable customary harvesting including within areas identified with outstanding landscape value, or significant ecological value.</u></p> <p><u>Explanation</u> Customary harvesting is essential in enabling Ngāi Tahu [and other Tangata Whenua Iwi] to exercise kaitiakitanga and to provide for their relationship with their culture, lands, water and other taonga. Cultural harvest may be for different reasons, including but not limited to, medicinal uses, ceremonial, uses, weaving or for consumption. Where particular resources are only available on private land, access agreements or case by case permissions from the landowner are essential before entry onto the property is allowed.</p>
68.	1,8	8-7	Policy 8.2.4 and reasons. 'Priority will be given to the re-establishment of indigenous biodiversity in Marlborough's lowland environments.'	Support	Habitat is essential for mahinga kai. As such Ngāi Tahu support the re-establishment of biodiversity in Marlborough's lowland environments.	Accept
69.	1,8	8-7	Policy 8.2.7 and reasons. 'A strategic approach to the containment/eradication of undesirable animals and plants that impact on indigenous biodiversity values will be developed and maintained.'	Support	Management of undesirable animals and plants is necessary to promote habitat for mahinga kai, and to allow mahinga kai species to flourish.	Accept

70.	1,8	8-8	Policy 8.2.9 and reasons. 'Maintain, enhance or restore ecosystems, habitats and areas of indigenous biodiversity even where these are not identified as significant in terms of the criteria in Policy 8.1.1, but are important for: (a) the continued functioning of ecological processes; (b) providing connections within or corridors between habitats of indigenous flora and fauna; (c) cultural purposes; (d) providing buffers or filters between land uses and wetlands, lakes or rivers and the coastal marine area; (e) botanical, wildlife, fishery and amenity values; (f) biological and genetic diversity; and (g) water quality, levels and flows.'	Support with amendments	Access to resources for cultural use is important to enabling the ongoing relationship between Māori and water, lands and taonga. Cultural uses may include: - Medicinal - Weaving - Food sources - Ceremonial	Accept with amendments to the reasons. The reasons would usefully be expanded to include some description of what cultural uses may entail.
71.	1,8	8-9	Policy 8.2.11 and reasons. 'Promote corridors of indigenous vegetation along waterbodies to allow the establishment of native ecosystems and to provide wildlife habitat and linkages to other fragmented bush or wetland remnants.'	Support	Promotes good habitat for mahinga kai	Accept Further information could usefully be provided on the methods that will be used to implement this policy.
72.	1,8	8-10	Policy 8.2.13 and reasons. 'When re-establishment or restoration of indigenous vegetation and habitat is undertaken, preference should be given to the use of native species of local genetic stock.'	Support with amendments	Opportunities to restore or re-establish indigenous vegetation with native species is supported. Ngāi Tahu would also like to see encouragement of the re-establishment of native species when exotic plants are removed.	Accept with amendments. When re-establishment or restoration of exotic or indigenous vegetation and habitat is undertaken, preference should be given to the use of native species of local genetic stock
73.	1,8	8-10/1	Policy 8.3.5 – In the context of Policy 8.3.1 and Policy 8.3.2, adverse effects to be avoided or otherwise remedied or	Support	These are appropriate matters to consider in the assessment	Accept

		1	<p>mitigated may include:</p> <p>(a) fragmentation of or a reduction in the size and extent of indigenous ecosystems and habitats;</p> <p>(b) fragmentation or disruption of connections or buffer zones between and around ecosystems or habitats;</p> <p>(c) changes that result in increased threats from pests (both plant and animal) on indigenous biodiversity and ecosystems;</p> <p>(d) the loss of a rare or threatened species or its habitat;</p> <p>(e) loss or degradation of wetlands, dune systems or coastal forests;</p> <p>(f) loss of mauri or taonga species;</p> <p>(g) impacts on habitats important as breeding, nursery or feeding areas, including for birds;</p> <p>(h) impacts on habitats for fish spawning or the obstruction of the migration of fish species;</p> <p>(i) impacts on any marine mammal sanctuary, marine mammal migration route or breeding, feeding or haul out area;</p> <p>(j) a reduction in the abundance or natural diversity of indigenous vegetation and habitats of indigenous fauna;</p> <p>(k) loss of ecosystem services;</p> <p>(l) effects that contribute to a cumulative loss or degradation of habitats and ecosystems;</p> <p>(m) loss of or damage to ecological mosaics, sequences, processes or integrity;</p> <p>(n) effects on the functioning of estuaries, coastal wetlands and their margins;</p>		<p>of effects on indigenous biodiversity in subdivision within the coastal environment</p>	
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			<p>(o) downstream effects on significant wetlands, rivers, streams and lakes from hydrological changes higher up the catchment; (p) natural flows altered to such an extent that it affects the life supporting capacity of waterbodies; (q) a modification of the viability or value of indigenous vegetation and habitats of indigenous fauna as a result of the use or development of other land, freshwater or coastal resources;</p> <p>(r) a reduction in the value of the historical, cultural and spiritual association with significant indigenous biodiversity held by Marlborough's tangata whenua iwi;</p> <p>(s) a reduction in the value of the historical, cultural and spiritual association with significant indigenous biodiversity held by the wider community; and</p> <p>(t) the destruction of or significant reduction in educational, scientific, amenity, historical, cultural, landscape or natural character values.</p>			
74.	1,8	8-12	<p>Policy 8.3.6 and reasons.</p> <p>'Where taking or diversion of water from waterbodies is proposed, water levels and flows shall remain at levels that protect the natural functioning of those waterbodies.'</p>	Support	This is consistent with submission points on section 5. The reasons note that in some instances prohibited activity rules are required to protect the natural functioning of waterbodies, which is supported by Ngāi Tahu.	Accept
75.	1,8	8-12/13	<p>Policy 8.3.8 and reasons.</p> <p>'With the exception of areas with significant indigenous biodiversity value, where indigenous biodiversity values will be adversely affected</p>	Support with amendments	Biodiversity offsetting can be a useful tool when there are no other options available to retain indigenous biodiversity.	<p>Accept with amendments:</p> <p>With the exception of areas with significant indigenous biodiversity value, where indigenous biodiversity values will be</p>

			<p>through land use or other activities, a biodiversity offset can be considered to mitigate residual adverse effects. Where a biodiversity offset is proposed, the following criteria will apply:</p> <p>(a) the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;</p> <p>(b) the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity;</p> <p>(c) where the area to be offset is identified as a national priority for protection under Objective 8.1, the offset must deliver a net gain for biodiversity;</p> <p>(d) there is a strong likelihood that the offsets will be achieved in perpetuity;</p> <p>(e) where the offset involves the ongoing protection of a separate site, it will deliver no net loss and preferably a net gain for indigenous biodiversity protection; and</p> <p>(f) offsets should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity.</p>		<p>However, Ngāi Tahu have concerns about offsetting being applied to different areas of the district, resulting in the gain being made out of the locality or catchment of the subject site.</p>	<p>adversely affected through land use or other activities, a biodiversity offset can be considered to mitigate residual adverse effects. Where a biodiversity offset is proposed, the following criteria will apply: [...]</p> <p>(e) where the offset involves the ongoing protection of a separate site, it will deliver no net loss and preferably a net gain for indigenous biodiversity protection; and</p> <p>(f) offsets should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity; and</p> <p><u>(g) offsets should be made on the same or immediately adjacent site to ensure that gains are retained within the local area or catchment.</u></p>
76.	1,9	9-2	<p>Objective 9.1 and reasons. ‘ 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.’</p>	Support with amendments	<p>In addition to the general public having access to amenity and recreational opportunities, Ngāi Tahu, and potentially other Tangata Whenua iwi, in some instances</p>	<p>Accept and add a new objective. New objective: <u>The relationship of Tangata Whenua Iwi with their ancestral lands, water, wāhi tapu and wāhi taonga are enabled through opportunities to provide for</u></p>

					may seek access to the coastal environment, rivers, lakes, areas of indigenous vegetation or sites of wāhi tapu or wāhi taonga for cultural purposes.	<u>customary access.</u>
77.	1,9	9-3	Policy 9.1.2 and reasons. ' 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.'	Support with amendments	Opportunities for customary access can sometimes arise during resource consent processes. Access to resources is an essential part of enabling iwi to exercise kaitiakitanga, and retain a relationship with ancestral lands, water and wāhi tapu and wāhi taonga.	Policy 9.1.2 Accept and add a new policy New policy: <u>Policy 9.1.3 Customary Access</u> <u>Customary access to sites, customary material or harvesting areas is encouraged in subdivision and development through landowner agreements or through wider public access arrangements.</u> <u>Explanation</u> <u>Customary access is necessary to enable Tangata Whenua Iwi to exercise kaitiakitanga and to actively maintain their relationship with lands, waters, wāhi tapu and wāhi taonga. Where resources or sites are located on private land, access arrangements such as agreements or case by case permissions are essential before entry can occur. Permission to enter private land is entirely at the discretion of the landowner. This policy acknowledges this and highlights that the Council encourages such agreements to be considered.</u>
78.	1,10	10-2	Policy 10.1.1 and reasons. ' Manage Marlborough's heritage resources in association with Heritage New Zealand, the Department of Conservation, the New Zealand Archaeological Association,	Support	Managing heritage resources in Marlborough is appropriately undertaken by the Council with key organisations, which includes iwi.	Accept

			Marlborough's tangata whenua iwi, other heritage organisations and the local community.'			
79.	1,10	10-5	Policy 10.1.9 and reasons. 'Except as set out in Policy 10.1.11, primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.'	Object	<p>In the management of archaeological sites Heritage New Zealand are bound by the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 (The Heritage Act). The Heritage Act does not provide for the same functions as the RMA, and is not a replacement for the functions of the RMA that relate to the management of development and protection of historic heritage.</p> <p>Instead, the two Acts must work together to manage historic heritage.</p> <p>While Policy 10.1.11 provides some safeguarding for Ngāi Tahu, the message that Policy 10.1.9 sends to developers may confuse.</p>	Reject
80.	1,10	10-6	Policy 10.1.11 and reasons. 'Control land disturbance activities in places of significance to Marlborough's tangata whenua iwi.'	Support with amendments	<p>Accidental Discovery Protocol's (ADP) are useful tools in the management of Māori archaeology, but are often the last resort and too late.</p> <p>Amendments to the policy are suggested, which changes the focus of the policy to the Council primarily working with Tangata Whenua iwi to develop an ADP. It also</p>	<p>Accept with amendments</p> <p><u>Working with Marlborough's Tangata Whenua Iwi, and in liaison</u> Liaise with Heritage New Zealand, <u>and</u> the New Zealand Archaeological Association <u>and</u> Marlborough's tangata whenua iwi to develop and implement an appropriate discovery protocol for archaeological sites <u>which will be included as a condition of consent on relevant planning application decisions, acknowledging that:</u></p> <p><u>(a) in some instances, cultural</u></p>

					<p>provides clear expectations about the implementation and use of ADP.</p> <p>The implementation of an ADP is supported, however Ngāi Tahu considers that this must be alongside new policies to provide more upfront assessment of potential effects on Māori heritage.</p>	<p><u>impact assessments and cultural monitors will be required to ensure the appropriate management of values, artefacts and koiwi.</u></p> <p><u>(b) Different approaches to ADP may be preferred by different iwi.</u></p>
81.	1,10	10-6	Policy 10.1.11 and reasons. 'Control land disturbance activities in places of significance to Marlborough's tangata whenua iwi.'	Support with amendments	The policy and reasons are supported.	Accept
82.	1,10	n/a	New Policy	n/a	<p>Wāhi Tapu and Wāhi Taonga are specifically provided for in s6(e) of the Resource Management Act. While the objectives and policies in the Proposed plan go some way to providing for s6(e) matters, it is considered that there should be greater protection for known Māori archaeology in the Marlborough Environment Plan.</p> <p>Wāhi tapu and wāhi taonga sites have a range of sensitive values attributed to them, and a one size fits all with other archaeology, may not always be appropriate. As such, a new policy is proposed.</p> <p>This policy is consistent with s 6(e), s6(f), s7(a) and s8 of the RMA.</p>	<p>Add a new policy (and explanation)</p> <p><u>Policy 10.X.X Wāhi Tapu and Wāhi Taonga</u></p> <p><u>a. Avoid any disturbance of known urupā - except for activities associated with the identification and protection of such sites which are undertaken by the relevant Tangata Whenua Iwi or their authorised agent.</u></p> <p><u>b. Protect known Wāhi Tapu and Wāhi Taonga sites from inappropriate development, disturbance, damage or destruction; and ensure activities adjoining these sites do not adversely affect them.</u></p> <p><u>c. The Council will encourage early consultation with Tangata Whenua iwi regarding applications on known or suspected areas or wāhi tapu or wāhi taonga.</u></p>

						<u>d. The relevant Tangata Whenua iwi will be consulted on applications on known or suspected areas of wāhi tapu or wāhi taonga.</u>
83.	1, 10	n/a	New policy	n/a	<p>To complement the above, a new policy is proposed, which would provide a pathway for future work to be undertaken by both the Council and Tangata Whenua iwi (as desired) to identify sites throughout the district. It is noted that in some instances, iwi may prefer not to disclose sites.</p> <p>This policy will assist the Council in discharging its duties under Part II of the RMA.</p> <p>In particular, this is consistent with s6(f) of the RMA, which provides for the protection of historic heritage from inappropriate subdivision, use and development.</p>	<p>Add a new policy (and explanation)</p> <p><u>Policy 10.X.X Sites of Significance to Tangata Whenua Iwi</u></p> <p><u>Work with Ngāi Tahu [or, if this is of interest to others - Marlborough's Tangata Whenua iwi] to identify sites of significance to iwi within the Marlborough District, using identification methods that respect the sensitive nature of the sites, and for the purposes of a plan change including objectives, policies, methods and rules before the next review of this plan to protect significant Māori heritage in the District.</u></p>
84.			Policy 10.1.11 and reasons 'Control land disturbance activities in places of significance to Marlborough's tangata whenua iwi.'	Support	Provides for s6(e) RMA matters	Accept
85.	1,13	13-3	Objective 13.1 and reasons. Areas of the coastal environment where the adverse effects from particular activities and/or forms of subdivision, use or development are to be avoided are clearly identified.	Support	<p>It is appropriate to identify areas where subdivision use or development must be avoided.</p> <p>Such areas may include wāhi tapu/wāhi taonga.</p>	Accept

86.	1,13	13-3	Policy 13.1.1 – Avoid adverse effects from subdivision, use and development activities on areas identified as having: (a) outstanding natural character; (b) outstanding natural features and/or outstanding natural landscapes; (c) significant marine biodiversity value and/or are a significant wetland; or (d) significant historic heritage value.	Support with amendments	As per listed points (a) – (d), the relationship of Māori with their ancestral , lands, water, sites, wāhi tapu and wāhi taonga are a matter of national importance as set out in s6(e). There may be instances where to provide for the relationship that Ngāi Tahu have with some sites, adverse effects cannot be mitigated and must be avoided.	Policy 13.1.1 – Avoid adverse effects from subdivision, use and development activities on areas identified as having: (a) outstanding natural character; (b) outstanding natural features and/or outstanding natural landscapes; (c) significant marine biodiversity value and/or are a significant wetland; or (d) significant historic heritage value. <u>(e) essential to the relationship between Māori and their ancestral lands, water, sites, wāhi tapu and wāhi taonga.</u>
87.	1,13	13-3	Policy 13.1.2 and reasons. Areas identified in Policy 13.1.1 as having significant values will be mapped to provide certainty for resource users, Marlborough’s tangata whenua iwi, the wider community and decision makers.	Support	To provide certainty. This is also consistent with submission points on section 10.	Accept
88.	1,13	13-4	Objective 13.2 and reasons. Subdivision, use or development activities take place in appropriate locations and forms and within appropriate limits.	Support with amendments	The framework of objectives and policies in this chapter creates a hierarchy of s6 matters within the coastal environment.	Reconsider the relationship between the two sets of objectives and policies.
89.	1,13	13-4	Policy 13.2.1 – The appropriate locations, forms and limits of subdivision, use and development activities in Marlborough’s coastal environment are those that recognise and provide for, and otherwise avoid, remedy or mitigate adverse effects on the following values: (a) the characteristics and qualities that contribute to natural character, natural features and landscape of an area; (b) the relationship of Māori and their culture and traditions with their	Support with amendments	The framework of objectives and policies in this chapter creates a hierarchy of s 6 matters within the coastal environment. Of particular concern, in some instances to recognise and provide for the relationship of Ngāi Tahu will ancestral lands, water sites and wāhi tapu/wāhi taonga, activities may need to be avoided.	Reconsider the relationship between the two sets of objectives and policies.

			<p>ancestral lands, water, sites, waahi tapu and other taonga;</p> <p>(c) the extensive area of open space within the coastal marine area available for the public to use and enjoy, including for recreational activities;</p> <p>(d) the importance of public access to and along the coastal marine area, including opportunities for enhancing public access;</p> <p>(e) the dynamic, complex and interdependent nature of coastal ecosystems;</p> <p>(f) the high level of water quality generally experienced in Marlborough's coastal waters; and</p> <p>(g) those attributes that collectively contribute to individual and community expectations about coastal amenity values.</p>			
90.	1,14	14-3/4	<p>Policy 14,1,4 and reasons</p> <p>'Manage primary production activities to ensure they are carried out sustainably through the implementation of policies and methods (including rules establishing standards for permitted activities) to address potential adverse effects on:</p> <p>(a) the life-supporting capacity of soils, water, air and ecosystems;</p> <p>(b) natural character of rivers, wetlands and lakes;</p> <p>(c) water quality and water availability;</p> <p>(d) areas with landscape significance;</p> <p>(e) areas with significant indigenous vegetation and significant habitats of indigenous fauna;</p> <p>(f) the values of the coastal environment as set out in Issue 13A of</p>	Support with amendments	<p>Primary production can have effects on the cultural values of Tangata Whenua Iwi. In particular, water, or sites or area of significance to iwi.</p> <p>Ngāi Tahu is supportive of primary production being carried out appropriately, and in a sustainable way,</p>	<p>Accept with amendments:</p> <p>Manage primary production activities to ensure they are carried out sustainably through the implementation of policies and methods (including rules establishing standards for permitted activities) to address potential adverse effects on:</p> <p>(a) the life-supporting capacity of soils, water, air and ecosystems;</p> <p><u>(b) the relationship of Tangata Whenua Iwi with lands, waters, sites, wāhi tapu and wāhi taonga, and the ability of Tangata Whenua Iwi to exercise kaitiakitanga;</u></p> <p>(b) (c) natural character of rivers, wetlands and lakes;</p> <p>(c) (d) water quality and water availability;</p> <p>(d) (e) areas with landscape significance;</p>

			Chapter 13- Use of the Coastal Environment; or (g) the safe and efficient operation of the land transport network and Marlborough's airports.'			(e) (f) areas with significant indigenous vegetation and significant habitats of indigenous fauna; (f) (g) the values of the coastal environment as set out in Issue 13A of Chapter 13- Use of the Coastal Environment; or (g) (h) the safe and efficient operation of the land transport network and Marlborough's airports.
91.	1,15	15-7	Objective 15.1a and reasons. 'Maintain and where necessary enhance water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters, so that: (a) the mauri of wai is protected; (b) water quality at beaches is suitable for contact recreation; (c) people can use the coast, rivers, lakes and wetlands for food gathering, cultural, commercial and other purposes; (d) groundwater quality is suitable for drinking; (e) the quality of surface water utilised for community drinking water supply remains suitable for drinking after existing treatment; and (f) coastal waters support healthy ecosystems.'	Support with amendments	The intent of this objective is supported. Ngāi Tahu considers that it is appropriate for an objective to state that all fresh water should be drinkable quality. Amendments are also proposed for clarity.	Accept with amendments Maintain and where necessary <u>degraded</u> enhance water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters, so that: (a) the mauri of wai is protected; (b) water quality at beaches is suitable for contact recreation; (c) people can use the coast, rivers, lakes and wetlands for food gathering, cultural, commercial and other purposes; (d) ground <u>freshwater</u> quality is suitable for drinking; (e) the quality of surface water utilised for community drinking water supply remains suitable for drinking after existing treatment; and (f) coastal waters support healthy ecosystems.
92.	1,15	15-8	Objective 15.1b and reasons. 'Maintain or enhance freshwater water quality in each Freshwater Management Unit so that the annual median nitrate concentration is <1 milligram nitrate-nitrogen per litre and the annual 95th percentile concentration is <1.5 milligrams nitrate-nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.'	Support	For Ngāi Tahu freshwater is a taonga and it is essential that the quality of freshwater is high.	Accept. As water is so important to Tangata Whenua, it is suggested that the reasons could include reference to the importance of water as a taonga, to pull through into the plan the threads from Chapter 3.

93.	1,15	15-8	Objective 15.1c and reasons. 'Maintain freshwater water quality in each Freshwater Management Unit so that the annual median ammonia concentration is <0.03 milligrams ammoniacal nitrogen per litre and the annual maximum concentration is <0.05 milligrams ammoniacal nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.'	Support	For Ngāi Tahu freshwater is a taonga and it is essential that the quality of freshwater is high.	Accept. As water is so important to Tangata Whenua, it is suggested that the reasons could include reference to the importance of water as a taonga, to pull through into the plan the threads from Chapter 3.
94.	1,15	15-9	Policy 15.1.1 and reasons. 'As a minimum, the quality of freshwater and coastal waters will be managed so that they are suitable for the following purposes: (a) Coastal waters: protection of marine ecosystems; potential for contact recreation and food gathering/marine farming; and for cultural and aesthetic purposes; (b) Rivers and lakes: protection of aquatic ecosystems; potential for contact recreation; community water supply (where water is already taken for this purpose); and for cultural and aesthetic purposes; (c) Groundwater: drinking water supply; and (d) Wetlands: protection of aquatic ecosystems and the potential for food gathering.'	Support	As per submission points on objective 15.1, Ngāi Tahu consider freshwater to be a taonga, and that all freshwater should be to a drinkable standard. Coastal waters are an essential source of mahinga kai, and as such Ngāi Tahu support the policy direction that coastal waters should support food gathering and cultural purposes.	Accept with amendments (c) Ground Freshwater : drinking water supply
95.	1,15	15-10	Policy 15.1.2 and reasons. 'Apply water quality classifications (and water quality standards) to all surface water, groundwater and coastal water resources, which reflect: (a) the management purposes specified in Policy 15.1.1; and (b) other uses and values supported by	Support with amendments	It is appropriate and in accordance with s6(e), 7 and 8 of the RMA to specifically highlight within this policy that water quality standards should be set so that Tangata Whenua values are reflected.	Accept with amendments Apply water quality classifications (and water quality standards) to all surface water, groundwater and coastal water resources, which reflect: (a) the management purposes specified in Policy 15.1.1; and

			the waterbody or coastal waters; or (c) where water quality has already been degraded, the uses and values that are to be restored.'			(b) other uses and values, <u>including Tangata Whenua Iwi values</u> , supported by the waterbody or coastal waters; or (c) where water quality has already been degraded, the uses and values that are to be restored
96.	1,15	15-10	Policy 15.1.3 and reasons 'To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having regard to the management purposes established by Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.'	Support with amendments	<p>It is supported that the cumulative effects of contaminants on water is assessed and incorporated into the proposed Plan. The consideration of cumulative effects is consistent with the ethic of ki uta ki tai.</p> <p>However, the wording of the policy currently could be interpreted to imply a presumption that waterbodies serve a network type purpose in receiving contaminants. This is inconsistent with the NPS freshwater and the values set out in Chapter 3 of the proposed Plan, and also specifically Objectives 3.1, 3.2, 3.3 and 3.5 of the proposed Plan.</p> <p>The amendments seek to remove the potential ambiguity and specifically seek that consultation with Tangata Whenua Iwi is undertaken as part of this work. This is to ensure that cumulative contaminant limits are consistent with iwi values and use of waters. This assists the Council is discharging its</p>	<p>Support with amendments</p> <p>To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having regard to the management purposes established by Policy 15.1.1 in order to <u>In consultation with Tangata Whenua Iwi, establish cumulative contaminant limits by 2024 having regard to the management purposes established by Policy 15.1.1</u></p>

					duties under Part II of the RMA, and gives effect to Objective D1 and Policy D1 of the NPS Freshwater.	
97.	1,15	15-14	<p>Policy 15.1.9 and reasons.</p> <p>'Enable point source discharge of contaminants or water to water where the discharge will not result:</p> <p>(a) in any of the following adverse effects beyond the zone of reasonable mixing:</p> <p>(i) the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;</p> <p>(ii) any conspicuous change in the colour or significant decrease in the clarity of the receiving waters;</p> <p>(iii) the rendering of freshwater unsuitable for consumption by farm animals;</p> <p>(iv) any significant adverse effect on the growth, reproduction or movement of aquatic life; or</p> <p>(b) in the flooding of or damage to another person's property.'</p>	Support with amendments	<p>Point source discharge can have adverse effects on Tangata Whenua iwi values associated with water. As such, this should be specifically considered as part of any discharge consent application.</p>	<p>Accept with amendments</p> <p>Enable point source discharge of contaminants or water to water where the discharge will not result:</p> <p>(a) in any of the following adverse effects beyond the zone of reasonable mixing:</p> <p>(i) the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;</p> <p>(ii) any conspicuous change in the colour or significant decrease in the clarity of the receiving waters;</p> <p>(iii) the rendering of freshwater unsuitable for consumption by farm animals;</p> <p>(iv) any significant adverse effect on the growth, reproduction or movement of aquatic life; or</p> <p>(b) in the flooding of or damage to another person's property, <u>or</u></p> <p><u>(c) adverse effects on tangata whenua iwi values associated with water.</u></p>
98.	1,15	15-14	<p>Policy 15.1.10 and reasons.</p> <p>'Require any applicant applying for a discharge permit that proposes the discharge of contaminants to water to consider all potential receiving environments and adopt the best practicable option, having regard to:</p> <p>(a) the nature of the contaminants;</p> <p>(b) the relative sensitivity of the receiving environment;</p> <p>(c) the financial implications and effects on the environment of each option when compared with the other options; and</p> <p>(d) the current state of technical</p>	Support with amendments	<p>In a number of instances, it may be that adverse effects on cultural values can be avoided by discharging to land instead of water.</p>	<p>Accept with amendments</p> <p>Require any applicant applying for a discharge permit that proposes the discharge of contaminants to water to consider all potential receiving environments and adopt the best practicable option, having regard to:</p> <p>(a) the nature of the contaminants;</p> <p>(b) the relative sensitivity of the receiving environment;</p> <p>(c) the financial implications and effects on the environment of each option when compared with the other options; and</p> <p>(d) the current state of technical knowledge</p>

			knowledge and the likelihood that each option can be successfully applied.'			and the likelihood that each option can be successfully applied, <u>and</u> <u>(e) Whether the contaminant should be released in water.</u>
99.	1,15	15-18	Policy 15.1.18 and reasons. 'Avoid the discharge of untreated human sewage to waterbodies or coastal waters.'	Support	The discharge of untreated human sewage into waterbodies and the coastal environment is against tikanga.	Accept
100.	1,15	15-22	Method 15.M.13 Cultural Impact Assessment	Support	Cultural Impact Assessments are an appropriate method to assess potential effects on Tangata Whenua iwi values.	Accept
101.	1,15	15-26	Policy 15.1.33 and reasons. 'Require land use consent for the establishment and operation of any new dairy farm.'	Support	Dairy farming, particularly in areas where water is scarce, can have significant adverse environmental effects, which are not easily reversed or rectified.	Accept
102.	1,15		Policy 15.1.34 and reasons. 'Approve land use consent applications for new dairy farms where the proposed farming would have no more than minor adverse effects on ground or surface water quality or on significant wetlands. A land use consent application must identify the risks of new dairy farming and provide measures to address those risks, including as a minimum: (a) measures (including fences, bridges or culverts) to prevent stock entering onto or passing across the bed of any river or lake, significant wetland, or any drain or the Drainage Channel Network; (b) provision of an appropriate, non-grazed buffer along the margins of any river, lake, significant wetland, drain or	Support with amendments	It is appropriate for the matters set out to be considered in the event of a change of land use to dairy farming. In particular, a nutrient management plan is essential in determining the effects of dairy farming.	Accept with amendments Point (e) should be amended so that there is a standard that needs to be met, as opposed to the standard being the provision of a nutrient management plan, of which the contents may not be acceptable, but nonetheless the requirement would be met through the provision of the plan itself.

			<p>the Drainage Channel Network, to intercept the runoff of contaminants from grazed pasture, with reference to the values of fresh waterbodies as identified in Appendix 5;</p> <p>(c) provision for storage of dairy effluent, with all storage ponds sufficiently sized to enable deferral of application to land until soil conditions are such that surface runoff and/or drainage do not occur;</p> <p>(d) demonstration of appropriate separation distances between effluent storage ponds and any surface waterbodies to ensure contamination of water does not occur (including during flood events); and</p> <p>(e) a nutrient management plan that includes nutrient inputs from dairy effluent, animal discharges, fertiliser and any other nutrient input.</p>			
103.	1,15		New policy	n/a	<p>Over the lifetime of the Plan the aspirations or practices of land owners could shift. Those aspirations or practices may be a result of market forces and changes which require diversification or a change of landuse. These changes could create unanticipated effects on the environment, particularly nutrient discharge. To achieve objectives 15.1a – 15.1e a new policy is sought to future proof the plan, and enable the Council to consider whether greater control is required to manage these effects.</p>	<p>Insert a new policy requiring the Council to undertake a plan change to introduce a nutrient management framework into the Marlborough Environment Plan, in the event that landuse changes occur or are foreseen to occur which will are not anticipated or appropriately regulated by the operative plan.</p>

104.	2,2	2-8	Controlled Activity 2.4.1. and standards Take and damming C Class water for the purpose of retaining water in storage for subsequent use.	Object	The activity involves taking water for the purposes of retention and subsequent use. Consistent with the Kaikōura IMP Ngāi Tahu believe that applications to take and dam water for the purposes of storage should require an assessment of the effects of that activity. In some instances, the activity will be inappropriate, and it is considered that the Council should retain the ability to decline the application. Controlled activity consents cannot be declined, and for this reason a restricted discretionary activity status is sought.	Reject. Move to a Restricted Discretionary activity status.
105.	2,2	2-9	Prohibited Activity 2.6.1. Take of water that would cause the water quantity allocation limit for the relevant Freshwater Management Unit to be exceeded, unless the take is: (a) provided for as a Permitted Activity; (b) the subject of a resource consent application affected by section 124 of the RMA.	Support	Consistent with the NPS – FW over allocation should be avoided.	Accept
106.	2,2	2-9	Prohibited Activity 2.6.5. Damming of water in the following waterbodies, including their tributaries: (a) Awatere River above Medway River (excluding tributaries not specified in this rule); (b) Clarence River; (c) Grey River; (d) Hodder River; (e) Waimea River above Box Stream;	Support with amendments	The Waiau-toa (Clarence River) is the pepeha river of Ngāti Kurī. The river holds particular significance for this reason, and also due to the extensive history of occupation and settlement near Waiau-toa, and use of the river as a mahinga kai.	Accept with amendments, which prohibit damming in the Awatere along the full extent. The inclusion of the dual name for the Clarence River is also sought when referred to throughout the plan.

			<p>(f) Winterborne River. This rule does not apply to a damming of water lawfully established prior to 9 June 2016.</p>		<p>While outside the Marlborough Region, the mouth of the Waiau-toa forms the current northern boundary of the Kaikōura Marine Guardians marine management area provided for by legislation. Ki uta ki tai – mountains to sea, it is critical that what flows from the Waiau-toa into the marine management area is of a high quality, and that water flows enable the river to function in accordance with its natural state.</p> <p>The Awatere River also holds particular significance for Ngāti Kurī. The Kaikōura IMP states that the river has historically been a major resource and travel route for Ngāi Tahu. Continuous and healthy flow of the river ki uta ki tai is a specific point raised in the Kaikōura IMP (page 50).</p> <p>It is appropriate that damming water in these waterbodies and tributaries is prohibited.</p> <p>In the case of the Awatere, due to the significance of this river it is sought that damming is prohibited along the full extent.</p>	
107.	2,2	2-16	Prohibited Activity 2.11.1. Construction of a dam on the following lakes and rivers, including their tributaries unless otherwise stipulated:	Support with amendments	As per the reasons above, it is appropriate that the construction of a dam in the Awatere and Waiau-toa is	Accept with amendments, which prohibit damming in the Awatere along the full extent. Dual names are also sought in the plan

			<p>(a) Acheron River; (b) Awatere River above Medway River (excluding tributaries not specified in this rule); (c) Branch River (including downstream of weir to the Wairau River confluence); (d) Clarence River; (e) Goulter River; (f) Grey River; (g) Hodder River; (h) Lake Alexander; (i) Lake Chalice; (j) Lake McRae; (k) Pelorus River above the Rai River confluence; (l) Rainbow River; (m) Tarmdale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere; (n) Waimea River above Box Stream; (o) Wairau River upstream of the Hamilton River confluence; (p) Winterborne River.</p>		<p>prohibited.</p> <p>As per the above, Ngāi Tahu seeks that this is extended to the full reach of the Awatere.</p>	<p>when referencing the Clarence River.</p>
108.	2,2	2-27	Prohibited Activity 2.20.1. Discharge of dairy farm effluent to water.	Support	<p>Discharge of dairy effluent to water adversely effects water quality. It also adversely affects Ngāi Tahu cultural values associated with freshwater particularly mahinga kai, and the ethic of ki uta ki tai.</p>	Accept
109.	2,2	n/a	New permitted Activity	n/a	<p>Ngāi Tahu seeks specific provision within the proposed Plan for customary harvesting.</p> <p>Customary harvesting is the sustainable harvest of customary materials or</p>	<p>Insert a new Permitted Activity</p> <p>Permitted Activity – customary harvest</p> <p>2.X.1 Customary Harvest</p> <p>Standards</p> <p>2.x.1.1 Must be undertaken in accordance</p>

					resources, for purposes such as medicine, weaving, or for consumption. Customary harvest occurs within a framework of tikanga. Tikanga includes seeking agreement from landowners before entering any private property.	with tikanga. 2.x.1 2 Where the material or resource is located on private property, an access agreement must be in place with the landowner, or alternatively, permission sought from the landowner on a case by case basis.
110.	2,3	3-1/3-9	Permitted Activities, 3.3 Standards that apply to specific permitted activities 3.3.1 Farming 3.3.1.1 The farming must not include a dairy farm established after 9 June 2016. AND 3.6 Discretionary Activities 3.6.8 Dairy farm established after 9 June 2016.	Support	A change of land use to dairy farming will create adverse impacts which need to be assessed, This rule structure makes it clear that any dairy farm established after 9 June 2016 will require a resource consent as a discretionary activity. There is no definition for Dairy Farm, and as such the only ambiguity is as to whether this rule also capture dairy support activities, which can also cause adverse environmental effects.	Accept with amendments to clarify that this rule includes dairy support farming.
111.	2,4	4-1	Permitted Activities, 4.3 Standards that apply to specific permitted activities 4.3.1 Farming 4.3.1.1 The farming must not include a dairy farm established after 9 June 2016. AND 4.6 Discretionary Activities 4.6.8 Dairy farm established after 9 June 2016.	Support	A change of land use to dairy farming will create adverse impacts which need to be assessed, This rule structure makes it clear that any dairy farm established after 9 June 2016 will require a resource consent as a discretionary activity. There is no definition for Dairy Farm, and as such the only ambiguity is as to whether this rule also capture dairy support	Accept with amendments to clarify that this rule includes dairy support farming.

					activities, which can also cause adverse environmental effects.	
112.	2,16	16-13	Prohibited Activity 16.7.4. Discharge of treated or untreated human sewage into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.	Support	The discharge of treated or untreated human sewage into the coastal marine area is offensive to Ngāi Tahu. Prohibiting this activity is supported. Ngāi Tahu also wishes to signal that over time, they would like to see all discharges of human sewage ceased.	Accept
113.	2,22	22-1 - 14	Section 22 Lake Grassmere Salt Works	Support	Ngāi Tahu is comfortable with the existing operations of the Saltworks. For any change in activity that would create adverse effects, these should trigger consent and consideration of environmental effects. The Section currently appears to provide for this. A specific point in support is set out below.	Accept
114.	2,22	22-11	Controlled Activities 22.4.2 Excavation of land exceeding 500mm in depth Matters of Control 22.4.2.6 The relationship of Māori and their cultural and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.	Support	It is appropriate for the Council to have the ability to oppose conditions on any consent for excavation exceeding 500mm. Pre-consultation with Te Rūnanga o Kaikōura would also be advised.	Accept
115.	2,24	24-14	2.4.3.1 Controlled Activity – Subdivision Matters for Control	Support with amendments	Additional matters of control are sought to ensure that the relationship between Ngāi Tahu (and other Tangata Whenua iwi if desired) is	Accept with the following amendments to Matters for control 24.3.1.18. The protection of existing vegetation and revegetation, and

			<p>recognised and provided for in new development. It is noted that matters of control form the extent to which the Council can control development, and they are able to apply discretion on a case by case basis in determining whether the size and location of the development deems matters such as those sought, relevant.</p>	<p><u>opportunities to enhance indigenous vegetation on the site.</u></p> <p>Add the following matters of control:</p> <p><u>24.2.1.27 The extent to which the proposal manages erosion and sediment discharge to waterways</u></p> <p><u>24.2.1.28 Any adverse effects of the proposal on the quality of surface and ground water, mahinga kai, including within waterways, on drainage to, or from, adjoining land, existing drains, waterways, and/or ponding areas.</u></p> <p><u>24.2.1.29 The extent to which any springs are protected, maintained and enhanced, including in relation to ecological, cultural and amenity values and the extent to which the development provides for pathways, for the water to flow from the spring head, that have regard to the existing natural flow path.</u></p> <p><u>24.2.1.30 Recognition of Tangata Whenua iwi heritage and identity and cultural values.</u></p>
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Te Rūnanga o NGĀI TAHU

Form 6, Clause 8 of the First Schedule, Resource Management Act 1991

FURTHER SUBMISSIONS ON THE PROPOSED MARLBOROUGH ENVIRONMENT PLAN

23 June 2017

To: Attention: Planning Technician
Marlborough District Council
PO Box 443
Blenheim 7240
Submission lodged by email – MEP@marlborough.govt.nz

Name of person making submission:

Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu.

These are further submissions in support or opposition to submissions on: The proposed Marlborough Environmental Plan.

Ngāi Tahu has an interest in the proposal that is greater than the general public has.

- 1.1 Ngāi Tahu are tangata whenua of parts of Marlborough. Ngāi Tahu means “people of Tahu”. Ngāi Tahu is the iwi comprised of Ngāi Tahu Whānui; that is the collective of the individuals who descend from the five primary hapū; Ngāti Kurī, Ngāti Irakehu, Kati Huirapa, Ngāi Tūāhuriri and Ngāi Te Ruahikihiki. The Ngāi Tahu takiwā extends over 80 per cent of Te Waipounamu, beginning at Te Parinui o Whiti (White Bluffs) in the Marlborough district. Te Waipounamu has been home to Ngāi Tahu for over 800 years, and therefore Ngāi Tahu hold mana whenua over these lands.
- 1.2 Te Rūnanga o Ngāi Tahu (Te Rūnanga) is statutorily recognised as the representative tribal body of Ngāi Tahu whānui and was established as a body corporate on 24th April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (the Act).

Decisions sought:

- 1.3 The specific decisions sought are listed in Schedule 1 by provision . Text to be deleted is either described narratively or shown as ~~striketthrough~~ (except where whole sections are to be replaced). Replacement text is either described narratively or shown in **bold underlined**.
- 1.4 We also seek any consequential amendments necessary to give effect to the decisions sought.

Te Rūnanga o Ngāi Tahu
Te Whare o Te Waipounamu
15 Show Place, Addington, Christchurch 8042
PO Box 13-046, Christchurch, New Zealand
Phone + 64 3 366 4344, 0800 KAI TAHU
Email: info@ngaitahu.iwi.nz
Website: www.ngaitahu.iwi.nz

1.5 The reasons for our support or opposition are also set out in Schedule One.

We DO wish to be heard in support of our submission. If others make a similar submission we would consider presenting a joint case with them at the hearing.

**Signature of person (s) making further submission
(or person authorised to sign on behalf of person (s) making further submission)**



**pp. Kara Edwards
General Manager, Te Ao Tūroa
Te Rūnanga o Ngāi Tahu**

**Tania Wati on behalf of,
Te Rūnanga o Kaikōura**

Date: 23 June 2017

Address for service:

Tanya Stevens
Te Rūnanga o Ngāi Tahu
PŌ Box 13 046
Ōtautahi
Christchurch 8021

Email: Tanya.Stevens@ngaitahu.iwi.nz (email is the preferred method of contact)

SCHEDULE 1

Proposed Marlborough Environment Plan, Further Submissions: Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu

	Submitter name and address	#	Sub. point	Volume/ Chapter	Provision	Summary	Support/oppose	Decision sought (Allow/Disallow)	Relief Sought	Reasons
1.	Ernslaw One Limited	505	1	1/All	n/a	Earnslaw seek that the plan be withdrawn and rewritten to provide for forestry as a permitted activity where it was lawfully established under the RMA either by resource consent or permitted by the previous plan to plan forestry. In environmentally sensitive areas, they seek that it should only default to controlled activity for harvest.	Oppose	Disallow	Retain as per notified plan with amendments as per the Ngāi Tahu Submission.	Forestry can have effects on the environment that need to be managed. It is appropriate that the effects of previously permitted plantation activities are considered under the plan.
2.	Heritage New Zealand Pouhere Taonga	768	4	1/All	n/a	When referring to adverse effects on archaeological sites, use the phrasing 'adverse effects from the modification or destruction of archaeological sites'	Oppose	Disallow	Retain wording as per the notified plan with amendments sought in the Ngāi Tahu submission.	The wording proposed is consistent with the Pouhere Taonga Act which is focused on these matters. However, this is a resource management plan prepared under the Resource Management Act 1991 (RMA), which has a broader jurisdiction than the Pouhere Taonga Act. Adverse effects on archaeological sites can extend further than simply being from the modification or destruction of those sites and the consideration of this is provided for under the RMA.
3.	Te Atiawa o Te Waka-a-Maui	1186	5	1/All	n/a	Create objectives, policies, methods, rules, standards, matters of control and discretion	Support	Allow	Retain Chapter 3 (with amendments sought by Ngāi Tahu) but take the threads from Chapter 3	This is consistent with the reasons provided to Ngāi Tahu submission point 2. Whilst a standalone chapter dealing with Tangata

						and include in all chapters that relate to cultural values/issues to ensure that they are addressed.			and weave these through the plan, by creating additional provisions (which in some instances may include non-regulatory) throughout the plan as necessary, or, where appropriate, include Tangata Whenua issues and values in existing provisions.	Whenua values/issues is useful, it is important that these issues then form threads that flow through the plan to assist the plan user in understanding how issues are dealt with.
4.	Te Atiawa o Te Waka-a-Māui	1186	17	1/All	n/a	Include provisions relating to terrestrial sedimentation on coastal water quality and benthic habitats	Support	Allow	<p>Include new provisions that provide for the relationship between land and coastal water, and prevent the sedimentation of coastal water from terrestrial sources.</p> <p>The Ngāi Tahu submission seeks an additional subdivision policy/policies to avoid or manage from the outset potential effects on Tangata Whenua iwi cultural values. This may be one appropriate location for the amendments sought here, in addition to others throughout the plan.</p>	This approach is consistent with the Ngāi Tahu environmental ethic of Ki Uta Ki Tai – from mountains to the sea.
5.	Te Atiawa o Te Waka-a-Māui	1186	28	1/All	n/a	Inclusion of provisions to protect significant areas of mahinga kai and traditional practices.	Support	Allow	This is supported with the assumption that these provisions would, while protecting these areas, allow manawhenua to access and harvest/use the areas according to	This is consistent with section 6 (e) of the RMA, and the Ngāi Tahu submission.

									tikanga.	
6.	The Marlborough Environment Centre	1193	139	1/All	n/a	The MECI seeks the inclusion of provisions managing proposals for the location and distribution of Genetically Modified Organisms on a district basis, together with protection of rural resources for organic and biodynamic farming.	Support in part	Allow in part	That an assessment of appropriate case law is undertaken and consultation with iwi before drafting provisions about Genetically Modified Organisms occurs.	Genetically Modified Organisms have been the subject of case law recently. Whether or not these are included in the Plan needs to be assessed.
7.	Federated Farmers of New Zealand	425	2	1/Introduction	Guiding principles	Retain guiding principles as notified	Support in part	Allow in part	If retained add the following to the third guiding principle: It is important that the kaitiaki role of Marlborough's tangata whenua iwi is recognised and provided for , as their perspectives...	The amendments make the guiding principle consistent with both s7(a) and 6(e) of the RMA.
8.	Horticulture New Zealand	769	2	1/2 Background	2	Horticulture New Zealand seek the inclusion of the following definitions in Chapter 25: Enable Avoid Control Manage Protect	Oppose	Disallow	Do not include as defined terms unless a specific rule requires the term to be defined. Retain the explanations of these terms provided in the notified plan – see submission point below from Environmental Defence Society.	Generally terms that are either defined in the RMA, or follow the standard Oxford dictionary meaning do not need to be defined. These terms do not need to be defined.
9.	Horticulture New Zealand	769	2	1/2 Background	3	Amend all uses of term 'natural and human use values' to values Add a definition in Chapter 25 :	Oppose in part	Disallow in part	Include a policy that explains what natural and human use values comprise of.	Ngāi Tahu submission point 25 highlights that the use of the phrase 'natural and human use values' is ambiguous and lends to interpretation. However, the use of the term value as proposed by

						Value = the worth, desirability or utility of a thing, or qualities on which these depend.				Horticulture New Zealand is not considered to be a useful alternative within the context that the phrase is used in the Plan.
10.	Marlborough Forest Industry Association Incorporated	962	5	1/2 Background	Identifying regionally significant issues	Remove regulation for plantation forestry from the plan	Oppose	Disallow	Retain as notified or as amended by Ngāi Tahu submission.	Forestry can have adverse effects on the environment that need to be managed.
11.	Environmental Defence Society	698	1/2 Background	6	How to use the MEP	Amendments to the explanation of 'Enable'	Support in Part	Disallow in Part	The explanation should be amended to more helpfully provide plan users with an understanding of what enable means.	An understanding of what enable means would be beneficial to plan users.
12.	Environmental Defence Society	698	1/2 Background	6	How to use the MEP	Amendments to explanation of 'Avoid'	Support	Allow	Accept.	The drafting is more consistent with the explanation of avoid provided in the King Salmon case.
13.	Environmental Defence Society	698	1/2 Background	7	How to use the MEP	Amendment to explanation of 'Protect'	Support	Allow	Accept.	The redrafted explanation of protect is clearer and easier to understand than the notified version.
14.	Te Rūnanga o Toa Rangatira	166	1/3	16	3	Addition of specific kaitiakitanga objective	Support in part	Allow in part	Include, plus a policy and appropriate methods.	A specific objective that enables Marlborough's Tangata Whenua iwi to exercise kaitiakitanga is supported. A policy and methods would also be required. This is consistent with s7(a) of the RMA. This would be broader in application than policy 3.1.3, which refers to the exercise of kaitiakitanga but only within the application of resource consents that are likely to affect iwi.
15.	Te Rūnanga o Toa Rangatira	166	1/3	18	3.	Explicit reference to the Tangata Whenua chapter in other chapters	Support	Allow	The intent of these amendments is supported. In some instances these may best be achieved by	The intent of the amendments sought is generally consistent with the Ngāi Tahu submission and is consistent with sections 5, 6, and 7 of the RMA.

									reference back to Chapter 3, or alternatively, by direct wording amendments within the specific chapters/provisions	
16.	Te Rūnanga a Rangitane o Wairau	1187	1/3	1	3	Various points including; more monitoring of Wairau lagoon, more sustainable approach to the management of freshwater, that water quality needs to be a priority for MDC.	Support	Allow	Provide for the amendments sought.	To a large extent the amendments sought are specifically relevant to the takiwā of Te Rūnanga a Rangitane o Wairau, however Ngāi Tahu supports these matters.
17.	Port Marlborough New Zealand Limited	433	1/3	2	Objective 3.3	Amendments and deletions to Objective 3.3	Oppose	Disallow	Retain objective as notified.	The amendments sought by Port Marlborough may or may not be appropriate within the specific context of the Port, however the objective is to be applied region wide and therefore the amendments are not appropriate.
18.	Federated Farmers of New Zealand	425	1/3	3	Policy 3.1.1	Strike out (d)	Oppose	Disallow	Retain as notified and amended by Ngāi Tahu submission	(d) is consistent with s8 of the RMA. It is appropriate to recognise in this policy that tangata whenua have rights protected by the Treaty of Waitangi, and that consequently the RMA accords iwi a status distinct from that of interest groups and members of the public.
19.	Trustpower Limited	1201	1/3	1	Policy 3.1.1	Delete clause (e)	Oppose	Disallow	Retain as notified and amended by the Ngāi Tahu submission	Each iwi will have preferences for the sustainable management of resources and this needs to be provided for in the Proposed Plan.
20.	Federated Farmers of New Zealand	425	1/3	5	Policy 3.1.2	Combine with 3.1.4	Oppose	Disallow	Retain as notified and amended by the Ngāi Tahu submission	The policies cover discrete matters that are appropriately provided for in separate policies.
21.	Horticulture New Zealand	769	1/3	4	Policy 3.1.2	Amend so that the applicant is 'encouraged to consult' rather than 'expected to consult'	Oppose	Disallow	Retain as notified	It is preferable that the expectation to consult is clear within the plan.

22.	Federated Farmers of New Zealand	425	1/3	4	Policy 3.1.4	Include background information in Iwi Management Plans to inform large scale resource consent and plan change applicants.	Oppose	Disallow	Retain as notified	It is appreciated that the submission point seeks ensure that Tangata Whenua values are taken into account in the preparation of an application, however whilst in some instances it may be appropriate to provide background information to inform large scale resource consents/plan changes, this may not always be the case and as such as an approach this is not appropriate for Iwi Management Plans. This is more appropriate on a case by case basis, and for inclusion (or not) in Cultural Impact Assessments. Cultural Impact Assessments are tools that enable Tangata Whenua values to be taken into account in the preparation of applications.
23.	Federated Farmers of New Zealand	425	6	1/3	Policy 3.1.5	Amend so that Iwi Management Plans are only taken into account with regards to the preparation of a regional policy statement, or regional and district plans.	Oppose	Disallow	Retain as notified	Iwi Management Plans are an important tool for all resource management processes.
24.	Port Marlborough New Zealand Limited	433	3	1/3	3.M.2	Amend when the Council must have regard to Statutory Acknowledgements so that it only relates to an activity directly affecting the statutory acknowledgment.	Oppose	Disallow	Retain as notified.	The amendment sought is inconsistent with the Ngāi Tahu Claims Settlement Act 1998. Section 208 of the Ngāi Tahu Claims Settlement Act 1998 states that local authorities must have regard to statutory acknowledgements within regard to activities within, adjacent to, or impacting directly on the statutory area. The Council does not have the jurisdiction to accept this submission point as sought by the

										submitter.
25.	Trustpower Limited	1201	5	1/3	3.M.6	Deletion of method and consequential amendments	Oppose	Disallow	Retain as notified.	Consultation is essential to ensure that sections 5, 6, 7 and 8 of the RMA are provided for.
26.	Te Rūnanga o Toa Rangatira	149	3	1/4	Policy 4.1.1	Include in methods that all applicants should consult iwi where application is within a statutory acknowledgment area and that an accidental discovery protocol and iwi monitor may be required.	Support in part	Allow in part	Include in the plan, although this could be usefully included in Chapter 3 and apply throughout the region and to all chapters.	This is an appropriate method to ensure that values within sites are protected or managed appropriately.
27.	Beef and Lamb New Zealand	459	1/4	12	Policy 4.1.1	Introduce an alternative, Farm Environment Planning pathway	Oppose in part	Disallow in part	If this is accepted, do not replace the notified rule with the proposed rule, but rather enable the use of Farm Environment Plans to support the rule rather than to create an alternative pathway. Farm Environment Plans should include issues and management approaches relating to water, mahinga kai and protection of taonga species. Any maps produced should show any known sites of significance and also any significant vegetation.	Farm Environment Plans provide a way to support rules but are not a suitable replacement for rules, or the assessment of activities through a resource consent process.
28.	Dairy NZ	676	5	1/4	Policy 4.1.2	Retain policy and amend explanation so that where adverse effects are considered minor and there is no potential for	Oppose	Disallow	Retain as notified.	While there may be instances where the adverse effects of an activity are minor, they may still have an impact on Ngāi Tahu values which require management or assessment. For this reason,

						environmental effects, resource consents will not be required.				this amendment is not supported.
29.	Friends of Nelson Haven and Tasman Bay Incorporated	716	30	1/4	Policy 4.1.2	Amend Policy 4.1.2 so that permitted activity rules are included where effects are no more than minor.	Oppose	Disallow	Retain as notified.	As above.
30.	John Malcolm McKee	477	4	1/4	Policy 4.2.1	Addition of areas of significant aquaculture and wine development to the list of regionally significant infrastructure.	Oppose	Disallow	Retain as notified.	Aquaculture and wine development are not regionally significant infrastructure which is relied on by the public.
31.	Dan McCall	641	4	1/4	Policy 4.2.1	Addition of areas of significant aquaculture to the list of regionally significant infrastructure.	Oppose	Disallow	Retain as notified.	Aquaculture is not regionally significant infrastructure which is relied on by the public.
32.	Irrigation New Zealand Incorporated	778	9	1/4	Policy 4.2.1	Amendment to list of regionally significant infrastructure	Oppose	Disallow	Retain as notified.	Reticulated water supply operated by Marlborough services the greater community need.
33.	New Zealand Forest Products Holdings Limited	995	8	1/4	Policy 4.2.1	Add transport infrastructure associated with primary industries to the list of regionally significant infrastructure	Oppose	Disallow	Retain as notified.	The district roading network is already provided for in the plan.
34.	Marlborough District Council	91	79	1/5	AER	Add new Anticipated Environmental Result – no occurrence of sea water intrusion into aquifers and indicator, conductivity levels as measured by Council's sentinel wells.	Support	Allow	Accept	This is an appropriate environmental result that should be monitored to avoid this occurring.
35.	Royal Forest and Bird Protection Society NZ (Forest and Bird)	715	6	1/5	5	Amend introduction including to explain that the marine environment is addressed in the Coastal Environment Chapter.	Support in part	Allow in part	Include the reference to the Coastal Environment Chapter, and in the interests of integrated management also include the following wording (or	The reference to the Coastal Environment Chapter is useful, and assists with the usability of the plan.

									similar): <u>While issues relating to the Coastal Environment are covered in Chapter 13, the integrated nature of water resources, ki uta ki tai (from mountains to the sea) is acknowledged by Marlborough District Council.</u>	
36.	Royal Forest and Bird Protection Society NZ (Forest and Bird)	715	6	1/5	5	Amend Chapter 5 to provide for further flow assessments to ensure future allocation retains necessary instream flows for indigenous vegetation and habitat	Support in part	Allow in part	Provide additional drafting as required to ensure that if there are any gaps in information, that these can be filled.	Instream habitat and vegetation is essential for mahinga kai, and sufficient flow is required to maintain species.
37.	New Zealand Fish Passage Advisory Group	994	6	1/5	AER	Include Anticipated Environmental Result to ensure that structures in waterways are assessed for their ability to provide fish passage.	Support	Allow	Accept	Fish passage is important for mahinga kai species and as such this submission point is supported.
38.	Te Atiawa o Te Waka-a-Māui	1186	20	1/5	5	Incorporate cultural indicators into the water allocation regime, air shed management and management of the coast.	Support	Allow	Include drafting to provide for the submission point.	Cultural indicators are consistent with Part II of the RMA.
39.	Federated Farmers of New Zealand	425	46	1/5	Policy 5.2.25	Delete policy	Oppose	Disallow	Retain as notified.	Policy 5.2.25 as notified requires that where necessary the conditions of existing water permits authorising the take of water are reviewed within 24 months of the MEP becoming operative. This policy is necessary to ensure that the water management framework provided for in the MEP is not

										undermined by existing water permits.
40.	Environmental Defence Society	531	22	1/5	5.3.1	Amend Policy 5.3.1 to read: Policy 5.3.1 – To allocate water in the following order of priority : (a) to the waterbody in the quantum required to safeguard its life supporting capacity; then (a) (b) other natural and human use values; then (b) (c) aquifer recharge; then (c) (d) domestic and stock water supply; then (d) (e) municipal water supply; and then (e) (f) all other takes of water.	Support	Allow	Accept	The waterbody should be prioritised first, over other demands.
41.	Environmental Defence Society Incorporated	698	23	1/5	Policy 5.3.3	Amend policy to more clearly establish its purpose	Support	Allow	Amend as sought by the submission.	The intent of policy 5.3.3 appears to be of value in terms of the management of freshwater units, however further information is required to establish this in the policy.
42.	Te Atiawa o Te Waka-a-Māui	1186	41	1/5	Policy 5.3.8	Clarify if subparts of policy are read conjunctively or disjunctively.	Support	Allow	Amend to provide clarity as sought by the submission.	This would be a useful clarification which can easily be amended.
43.	Te Atiawa o Te Waka-a-Māui	1186	45	1/5	Objective 5.8	Modify objective to account for cultural values	Support	Allow	Redraft to provide for the submission point	This is consistent with the Ngāi Tahu submission on issue 5H.
44.	Te Atiawa o Te Waka-a-Māui	1186	46	1/5	Objective 5.10	Modify objective to account for cultural values	Support	Allow	Redraft to provide for the submission point	Cultural values should form part of the consideration of resource availability.
45.	Te Atiawa o	1186	47	1/5	Policy 5.10.3	Amend policy to include	Support	Allow	Redraft to provide for	It is appropriate to consider cultural

	Te Waka-a-Māui					at the end 'cultural and environmental values'			the submission point.	and environmental values when considering the right to occupy the coastal marine area.
46.	Department of Conservation	479	51	1/6	Objective 6.1	Retain objective	Support	Allow	Retain objective.	Consistent with s6(a) of the RMA.
47.	Te Atiawa o Te Waka-a-Māui	1186	51	1/6	Policy 6.1.1	Amend natural character qualities list to include cultural and spiritual values	Support	Allow	Amend as per the submission.	This is consistent with the NZCPS, in particular Objective 3 and Policy 1.
48.	Department of Conservation	479	58	1/6	Objective 6.2	Retain as notified	Support	Allow	Retain as notified.	The objective is consistent with s6(a) of the RMA and the NZCPS.
49.	Royal Forest and Bird Protection Society NZ (Forest and Bird)	496	6	1/7	Objective 7.1	Retain as notified	Support in part	Allow in part	Retain but amend as necessary to provide for the relationship of iwi with and within the landscape.	Consistent with section 6 of the RMA.
50.	Royal Forest and Bird Protection Society NZ (Forest and Bird)	496	12	1/7	Objective 7.2	Retain as notified	Support	Allow	Retain as notified.	Consistent with section 6(b)
51.	Te Rūnanga o Toa Rangatira	166	27	1/8	Policy 8.3.4	Redraft to include requirement to consult with iwi.	Support	Allow	Redraft as requested.	Drainage channel maintenance can result in impacts on mahinga kai and other values of Ngāi Tahu and iwi. It is appropriate that iwi are consulted when these activities are undertaken.
52.	Te Rūnanga o Ngāti Kuia	501	46	1/10	Policy 10.1.8	Amend policy so that in assessing resource consents, whether a iwi monitor is required is considered.	Support	Allow	Redraft as requested.	Consistent with section 6(e), (f) and 7(a) of the RMA. This may also need to be amended further as a consequential amendment to Ngāi Tahu submission point 89.
53.	Heritage New Zealand Pouhere Taonga	768	46	1/10	10.AER.1	Amend to include 'No loss of sites of significance to Māori, including wāhi tapu, as measured through the	Support in part	Allow with amendments	Amend as per the below: No loss of sites of significance to Māori,	These amendments are consistent with Ngāi Tahu submissions on this chapter, section 6(e) and (f) of the RMA.

						grant of resource consent applications to destroy sites of significance to Māori, including wāhi tapu.			including wāhi tapu and wāhi taonga , as measured through the grant of resource consent applications to destroy sites of significance to Māori, including wāhi tapu and wāhi taonga .	
54.	Te Rūnanga o Toa Rangitira	166	5	1/11	11	Link between chapter and climate change chapter	Support	Allow	Include links in chapter.	Consistent with creating an integrated plan.
55.	Te Atiawa o Te Waka-a-Māui	186	60	1/11	Policy 11.1.3	Amend to contain explicit statement regarding iwi involvement, consultation, discussion.	Support	Allow	Redraft to reflect submission.	The management of flood hazards through mitigation works can have effects on iwi values.
56.	Department of Conservation	479	123	1/15	Objective 15.1d	Retain	Support	Allow	Retain objective	The objective seeks that freshwater quality is maintained or enhanced. This is consistent with the NPSFM. However, Ngāi Tahu believes that water quality should be of a drinkable level, rather than a level suitable only for contact recreation.
57.	Department of Conservation	479	124	1/15	Objective 15.1e	Retain	Support	Allow	Retain objective	The objective seeks that freshwater quality is maintained or enhanced. This is consistent with the NPSFM. However, Ngāi Tahu believes that water quality should be of a drinkable level, rather than a level suitable only for contact recreation.
58.	Environmental Defence Society Incorporated	698	101	1/15	Policy 15.1.11	Amend to include the potential for adverse effects on ecosystem health	Support	Allow	Redraft	The additions proposed, in addition to the existing matters included in the policy, provide a robust framework for the consideration of discharge of contaminants into water.
59.	Environmental Defence Society	698	106	1/15	Policy 15.1.27	Amend to require planting or riparian margins as a condition	Support	Allow	Include drafting as proposed.	Riparian margins are important elements of the waterbody ecosystem.

	Incorporated					of consent where appropriate				
60.	Te Atiawa o Te Waka-a-Māui	1186	27	2	All	Request the inclusion of provisions to protect significant areas of mahinga kai and traditional practices.	Support	Allow	Provide drafting as per submission	Consistent with sections 6(e) and 7(a) of the RMA.
61.	Royal Forest and Bird Protection Society (Forest and Bird)	715	377	2	2	Amend activity status' throughout the plan to Non-Complying where appropriate	Support	Allow	Review and apply non-complying status as appropriate	A Non-complying status may be appropriate in a number of instances.
62.	Department of Conservation	479	157	2/2	Rule 2.2.17	Delete permitted rule allowing damming	Support	Allow	Delete	Consistent with the Kaikōura IMP Ngāi Tahu believe that applications to take and dam water for the purposes of storage should require an assessment of the effects of that activity.
63.	Department of Conservation	479	156	2/2	Rule 2.3.14	Delete permitted rule and activity standard or amend.	Support	Allow	Either delete or amend.	The non-consumptive use of water then returning to the waterbody has the potential to create adverse effects on the environment if not adequately managed.
64.	Department of Conservation	479	171	2/2	Rule 2.9.3	Amend standard to provide greater detail on the screening requirements	Support	Allow	Amend as per submission	Fish passage is essential to maintain mahinga kai.
65.	Te Atiawa o Te Waka-a-Māui	1186	110	2/2	Rule 2.9.4	Amend standard list to include consideration of cultural values, areas and sites	Support	Allow	Amend as per submission	Consistent with sections 6(e) and 7(a) of the RMA.
66.	Te Atiawa o Te Waka-a-Māui	1186	111	2/2	Rule 2.9.5	Amend standard list to include consultation with iwi and consideration of cultural values, areas and sites	Support in part	Allow in part	Include a standard that the structure must not be located within a site of significance to tangata whenua iwi.	To ensure that a requirement for consent is triggered where the proposed structure is to be placed in a place of significance to tangata whenua.
67.	Beef and Lamb New	459	13	2/2	Rule 2.9.9	Include provision for Farm Environment Plans	Oppose in part	Disallow in part	If this is accepted, do not replace the rule	It is important that Farm Environment Plans do not replace

	Zealand								with the proposed rule, but rather enable the use of Farm Environment Plans to support the rule. Farm Environment Plans should also include mahinga kai, protection of taonga species. Any maps produced should show any known sites of significance and also any significant vegetation.	the consenting process or create an alternative pathway, but that if they are provided for as a way to support a rule, that they are comprehensive.
68.	Beef and Lamb New Zealand	459	33	2/2	Rule 2.9.9	Amend standards relating to livestock accessing waterways	Oppose in part	Disallow in part	Retain rule as notified and add proposed standard 2, that Livestock are able to enter for the purposes of crossing if they are being actively driven across the waterbody in a continuous movement.	It is acknowledged that it is at times necessary to cross livestock over waterways, however Farm Environment Plans should not be used as a replacement for the notified standards, and the detailed standards about the waterway health are required for enforcement purposes.
69.	Federated Farmers of New Zealand	425	517	2/3	Rule 3.1.1	Include earthworks ancillary to farming as a permitted activity	Oppose	Disallow	Either reject or add standards about the location, and extent of earthworks	As an ancillary activity this may give rise to more earthworks than already permitted by rules. Earthworks can have adverse effects on Ngāi Tahu values particularly underground archaeology.

ANNEXURE B – Copies of the Relevant Parts of the Decisions



Proposed Marlborough Environment Plan

Topic 2: Marlborough's Tangata Whenua Iwi

Hearing dates: 20 – 21 November 2017

S42A Report Writer: Rachel Anderson

Conflicts of Interest: None

Interim decision: None

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

43. Under the heading 'Integrated management of the Marlborough environment' the PMEP puts 'kaitiakitanga' to the forefront of the promotion of the integrated management of the region.

*'Kaitiakitanga, the environmental guardianship practiced by Marlborough's tangata whenua iwi, has its foundation in the world view that all life and elements within the natural world that support life are connected. As a community we also recognise the existence and importance of these connections. Integrated management attempts to acknowledge and provide for the interconnectedness of natural and physical resources within our environment.'*²⁰

44. Marlborough's tangata whenua iwi have developed an environmental ethic and management system for the sustainable management of natural resources which is embodied in kaitiakitanga.

45. The responsibility of kaitiaki is seen by iwi as twofold: the ultimate aim is to protect the mauri (life force) of the environment, and with this there is a duty to pass the environment to future generations in the same or better condition than its current state.

46. This decision document outlines the Panels approach to considering and/or adopting the use of kaitiakitanga within existing and new plan provisions, based on the submissions of Marlborough's tangata whenua iwi and the broader community.

Objective 3.2

Natural and physical resources are managed in a manner that takes into account the spiritual and cultural values of Marlborough's tangata whenua iwi and respects and accommodates tikanga Māori.

47. This objective attracted five submissions. HNZPT, FNHTB, PMNZ and Trustpower,²¹ all of which seek retention of the provision as notified. The fifth submission from Ngāi Tahu²² seeks retention of the provision, but with an amendment. This amendment by Ngāi Tahu addresses s 7 of the RMA.

48. The amendments sought to the wording of the objective are as follows:

- *Rather than taking into account spiritual and cultural values of iwi, particular regard is had to them.*
- *Explicit reference be made to Marlborough's tangata whenua iwi as being kaitiaki.*
- *Rather than accommodating tikanga, tikanga is enabled.*

²⁰ PMEP Volume 1, page 2-2.

²¹ HNZPT (768.6), FNHTB (716.16), Trustpower (1201.6).

²² Ngāi Tahu (1189.14).

49. Ngāi Tahu considers these three amendments are better aligned with ss 7(a) and s 58 of the RMA and that their inclusion will strengthen the objective.

Section 42A Report

50. We support the Section 42A Report where it acknowledges confidence with parts of the amendments as there are references to the 'ethic' and exercise of 'kaitiakitanga' in the explanation to the objective. Further, an alignment with the directive '*shall have particular regard to*' in s 7 is appropriate given the matters to which regard shall be given include kaitiakitanga (s 7(a)) and the ethic of stewardship (s 7(aa)). We consider, too, that the amendment seeking to formally acknowledge Marlborough tangata whenua iwi as kaitiaki is appropriate as this description is clear throughout Chapter 3.

51. The report writer is not so confident, however, about the further amendment to the change 'accommodate tikanga Māori' to 'enables' tikanga Māori. For the PMEP as a whole generally uses the word 'enable' as a signal that there are Permitted Activity provisions giving effect to such references – resulting in potential confusion for users. The word 'accommodate' has a less active intent and does not necessarily signal action would be taken to facilitate something. 'Section 7 RMA requires the Council to manage the use, development of natural resources having particular regard to kaitiakitanga – does this *enable* tikanga?'²³

Consideration

52. We agree that the word 'accommodate' in Objective 3.2 should not be replaced by 'enables', for the reasons referred to in the Section 42A Report, but also for slightly different reasons.

53. The phrase 'tikanga Māori' relates to 'Māori customs and practices'.²⁴ Ms Hariata Kahu for Ngāi Tahu provided a careful explanation of one of these cultural customs and practices. In her brief of evidence she shares her understanding of several cultural values that apply to realms of cultural and natural resource management.²⁵ That understanding includes kaitiakitanga which embodies for Ngāti Kuri the responsible management of resources. Ms Kahu shares her knowledge as follows:

'Although it is a responsibility for all Māori to practice kaitiakitanga, the role of kaitiaki (authorised guardian) is often placed upon appointed mātauranga/tohunga trained individuals and is handed down from one generation to the next. Kaitiaki are the monitors of resource health and wellbeing. Kaitiaki are entrusted with the mātauranga

²³ Section 42A Report, page 9.

²⁴ Section 2 RMA Interpretation.

²⁵ Ngāi Tahu Summary Statement, PMEP Hearings 20 November 2017. Ms Kahu is Chairperson of Te Runanga Kaikōura Inc which represents the interests of Ngāti Kuri. Ms Kahu has direct links to significant Ngāi Tahu.

*which enables them to interpret signs in the environment, such as environmental indicator species or natural events that can be utilised to understand the changing ecology. Kaitiakitanga in the resource management context means maintaining and enhancing the integrity of life -sustaining the resources we all depend on to survive. While the role of kaitiaki has evolved to **accommodate contemporary resource management processes, we are still guided and remain true to our cultural foundations based on mauri and mātauranga.**' [Our emphasis]*

54. With reference to Ngāi Tahu's suggested amendment, there is a fine line between 'accommodates' and 'enables'. Both kaitiakitanga and the exercise of tikanga Māori are living, existing iwi cultural concepts. They endure/exist in the environment as positive cultural forces. The MDC is required to pay them particular regard through the relevant s 7 RMA provisions in its management of the region's natural and physical resources – either by reconciling differences or adapting them to suit the cultural purpose relating to the resource.
55. 'Accommodate' requires adaptation, harmonization, reconciliation. 'Enables' provides someone with the means or authority to do something.²⁶ It can mean promote or assist.
56. The manner of MDC's management of the region's resources should not 'enable' tikanga Māori, for it suggests a measure of control to be switched on and off by the Council to grant the tangata whenua iwi the means or authority to exercise kaitiakitanga (even if that is not meant), after giving the position particular regard. On the other hand, the word 'accommodates' implies a consistent recognised existence of guardianship of Marlborough's tangata whenua iwi absorbed into the Council's process of managing Marlborough's resources.
57. It is important to tangata whenua iwi that in sustainably managing Marlborough's natural and physical resources, appropriate recognition is given to tikanga Māori when having regard to the spiritual and cultural values of iwi. This is important to iwi as observing tikanga is part of the ethic and exercise of kaitiakitanga.

Decision

58. Objective 3.2 is amended to read:

Natural and physical resources are managed in a manner that has particular regard to ~~takes into account~~ the spiritual and cultural values of Marlborough's tangata whenua iwi as kaitiaki and respects and ~~accommodates~~ enables tikanga Māori.

²⁶ New Zealand Pocket Oxford Dictionary *The Future of New Zealand English* Fourth Edition, pages 7, 371.

It is important to iwi that in sustainably managing Marlborough's natural and physical resources, ~~when taking into account the spiritual and cultural values of iwi that,~~ appropriate recognition is given to tikanga Māori when having regard to the spiritual and cultural values of iwi. This is important for iwi as observing tikanga is part of the ethic and exercise of kaitiakitanga.

[New] Objective 3.2

59. Natural and physical resources are managed in a manner that takes into account the spiritual and cultural values of Marlborough's tangata whenua iwi and respects and accommodates tikanga Māori.

60. In response to the hearing and evidence presented, the report writer considered that adding specific provisions at potentially all levels to provide for/recognise kaitiakitanga could be provided.²⁷ Ngāti Toa²⁸ seeks a new objective for that purpose to include kaitiakitanga. Policy 3.1.3 provides for kaitiakitanga at a policy level with regard to resource consents. The Section 42A Report recommends that this be rejected as it is iwi who practise kaitiakitanga and the value does not need to be included in policies, methods, rules. Ngāi Tahu²⁹ in response considers that s 7(a) of the RMA supports a planning approach whereby kaitiakitanga is enabled throughout a plan. Kaitiaki cannot care for the environment if their views, issues or concerns do not form part of the process. A specific objective would facilitate this. Ngāi Tahu proposes the following:

'Objective XX - A strong and enduring relationship between the Council and Marlborough's tangata whenua iwi: the delivery of resource management outcomes that enables iwi to exercise kaitiakitanga.'

61. The Panel reviewed the issue of kaitiakitanga again in the light of iwi concerns that kaitiakitanga is not reflected throughout the plan as they would like. The Panel accepts the relief sought by Ngāi Tahu. A new Objective 3.2 places emphasis on the development and maintenance of the relationship between the Council and iwi authorities.

62. A positive relationship between the Council and Marlborough's tangata whenua iwi in the delivery of resource management outcomes is a different issue.

Decision

63. The Panel considered all these issues and took up the iwi suggestions to provide an extra objective to address concerns relating to the management of natural and physical resources in

²⁷ Section 42A Report, Consideration of Evidence Received for Marlborough's Tangata Whenua Iwi Hearing 12 November 2018, page 1.

²⁸ Ngāti Toa (166.4).

²⁹ Ngāi Tahu Tanya Jane Stevens Evidence, paragraphs 67-70.

the context of Māori spiritual and cultural values. The new objective is to be included at Objective 3.2 and is to read as follows:

Objective 3.2 – A strong relationship between the Council and Marlborough's tangata whenua iwi in the delivery of outcomes that accommodate iwi to exercise kaitiakitanga.

Marlborough's tangata whenua iwi believe that the exercise of kaitiakitanga is essential to protecting the mauri of natural resources and to fulfilling a duty to ensure the environment is left in the same or better condition than the current state for future generations. This objective recognises the role of the Council in enabling opportunities for Marlborough's tangata whenua iwi to exercise kaitiakitanga. The nature of the opportunities is identified in other provisions of this Chapter. However, all policies and methods require a strong, positive relationship between the Council and the iwi authorities in order for the provisions to be implemented successfully and meaningfully. The objective therefore places emphasis on the development and maintenance of that relationship.

Issue 3D

The impact of resource use on the mauri of natural resources.

64. The opening paragraph of Issue 3D identifies that *mauri* is the life force existing in all things in the natural world, comprising both physical and spiritual qualities. Iwi consider mauri within *all* natural resources must be protected and sustained if the environment is to flourish. As identified, under Issue 3B the responsibility of kaitiaki is twofold. The first is to protect mauri, and secondly there is a duty to pass the environment in a sound state to future generations.³⁰
65. The explanation to Issue 3D refers to the importance of 'water bodies' as being particularly significant to Marlborough's tangata whenua iwi. Te Ātiawa in its submission seeks to amend the term by replacing it with 'coastal waters' as they assert 'coastal waterbodies' is defined in the RMA as only including 'fresh water'. The iwi is unclear as a result whether the term 'fresh water' extends to 'natural resources' and that, as it stands, the use of 'fresh water' limits any reference to 'coastal water' which is an integral part of Te Ātiawa's guardianship.
66. The report writer considers referencing *coastal waterbodies* as suggested is confusing as a waterbody under the RMA is only freshwater. The Section 42A Report indicates why Issue 3D as notified should be retained:

³⁰ PMEP Volume 1 Chapter 3 Matter 2 Issue 3D.

accommodating activities to occur on **their** land including papakāinga, marae, cultural activities, cultural use. [Emphasis added.] This will assist in social, cultural and economic development.

82. The Section 42A Report identifies that Objective 3.4 is more appropriate for achieving the purpose of the RMA than an objective seeking development of papakāinga that is not limited to Māori land. Further, any change to Objective 3.4 as suggested by Ngāti Toa would also result in it being inconsistent with Policy 3.1.6 (see below). The report writer considers if the development of papakāinga as a permitted activity is not limited to Māori land, then not only could that activity occur anywhere but it could be done by any person irrespective of whether they were tangata whenua. This has the potential to have significant adverse effects on the environment. In her view, the notified wording of Objective 3.4 is more appropriate for achieving the purpose of the RMA.

Consideration

83. Matters relating to papakāinga and marae and cultural activities are further addressed in Policy 3.1.6. The Panel accepts the report writer's recommendation on this issue. There is no change to the objective.

Decision

84. Objective 3.4 remains as notified.

Objective 3.5

Resource management decision making processes that give particular consideration to the cultural and spiritual values of Marlborough's tangata whenua iwi

85. Objective 3.5 attracted three submissions.⁴¹ HNZPT and FNHTB seek retention of the provision, as notified, with Ngāi Tahu supporting the provision subject to amendments. These particular amendments sought are:

Resource management decision making processes that involve Marlborough's tangata whenua iwi, and recognise and reflect the cultural and spiritual values of Marlborough's tangata whenua iwi, and their relationship to lands, water, waahi tapu and waahi taonga.

86. The reasons given for the amendments are that, based on the explanation to the objective, they provide greater clarity to plan users and the outcome sought through this objective. And, that the wording 'involve Marlborough's tangata whenua iwi' has been proposed because as without iwi involvement, it will be difficult to give consideration to/recognise and reflect their cultural values. And finally, the wording as to their relationship with lands and water waahi tapu and

⁴¹ HNZPT (768.9), FNHTB (716.19), Ngāi Tahu (1189.17).

waahi toanga is also included as many key decisions will relate to s 6(e) RMA matters which will require the insight, views and guidance of iwi.

87. Ngāi Tahu's submission received two submissions in opposition. Federated Farmers sought clarity in the PMP regarding what iwi involvement in resource management looks like in practice, and, that it be transparent and justified. PMNZ supports the addition of the words 'and their relationship to lands, water, waahi tapu and waahi taonga' as better reflecting s 6 RMA. The company otherwise opposes the word 'reflect' in the amendments as it does not import the wording of s 6 of the RMA.

Section 42A Report

88. The report writer supports the addition of the words 'and their relationship to lands, water, waahi tapu and waahi taonga' as it reflects similar wording in other objectives. The addition of the words 'involve Marlborough's tangata whenua iwi' however creates an issue:

- *The objective would change from considering iwi values in the decision-making process to having iwi involved in making it.*
- *The explanation to the objective includes discussion on iwi involvement at a plan writing level in the implementation monitoring of the Plan, and it also references ongoing involvement in decision-making processes; this suggests iwi would be involved in all decision-making processes following such a high-level directive.*
- *The explanation to the objective is seen by the report writer as somewhat ambiguous, and she considered the wording of (related) Policy 3.1.3. That sets out the matters decision makers must consider – that is, if the application is likely to affect the relationship of iwi and their culture and traditions.*
- *This process then triggers the provisional involvement that is provided for in Method 3.M.7 Decision making processes - which states, depending on the circumstances, a commissioner with expertise in tikanga Māori will be appointed to a committee charged with hearing and deciding an application. The Council will support iwi members to be certified commissioners and provide opportunities for the tangata whenua to become involved.*

89. The report writer is not convinced about that part of the Ngāi Tahu amendment seeking reference to certified commissioners charged with hearing applications is appropriate. It may establish an objective that gives iwi greater involvement in decision-making than intended. She is also concerned with the proposed change in wording from 'give particular consideration' to

'recognise and reflect'. The existing wording of the current objective seeks a consideration of values which leaves room for a determination that there may be none. It seems to be a move away from an objective with discretion (see also Policy 3.1.3) to one that is more absolute.

90. The report writer's advice is to amend Objective 3.5 as follows:

Resource management decision making processes that give particular consideration to the cultural and spiritual values of Marlborough's tangata whenua iwi, and their relationship to lands, water, waahi tapu and waahi taonga.

Consideration

91. We support the submission that particular consideration of the cultural and spiritual values of Marlborough's tangata whenua iwi is an essential part of MDC's decision-making process but agree with PMNZ that 'reflection' is not a necessary part of the process. This may or may not happen in the assessment of the effects of a proposal. If 'particular' consideration is not given, Objective 3.5 as it stands is somewhat of a hollow vessel, but 'reflection' is a step too far and is not part of the language of the RMA.

92. No submissions suggested change to the explanation to Objective 3.5. We note by leaving it intact, it encompasses a number of other processes that have come to the fore in recent years to assist Marlborough's tangata whenua iwi in MDC's decision-making processes. These may be identified in information to come in future Iwi Management Plans (IMP), the information already available in Statutory Acknowledgements, and the mandatory process now in place to advise tangata whenua iwi of all resource consent applications that come before Council, and finally the application of Method 3.M.5 (Cultural Indicators) to be identified in the future.

93. In addition the new RMA provision for Mana Whakahono ā Rohe agreements needs acknowledgment in the explanation to this objective.

Decision

94. The Ngāi Tahu submission is accepted in part as is that of PMNZ⁴² with the deletion of the word 'reflect'. HNZPT and the FNHTB submissions are also accepted in part to the extent that parts of the objective not amended are retained as notified.

95. Objective 3.5 is amended as follows:

⁴² PMNZ (433).

Objective 3.5 - Resource management decision making processes that give particular consideration to the cultural and spiritual values of Marlborough's tangata whenua iwi and their relationship to lands, water, waahi tapu and waahi taonga.

96. Add a new sentence to the end of the explanatory statement to Objective 3.5 as follows:

This can be achieved through Mana Whakahono ā Rohe agreements.

Policy 3.1.1

Management of natural and physical resources in Marlborough will be carried out in a manner that: [(a)-(e)]

97. This policy reflects how management of resources will be carried out in relation to Marlborough's tangata whenua iwi.
98. Submitters to this policy included FNHTB,⁴³ Ngāi Tahu⁴⁴ and Ngāti Toa⁴⁵ in part, Federated Farmers,⁴⁶ Trustpower Ltd⁴⁷ and the Fishing Industry.⁴⁸ FNHTB seek retention of the provision Policy 3.1.1 as notified. Ngāi Tahu⁴⁹ seeks minor wording changes that in its view correct the drafting of Policy 3.1.1 which it believes reads more like an objective. Federated Farmers also support the policy in part and seek amendments.⁵⁰
99. Ngāti Toa seeks the addition of a new part (f) to Policy 3.1.1 which recognises that the principle of consultation requires both parties to have the time and resources to consult appropriately.
100. Federated Farmers seek also to delete part (d) from Policy 3.1.1 which relates to recognition of the rights of tangata whenua and the status of iwi as distinct from that of interest groups and members of the public. The organisation also considers that (d) is a duplicate of (a) that relates to taking Te Tiriti into account. And in any case the submitter has doubts that iwi do have a higher status than any other party under the RMA.
101. Trustpower initially sought to delete part (e) from Policy 3.1.1 - the right of iwi to define their own preference for sustainable management of natural and physical resources where their preference is not inconsistent with the RMA. The company considers that (e), as it stands infers that iwi will define what constitutes management of natural and physical resources when that is actually the role for decision-makers on resource consent applications and statutory planning

⁴³ FNHTB (716.20).

⁴⁴ Ngāi Tahu (1189.18).

⁴⁵ Ngāti Toa (166.1).

⁴⁶ Federated Farmers (425.3).

⁴⁷ Trustpower (1201.1)

⁴⁸ This is the name under which a large number of interests are gathered.

⁴⁹ Ngāi Tahu (1189.18).

⁵⁰ Federated Farmers (425.3).

documents. Further, it says the policy incorrectly suggests that the sustainable management of natural and physical resources will be achieved where activities are 'not consistent' with the RMA.

102. The Fishing Industry seeks a new subclause (f) to the policy as follows: 'recognises the fishing rights allocated and protected under the Māori Fisheries Settlement and avoids, remedies or mitigates any adverse effects on the exercise of those rights caused by activities under the RMA'. But fisheries-related resource consent issues at the time of hearing are on appeal to the Court of Appeal by the Attorney-General and are therefore not for discussion here.

103. In essence the iwi submissions call in aid the Treaty principles and recognition of those in a practical sense relating to management of natural and physical resources and how decision making will be carried out in the Plan.

Section 42A Report

104. The report writer identifies that the current wording of the policy provides a better link to the objectives. There is not sufficient gain to warrant accepting the amendments.

105. The report writer also considered it is inappropriate to amend Policy 3.1.1 in the way suggested and that the issues raised would be better addressed in new Methods of implementation if the existing provisions of the policy are lacking. Ngāi Tahu initially did not provide any specific wording to address its concerns so no further assessment could be made of either its amendment to the policy or the methods.

106. At the hearing Ngāi Tahu offered two new methods in its evidence – raising and promoting the awareness of Te Tiriti for decision-makers, and with regard to IMP, recognising the right of iwi to state their preferences in relation to environmental management. The first suggestion is for the MDC to develop a training course for all councillors and decision-makers; the second is for the Council to work with iwi in developing management plans to better enable iwi to participate in RMA processes. Ngāi Tahu recognises that there will be costs associated with both methods to be borne by Council. While these do not need to be unreasonable they are said to be necessary to the Council's particular obligation to iwi.⁵¹

107. The Section 42A Report indicates that the method Ngāi Tahu offered around raising awareness of Te Tiriti is already covered through the Making Good Decisions course that all decision-makers undertake. As to the issue around IMP, the matters are already covered in Policy 3.1.4 and Method 3.M.3.

⁵¹ Ngāi Tahu, Tanya Jane Stevens Evidence, paragraphs 71-78.

- (c) ~~promotes~~ promoting awareness and understanding of the Marlborough District Council's obligations under the Resource Management Act 1991 regarding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi among Council decision makers, staff and the community;
- (d) ~~recognises~~ recognising that tangata whenua have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the Resource Management Act 1991 accords iwi a status distinct from that of interest groups and members of the public; and
- (e) ~~recognises~~ recognising the right of each iwi to define their own preferences through management plans and other documents for the sustainable management of natural and physical resources, where this is not inconsistent with the Resource Management Act 1991.
- (f) recognising the right of iwi to invite the Council to enter into mana whakahono ā rohe agreements.

116. Add two new sentences to the last paragraph of the explanatory statement to Issue 3G as follows:

... They therefore welcome the opportunity to explore ways of improving their participation in resource management decision making processes as a practical expression of kaitiakitanga. This could be expressed through mana whakahono ā rohe agreements. Iwi authorities can invite the Council to enter into an agreement in order to record ways in which Marlborough's tangata whenua iwi can participate in resource management and decision making processes.

117. Add a new paragraph to the end of the explanatory statement to Policy 3.1.1:

A recent amendment to the RMA has created the opportunity for iwi authorities to invite local authorities to enter into mana whakahono ā rohe agreements in order to build on the Treaty relationship between local authorities and iwi authorities.

Policy 3.1.2

An applicant will be expected to consult early in the development of a proposal (for a resource consent or plan change) so that cultural values of Marlborough's tangata whenua iwi can be taken into account.

118. Consultation with tangata whenua iwi over issues arising under Part 2 RMA have proved a vexed question for applicants, councils and iwi alike since the legislation was implemented. The issue arises again in the PMEP.

119. Marlborough's tangata whenua iwi have the detailed knowledge of their ancestral lands, water, knowledge of their customs, their sacred places, their taonga. The significance of consultation in that regard is that the MDC acknowledges it has obligations to Māori as a result of the provisions of the RMA, especially through ss 6, 7 and 8. This includes applying one of the principles of the Treaty of Waitangi/Te Tiriti o Waitangi – the importance of early consultation.⁵³
120. The word 'expects' in Policy 3.1.2 generated a number of submissions from Ngāi Tahu and Ngāti Toa for iwi, Friends for the Community, and the remainder from industry and the primary sector.
121. Ngāi Tahu,⁵⁴ FNHTB,⁵⁵ and KiwiRail⁵⁶ seek the retention of the policy as notified. KiwiRail also seeks the retention of Method 3.M.4 Consultation as notified. PMNZ, Trustpower, Ravensdown Ltd, Hort NZ, and the Oil Companies,⁵⁷ with the exception of Federated Farmers, all support an amended policy with some differing variations/amendments. Parts of the Ngāi Tahu and Oil Companies' submissions seek new policies.
122. Ngāi Tahu considers that the policy to consult early with iwi is an appropriate expectation consistent with best practice. It observed, however, that the policy is directed only at applicants, whereas they assert the MDC have a partnership relationship (implying the need for consultation) arising from the Treaty principles extant in s 8 RMA and its duties generally under Part 2 matters. The iwi seek a separate policy to make this clear ('the Council will consult') as consultation is currently only implicit in the framework of objectives and policies in the plan.
123. Ngāti Toa⁵⁸ seeks new rules/methods and a new appendix and overlay that includes site areas and habitats that are culturally significant. The purpose of this is to ensure timely engagement between stakeholders and the Council. This document would contain a caveat that not all information is disclosed by iwi and that the overlay is only a starting point for full consideration of and consultation with Māori.
124. Federated Farmers consider Policy 3.1.2 is overly onerous, inefficient, and imposes significant costs and uncertainty on applications with no clear benefits. It seeks that Policy 3.1.2 and Policy

⁵³ PMP Volume 1 Chapter 3, Policy 3.1.2, page 3-15.

⁵⁴ Ngāi Tahu (1189.19).

⁵⁵ FNHTB (716.21).

⁵⁶ KiwiRail (873.2).

⁵⁷ Ravensdown Ltd (1090.2), Trustpower (1201.2), Hort NZ (769.4), Oil Companies (1004.1), Federated Farmers (425.5).

⁵⁸ Ngāti Toa (166.1).

3.1.4 are merged, but with the outcome in the report writer's opinion, that the combination of the two policies effectively removes all reference to consultation with iwi altogether.⁵⁹

125. The Oil Companies seek amendments to Policy 3.1.2 to substitute the word 'encourage' for 'expect' for applicants to consult early in the development of a proposal. They also seek either via a new policy or method a process whereby: it can be determined with certainty what is likely to be of significance to iwi; who should be consulted; and some considerations are established as to engagement expectations relating to such matters as contact and response times, information sharing protocols and cost recovery by iwi.
126. Ravensdown Ltd seeks that Policy 3.1.2 is amended so that it applies only to plan changes. Its reason is that the RMA does not require consultation with any party requiring a resource consent application and there may be occasions when consultation is not necessary or possible. Federated Farmers submitted in support of this approach as it also underpins consistency with the way in which the RMA is constructed.
127. Hort NZ also seeks the substitution of the word 'expect' early consultation by 'encourage'. But it also seeks to replace the remainder of the policy with the words where 'the scale and significance of the impact will affect cultural values'. The latter approach is problematic because the new wording suggested appears to represent a contractual agreement between the applicant and iwi. And in reality it is the Council and iwi to establish the circumstances in which a proposal may affect them. As currently worded in this submission it appears as though iwi are the decision-maker about the appropriate scale and significance of a project.
128. PMNZ has a number of general concerns regarding the practicalities of the consultation provisions in the PMP. In particular, it seeks a resolution of the two opposites:
- (a) submitters who seek the inclusion of general 'requirements' that applicants and/or the Council be required to consult with mana whenua in relation to applications for consent; and
 - (b) submitters who seek that, while consultation with iwi should be encouraged where appropriate, it should not be mandated in all situations.
129. The company reinforces its early submission that the wording of Policy 3.1.2 should 'encourage' and not 'require' consultation.
130. Trustpower supports Policy 3.1.2 in part, seeking an amendment also requesting that 'expected' be amended to 'encouraged'. This is because the MDC has no authority to require a

⁵⁹ Section 42A Report Consideration of Evidence Received for Marlborough's Tangata Whenua Iwi Hearing.

resource consent applicant to consult with any party and it is unclear how the PMEP anticipates that the expectation for consultation will manifest itself. While there is no obligation for a consent applicant to consult under the RMA, however, it is carried out as 'best practice' (supporting Ngāi Tahu's approach).

131. In another submission point,⁶⁰ Ngāi Tahu seek a new policy as follows: *'The Council will consult with tangata whenua iwi on applications that may have an impact on the relationship with land, water, wahi tapu or wahi taonga, or otherwise on their cultural values.'*

Section 42A Report

132. In the opinion of the report writer the concerns of Ngāi Tahu are addressed through Methods 3.M.4 Consultation, 3.M.3 Consideration of iwi management plans (IMP); and through the requirements under Method 3.4.2 Recognising statutory acknowledgements. These better require a summary of all resource consent applications lodged with Council to be provided to iwi prior to a s 95 RMA decision as to whether to notify an application being made under the PMEP. Ngāi Tahu's draft policy is recommended to be rejected.
133. We have already observed that MDC had been supportive of the inclusion of sites of significance to iwi and initially sought that those be identified and mapped throughout the lengthy IWG process in time for implementation into the PMEP. This identification and mapping, however, did not eventuate because some iwi did not wish to have sites identified in the PMEP – a matter recognised by Ngāti Toa and other iwi at the hearing.
134. In that vacuum the report writer identifies that Ngāti Toa's concerns are also addressed through Method 3.M.2 as Statutory Acknowledgements recognise the particular cultural, spiritual, historical and traditional association of an iwi with an identified site/area. As noted earlier, her recommendation is that sites of significance should be added to the PMEP but by way of a variation or plan change as it will require consultation with all iwi and landowners. Marlborough's tangata whenua iwi, including Ngāti Kuia, support this approach.
135. In the absence of any specific new provisions from the Oil Companies to assess, the report writer reiterates that Methods 3.M.2 Recognising statutory acknowledgements, 3.M.3 Consideration of management plans, 3.M.4 Consultation and 3.M.6 Cultural impact assessment and cultural value reports, all provide PMEP users with guidance as to the various ways in which they can ascertain 'what is likely to be of significance to iwi' together with the relevant iwi to approach for consultation. The report suggests it would not be appropriate for the PMEP to have provisions regarding engagement expectations, such as contact and response times, information

⁶⁰ Ngāi Tahu (1189.20).

sharing protocols and cost recovery by iwi, as those expectations would be a matter between the relevant iwi and the applicant for a particular proposal.

136. In closing off this section of the report, the report writer identifies that the wording of Policy 3.1.2 'expects' early consultation is deliberate, reflecting the fact that the policy in the RMA does not 'require' consultation - an 'expectation' is not the same as a 'requirement'. 'Requirement' provides something akin to a threshold that had to be met for an application to proceed. 'Expectation', on the other hand, leaves the door open to there being, in some circumstances for good reason, no consultation.

Issues arising

- Legal requirements
- Expect/encourage?
- Finding relevant information
- Statutory Acknowledgements

Legal requirements

137. Section 36A(1)(a)(b)(c) RMA states as follows:

36A No duty under this Act to consult about resource consent applications and notices of requirement

(1) The following apply to an applicant for a resource consent and the local authority:

- (a) neither has a duty under this Act to consult any person about the application; and**
- (b) each must comply with a duty under any other enactment to consult any person about the application; and**
- (c) each may consult any person about the application.**

138. Thus, while there is no duty under the RMA for applicants or local authorities to consult any person about an application for a resource consent and requirements (s 36A(1)(a)), the section also applies to a notice of requirement issued under ss 168, 168A, 189 and 189A. If other legislation outside the RMA requires consultation then applicants and local authorities must abide by that duty to consult (s 36A(1)(b)) around issues arising under that legislation.⁶¹

139. Irrespective of s 36A(1)(a), the legislation provides that applicants and authorities *may consult* any person about the application (s 36A(1)(c)). This provides the parties with a discretion to consult Marlborough's tangata whenua iwi (or otherwise) about an application for a resource consent or private plan change.

⁶¹ Local Government Act 2002.

140. Section 95E(1) RMA requires the consent authority to decide if a person is affected in relation to an activity, if the activity effects are minor or more than minor. (This appears to the Panel to contemplate that a council may need to consult to identify who or what organisation is an 'affected person'.) Section 95E(2)(c) requires that consent authorities must have regard to every relevant statutory acknowledgement made in accordance with an Act identified in Schedule 11 RMA. This schedule includes the various settlement deeds relating to Marlborough's tangata whenua iwi and its significance is further referred to elsewhere.
141. In Schedule 4 RMA, clause 6(1)(c) as to 'Information required in application for resource consent' directs that information for resource consents must include a mandatory assessment of the actual and potential effects on the environment. Schedule 4, clause 6(1)(f) requires the identification of the persons affected by the activity, any consultation and any response to their views.
142. Schedule 4, clause 6(3)(a), however, identifies that reporting the persons affected by a proposal does not oblige an applicant to '*consult any person*' or '*create any ground for expecting an applicant will consult*'. This appears to relate back to the fact that there is no duty for applicants to consult under s 36A(1). But it does not exclude s 36A(1)(c), leaving it open for applicants to consult if they consider it is appropriate.
143. Schedule 4 7(1)(a) requires a mandatory assessment of effects on those in the neighbourhood and, where relevant, the wider community – including cultural effects. And Schedule 4 7(1)(d) requires an assessment of any effect on natural and physical resources having spiritual or cultural value. Both these provisions identify the need for the relevant iwi to be involved in consultation by the applicant.

Resolution of expect/encourage

144. Under s 36A(1)(a) RMA there is no 'duty' for an applicant to consult with anyone on resource consent applications. Under Schedule 4 clause 6(3)(a) reporting that someone is affected by a proposal does not create a duty or obligation for an applicant for a resource consent to consult any person. 'Obligate' is defined as a limit on 'a person legally or morally', and 'obligation' is defined as [the] 'constraining power of law, *duty*, contract'.⁶² Thus 'duty' and 'obligation' are interchangeable and is one reason why we do not consider Ngāi Tahu's suggested policy of an obligation on council to consult, has traction.
145. We have concluded the word 'expects' sets up the *probability* of consultation. It sets up just as high a threshold as 'requirement'; but with the application of Section 36A(1)(a) and Schedule 4

⁶² New Zealand Pocket Concise Oxford Dictionary *The Future of New Zealand English* Fourth Edition, p 776.

clause 6(3)(a) as to resource consent applications and plan changes, no person is *obliged* to consult or give any grounds for doing so.

146. We conclude that 'expected' to consult should be amended to 'encouraged' and the policy be amended also to state that this is 'best practice'.

Where to find relevant information

147. This opens up the question of where an applicant (who *does* want to engage with tangata whenua iwi under s 36A(1)(c) RMA) is to find relevant guidance. Even with some knowledge publicly available, tangata whenua iwi assured us that much relevant cultural information is still held privately by the iwi in the areas identified in the statutory authorities. There may be 'hidden files'.

148. The MDC's long-held administrative policy has been to circulate the tangata whenua iwi with all applications for resource consents. The Panel was informed that to date these lists are rarely responded to. Post-settlement that may well change, particularly as the Statutory Acknowledgements now broadly identify so many iwi areas of cultural significance and the MDC is now required to address those Acknowledgements as a matter of law.

149. This process is now encapsulated in s 95 RMA providing steps for the MDC to assess whether applications should be notified or non-notified. Recent RMA amendments to the resource consent limited notification provisions were introduced as part of the Resource Legislation Amendment Act 2017 (s 95B RMA). In identifying which parties should be notified as part of the new step-by-step analysis, Step 1 involves determining whether there are any affected protected customary rights groups or Customary Marine Title groups, or whether the proposed activity is on or adjacent to any land subject to Statutory Acknowledgement. Where there are no affected groups, the analysis then shifts to Step 2 (identifying whether limited notification is precluded). Where iwi groups are not affected, consultation is not required.

Statutory Acknowledgements

150. A great deal of spatial information is set out in the MDC's Statutory Acknowledgements and the associated maps may be accessed on the Council website: <https://www.marlborough.govt.nz/your-council/tangata-whenua/te-tau-ihu-iwi-statutory-acknowledgements> and as concluded from the material supplied from the Section 42A Report, we also support Methods 3.M.2 Recognising statutory acknowledgements and 3.M.3 Consideration of iwi management plans. Ngāi Tahu had one of the first (very extensive) IMPs that is now referred to by consent authorities in the Canterbury region. IMPs may be considered

significant repositories of information if addressed as Method 3.M.3 suggests (see further at Policy 3.1.4).

Considerations for consultation

151. As described above, Marlborough's tangata whenua iwi were reluctant to divulge any further information as to places, waters, land and cultural issues until they had the opportunity to further liaise with MDC and consider a plan change to the PMEP as to what would be considered relevant information and to consult with landowners.
152. PMNZ's counsel helpfully proposed a list of requirements that might be considered for any anticipated meetings of iwi, landowners and Council to overcome some of the uncertainties we experienced with the suggestions in the submissions identified above. We record them here to avoid further delays and costs to the parties.
- (a) The areas in which applications will be subject to those requirements.
 - (b) Which activities within those areas require consultation.
 - (c) Which iwi must be consulted in relation to each of those areas.
 - (d) What the cultural values for Marlborough are and how they are to be recognised and provided for.
 - (e) Engagement expectations, including matters such as response times, information sharing and cost recovery by iwi.⁶³

⁶³ PMNZ Legal Counsel Submission, paragraph 34.

Consideration

153. After reading and hearing submissions, assessing the information in the Section 42A Report and addressing legal questions, we determined that Policy 3.1.2 requires amendment to the phrase 'an applicant will be 'expected' to consult early. The word 'encouraged' is to be substituted instead, with the addition of the phrase 'best practice'. This will provide applicants with a more realistic impetus to independently consult iwi (even outside of the Statutory Acknowledgements process).
154. We also concluded that early consultation with Marlborough's tangata whenua iwi is to be encouraged as it will ensure that relevant cultural considerations are adequately identified and taken into account prior to the advanced development of proposals or plan changes. This will also mitigate any potential disruption that can arise from consultation occurring at a late stage of development.

Decision

155. Policy 3.1.2 is amended as follows:

Policy 3.1.2

An applicant will be ~~expected~~ encouraged, as best practice, to consult early in the development of a proposal (for resource consent or plan change) so that cultural values of Marlborough's tangata whenua iwi can be taken into account.

Only Marlborough's tangata whenua iwi can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. This means that iwi are in the best position to determine whether a proposal will affect areas of significance for iwi. Consultation undertaken ~~It is therefore important that consultation with iwi occurs~~ early in the process of planning of a development (either by resource consent or plan change) to ensure impacts are allows the effects on the cultural values to be appropriately identified and addressed. Early consultation with Marlborough's tangata whenua iwi is therefore considered to be best practice when preparing an assessment of effects on cultural values.

Policy 3.1.3

Where an application for resource consent or plan change is likely to affect the relationship of Marlborough's tangata whenua iwi and their culture and traditions, decision makers shall ensure: [(a)-(e)]

156. This policy attracted six submissions. FNHTB seeks retention of the provision as notified.⁶⁴

Three others – Ngāi Tahu, HNZPT and PMNZ⁶⁵ – support the provision with amendments, and two oppose in part – Transpower and Fulton Hogan.⁶⁶

157. Transpower seeks to amend (a) and (b) of the policy to reword it in part to provide that (a) *particular regard is had to the ability* for tangata whenua to exercise kaitiakitanga with the deletion of the words '*is maintained*'. In Trustpower's opinion this wording is supported because it better reflects s 7 RMA. Further, the exercise of kaitiakitanga is only a matter to have particular regard to – there is no statutory requirement to strictly provide for or maintain the ability of iwi to undertake it.

158. Trustpower's reasons for amendments to (b) are that it understands that the vitality of the mauri of a waterbody can change depending on its quality and flows. As such, there can be a direct relationship between monitoring the mauri of a river and monitoring its existing flow or water quality. This approach could conflict with other objectives of the PMEP such as Chapter 5. (Objective 5.3 seeks to enable access to reliable supplies of freshwater for primary production, commercial and industrial purposes to ensure access to reliable supplies to support Marlborough's social and economic vitality.) The company considers that the policy should focus on avoiding, remedying or mitigating adverse effects on the overall integrity of mauri and recognise that its maintenance does not equate to maintaining the water flows, water quality or biophysical values of a waterbody in their existing state. Trustpower also seeks the provision of explanatory material in the PMEP that provides greater direction as to the elements that contribute to determining whether the integrity of the mauri of fresh or coastal waters, land and air is being maintained.

159. Fulton Hogan seeks the following amendment to the opening sentence of Policy 3.1.3: (b) *mauri as described in the relevant iwi management plan* is maintained... This submitter considers that while Policy 3.1.3 requires decision makers to ensure mauri is maintained and improved where degraded, Policy 3.1.4 requires iwi to provide guidance through IMP. Without that guidance there is a lack of certainty for consent applicants as to what level or management or mitigation will satisfy Policy 3.1.3.

⁶⁴ FNHTB (716.22).

⁶⁵ Ngāi Tahu (1189.21), HNZPT (768.10), PMNZ (433.2).

⁶⁶ Trustpower (1201.3), Fulton Hogan (717.8).

160. Ngāi Tahu submits that while consultation and notification of resource consents is implicit in the policy, making it explicit provides greater direction in understanding how the policy is to be implemented. Therefore it considers that an amendment requiring decision makers shall *'consult with, and notify resource consent applications to iwi, and ensure that ...*
161. Ngāi Tahu's submission is challenged by both Federated Farmers and PMNZ. In the Farmers' opinion it is unclear how the amendment would relate to small resource consents that might be required for farming activities. They say amendment should be limited to large-scale resource consents or plan change applications. PMNZ also considers in relation to subclause (d) of Policy 3.1.3 that it is unclear how the physical health of waterbodies will be considered and how in fact compliance with the provision would be demonstrated. It says the PMP already contains robust provisions for the protection of waterbodies and (d) duplicates a number of these. PMNZ also considers some aspects of the policy go beyond cultural matters and some requirements are unduly restrictive of proposals for use and development within the Port and Marina Zones. PMNZ's submission is supported by a further submission by MFA and AQNZ but the reasons given by the latter suggest that it only refers to amendments to the rule applying to the Coastal Marine Zone.
162. HNZPT seeks amendment to Policy 3.1.3 subclause (e) by deleting 'how' and replacing it with *'that traditional and cultural Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakainga and taonga raranga will be recognised and provided for'*. The reasoning advanced is that the use of the word 'traditional' in subclause (e) is too limited as it lacks the linkage of particular uses and practices to a particular time and does not provide for their ongoing evolution and change. The word 'cultural' is also said to be informed by the language of the RMA.
163. The other amendments sought are for grammatical reasons.

Section 42A Report

164. The RMA requires resource management issues of significance to be identified as they have been in Issues 3A-3J. Policy 3.1.3 provisions are developed to respond to these.
165. A recommended amendment to (a) moves the policy away from issues identified by tangata whenua iwi particularly Issue 3B that concerns the lack of accommodation for iwi to exercise kaitiakitanga; thus *'ensure ... the ability to exercise kaitiakitanga is maintained'* is a much stronger response.
166. The report writer responds also to other suggestions by disputing concerns about the conflict with other provisions. Objective 5.3 has policies that give effect to and only enable water to be

taken if it will have little or no adverse effects on water resources (that could affect mauri) or a minimum flow and allocation limit for the source is established in the PMEP, while Policy 5.2.4 states that environmental flows will be set to protect mauri of a waterbody. The report writer also considers the amendments Trustpower seeks to (b) do not respond to Issues 3A-3J better than the existing wording.

167. The report observes that in the absence of any new provisions in its submission from Trustpower to assess, Methods 3.M.2 Recognising statutory acknowledgements, 3.M.4 Consultation and 3.M.6 Cultural assessments reports and cultural value reports provide Plan users with various ways in which they can gather a greater understanding to ensure mauri values are maintained or improved when degraded.

168. The report writer identifies that Policy 3.1.4 does not require iwi to develop IMPs and neither does the RMA. While IMPs are important they do not replace the need for consultation between parties where appropriate. The encouragement⁶⁷ set out in Policy 3.1.2 that applicants will consult early in the development of a proposal should assist in providing the certainty referred to in Fulton Hogan's submission.

Consideration

169. Issues arising:

- Is the word 'ensure' in the third sentence to the opening paragraph too directive?
- And if so, what should it be replaced with?
- Should Policy 3.1.3(d) be deleted because it is too detailed for an RPS?
- Might Policy 3.1.3 subclauses (a), (b) and (c) be a block to development?
- Are the amendments by HNZPT acceptable?

170. The Section 42A Report identifies the words 'shall ensure' in the opening paragraph are 'too high a bar' for the local authorities to achieve. It leaves no room for solutions which, despite the benefits of an activity, are unable to be fully achieved. Further, it goes beyond the wording set out in s 56 RMA 'to recognise and provide for' and s 7 'have particular regard to'.

171. The Panel considered this, and came to the conclusion the word 'ensure' should be replaced with 'consider' because it is for the front-line decision-makers to assess whether an application for a resource consent or plan change is likely to affect Marlborough's tangata whenua iwi and how this may occur. And by interposing the word 'how' in front of subclauses (a), (b) and (c) of

⁶⁷ See amended to 'encourage' consultation, page 27 above.

Policy 3.1.3 it sets MDC officers on inquiry as to 'how' the iwi are likely to be affected and 'how' the special relationship with the iwi will be recognised and provided for. This word precedes the requirements in (a), (b) and (c) and is already operating.

172. As to a better Policy 3.1.3(d), this generally relates to values which are generally addressed in the PMEP. This is particularly so in Chapter 15 of the PMEP (including water quality). We consider these provisions should be deleted as they are also too detailed for an RPS.

173. Finally, the provisions HNZPT seeks to be included make the policy clearer and bring the use of the word 'traditional' more up to date by deleting 'how' and replacing it with 'that' and by including the word 'cultural' as well.

Decision

174. Policy 3.1.3 is amended as follows:

Policy 3.1.3 - Where an application for resource consent or plan change is likely to affect the relationship of Marlborough's tangata whenua iwi and their culture and traditions, decision makers shall ~~ensure~~ consider how:

- (a) the ability for tangata whenua to exercise kaitiakitanga is maintained;*
- (b) mauri is maintained or improved where degraded, particularly in relation to fresh and coastal waters, land and air;*
- (c) mahinga kai and natural resources used for customary purposes are maintained or enhanced and that these resources are healthy and accessible to tangata whenua;*
- (d) the special relationship between tangata whenua and nga wai will be recognised and provided for. ~~for waterbodies, the elements of physical health to be assessed are:~~*
 - ~~i. aesthetic and sensory qualities, e.g. clarity, colour, natural character, smell and sustenance for indigenous flora and fauna;~~*
 - ~~ii. life supporting capacity, ecosystem robustness and habitat richness;~~*
 - ~~iii. depth and velocity of flow (reflecting the life force of the river through its changing character, flows and fluctuations);~~*
 - ~~iv. continuity of flow from the sources of a river to its mouth at the sea;~~*
 - ~~v. wilderness and natural character;~~*
 - ~~vi. productive capacity; and~~*
 - ~~vii. fitness to support human use, including cultural uses.~~*

- (e) ~~how~~ *traditional and cultural* Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakāinga and taonga raranga are ~~to be~~ recognised and provided for.

Policy 3.1.4

Encourage iwi to develop management plans that contain:

- (a) specific requirements to address the management of coastal waters, land and air resources, including mauri, and in relation to Sections 6(e), 7(a) and 8 of the Resource Management Act 1991;**
- (b) protocols to give effect to their role of kaitiaki of water and land resources;**
- (c) sites of cultural significance;**
- (d) descriptions of how the document is to be used, monitored and reviewed; and**
- (e) the outcomes expected from implementing the management plan.**

175. Three submissions from FNHTB, Ngāi Tahu and Fulton Hogan⁶⁸ seek retention of the policy as notified. Four - Federated Farmers, Irrigation NZ, HNZPT and Ngāti Toa – either oppose or support Policy 3.1.4 subject to amendment.⁶⁹

176. Ngāi Tahu's observation in respect of this policy is that IMP are essential tools giving as an example the Kaikōura Management Plan described as comprehensive, providing insight and detail to inform resource management processes. Ngāi Tahu considers the policy is an indication of the expression of kaitiakitanga as provided for by s 7(a) RMA, and this would be made clearer if kaitiakitanga is referenced after the provision.

177. Fulton Hogan seeks retention of Policy 3.1.4 as notified, inferring, however, that IMP are 'required' through this policy in order to provide certainty for resource consent applicants (with reference back to Policy 3.1.3). The matter of IMPs being 'required' as opposed to 'encouraged' is raised. Nevertheless the report writer notes that relief sought (encourages) is quite explicit that the policy be retained as notified.

178. Federated Farmers seeks amendment to Policy 3.1.4 through the addition of a new part amendment limiting it to (f) 'background information for large-scale resource consent and plan change applicants so that Marlborough's tangata whenua iwi can be taken into account in the preparation of an application'. While the organisation identifies its support for the development of IMP it is of the opinion that Policies 3.1.2 and 3.1.4 should be combined.

179. Irrigation NZ seeks amendment to the opening statement of Policy 3.1.4 to also 'Require iwi to develop iwi management plans that contain...'. Irrigation NZ's reason for agreeing with Ngāi

⁶⁸ FNHTB (716.23), Ngāi Tahu (1189.22), Fulton Hogan (717.9).

⁶⁹ Federated Farmers (425.5), Irrigation NZ (778.1), HNZPT (768.11), Ngāti Toa (166.14).

Tahu's recognition of the significance of IMP is that they are important tools that can assist and provide more certainty for applicants and protect iwi values.

180. HNZPT seeks amendment to Policy 3.1.4 point (c) as follows:

'(c) sites, places, areas and landscapes of cultural or historic significance;'

its reason being that IMP are an important means of identifying a range of historic resources of significance and this should be encouraged.

181. Ngāti Toa seeks to amend Policy 3.1.4 in the opening statement to support iwi management plans instead of encouraging them. Iwi make the point that iwi authorities are under-resourced and require capacity to fulfil their duties and the amendment sought will allow iwi to build capability and capacity in this space. It will also help MDC in meeting its obligations, and so it should have a resource specifically dedicated to the response.

Section 42A Report

182. The Section 42A Report identifies that in combining the two policies and amending the outcome, Federated Farmers in effect seek first the deletion of the policy requiring early consultation by the applicant (Policy 3.1.2), and secondly, replacing it with an additional matter in Policy 3.1.4 for IMP to provide background information for applicants. The two policies seek to achieve different outcomes and involve different parties – one between iwi and applicants and one about the relationship between iwi and MDC. Subsequently the evidence provided at the hearing by Federated Farmers suggests a change in its opinion - the organisation is no longer seeking an amendment to Policy 3.1.4.⁷⁰

183. In response to Irrigation NZ's submission that the RMA does not 'require' iwi to develop IMPs, the report identifies these plans may also include matters unrelated to resource management. There is no statutory requirement for the plans to be anything other than iwi want them to be.

184. On the HNZPT submission, (*'sites, places, areas and landscapes of historic or cultural significance'*) those are relevant in the context of Policy 3.1.4(c), and this amendment is recommended. Iwi should be encouraged to identify the range of resources of historic and cultural significance that are referenced throughout the PMEP.

185. In reply to Ngāti Toa's submission seeking MDC's support for developing IMP, the report writer originally believed that the proposed amendment is likely to set up an expectation by iwi that could not be met with regard to funding and resourcing issues. The provision of resourcing would either likely be a staffing matter and a Long Term Plan/Annual Plan matter – both issues

⁷⁰ Federated Farmers Evidence Kim Louise Reilly paragraphs 20-22.

beyond the scope of the PMP. 'Encouraging' or 'supporting' IMP sets up a doubt of whether the use of the word 'support' would set up an expectation of financial or resource support from MDC. But having had it pointed out that MDC's support was historically offered in the past to develop their IMPs, the report writer recalls that Ngāti Kuia ultimately lodged their Pakohe IMP with the Council as a result of this type of support (and similar support is given from Nelson City and Tasman District Councils).

Consideration

186. The Panel considers the policy as notified, but including reference in Method 3.M.9 to partnership, also allows the nature of support for the development of iwi management plans to be discussed between the Council and iwi authorities.
187. With respect to Policy 3.1.4, the Panel accepts HNZPT's suggested amendment to Policy 3.1.4(c) making explicit what may be incorporated into IMPs by way of the identification of areas of historic significance as well as cultural.
188. The definition of 'historic heritage' in s 2 RMA means those natural and physical resources that contribute to an understanding of New Zealand's *history* and cultures deriving from all the qualities identified in s 2(b)(i)-(iv). As HNZPT points out, Policy 3.1.4 is an encouragement policy and iwi should be encouraged to identify the range of **heritage** resources of historic or cultural significance.⁷¹
189. The overall finding results in a positive expression of support for the development of iwi management plans firstly with the word "*support* iwi management plans' which we endorse. Further, the word 'kaitiakitanga' is to be inserted into Policy 3.1.4(a) and minor amendments with the word '*assist*' inserted throughout the explanation to the policy.

Decision

Policy 3.1.4 is amended as follows:

Policy 3.1.4 - Encourage iwi to develop iwi management plans that ~~contain~~ may include:

- (a) specific requirements to address the management of coastal waters, land and air resources, including mauri, and in relation to Sections 6(e), 7(a) (kaitiakitanga) and 8 of the Resource Management Act 1991;*
- (b) protocols to give effect to their role as of kaitiaki of water and land resources;*
- (c) sites, places, areas and landscapes of historic and/or cultural significance;*
- (d) descriptions of how the document is to be used, monitored and reviewed; and*

⁷¹ See also Ngāti Kuia, Julia Eason Evidence.

(e) *the outcomes expected from implementing the management plan.*

Encouraging Marlborough's tangata whenua iwi to develop and implement iwi management plans will ~~help~~ assist to achieve two significant outcomes. Ultimately, it will ~~help~~ assist the Council to meet its requirements relating to Māori in the resource management planning process, especially when preparing new resource management policy and plans. Secondly, because the plans belong to the iwi that prepared them, they will ~~help~~ assist those iwi ~~themselves~~ to identify and express the values and relationships they have with their resources and how they ought to be protected, maintained or enhanced. Iwi management plans can provide a framework for consultation both for plan review and resource consent processes. Including the matters identified within (a) to (e) of the policy and implementing an iwi management plan will build and strengthen partnerships between iwi and the Council, and build trust and good relationships.

Policy 3.1.5

Ensure iwi management plans are taken into account in resource management decision making processes.

190. FNHTB seek retention of the policy as notified. Trustpower Limited also seeks retention, identifying it is consistent with ss 60 and 74 of the RMA as its reason.
191. Ngāi Tahu seeks to amend Policy 3.1.5 with an amendment to 'ensure management plans are *given particular regard to* in resource management decision-making processes'. The proposed amendment recognises that an IMP is an expression of kaitiakitanga as provided for by s 7 RMA. Trustpower opposes Ngāi Tahu's submission on the basis that the submitter's amendment to Policy 3.1.5 as s 104 of the RMA requires 'regard' to other matters not 'particular regard'.
192. Federated Farmers seeks an amendment to 'ensure that IMPs are taken into account in resource management decision-making processes *with regard to the preparation of a regional policy statement or regional or district plans.*' The policy is not seen as clear whether it applies to decision-making or resource consents.

Section 42A Report

193. In respect of Trustpower's opposition to Ngāi Tahu's amendment to Policy 3.1.5, the report writer does not agree with Trustpower Limited's interpretation that the context of the submission from Ngāi Tahu (iwi management plans) links directly to s 7 of the RMA, rather than "Other Matters" in s 104(2)(c). With regard to resource consents, s 104 of the RMA states "...the consent authority must, subject to Part 2, have regard to...". Section 7 of the RMA lists the matters (a) to (j) to have "*particular regard to*". Consideration of an application under s 104 is subject to this, and has to have "*regard*" to the matters listed in s 104(a) to (c).

with the Council to be provided to iwi prior to the s 95 RMA decision whether to notify an application made. The considerations required by s 95B(3) and s 95(2)(e) RMA are sufficient for identifiable purposes. Section 95E lays down what a consent authority must consider in deciding if a person is an affected person. Section 95E(2)(c) states:

A consent authority must have regard to every relevant statutory acknowledgement made in accordance with the Act specified in Schedule 1.

222. Ngāti Toa's second submission relates to the fact that Method 3.M.2 referred to 'the relevant trustees for an iwi' as being those who must be provided with a summary of resource consent applications. Ngāti Toa sought clarity regarding the meaning of 'trustees for an iwi' and preferred the phrase 'iwi authority'. The Panel considers this change is appropriate.
223. The submission requesting an appendix of Statutory Acknowledgements is a recognised way for identifying them. The Council does this for the Wairau/Awatere and Marlborough Sounds Resource Management Plans and will also do so for the PMEP. This is a requirement of the new legislation surrounding the Te Tau Ihu Treaty settlements but was not known at the time the PMEP was notified.
224. The third of Ngāti Toa's submissions is accepted as to Method 3.M.2 as sought with the substitution of the word 'trustees' with 'iwi authority', and 'the relevant trustees' with '*the relevant iwi authority*'

Decision

225. Method 3.M.2 is amended as follows:

The relevant ~~trustees for an iwi~~ iwi authority must be provided with a summary of a resource consent application for an activity within, adjacent to, or directly affecting a statutory area. The Council must also have regard to the Statutory Acknowledgement relating to a statutory area when deciding whether the relevant ~~trustees~~ iwi authority are affected persons in relation to an activity within, adjacent to, or directly affecting the statutory area and for which an application for resource consent is made. In some cases this will involve more than one iwi. The Council is also required to include information recording the statutory acknowledgements within its resource management documents

Method 3.M.3

Consideration of iwi management plans

226. Method 3.M.3, which refers to Policy 3.1.4 and the 'Consideration of iwi management plans', attracted two submissions – Irrigation NZ and HNZPT.

227. HNZPT supports the Method subject to amendment - that the following bullet point be added to Method 3.M.3: '*assist the identification of heritage resources for inclusion in the Marlborough Environment Plan and Council maps*', the reason being that its submission in respect of 3.M.3 is as for Policy 3.1.4(b). HNZPT's reason is the same as for Policy 3.1.4(c) and the amendment suggested there.

Consideration

228. Currently the Plan does not provide a separate rule framework for protecting sites of significance to Māori; rather, it is combined with other historic heritage rules.

229. On the recommendation of the report writer at this stage, however, if mapping of the sites of iwi significance is to be added to the PMP, this should be done as a variation or plan change to incorporate consultation with iwi and landowners.

Decision

230. The HNZPT submission is accepted in part with the addition of a new the fourth bullet point to Method 3.M.3 as follows:

- *Assist the identification of heritage resources*

Method 3.M.4

Consultation

231. Some of Ngāti Toa's concerns are addressed to some extent through Method 3.M.2 Recognising Statutory Acknowledgements as they recognise iwi values with identified site areas.⁷⁹ Method 3.M.4 clearly states consultation with iwi by the *Council may* result in a cultural impact assessment being required; the Method does not compel an applicant to obtain one as suggested by Trustpower. In the report writer's opinion, it is entirely appropriate for a Council officer to engage in consultation with iwi to better understand the effects of an application if there is an indication that this would be beneficial. It is likely that consultation of this nature would assist the Council in determining if an iwi authority was an affected party in relation to statutory acknowledgments and is therefore consistent with Method 3.M.2.

232. While the report recommends there is no change to Method 3.M.4 we have already outlined above reasons why the Panel prefers the concept of encouragement of early consultation.

Decision

⁷⁹ Ngāti Toa also seek the addition of a rule in Volume 2 to cement some of the issues identified. It is the Report writer's opinion that the suggested text stating '*consult with iwi in certain areas*' creates uncertainty in the context of such a rule due to its lack of specificity.



Proposed Marlborough Environment Plan

Topic 3: Natural and Physical Resources

Hearing dates: 27 – 29 November 2017

S42A Report Writer: Liz White

Conflicts of Interest: None

Interim decision: None

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

63. The linking mechanism here between Issue 4A and the subsequent policies is Objective 4.1. It quickly becomes clear on the face of the related issues that a broader objective is preferable because the earlier Issue 4A was unnecessarily limited to the 'use' of natural resources.
64. On reflection, therefore, we consider a broader objective is preferable and Fulton Hogan's proposed wording is helpful to amalgamate with the existing objective.
65. The Panel believe consequential change is also required to introduce text that recognises that access to resources other than land and water are also important for social and economic wellbeing.

Decision

66. Objective 4.1 is amended as follows:

[RPS]

Objective 4.1 – Sustainable use or development of Marlborough's natural resources supports Marlborough's social, economic and cultural wellbeing ~~Marlborough's primary production sector and tourism sector continue to be successful and thrive whilst ensuring the sustainability of natural resources. ...~~

67. The explanatory statement after the third paragraph is amended as follows:

... These responsibilities are reflected in policies elsewhere in the MEP.

Access to other natural resources is important for Marlborough's social and economic wellbeing. For example, aggregate from land-based sources and from rivers has made a significant contribution to the provision of infrastructure, particularly roads, and is valued as a construction resource. However, it is essential that access to such resources is managed on a sustainable basis. ...

Policy 4.1.1

Recognise the rights of resource users by only intervening in the use of land to protect the environment and wider public interests in the environment.

68. Twenty-four submitters support the policy and seek that it is retained. Three submissions seek that the policy be deleted because it is not clear what it achieves; it is unclear what resource management issue the policy intends to address; it should be deleted given the rules in the PMEP and the issue of non-intervention is generally the position of most councils; the

inference that land ownership is implicit in s 9 RMA (within the explanation) is incorrect – further, given the rules in the plan, this is generally the position of most councils.⁴⁴

69. Other submitters consider that:

- It is critical that intervention is only contemplated where there are clear service and economic ecological indications to support it – intervention is only justified when there are well established science, economic and ecological grounds.⁴⁵
- While the policy is supported in part, rules are not drafted to guide the way resource use is undertaken and in relation to Policy 4.1.1, it should be amended to read *‘Recognise the rights of resource users by not intervening in the use of land to protect the environment and wider public interests in the environment unless specifically required under the Plan’*.⁴⁶
- The policy should be amended to read:⁴⁷ *‘Recognise the rights of resource users while only intervening in the use of the coastal marine area where it is identified to ensure sustainable management of the environment. ‘Use of private land will reflect sustainable management including protection of the environment and wider public interests in it.’ Other reasons include cross-boundary effects, managing natural hazards, other hazards, reverse sensitivity.*
- Drafting of the policy implies that the rights of the landowners to use resources is more important than the environment; iwi rights should be referred to, as interests to ‘pull through’ the matters set out in Chapter 3. The policy should be amended to read *‘Recognise the rights of resource users while protecting the environment, and iwi rights and interests’* on the basis that it seeks to improve and provide greater recognition and protection for iwi values, beliefs and resources.⁴⁸
- The phrase ‘wider public interests’ should be replaced with ‘greater public good’ as the latter is more restrictive and will compel a greater contemplation of the *displacement* of the rights and freedoms of individuals.⁴⁹

⁴⁴ Fish and Game (509.16), Ravensdown (1090.4), Fertiliser NZ (1192.2).

⁴⁵ PF Olsen Ltd (149.3).

⁴⁶ Federated Farmers (425.9).

⁴⁷ FNHTB (716.29).

⁴⁸ Te Rūnanga o Ngāi Tahu (1189.28).

⁴⁹ K Adams (36.3).

- Intervention should only be contemplated where there is a clear resource management issue that requires intervention, not just the wider public interest in the use of land being protected.⁵⁰
- A provision be added to the policy that recognises Farm Environmental Planning (FEP) as a valid tool to deliver positive environmental outcomes while monitoring land use flexibility, better balancing the environment and minimisation of regulation – this is a better alternative to prescriptive activity-based rules.⁵¹
- An area where intervention is necessary is exotic commercial forestry where various adverse effects can arise such as effects on the coastal marine environment through sedimentation, safety amenity and cross-boundary effects, especially in Port Underwood.⁵²
- The policy has the wrong emphasis, as it recognises the rights of resource users rather than controlling the use of land for environmental outcomes (responsibility of a regional council under s 30(1)(c) RMA) and the control of effects from land use and development (responsibility of a territorial authority under s 31(1)(b) RMA).
- Two submitters seek that the last two paragraphs of the explanation to the policy are amended to include reference to the need to control land use where activities have effects beyond their boundary on other people and the environment.⁵³

Section 42A Report

70. The Section 42A Report identifies it is clear what is intended by the policy's direction and this is expanded in the explanation – further detail having been expanded in the originating Section 32 Report. The policy reflects the public consultation that took place in creating the PMEP and the importance of recognising private property rights, providing a key direction for how the PMEP achieves Objective 4.1. The submitter's reference to s 9 RMA (Restrictions on use of land) should not be accepted as land ownership is not implicit within the section and its relevance is captured in any event within the second paragraph of the explanation.⁵⁴
71. As to the issue around changing the policy and seeking changes to the rules, this would create a circular policy which would then provide no assistance to guide the provisions in the other parts of the PMEP as to when intervention is warranted.

⁵⁰ Hort NZ (769.6).

⁵¹ Beef + Lamb (459.12).

⁵² Clintondale Trust and Whyte Trustee Company (484.3).

⁵³ KR and SM Roush (845.1), Port Underwood Association (1042.1).

⁵⁴ Section 42A Report, pages 18-20.

72. The report writer says the policy as worded provides better direction and is better aligned with the aims of Objective 4.1 because the definition of 'environment' is so broad, encompassing all interests including ecosystems, people and communities, all natural and physical resources etc. As an example, as currently worded, the policy provides justification to intervene to protect people and communities from the effects of natural hazards where this relates to the effects of private land use. The policy as worded provides better direction and is better aligned with the aims of Objective 4.1 than the alternative suggestion.
73. Further, the report says protection offered landowners does not have more weight than the protection offered to the environment (including ecosystems, people and communities, all natural and physical resources, amenity values, and social and economic conditions); for it expressly provides direction by providing that intervention is appropriate if necessary to protect the environment. The submission adds little value as a high level policy.
74. With reference to iwi rights and interests, the report observes that objectives in the PMEP need to be considered together and it is not necessary or appropriate for different objectives to cover the same issues.
75. In relation to replacing the 'wider public interest' with the 'greater public good', the 'wider public interest' the report states this is not an appropriate driving force for intervention. The breadth of the definition of 'environment[al]' under the RMA covers the wider public intervention in any case, and the phrase 'wider public interest' may be deleted.
76. Reluctance to protecting the environment entirely and replacing it with ... 'a resource management issue' ... is identified in the report as not appropriate in that it risks other policies in the PMEP driving the level of intervention, not the other way round. Use of the phrase 'protect the environment' too sets a relatively low bar on intervention because 'protection' could be to mean 'no change'. A recommendation is to amend the policy to limit intervention on the use of land to 'where it is justified to protect the environment'.⁵⁵
77. While a submitter considers FEP would deliver a better alternative to prescriptive activity-based rules, the report writer considers this change is too detailed and specific for the nature of the policy which is intended to provide overarching direction across the Plan. There are other ranges of tools that are best left to rule packages.
78. With regard to forestry, the report draws attention to the fact that there are now national rules relating to the activity set out in the National Environmental Standard for Plantation

⁵⁵ Section 42A Report, pages 18-21; Reply to Evidence, pages 3-5.

Forestry and this includes limited opportunity for the provisions within the PMEP to differ from those set out in the standard.

79. The initial recommendation of the report writer was to amend Policy 4.1.1 as follows:⁵⁶

Policy 4.1.1 – Recognise the rights of resource users by only intervening in the use of land where it is justified to protect the environment ~~and wider public interests in the environment.~~

80. In a subsequent hearing where evidence was presented, several requested the policy be further amended to read: ‘Recognise the rights of resource users ~~by~~ while only intervening in the use of ~~land~~ the coastal marine area where it is justified to protect ensure sustainable management of the environment ~~and wider public interests in the environment.~~’⁵⁷

Section 42A Reply to Evidence

81. The report writer identifies⁵⁸ it is not clear why the policy should apply to the CMA rather than to land. The explanation is clear that this was not the intention of the policy. Section 9 RMA provides for the use of land without consent, unless a plan rule requires one. Conversely, various activities within the CMA require consent, unless a plan rule allows for them as a permitted activity. No change is recommended.
82. The report writer had some concerns with using ‘ensure sustainable management’ instead of ‘protect the environment’ because reference to sustainable management essentially refers back to everything encompassed in s 5(2) RMA. That outcome does not provide particular direction about how the s 5(2) RMA objectives are to be achieved in the Marlborough context. No change is recommended.
83. The report writer further observes that the purpose of the policy is to assist in achieving the objectives of the PMEP (particularly Objective 4.1) rather than directly seeking to give effect to the intent of the RMA. Regardless of whether the policy ‘sets out the intent of the RMA’, the question should be, would the deletion of the policy better assist in achieving the overriding objective, which it is suggested it would not. No change is recommended.
84. In addition, the report writer notes that the emphasis on resource users (rather than control of use of land) relates again to the achievement of the objective, that is, recognition of the rights of resource users is part of ensuring the continued success of the primary production

⁵⁶ Section 42A Report, page 20.

⁵⁷ Section 42A Report, Reply to Evidence, page 3.

⁵⁸ Section 42A Report, Reply to Evidence, pages 3-4.

and tourism sectors, with the intervention identified being related (in part) to ensuring sustainability of natural resources.

85. With regard to FEPs, her view remains as set out in the Section 42A Report.⁵⁹ Specifically, this chapter provides overarching direction, whereas the use of particular tools to achieve and implement these aims is a more specific matter that should be considered in relation to the provisions that are included within the MEP to give effect to Chapter 4. No change is recommended.
86. The concerns expressed about the use of the phrase ‘protect the environment’ arise in this context. Thus the report writer takes the position that because the policy direction sets the bar for intervention at the level where there is justification for the intervention for the protection of the environment, the policy direction is saying that only justified intervention will be undertaken to protect the environment.
87. The later part of policy 4.1.1 was the subject of submission challenging the intervention being justified in the ‘wider public interests in the environment’. The Report writer summarised her concerns as follows:

I tend to agree with both submitters that “wider public interest” is perhaps not an appropriate driving force for intervention. Given the breadth of the definition of “environment” under the RMA (which includes people and communities, and amenity values in any case), my view is that this already covers any wider public interest in the environment that is relevant

88. In terms of questions regarding the application of the policy (for example, when is it ‘justified’ to protect the environment?) the report writer notes that the policy is an RPS provision, which is then to be given effect to through the district and regional land use plan provisions. Essentially, when intervention is justified will be set out within these provisions – it is not something to be controlled by the consent process.

Consideration

89. The Panel considered whether Policy 4.1.1 should be retained with some submitters asserting it states the obvious. We consider the policy provides an oversight at the RPS level of the direction in which the subsequent provisions will go, and should be retained.
90. In terms of intervention, this should only occur where there is a clear resource management issue to be addressed that requires intervention, not the ‘wider public interest’, which sets a

⁵⁹ Section 42A Report, pages 19-20.

much lower standard for intervention in the use of land. In terms of whether the policy should refer to the coastal marine area, this request ignores the reality that this policy addresses land issues because of the fact that activities on land are allowed as of right by s 9 RMA if there is no rule to the contrary. Whereas in the CMA, ss 12 and 15 RMA have the effect that rules are needed to allow activities. The distinction between Section 9 and sections 12 - 15 is important and the Panel has decided to include an added explanation as to that distinction.

Decision

91. Policy 4.1.1 is amended as follows:

Policy 4.1.1 - Recognise the rights of resource users by only intervening in the use of land where it is justified to protect the environment ~~and wider public interests in the environment.~~

92. The explanation is amended as follows:

With land ownership comes an expectation of the ability to reasonably develop and use the land. In a property owning democracy such as New Zealand, it is fundamental that the reasonable rights and expectations of private property owners are respected. This is reflected in Section 9 of the RMA, which enables people to use or develop land. This position contrasts with Sections 12 to 15 of the RMA applying to other natural resources, which set out that the use of those resources can only occur if expressly allowed by a rule in a plan or by resource consent.

Notwithstanding these property rights, the Council can constrain such land use through rules in a regional or district plan. Under this policy, ~~t~~The Council can intervene in the exercise of private property rights where there is justification to do so to protect the environment ~~and wider public interests in the environment.~~ Even in these situations, the Council will seek to minimise the extent of regulation placed upon resource users. Generally speaking, resource users have a vested interest in sustaining the natural resources from which they extract an income. The Council can influence and guide the way in which resource use is undertaken by establishing clear and concise standards.

It is important to acknowledge that existing uses of land can continue under Section 10 of the RMA irrespective of the introduction of district rules to constrain the use. For this to apply, the use must be lawfully established and its effects must be the same or similar to those that existed prior to the introduction of the rule.

The policy reflects that, where activities carried out on private land could adversely affect the wider environment, ~~At times it may be necessary for wider public interest considerations to~~

~~prevail over individual expectations and land use may need to be controlled in order to protect the environment.~~ In these circumstances, compensation to the land user is not payable under Section 85 of the RMA. The same section also provides the land user with the ability to challenge any provision of a plan on the grounds that the provision would render their land incapable of reasonable use. Section 86 of the RMA empowers the Council to acquire land with the agreement of the landowner and pay compensation for it.

Policy 4.1.2

Enable sustainable use of natural resources in the Marlborough environment

93. Twenty-one submitters support the policy and do not seek any changes. Others seek that: the policy is amended to refer to the use *and* ‘development of’ natural resources as its inclusion would provide a clear reference to potential future use of the environment and is consistent with the direction in s 5(2) RMA;⁶⁰ the policy does not support or encourage sustainable management and requires change;⁶¹ support the policy but its scope is too wide – it should be extended to add ‘by including permitted activity rules where adverse effects are no more than minor, taking into account cumulative effects’ (this is seen as consistent with the explanation to the policy and Method 4.M.3); also the reference to coastal space in the explanation should be amended to the ‘coastal marine area’ to more accurately reflect s 12 RMA;⁶² the policy be amended to enable ‘use’ rather than ‘sustainable use’ with the addition of ‘while managing any adverse environmental effects’. This is on the basis that, while the submitter supports the enabling intent of the policy, the purpose of the RMA is to promote the sustainable management of natural resources through managing effects;⁶³ the first paragraph to the explanation be amended to state at the commencement of the provisions sentence ‘Where the adverse effects are considered minor and there is no potential for environment effects, resource consents will not be required’;⁶⁴ amend the first paragraph: ‘to ensure natural resource sustainability long-term consents (over 20 years) should not be granted in public space’.⁶⁵

Section 42A Report

94. The report writer agrees that the policy should refer to use and ‘development’ of natural resources contributing to the success of primary production and tourism sectors. It is also

⁶⁰ AQNZ (401.16), MFA (426.16).

⁶¹ Further submissions from Clova Bay Residents, KCSRA.

⁶² FNHTB (716.30).

⁶³ Ravensdown (1090.5).

⁶⁴ Dairy NZ (676.5).

⁶⁵ Port Underwood Association (1042.2).

Proposed Marlborough Environment Plan

Topic 4: Water Allocation

Hearing dates: 18 – 20 and 25 – 26 February 2019

S42A Report Writer: Rachel Anderson, Peter Hamill, Peter Davidson, Vallyn Wadsworth

Conflicts of Interest: None

Interim decision: No

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

NPSFM was the version that the PMEP as notified sought to give effect to, but as the 2017 NPSFM is now operative we are bound to give effect to it in our decision.

13. The 2017 NPSFM importantly contained a significant additional recognition of water quality protection by incorporating, largely at the repeated request of iwi interests throughout the country, the concept of Te Mana o te Wai. Objective AA1 of the NPSFM 2017 provides:

To consider and recognise Te Mana o te Wai in the management of fresh water.

14. That recognition of Te Mana o te Wai for the first time provides a statutory base to the fundamental concept of a sustainable bottom line being necessary to be fixed in plans for each FMU. The purpose of the bottom line is to protect the life force in ecological and water quality terms of a river (or FMU) for it to be able to maintain its mauri – the essence or life force of an FMU. The concept is relevant then not only to maintenance or restoration of water quality, but also to maintenance of water quantities within FMUs to maintain Te Mana o te Wai.
15. The PMEP has two appendices, 5 and 6, which are directly relevant to the both the concept of Te Mana o te Wai and the objectives and policies in Chapter Five of the PMEP which govern the allocation principles expressed in those objectives and policies. Those appendices are entitled:

Appendix 5 - Water Resource Unit Values & Water Quality Classification Standards

Appendix 6 - Environmental Flows and Levels

16. Appendix 5 contains two schedules, Schedule 1 – Water Resource Unit Values, and Schedule 2 - Water Quality Classification Standards. Schedule 1 is particularly relevant to the allocation of water resources, as it identifies and describes the values of what are described as Water Resource Units, which for practical purposes relate to the FMUs in Appendix 6.
17. Appendix 6 fixes the allocation quantities able to be sustainably taken while maintaining environmental flows and levels. Appendix 6 is comprised of a number of schedules the most important of which, for the purposes of this decision, are Schedule 1 – Quantity Allocations for Water Takes, and Schedule 3 - Minimum Flows and Levels for Water Takes.
18. Schedule 1 of Appendix 6 fixes maximum quantities able to be sustainably taken expressed on a daily basis for surface FMUs, and on an annual basis for subsurface aquifer FMUs. Of particular significance in the Awatere, but potentially increasingly in the Wairau catchment, for some FMUs the surface flow allocations are divided into three classes A, B and C. C class takes are for very high flow storage takes (usually in winter), B class only available for higher

flow irrigation takes, with A class being available for takes all year - provided minimum flows or levels specified for FMUs in Schedule 3 of Appendix 6 are maintained.

19. Schedule 3 of Appendix 6 provides the 'bottom line protections' for FMUs by fixing aquifer levels and surface flow volumes at which abstraction must cease, or in some cases where rationing of takes commences on a reducing basis until cessation. It also fixes the monitoring location where those flow or level assessments are to be made. An important exception is the Wairau Aquifer which does not have cut-off levels fixed for reasons that will be traversed later.
20. Another background document which must be referred to at this introductory stage is the Proposed National Environmental Standard on Ecological Flows and Water Levels. That document was released as a draft for discussion by the Government in 2008 as an interim measure pending the setting of limits in a regional plan.
21. The nature of this draft was expressed as follows in 2008:

The Proposed National Environmental Standard on Ecological Flows and Water Levels is to promote consistency in the way we decide whether the variability and quantity of water flowing to rivers, ground water systems, lakes and wetlands is sufficient.

It would do this by:

- setting interim limits on the alteration to flows and/or water levels where limits have not been imposed through regional plans or water conservation orders*
- providing a process for selecting the appropriate technical methods for evaluating the ecological component of environmental flows and water levels.*

(Panel's underlining for emphasis)

22. It is important to emphasise the interim nature of this proposed standard, which has never become operative, largely because it has been superseded by the 2011 NPSFM and the two later 2014 and 2017 versions of the NPSFM.
23. With the massive development and expansion of the viticulture industry in the Wairau and Awatere catchments in recent decades, the FMUs in those catchments have come under pressure, particularly in dry summers towards the end of the irrigation season as river flows and aquifer levels reduce. In drier recent years flow rates and aquifer levels have reached the point where cessation of takes has either had to occur or has been on the brink of occurring.

24. The A class allocations in most FMUs in the Wairau and Awatere are, for historical reasons, over-allocated. The increase in intensive dairying in some of the Pelorus feeder catchments, particularly those rivers such as the Opouri, Ronga and Tunakino, has also resulted in increased irrigation pressures. Those smaller FMUs have limited aquifer structures and relatively small surface flows which in some cases dry up in an irrigation season.

Submissions

25. A major issue, both in submissions and in evidence at the hearings, was the surface flow rates fixed in the Wairau River itself. In essence, the flow rates fixed in the PMEP were challenged by some submitters, particularly led by Fish & Game², as being unsustainable in terms of protection of in-stream ecological values, particularly for the habitat necessary for the trout fishery.
26. Another major feature identified in various policies, and in the limits contained in the schedules to Appendix 6, is the complex interrelationship between surface flows and subsurface aquifers, particularly in the major Wairau Springs aquifer areas, but generally in relation to all aquifer FMUs other than the Wairau. The levels fixed for aquifers in Schedule 6, particularly in the Wairau catchment, were consequently the focus of considerable attention both in submissions and in evidence at our hearings.
27. In addition to those issues, most of which attracted significant input by way of evidence at the hearings, we also considered a very large number of other submissions on the various aspects of water allocation. (As has occurred generally in the PMEP decision, to save unnecessary repetition, where we agreed entirely with the reasoning and recommendations of the Section 42A Report or Reply to Evidence we have not repeated those conclusions.)
28. Much of the content of this decision will, therefore, be occupied with addressing submissions focussed on the Te Mana o te Wai and sustainability concepts, as reflected in various policies of the Plan and in Appendix 5; and the two major issues of the effects of allocation of resources on Wairau surface flows and aquifer levels as set in Appendix 6 – both of which had many sub-sets of issues related to them raised in submissions.

Te Mana o te Wai

29. The NPS states:

The matter of national significance to which this national policy statement applies is the management of fresh water through a framework that considers and recognises Te Mana o te Wai as an integral part of freshwater management. ...

² 509.37

Te Mana o te Wai is the integrated and holistic well-being of a freshwater body.

Upholding Te Mana o te Wai acknowledges and protects the mauri of the water. This requires that in using water you must also provide for Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people).

Te Mana o te Wai incorporates the values of tangata whenua and the wider community in relation to each water body.

The engagement promoted by Te Mana o te Wai will help the community, including tangata whenua, and regional councils develop tailored responses to freshwater management that work within their region.

By recognising Te Mana o te Wai as an integral part of the freshwater management framework it is intended that the health and well-being of freshwater bodies is at the forefront of all discussions and decisions about fresh water, including the identification of freshwater values and objectives, setting limits and the development of policies and rules. This is intended to ensure that water is available for the use and enjoyment of all New Zealanders, including tangata whenua, now and for future generations.

30. This issue also brings into play a range of policies in the PMEP under Objective 5.2. It responds to Issue 5B which is expressed as follows:

Issue 5B – The taking, damming or diversion of water can compromise the life-supporting capacity of rivers, lakes, aquifers and wetlands.

31. Objective 5.2 then provides:

Objective 5.2 – Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels for the natural and human use values supported by waterbodies.

32. The policies which give effect to that objective which are of particular relevance are policies 5.2.1, 5.2.2, 5.2.3, & 5.2.11. They link to Appendix 5 as to identified resource unit or FMU values. The combination of the policy suite of those four policies and the FMU resource unit values in Appendix 5 underlie the rationale for the limits set in Appendix 6.

33. The suite of policies provides as follows:

Policy 5.2.1 – Maintain or enhance the natural and human use values supported by freshwater bodies.

Policy 5.2.2 – Give priority to protecting the mauri of freshwater and freshwater flows/levels.

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

Policy 5.2.4 – Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to:

- (a) protect the mauri of the waterbody;*
- (b) protect instream habitat and ecology;*
- (c) maintain fish passage and fish spawning grounds;*
- (d) preserve the natural character of the river;*
- (e) maintain water quality;*
- (f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and*
- (g) maintain amenity values.*

Policy 5.2.11 – Set specific minimum levels for Freshwater Management Units dominated by aquifers to:

- (a) prevent physical damage to the structure of the aquifer;*
- (b) prevent headwater recession of spring flows;*
- (c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;*
- (d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;*
- (e) maintain groundwater quality; and*
- (f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).*

Submissions

34. Ngai Tahu³ supported the objective but sought that it be strengthened to recognise and protect the inherent values of the water resources themselves stating:

The intent of the objective is largely supported however the outcome of the objective is not clear. The objective also presumes a philosophical approach whereby freshwater resources need to only be protected to a sufficient level that will support human use. As indicated in the introductory section, Ngai Tahu is of the view that allowance needs to be made for the resource itself not to just function and survive, but to maintain healthy levels, at the same time as providing for the sustainable use of the resource. This is consistent with Policy 5.2.2.

35. Ngai Tahu's submission in respect of Objective 5.2 sought the following amendments:

Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels for the health of the resource as a first priority, followed by natural and human use values supported by waterbodies

Section 42A Report

36. The report writer considered that the addition was unnecessary as the notified version of the Plan recognised and protected 'natural values'. She emphasised that the explanation to the objective made that very plain.

Consideration

37. The Panel considers that the use of the term 'natural and human use' does not adequately capture the intent of Te Mana o te Wai that seeks to protect the values of the river which the NPS places at the 'forefront of all discussions and decisions about freshwater'. Therefore the Panel has decided an amendment to Objective 5.2 and its associated policies is required. The Council is required to give effect to the NPS and therefore must include provisions that achieve this.

Decision

38. Objective 5.2 and its explanatory statement are amended as follows:

Objective 5.2 – Recognise Te Mana o te Wai and ~~s~~Safeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining sufficient flows and/or levels required for the natural and human use values supported by waterbodies.

³ 1189.035

The natural and human use values supported by Marlborough’s freshwater bodies are important to retain given their contribution to the social, economic and cultural wellbeing of the community. In addition, the values can also have significance as a matter of national importance under Section 6 of the RMA, which must be recognised and provided for. Objectives AA1 and B1 of the NPSFM require Council to recognise and consider Te Mana o te Wai in the management of fresh water, and to safeguard the ~~also requires~~ life-supporting capacity, ecosystem processes and indigenous species of freshwater resources ~~to be safeguarded~~. Objective 5.2 reflects the need to recognise Te Mana o te Wai and safeguard the life-supporting capacity of Marlborough’s freshwater bodies when managing the taking, damming or diversion of water.

39. Replace the notified Policy 5.2.2 and its explanatory statement with the following:

Policy 5.2.2 – Recognising Te Mana o te Wai gives priority to the integrated and holistic well-being of freshwater.

The National Policy Statement for Freshwater Management 2017 (NPSFM) provides councils with direction on how freshwater is to be managed through an objective and policy framework. Objective 5.2 requires councils to consider and recognise Te Mana o te Wai in freshwater management, and the policy requires councils to consider and recognise Te Mana o te Wai when making or changing regional policy statements and plans, noting that:

- (a) Te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people); and*
- (b) values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits.*

To achieve this, council and communities, including Marlborough’s tangata whenua iwi, will come together and discuss what values they hold for the freshwater bodies in their rohe (geographical area) or areas of statutory acknowledgement, and set freshwater objectives and limits in response to this. This will include identifying what Te Mana o te Wai means to the Marlborough community. Marlborough’s tangata whenua iwi often use terms like mauri to describe the cultural concept that all natural resources have a lifeforce. This lifeforce (wairua) is derived from the physical attributes of the resource as well as the spiritual association iwi have with natural resources. The taking, damming or diversion of water can adversely affect the mauri of water.

Te Mana o te Wai will assist in building a greater understanding amongst the community of the integrated and inter-connectedness of values and their role in managing freshwater resources.

Regard was had to protecting the mauri of freshwater and freshwater bodies when establishing the allocation frameworks and permitted activity rules contained in the provisions of this chapter. Te Mana o te Wai will build on this process.

40. Insert a new method as 5.M.1 (with subsequent numbering changes), as follows:

5.M.1 - Setting community values – Te Mana o te Wai

Council will work with communities, including Marlborough’s tangata whenua iwi, to identify values and use them to inform the setting of freshwater objectives and limits.

Limits to Allocation of Water

41. As the aquifer replenishments, and aquifer levels restricting takes, (which drove a large number of the submissions on aquifer allocations), are both interrelated with Wairau surface flows, either directly or indirectly, it is best to record conclusions first on those surface flow rate issues.
42. Policies 5.2.4, 5.2.5, 5.2.11 and 5.2.13 combine with Appendix 6 to set limits on the total amount of water available to be taken from FMU’s in accordance with Policy B1 of the NPSFM 2017. Policy B1 of the NSPFM requires the environmental flows and/or levels to be set together with allocation limits. Policies 5.2.4 and 5.2.11 also have relevance to the values protected by the setting of limits so were set out above when considering Appendix 5.
43. The other policies relevant to limit setting in Appendix 6 are policies 5.2.5 and 5.2.12, 5.2.13:

Policy 5.2.5 – With the exception of water taken for domestic needs or animal drinking water, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.

Policy 5.2.12 – Set conductivity limits for Freshwater Management Units dominated by aquifers adjoining the coast to manage the potential for saltwater contamination of the aquifer.

Policy 5.2.13 – Limit the total amount of water available to be taken from any freshwater management unit and avoid allocating water (through the resource consent process) beyond the limit set.

believes accords with both the concept of Te Mana o te Wai, and the precautionary approach suggested in the NPSFM 2017 where uncertainty exists.

Decision

113. The cut-off levels for water takes for both surface flows and aquifer levels in the southern valleys remain as notified and submissions seeking their amendment are rejected.

Values to be protected - Policies 5.2.1, 5.2.2, 5.2.3, 5.2.4 & 5.2.11 & Appendix 5

Policy 5.2.1 – Maintain or enhance the natural and human use values supported by freshwater bodies.

Policy 5.2.2 – Give priority to protecting the mauri of freshwater and freshwater flows/levels.

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

Policy 5.2.4 – Set specific environmental flows and/or levels for Freshwater Management Units dominated by rivers, lakes and wetlands to:

- (a) protect the mauri of the waterbody;
- (b) protect instream habitat and ecology;
- (c) maintain fish passage and fish spawning grounds;
- (d) preserve the natural character of the river;
- (e) maintain water quality;
- (f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and
- (g) maintain amenity values.

Policy 5.2.11 – Set specific minimum levels for Freshwater Management Units dominated by aquifers to:

- (a) prevent physical damage to the structure of the aquifer;
- (b) prevent headwater recession of spring flows;
- (c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;
- (d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;
- (e) maintain groundwater quality; and
- (f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).

114. Appendix 5 in Schedule 1 identifies the values of 60 Water Resource Units (WRUs) which are mapped on the overlay Freshwater Management Unit – Map 5 Volume 4 of the PMEP and also ascribes water quality classifications to those WRUs by the use of nine abbreviations such as NS for Natural State, C for Cultural or F for fisheries.

115. Appendix 5 Schedule 2 sets out detailed water quality attributes as minima standards or parameters for the water quality attributable to each of the classification types in Schedule 1.

116. The combination of Appendix 5 then with the policies set out above are intended to ensure the mauri and/or life supporting capacity is maintained at flows or levels and qualities for the identified values for all WRUs.
117. In considering the varying propositions advanced from those different points on the spectrum of views of submitters the Panel also had to consider the detail as to values identified in the NPSFM 2017. It essentially adopts the approach of identifying compulsory national values which Policy CA2 (c) requires each regional council to include in its plans, and other national values which the regional council can include as it “considers appropriate”. Appendix One of the NPSFM then sets out separately the Compulsory National Values and the Other National Values.
118. Included in the latter are confusingly two descriptions of ‘mahinga kai’. Other features of those optional values are their wide range in nature. They range over matters such as ‘Natural form and character’ and ‘Water supply’, food gathering such as ‘Mahinga kai’ and ‘Fishing’ to economic and consumptive uses – including by way of example ‘Irrigation, cultivation, and food production’ to ‘Commercial and industrial use’ and ‘hydro-electric power generation’.
119. Given the wide range of possible values which the NPSFM enables to be identified as optional national values submissions on the interrelated PMEP policies and Appendix 5 once again ranged across the broad spectrum covered by the NPSFM. The submissions ranged from those seeking a relaxation of flows or levels or of water quality standards to enable greater economic or consumptive uses to those seeking more natural values were increased in a protective manner to maintain or enhance water flows/levels or quality.
120. In general terms the Panel was not persuaded that Appendix 5 required urgent or fundamental amendment, other than as to the need to recognise explicitly the concept of Te Mana o te Wai, and that the PMEP otherwise appropriately protected the compulsory values as required by the NPSFM 2017.
121. The Panel took the view that any changes in the PMEP to Appendix 5 that might be seen as warranted in terms of optional national values were best addressed by broader community engagement over time as circumstances changed or developed. In the course of that type of broader community engagement, which the Panel envisaged would use new Method 5.M.X, the knotty issue of deciding on the adoption of whichever descriptor or ‘mahinga kai’ might be appropriate could also be explored in a manner which involved iwi as part of the whole community.

122. The final issue then that the Panel needed to address in relation to this suite of policies and appendix provisions was the question of whether Policy 5.2.1 should continue to include 'enhance' or not, i.e. is restoration of values a valid issue?
123. Once again submissions on this point came from widely disparate ends of a spectrum. Some pointed out that Marlborough enjoyed a high level of rivers with water quality which was either pristine or of very high quality so that it was argued to be unnecessary or illogical to have a policy requiring water quality to be enhanced. Others argued that removal of the word 'enhance' would send the wrong message that water bodies which were not at a high quality level did not need enhancement and that maintenance of poor or substandard quality was sufficient.
124. The Panel's considers it was important to adhere to the notified wording of Policy 5.2.1 which being expressed in the alternative or 'maintain or enhance' covered the situation. If water quality was pristine or very high quality then it should be maintained, but if of poorer quality the policy should be for it to be enhanced. That approach accorded with Objective A2 of the NPSFM 2017 which is:

Objective A2

The overall quality of fresh water within a freshwater management unit is maintained or improved ...

125. However, the Panel considered amendments to the explanation to Policy 5.2.1. should address these considerations in more detail, while acknowledging also the potential impacts of climate change, as follows:

The natural and human use values supported by freshwater bodies in Marlborough are varied, reflecting the diversity of water resources highlighted in Policy 5.1.1. The natural and human use values supported by different waterbodies are identified in Appendix 5. Given their intrinsic value and their significance to the community, the policy seeks to retain the natural and human use values. Objective A2 of the NPSFM 2017 specifies that the overall quality of freshwater is to be 'maintained or improved' and the alternative of 'maintain or enhance' in this policy aims to achieve that Objective. With that alternative wording high quality water bodies can be maintained, but water bodies of lesser quality can and should be enhanced if possible. The potential effects of increased flood induced risks as a result of climate change to water quality through effects such as increased sedimentation from natural or human induced sources also requires an approach that allows for management through consent conditions of enhancement of water quality.

The development of allocation frameworks contained in the provisions of this chapter has taken into account Objective 5.2 and this policy. The setting of environmental limits established through subsequent policies are intended to retain sufficient flow and/or level to maintain, restore or enhance the natural and human use values of specific freshwater bodies. Maintaining or enhancing natural and human use values were also a relevant consideration in determining the circumstances under which the taking of water could occur without resource consent.

The NPSFM 2017 provides guidance as to the compulsory national values that must be included in Appendix 5 and enables various optional national values to be considered for inclusion. Any changes to be considered to those values will follow a process of community engagement utilising Method 5.M.X.

Some proposals to take, dam or divert water can involve site specific adverse effects on natural and human use values. This policy allows those potential adverse effects to be considered in the determination of any application for resource consent to take, dam or divert water.

Decision

126. That policies 5.2.1, 5.2.2, 5.2.3, 5.2.4 & 5.2.11 & Appendix 5 are retained as notified in the PMEP, and that the submissions in respect of them are only allowed to the extent of the amendments to the explanation to Policy 5.2.1 as above.

Objective 5.2 – ‘Sufficient’ Flows and/or Levels?

Objective 5.2 – Safeguard the life-supporting capacity of freshwater resources by retaining sufficient flows and/or levels for the natural and human use values supported by waterbodies.

127. Another closely related issue arising in respect of the environmental flows and cut off limits was the focus in some submissions on the use of the term ‘by retaining sufficient flows’ in Objective 5.2. Some submitters were strongly of the view that the use of that term denigrated from or at the very least downplayed the importance of the aim of maintaining or improving Te Mana o te Wai.

Consideration

128. The Panel took into account the fact that that the NPSFM 2017 uses terminology in its definition of ‘environmental flows and/or levels’ of ensuring the flows were safeguarded which were ‘required’ to provide for Te Mana o Te Wai and natural and human use values. The definition in the NPSFM of that phrase uses the phraseology that environmental flows and/or describe the amount of water “...which is required to meet freshwater objectives”.

129. On that basis the Panel considered that the use of the word ‘required’ instead of ‘sufficient’ would better reflect the intent of the NPSFM and the objective of Objective 5.2.

Decision

130. In addition to the substantive changes to this objective in response to the matters raised by Ngai Tahu in relation to the notified version of this objective, delete the word ‘sufficient’, and insert ‘required’ in Objective 5.2 so that the objective reads in full:

Objective 5.2 – Safeguard the life-supporting capacity of freshwater resources by retaining ~~sufficient~~ flows and/or levels required for the natural and human use values supported by waterbodies.

131. As a consequence, the tracked changed version of Objective 5.2 including the changes made to address Te Mana o te Wai and this issue of sufficiency will read:

Objective 5.2 – Recognise Te Mana o te Wai and ~~s~~Safeguard the life-supporting capacity of freshwater resources by recognising the connection between water and the broader environment and retaining ~~sufficient~~ flows and/or levels required for the natural and human use values supported by waterbodies.

Flexibility in measuring takes and environmental flows – Policy 5.3.10

Policy 5.3.10 – The instantaneous rate of take from a surface waterbody may exceed the instantaneous equivalent of the maximum daily allocation:

(a) by 20% at any point in time; or

(b) for 20% of the time;

but in both cases the cumulative take over 24 hours (midnight to midnight) must not exceed the daily maximum.

132. Both EDS and Fish & Game submitted against this policy asserting it enabled the maximums in take rate to be exceeded by irrigators particularly in the Wairau FMU⁴.
133. There are fluctuations in instantaneous flows which occur at any particular location along the Wairau because of irrigation drawdowns and Branch River releases. As to the impacts of irrigation take effects, they will inevitably be irregular in timing, location and volume. That is because of the very large number of take locations spread out along the length of the river.
134. Moreover, as the explanation to Policy 5.3.10 emphasises, irrigation systems are not designed to necessarily operate on a 24 hour basis. As a consequence the instantaneous rate on a consent will commonly be higher than the rate calculated over a 24 hour period.
135. A further practical point of importance is because of these fluctuations when flows are at or near the minimum level to have that fixed on an instantaneous basis would literally require

⁴ EDS (698.26), Fish & Game (509.66)

the rationing point in Schedule 3, towards the final cut off point, abstractions will be rationed progressively, with available allocation expressed as a percentage of the consented rate of take as required to protect the minimum flow.

Ballots

Issue 5I – There is the potential for a new water user to get access to water on a more reliable basis than allocations already made, resulting in inequitable outcomes.

Policy 5.9.1 – Once an allocation limit is reached and that part of the water resource is fully allocated, any water that subsequently becomes free to allocate to other users will only be made available to those users through a system of ballot.

182. The submissions on this issue focused on whether tendering or ballots were the best method of providing an equitable allocation of potential rights. The Issue is framed in a manner that reflects the lack of equity that arises from the current RMA ‘first-in, first-served’ approach.
183. What is offered by this policy is only a ballot approach where as a result of surrenders or acquisition by council further unallocated water becomes available. The options available really come down to three – retention of ‘first-in, first-served’; tendering; or ballots.
184. The Panel considered that the first two methods tended to favour those with more resources or deeper pockets. Those with more resources tend to keep a closer eye on what is occurring in the water allocation field and council reactions or review processes, and are more likely to be better placed to be ‘first-in’ for any unallocated water. Similarly, with tendering those with more resources will have the deeper pockets and be able to place a higher tender.
185. The ballot process on the other hand provides a far more open and level playing field amongst those who may be interested. What is being offered is only a right to apply for a resource consent so if a ballot winner was unsuccessful in an application for consent for any reason then a re-draw of the ballot could occur.

Decision

186. Retain Issue 5I and Policy 5.9.1 as notified and reject any submissions seeking alternative wording.

Transfers – Policies 5.4.4 and 5.4.5

Policy 5.4.4 – Enable access to water that has been allocated but is not currently being utilised by individual water permit holders through the transfer of water permits.

Policy 5.4.5 – When an enhanced transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between the holders of water permits to take and use water, this will be provided for as a permitted activity where:

- (a) the respective takes are from the same Freshwater Management Unit;**
- (b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;**

- (c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit or the Riverlands Freshwater Management Unit;
- (d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;
- (e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;
- (f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and
- (g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

187. These particular policies are somewhat unique in the PMEP in that they cannot be practically given effect until a further Plan Change has occurred to enable what was described in the PMEP as a system of ‘enhanced’ transfers of water allocations. As a consequence some submissions sought their deletion on the basis that until the transfer system is actually in place in the PMEP the policies serve no purpose.
188. Other submissions dealt in more detail as to the potential for water to become a tradable commodity.

Consideration

189. As to the challenge in respect of these policies creating a tradeable commodity, the Panel is facing a situation where there is full allocation in most FMU’s. In a state of full allocation the only means of new or existing users to gain access to water is through gaining access to water that has already been allocated by means of transfer of water permits. Policy B3 of the NPSFM requires regional plans to state criteria by which *‘applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water.’* It is the NPS, therefore, not this Panel or the PMEP, which is requiring a mechanism of transfer of water take permits.
190. The RMA does not otherwise provide the ability to prevent water permits becoming a tradeable asset as the effects of the quantity of the abstraction have already been considered.
191. The Panel recognises the logic behind those submissions seeking deletion of the policies at this stage before a plan change is proposed to actually introduce the transfer system into the Plan.
192. The Panel was also of the view that some purpose was served by retaining the policies as an indicator of future intent so as to encourage thinking as to greater efficiency of water use, by enabling transfers on a far more flexible basis as to use in terms of timing, location and purpose. With allocation being mostly at its limits in most catchments encouragement is needed of greater efficiency of use. If that can be achieved by a more flexible regime of readily

operated transfers then it should be encouraged by policies in the PMEP – even though there will be significant work and processes needed to develop a workable regime able to be advanced through a Plan Change process.

193. As to the basic question of whether these types of transfers will be beneficial to greater efficiency of use, the Panel's view was that they had the potential to be useful. In some fully allocated situations they could enable access for water to be used which at present is technically on paper 'utilised' in terms of being allocated, but in fact for some time periods may not be being actually utilised – yet possibly could be made available to other users, even if only for very short terms.
194. In those situations complex RMA consent processes may not be needed in terms of environmental outcome as the environmental outcome is already controlled by the fixing of limits/levels.
195. This system could avoid unnecessary cost and delay which otherwise might possibly result in water not being efficiently utilised.
196. It is a system, too, which will ensure the private transactional process is removed from the RMA consent consideration.
197. Method 5.M.2 will be important to ensure the Plan Change process is community or user group driven in conjunction with iwi – aided by Council facilitation.
198. The word 'enhanced' is not seen as useful guide as in RMA terms that word usually denotes an 'enhancement' or improvement of the environment. Transfers of extractive rights to take water for irrigation use might fall in that category in the eyes of some, but to others taking of water does not 'enhance' a surface flow or an aquifer level, and arguably does the opposite.
199. As this is really a process regime concept to encourage efficiency in process and water use, the Panel decided to instead use the term 'streamlined transfers', thus adopting statutory language from a recent RMA Amendment Act as to the streamlining of processes. The concept involves a 'streamlined' transfer process which is not complicated by the necessity to obtain RMA consents for transfers within allocation limits, and the word 'streamlined' appears in those circumstances to be far more apposite.

Decision

200. Policy 5.4.4 remains as notified and Policy 5.4.5 is amended as follows:

Policy 5.4.5 – When an ~~enhanced~~ streamlined transfer system is included in the Marlborough Environment Plan to enable the full or partial transfer of individual water allocations between

the holders of water permits to take and use water, this will be provided for as a permitted activity where:

(a) the respective takes are from the same Freshwater Management Unit;

(b) the Freshwater Management Unit has a water allocation limit specified in Schedule 1 of Appendix 6;

(c) the take is not from the Brancott Freshwater Management Unit, Benmorven Freshwater Management Unit Omaka Aquifer Freshwater Management Unit or the Riverlands Freshwater Management Unit;

(d) metered take and use data is transferred to the Council by both the transferor and the transferee in real time using telemetry;

(e) the allocation is authorised via a water permit(s) applied for and granted after 9 June 2016;

(f) the transferee holds a water permit to take water if their abstraction point differs from the that of the transferor; and

(g) the transferee holds a water permit to use water.

The duration of the transfer is at the discretion of the transferor and transferee and can be on a temporary basis or for the remaining duration of the water permit.

An ~~enhanced~~ streamlined transfer system was not included in the MEP when it was publically notified on 9 June 2016. However, the Council intends to introduce such a system to the MEP through the plan change provisions under First Schedule of the RMA at a later date. Under a system of ~~enhanced~~ streamlined transfer of water permits, water users would have the flexibility to develop their own transfer arrangements. In these circumstances, there is a need for appropriate protections to be put in place to make a system of ~~enhanced~~ streamlined transfer work efficiently and effectively for water users, as well as to protect the reliability of the water resource for existing users. The matters (a) to (f) effectively establish ground rules under which ~~enhanced~~ streamlined transfer can occur. In doing so, this policy gives effect to Policy B3 of the NPSFM. The matters listed above will form the basis of permitted activity standards for the transfer of water permits.

Decision

221. The submissions seeking the deletion or amendment of Policy 5.3.15 and to delete Policy 5.3.16 and Standard 3.3.6.2 (g) are rejected.

222. Amend Policy 5.3.16 as follows:

Policy 5.3.16 – When considering any application for land use consent required as a result of Policy 5.3.15, have regard to the effect of the proposed forestry on river flow (including combined effects with ~~other commercial~~ existing plantation forestry ~~and carbon sequestration forestry (non-permanent)~~ established after 9 June 2016) and seek to avoid any cumulative reduction in the seven day mean annual low flow of more than 5%.

223. Amend the last sentence explanatory statement to Policy 5.3.16 to read as follows:

Any reduction in flow shall be measured against the seven day mean annual low flow at 9 June 2016, being the date of notification of the MEP, and any assessment of cumulative effects should only consider ~~commercial~~ plantation forestry established after 9 June 2016

224. Amend Standard 3.3.6.2 (g) to read as follows:

(g) an Afforestation Flow Sensitive Site, unless replanting harvested plantation forest that was lawfully established.

Environmental Flows – Diversions & Damming – Policies 5.2.3 and 5.2.18, to 5.2.22

Policy 5.2.3 – Protect the significant values of specifically identified freshwater bodies by classifying the taking, damming or diversion of water in these waterbodies as a prohibited activity.

Policy 5.2.18 – Require resource consent for the diversion of water to enable the potential adverse effects of the diversion to be considered.

Policy 5.2.19 – Have regard to the following matters in determining any resource consent application to divert water:

- (a) the purpose of the diversion and any positive effects;**
- (b) the volume or proportion of flow remaining in-channel and the duration of the diversion;**
- (c) the effect of the diversion on environmental flows set for the waterbody;**
- (d) the scale and method of diversion;**
- (e) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;**
- (f) any adverse effects on permitted or authorised uses of water; and**
- (g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.**

Policy 5.2.20 – Where water is to be dammed to enable the storage of water, encourage the construction and use of “out-of-river” dams in preference to the construction and use of dams within the beds of perennially or intermittently flowing rivers.

Policy 5.2.21 – Ensure any new proposal to dam water within the bed of a river provides for:

- (a) effective passage of fish where the migration of indigenous fish species, trout and salmon already occurs past the proposed dam site;**

- (b) **sufficient flow and flow variability downstream of the dam structure to maintain:**
 - (i) **existing indigenous fish habitats and the habitats of trout and salmon; and**
 - (ii) **permitted or authorised uses of water; and**
 - (iii) **flushing flows below the dam;**
- (c) **the natural character of any waterbody downstream of the dam structure; and have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.**

Policy 5.2.22 – In the determination of any resource consent application, have regard to the following effects of damming of water:

- (a) **the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;**
- (b) **changes in river bed levels and the effects of those changes;**
- (c) **any downstream effects of a breach in the dam wall;**
- (d) **interception of groundwater or groundwater recharge; and**
- (e) **interception of surface water runoff.**

225. Many submissions were lodged on these various provisions as to diversions and damming proposals for surface flows once again with a broad spectrum involved. At one end of the spectrum was the approach of submitters led principally in evidential terms by Ngai Tahu who sought that there be a prohibition on in-stream damming activities in main stems and in all the branches of the Awatere catchment because of the interference they caused with the mauri of the waters, or the impact of damming on the concept of Te Mana o te Wai. Ngai Tahu also sought greater controls on the potential mixing of waters in respect of diversions.

226. At the other end of the spectrum were users such as the hydro generators and irrigation users who regarded diversions as beneficial uses of water, and which for hydro at least was not consumptive, and damming as a valuable method of storage of water to enable peak demands to be met.

227. Other submissions took a range of positions between those differing ends of the spectrum of effects on surface flows. Some iwi submitters particularly sought greater account to be required to be taken of issues of significance to iwi on consideration of diversion applications.

Section 42A Report

228. The Section 42A Report drew attention to the fact that a suite of standards also needed to be considered when considering these policies as those standards addressed a number of matters of detail which were significant in assessing the overall impact of the policies.

229. As a consequence the report recommended that Policy 5.2.18 as to diversions remained as notified; that Policy 5.2.19 be amended by adding reference to tangata whenua values; that Policy 5.2.20 as to damming be retained as notified; that Policy 5.2.21 be amended to recognise the potential value of enabling dams without fish by-passes so as to enable

restoration of native species above the dam in certain circumstances and again to include reference to cultural values; and finally, in respect of Policy 5.2.22 in the Final Report inclusion was recommended of references to regard also being had to degradation of mauri, loss of indigenous biodiversity and the positive effects available from damming.

Consideration

230. In terms of the policies the Panel reached the conclusion after hearing all the evidence produced that there were a range of potential activities involving diversions and damming activities which could if well-planned have beneficial as well as obvious adverse effects.
231. Those benefits included, by way of example, those from diversions intended to re-water old stream beds, as in Gibsons Creek, which has had major benefits on aquifer recharge rates in the Wairau aquifers. Moreover, that Scheme has in addition enabled the Southern Valleys Irrigation Scheme (SVIS) which has itself taken pressure off the southern valleys aquifers. That occurred just as those aquifers were struggling to cope with irrigation demands, and recharge rates were declining. In addition the SVIS has enabled the irrigation on a much more sustainable basis of over 5,000 ha of land in the southern valleys providing a significant amount of production from what otherwise would have been water short land.
232. Another example has been the major Branch hydro diversion into the Argyle Pond and canal which has enabled a major generation facility with limited effects – and some of those effects have in fact worked well. Fluctuation flows downstream from the Argyle pond releases have to a significant extent assisted in maintaining sustainable varied flows and hence avoiding cut-offs of takes in the lower Wairau.
233. In terms of dams the principal uses have been for hydro generation in the Waihopai in early years, and more latterly on a widespread basis for high flow storage dams principally for C class water. The development of those dams has meant that again pressure at low flow periods has been relieved utilising water that otherwise would principally have flowed to sea. They have opened up large areas of the Awatere and other southern catchments to increased viticultural and agricultural production on what otherwise would have been seriously dry country.
234. While Ngai Tahu's concerns about effects on the mauri of instream damming are recognised, at the same time the value of those storage dams in supporting a greater biodiversity of flora and fauna in the relatively water short Awatere and southern catchments cannot be overlooked. Evidence was given of many examples of water storage dams providing enhanced habitat for both indigenous flora and fauna in areas and sub-catchments which otherwise

were verging on being barren, and on its own site visits south of Blenheim the Panel observed some of those very obvious restoration qualities at first hand. Particularly persuasive evidence was given in that regard by Dr McConchie about the benefits the well planned Hickman dam on one of the tributaries feeding into Lake Elterwater was able to provide, which enhanced biodiversity values in a manner and to an extent that was unlikely in the natural very dry climate at that location. His positive opinions as to that outcome were supported by Mr Hamill the Section 42A Report writer, based on his own observations of the outcome there.

235. The Panel considers that the existing provisions are not necessarily inconsistent with the concepts of Te Mana o te Wai given that type of positive evidence. The Panel sees it as being important that Te Mana o te Wai is identified specifically in Policy 5.2.21(b) for that reason.
236. As to the issue of fish passage by-passes being required to be considered in every case (Policy 5.2.21(a)), the Panel heard interesting arguments against such a requirement because of the benefits in some smaller sub-catchments of being able to restore habitat for indigenous species. Those species otherwise would be predated by salmonoid species. That arises as a result of the peculiarity of s 7 (h) of the RMA which provides a measure of statutory recognition to the habitat of introduced species of trout and salmon in s 7 (h) of the Act.
237. The Panel also took into account the provisions of cl 43(1) of the Freshwater Fish Passage Regulations 1983. While that provides additional requirements for fish passage on structures in rivers, but those requirements are at the discretion of the Director General (as defined in the Fisheries Act 1983) and can enable dispensations or differing forms of fish facilities which are defined as including fish screens as well as fish passages. The provisions of cl 43 are as follows:

43 Dams and diversion structures

(1) The Director-General may require that any dam or diversion structure proposed to be built include a fish facility:

provided that this requirement shall not apply to any dam or diversion structure subject to a water right issued under the provisions of the Water and Soil Conservation Act 1967 prior to 1 January 1984.

(2) Any person proposing to build such a dam or diversion structure shall notify the Director-General and forward a submission seeking the Director-General's approval or dispensation from the requirements of these regulations, shall supply to the Director-General such information as is reasonably required by the Director-General to assist him in deciding his

requirements (including plans and specifications of the proposed structure and any proposed fish facility).

(3) Should the Director-General consider that the information supplied is inadequate, he shall, within 28 days, advise the applicant as to what further information is required.

238. In land terms introduced species which predate on native species, such as rats and possums, are regarded as pests. However, despite the predation of trout and salmon on native species in our rivers, they are regarded in statutory terms as an asset whose habitat is deserving of particular consideration, (regardless of the irony that part of that habitat consists of indigenous species upon which the trout and salmon predate). Section 7(h) RMA provides that particular regard must be had to:

(h) The protection of the habitat of trout and salmon

239. Notwithstanding that protection there plainly is a value to be recognised from enabling some sub-catchments to provide habitat for indigenous species where they cannot be predated by trout. We were persuaded that the door should be left open to that particular enhancement possibility for indigenous species.

Decision

240. Policy 5.2.21 (a) is amended as follows:

(a) Effective passage of fish where the migration of indigenous fish species, trout and/or salmon already occurs past the proposed dam site, provided that if the purpose of the dam is for the restoration and/or establishment of only native species habitat then fish passage for trout and salmon is not required.

241. In addition the Panel decided that a new sub-clause (iv) was needed at Policy 5.2.21 (b):

(iv) mauri o te wai; and

242. Amend the explanation to Policy 5.2.21 as follows:

Where a dam is proposed to be constructed in the bed of a river in spite of Policy 5.2.19, the policy identifies three matters to be provided for as part of the proposal. It recognises that a dam structure can act as a barrier to fish passage, modify the flow pattern downstream of the dam structure, ~~and~~ alter the natural character and mauri of the river (or other downstream waterbodies) as a result of flow modification. The nature and significance of the adverse effects created by the dam structure will vary depending on the proposed structure, and the nature of the river and the natural and human use values it supports. This policy allows these proposal and site specific factors to be taken into account. ...

Duration of take & use permits – Policy 5.3.14

Policy 5.3.14 – The duration of water permits to take water will reflect the circumstances of the take and the actual and potential adverse effects, but should generally:

- (a) not be less than 30 years when the take is from a water resource:**
 - (i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and**
 - (ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and**
 - (iii) that is not over-allocated; or**
- (b) not be more than ten years when the take is from an over-allocated water resource as specified in Policy 5.5.1; or**
- (c) not be more than ten years when the take is from a water resource that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.**

283. This policy seeks to steer a path between the demands of water users for certainty to allow major capital expenditure to be made with confidence from the certainty of supply, and the concerns by others and Council as the resource manager as to the inability to control take and use of a resource because of existing permits. That concern is exacerbated in that many FMUs are already over-allocated, and by the fact that the effects of climate change may cause current catchment allocations to need review well before permits expire.

284. The submissions received highlighted that range of views with some seeking longer duration permits and others seeking that the policy restrict the duration of permits, particularly as a precautionary matter given the impacts and uncertainty of the effects on water supply as a result of climate change.

Section 42A Report

285. The approach in general terms in the report was to support the policy as notified, but with it being recommended to be amended to include all consumptive diversion permits as well and to amend the terminology of water resource to FMU to reflect the NPS terminology used in the rest of the Plan.

286. The report particularly identified that community water supplies need the certainty of 30 year terms but identified the principal problem as being those situations where FMUs were over-allocated where 10 year terms are warranted until the over-allocation is removed.

Consideration

287. The Panel agreed with the Section 42A Report recommendation that diversions for consumptive purposes are dealt with on an equal basis to take permits. The duration of diversions for consumptive purposes has the same potential effect on the total allocations of water for those purposes as the duration of takes for consumptive purposes, so the policy, if amended, would treat them equally.

288. The effects of climate change in Marlborough on water resources are at present unknown. The fact of large and long catchments such as the Wairau, Branch, Waihopai and the Awatere having sources far distant from irrigated use areas may even mean that rainfall in those more westerly and southerly areas increases, while drought effects become more common to the east.
289. Consideration of ensuring Te Mana o te Wai and sustainability requires a more conservative or precautionary approach than 30 year permits.
290. Until monitoring over ten to twenty year periods produces more reliable patterns of water availability and soil moisture retention rates it is better to limit the duration of take/use consents.
291. At the same time the Panel considered it was necessary to take into account both the level of capital investment reliant on take/use consents and the considerable costs of re-consenting too frequently.
292. The Panel did take into account the irrigation efficiency trials being run by the viticulture industry and their potential to have huge effect on water demand for irrigation for viticulture, but until the results of those trials have been verified in real terms over a range of seasons the Panel was of the view that the precautionary approach it preferred to guard against the effects of climate change was warranted having regard to s.7 (i) of the RMA.
293. The Panel decided that it was appropriate to amend the term in Policy 5.3.14 (a) from 30 years to 20 years taking into account all those considerations.

Decision

294. Amend Policy 5.3.14 as follows:

Policy 5.3.14 – The duration of water permits to take or divert water for consumptive purposes will reflect the circumstances of the take or the diversion and the actual and potential adverse effects, but should generally:

(a) not be less than ~~30~~ 20 years when the take or diversion of water for consumptive purposes is from a Freshwater Management Unit ~~water resource~~:

- (i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and*
- (ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and*
- (iii) that is not over-allocated; or*

(b) not be more than ten years when the take or diversion of water for consumptive purposes is from an over-allocated ~~water resource~~ Freshwater Management Units as specified in Policy 5.5.1; or

(c) not be more than ten years when the take or diversion of water for consumptive purposes is from a ~~water resource~~ Freshwater Management Units that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.

295. Add a new paragraph to the end of the explanatory statement to Policy 5.3.14 as follows:

The duration of diversions for consumptive purposes has the same potential effect on the total allocation of water as the duration of takes, so the Policy treats them equally.

Consents – lapse duration – policies 5.4.1 & 5.4.3 and order of policies 5.4.1, 5.4.2 and 5.4.3 in Plan

Policy 5.4.1 – The lapse period for water permits to take water shall be no more than two years.

Policy 5.4.2 – Giving effect to water permits to take and use water will be determined on the basis of the water being taken (and/or stored) for the authorised use and that the take is recorded in accordance with Policy 5.7.4.

Policy 5.4.3 – The lapse period for water permits to use water shall be at least ten years.

296. The statutory regime for lapse periods for water permits to both take and to use water, and their potential as an issue of concern in Marlborough is succinctly described for take permits in the explanatory statement to policy 5.4.1 as follows:

The statutory lapse period to commence the exercise of a resource consent is five years. This is a considerable period of time to have water allocated but potentially not used. With increasing scarcity of freshwater resources, it is appropriate to have a shorter lapse period.

297. The two year lapse period in proposed in Policy 5.4.1 for permits to take water.

298. At first sight that appears to conflict with the extended lapse term for permits to use water contained in Policy 5.4.3 which is ten years. However, the explanatory statement to Policy 5.4.3 makes it clear that the time period proposed is dictated by the ‘enhanced’ (changed by earlier decision above to ‘streamlined’) transfer system. The relevant part of the explanatory statement to Policy 5.4.3 states:

A user must, as a minimum, hold a water permit to use water (a water permit to take water may not be necessary depending on the method of water distribution). Opportunities to utilise enhanced transfer of water permits may be limited in time. It would therefore be inappropriate to lapse the water permit to use water on the basis

Efficiency of Use & Reference to Irricalc – Policy 5.7.2 & Explanatory Statement & Policy 5.7.3 Explanatory Statement

Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.

One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. In the case of irrigation, the Council will provide users with a tool, "IrriCalc," to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property.

317. This policy assists to give effect to Policy B4 of the NPSFM.
318. Policies 5.7.2 and 5.7.3 both describe in their Explanations the use of computer methodology, at present primarily in the form of a system called 'Irricalc', which is effectively a tool to ensure that consents to take and use water can be efficiently calculated in terms of quantities needed for particular crops, based on a range of factors including soil types, soil moisture holding characteristics, evapotranspiration rates and climate at particular locations. Some submitters sought that the specific reference to 'Irricalc' in the PMP should be deleted and a more generic descriptor be provided.
319. The reasons for the request included the lack of control by Council of the methodology and its ability to be changed without going through any formal Plan Change process; the effective practical 'delegation' as a result of control of efficiency of water use to the Irricalc designer/owner; and the effective shutting out of potential other developers of similar methodology and the improvements that they may be able to bring to environmental management.
320. The Section 42A Report writer in the Reply to Evidence on Matter 7 recognised the validity of some of the arguments advanced and recommended that the Policy 5.7.2 wording could be retained but recommended that the notified Explanation to Policy 5.7.2 was amended as follows:

One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. In the case of irrigation, ~~the Council will provide users with a tool, "IrriCalc,"~~ a reasonable use model will be used to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property.

321. The report also recommended that the following sentence be added to the first paragraph of the Explanation to the Policy:

In the case of non-irrigation uses, the allocation to the user will be assessed on a case-by-case basis.

322. The Panel accepted the recommendations as it agreed the points made by submitters were valid criticisms but considered that some limited changes to the recommended wording were appropriate in the new sentence.

Decision

323. Retain Policy 5.7.2 as notified but amend the Explanation to Policy 5.7.2 to read as follows:

One of the ways in which efficient use of water can be achieved is by ensuring that the allocation to the user does not exceed that which is reasonably required for the use. ~~In the case of~~ For irrigation the Council will provide users with a tool, "Irricalc," a reasonable use model will be used to estimate water demand for the crop, based on the soil type(s) and climate that exist at the property.

For non-irrigation uses, the allocation will be assessed on a case-by-case basis.

Efficiency of Use & Reference to Irricalc - Policy 5.7.3 and Explanatory Statement

324. Much the same issues arose in submissions on the explanation to Policy 5.7.3 leading to a recommendation in the Reply to Evidence that references to Irricalc be replaced by generic references to a 'reasonable use model'. The report also recommended a consequential change to Method 5.M.7 as follows:

Model the irrigation demand of pasture and crops according to soil type and climate using Irricalc or a similar analysis method approved by Marlborough District Council. The model output will be used as a basis for determining allocations for the use of water.
The model will be provided to water users via ~~the E-planning~~ an online tool.

325. For the same reasons the Panel agreed with those recommendations but with some very limited wording changes.

Decision

326. Retain Policy 5.7.3 as notified but amend paragraphs two, three and four of the explanatory statement to Policy 5.7.3 to read as follows:

~~"Irricalc"~~ Reasonable use models uses existing soils information and modelled climate data to provide estimates of water use for all crop types. To ensure efficient use of water for irrigation, the Council will generally not grant water permits to use water for irrigation purposes at a rate that exceeds the reasonable use calculation provided by a reasonable use model. ~~"Irricalc"~~

Mauri - Policy 5.2.21

Policy 5.2.21 – Ensure any new proposal to dam water within the bed of a river provides for:

- (a) effective passage of fish where the migration of indigenous fish species, trout and salmon already occurs past the proposed dam site;**
 - (b) sufficient flow and flow variability downstream of the dam structure to maintain:

 - (i) existing indigenous fish habitats and the habitats of trout and salmon; and**
 - (ii) permitted or authorised uses of water; and**
 - (iii) flushing flows below the dam;****
 - (c) the natural character of any waterbody downstream of the dam structure; and**
- have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.**

364. A closely related submission was made by Ngāti Toa and Ngāti Kuia in relation to this Policy 5.2.21 where they sought inclusion of a sub-clause (iv) in sub-clause (b) to the Policy to specifically refer to maintaining the ‘mauri’ of the dam waters.

365. In this case, however, the Section 42A Report did support the specific reference being included as a new sub-clause (iv).

366. The Panel in its consideration thought that it would be helpful for the word ‘mauri’ to be specifically tied into the ‘wai’ by making that reference. It also considered that an amendment should be made to the Explanatory Statement to Policy 5.2.21 to contain reference to the ‘mauri’ of the river.

Decision

367. Amend Policy 5.2.21 by inserting the following additional sub-clause in Policy 5.2.21 (b):

(iv) mauri o te wai;

368. Amend the Explanatory Statement to Policy 5.2.21 as follows:

Where a dam is proposed to be constructed in the bed of a river in spite of Policy 5.2.19, the policy identifies three matters to be provided for as part of the proposal. It recognises that a dam structure can act as a barrier to fish passage, modify the flow pattern downstream of the dam structure, ~~and~~ alter the natural character and mauri of the river (or other downstream waterbodies) as a result of flow modification. The nature and significance of the adverse effects created by the dam structure will vary depending on the proposed structure, and the nature of the river and the natural and human use values it supports. This policy allows these proposal and site specific factors to be taken into account. ...

Damming – effects on ‘mauri’ – Policy 5.2.22

Policy 5.2.22 – In the determination of any resource consent application, have regard to the following effects of damming of water:

- (a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;
- (b) changes in river bed levels and the effects of those changes;
- (c) any downstream effects of a breach in the dam wall;
- (d) interception of groundwater or groundwater recharge; and
- (e) interception of surface water runoff.

369. Ngāti Kuia in its submission sought similarly that protection against ‘degradation of mauri’ be specifically referred to in this Policy. The report writer took a similar view as to that request as for Policy 5.2.21.¹⁶

370. Again the Panel preferred to expand the reference to so that it was to degradation of the ‘mauri of the wai’ to specifically refer to the water body affected.

Decision

371. Amend Policy 5.2.22 by adding in a further sub-clause as follows:

(x). degradation of the mauri o te wai.

Temporary dams – Policy 5.2.22 and Rule 2.7.1

2.7.1. Alteration, repair or maintenance of an existing structure in, on or over the bed of a lake or river.

372. Trustpower and others raised in submissions the need to ensure that Policy 5.2.22 did not have the practical effect of preventing the use of temporary dams as part of river works in riverbeds to carry out necessary maintenance of significant infrastructure, and for that reason sought a specific provision for temporary dams to enable necessary maintenance work on existing structures, and the release of any associated detritus when the temporary dam was removed.¹⁷

373. The Reply to Evidence acknowledged that need, as had the original report. It recommended the following wording amendment for rule 2.7.1:

2.7.1. Alteration, repair or maintenance, including the temporary damming of water, of an existing structure in, on or over the bed of a lake or river.

374. The Panel agreed with that recommendation but considered that a slightly different wording was required.

¹⁶ (501.10)

¹⁷ (1201.38)

Decision

375. Amend rule 2.7.1 to read:

2.7.1. Alteration, repair or maintenance of an existing structure, including any associated temporary damming of water or release of detritus, in, on or over the bed of a lake or river.

376. Amend Standard 2.9.1 heading as a consequence to read:

2.9.1 Alteration, repair or maintenance of an existing structure, including any associated temporary damming of water or release of detritus, in, on or over the bed of a lake or river.

Efficiency of use – Objective 5.4

Objective 5.4 – Improve the utilisation of scarce water resources.

377. This Objective and following policies seek to encourage better utilisation of water resources which are over-allocated. A number of submissions particularly sought that the explanation to the Objective make it clearer what is intended by this Objective and supporting policies. The Section 42A Report did not agree any amendment was needed to the notified version.

378. After considering the submissions the Panel decided some greater clarity could be provided by an amendment as follows to focus on the issue of better utilisation of scarce resources rather than on gaining access to other sources.

Decision

379. Amend the explanatory statement to Objective 5.4 so that it reads:

In a state of full allocation of water resources, and given the implications of full allocation for potential users under the NPSFM, it is essential that ~~an alternative method to gain access to water is found to meet future demand~~ better utilisation of scarce water resources occurs to enable access to water to meet future demand.

Provision for non-irrigation uses – Policy 5.7.2

Policy 5.7.2 – To allocate water on the basis of reasonable demand given the intended use.

380. A number of submissions raised concerns that the Plan needed to specifically acknowledge the demand for water use from non-irrigation users as much as from irrigation users and that this Policy or its explanation provided that opportunity. The Section 42A Report agreed with that and recommended a wording for the Explanation that commenced “In the case of non-irrigation uses...”.

Decision

381. The Panel would prefer to slightly amend the opening words to that recommendation so the addition to the explanation reads, as an addition to the end of the first paragraph:

For non-irrigation uses, the allocation to the user will be assessed on a case-by case basis.

Rule 2.6.4 (b) - Branch River

2.6.4. Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

(a) Acheron River;

(b) Branch River (including downstream of weir to the Wairau River confluence);

428. NZTA's submission sought an exemption to enable it to carry out works downstream of the weir for the offtake of water into the Argyle canal for the power scheme to enable the maintenance of the SH 63 bridge and its support structures.²²

429. That bridge is an important part of the regional significant infrastructure and the Panel accepted the need for the exemption which the original Section 42A Report also did. However, the original report & reply to Evidence both suggested it be added as an exemption at the end of the rule.

430. As the exemption is only intended to relate to this particular bridge and river the Panel thought it preferable to provide for the exemption in 2.6.4 (b) itself.

Decision

431. Amend Rule 2.6.4 (b) to read as follows:

2.6.4. Take, use, damming or diversion of water from the following waterbodies, including their tributaries:

(a) Acheron River;

(b) Branch River (including downstream of weir to the Wairau River confluence) provided that the rule does not apply to the take, use, or diversion of water associated with the maintenance or upgrade of the State Highway 63 road bridge over the Branch River;

Clarence River reference in Rule 2.6.5 and elsewhere in the PMEP

2.6.5. Damming of water in the following waterbodies, including their tributaries:

(a) Awatere River above Medway River (excluding tributaries not specified in this rule);

(b) Clarence River;

(c)

432. Ngai Tahu sought in their submission that this reference to the 'Clarence' be amended to refer to the 'Waiau-toa/Clarence River' as that name change has occurred officially.²³

433. The Panel agrees with that as did the Section 42A Report. However, the Panel also directs that a consequential change is made in that nomenclature wherever reference is made to the 'Clarence' throughout the Plan.

²² (1002.19)

²³ (1189.115)

Decision

434. Amend the reference to 'Clarence' to the 'Waiau-toa/Clarence River' both in Rule 2.6.5 and as a consequential change at any location where that name appears throughout the MEP.

Dam wall height standard request – Standards 3.3.19 & 4.3.18

435. The Davidson Group Limited submission on this issue sought that additional safety requirements should be included in Standard 3.3.19 – in particular that a Standard from the Wairau Awatere Resource Management Plan (WARMP) should be carried over into the PMEP controlling dam wall height at 4m as a standard. The point made in the submission was that a small dam on a big highly-ephemeral catchment was not protected in terms of height of dam wall as a permitted activity.²⁴
436. The Addendum Report did not express any particular view pointing out that if the submission was addressing only dams in ephemeral rivers then they were not a permitted activity as Rule 3.1.19 only permitted off-river dams. At the hearing Mr Ross Davis for the submitter made it clear the concern was generic and not related solely to dams in ephemeral valleys. In the Reply to evidence on the Addendum report issues the Section 42A comment was simply that the report writers did not have the expertise to provide an expert response.
437. The Panel accepted the evidence of Mr Davis as an experienced engineer with long experience in Marlborough of dam construction that this issue of dam height should be controlled as it was in the WARMP.

Decision

438. Add a new standard in Standard 3.3.19 for the Rural Zone and Standard 4.3.18 for the Coastal Environment Zone as follows:

The dam must be less than 4m in height, measured from base to crest.

Ōpaoa River monitoring site location – Appendix 6 Schedule 3

439. The monitoring site for flow levels in the notified PMEP was expressed in the first column as being in respect of the 'Ōpaoa (below O'Dwyers Road). The monitoring site location was expressed simply as 'Hutcheson Street' – and the minimum flow was specified as being '1.500 m³/s adjacent Sec 1 SO 417530'.
440. MDC in a submission sought there was more precision by seeking to change the descriptor of the FMU involved in the Ōpaoa to reflect the river flow being monitored as being from Mills and Ford Road to the confluence of the Ōpaoa and Taylor rivers.²⁵

²⁴ (172.5)

²⁵ (91.258)



Proposed Marlborough Environment Plan

Topic 7: Public Access and Open Space

Hearing dates: 12 – 13 March and 3 April 2018

S42A Report Writer: Paul Whyte

Conflicts of Interest: None

Interim decision: None

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

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List of Abbreviations

MDC	Marlborough District Council
MSRMP	Marlborough Sounds Resource Management Plan
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
RPS	Regional Policy Statement
S42A Report	Section 42A Report

Submitter abbreviations

AQNZ	Aquaculture New Zealand
DOC	Department of Conservation
FENZ	Fire and Emergency New Zealand
FIS	The Fishing Industry Submitters
Fish & Game	Fish and Game New Zealand
Forest and Bird	Royal Forest and Bird Protection Society NZ
FNHTB	Friends of Nelson Haven and Tasman Bay Incorporated
HNZPT	Heritage New Zealand Pouhere Taonga
MDC	Marlborough District Council
MFA	Marine Farmers Association Incorporated
MFIA	Marlborough Forestry Industry Association Incorporated
NFL	Nelson Forests Limited
NMDHB	Nelson Marlborough District Health Board
NZDF	New Zealand Defence Force
NZIS	New Zealand Institute of Surveyors
NZWAC	New Zealand Walking Access Commission
NZTA	New Zealand Transport Agency
PMNZ	Port Marlborough New Zealand Limited
TRONT	Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu

Structure of Decisions

1. It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel¹.
2. The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.
3. Where the PMEP provisions **remain as notified**, it is because:
 - (a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or
 - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or
 - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.
4. Where there is a **change to a provision** within the plan it is because:
 - (a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or
 - (b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or
 - (c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report;
or

¹ (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

- (d) A consequential change has been necessary following on from a decision in either a), b) or c).
5. Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.
 6. There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.
 7. Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

Introduction

8. The Introduction to Chapter 9 states that there are two regionally significant elements of community wellbeing in Marlborough. These are the access to rivers, lakes, high country and coast and the ability to enjoy areas of open space for recreation or other purposes. As there is a strong relationship between providing for areas of public access and areas of open space, the issues and supporting policies are considered together in this chapter. The chapter is also provided direction by s 6(d) RMA which states that 'the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers' is of national importance.
9. There were a number of general submissions on Chapter 9² that variously seek additional reference to 'cycling'; the control of weeds; increased consultation with Ngāti Koata, particularly around riparian rights and mooring sites; recognition that current access to Port Underwood is sufficient and should therefore not be a priority for public access (if access is enhanced, it is said there will be additional presence of logging trucks in the area, which is of particular concern); recognition that some types of subdivision cannot provide esplanade reserves and provide for the operational requirements, such as those that require operational connections between land and sea (these operational issues should be accounted for); objectives and policy should avoid too restrictively zoning privately owned in breach of s 85 RMA (zoning of any land not owned by the Council or Department of Conservation as Open Space Zone is opposed); inclusion of freedom camping in the chapter's policies; amendment to create a more concise and succinct chapter; Council to make a clear commitment to ensuring public spaces are managed through regulatory and non-regulatory provisions; recognition that public access is not supported by whanau who hold riparian rights in private ownership.

Section 42A Report

10. The proposed amendments are not accepted in the Section 42A Report. The report emphasises that public access is a matter of national importance and the overall chapter content is considered reasonable. Riparian rights cannot be altered without some kind of statutory process and this should not derogate from the public access rights under the MEP. Mooring is also addressed separately in the MEP as a discretionary activity under Rule 16.6.2.

² Kevin Wilson (210.5), Murray Chapman (348.11), George Elkington (727.1), NZ Forest Products Ltd (995.15 and .44), Flaxbourne Settlers Association (712.19,.20 and .24-.29) and KF Lowe (454.13-.18 and.30-.31), Federated Farmers (452.152), P Rene (1023.18).

11. Very little of the land that has been zoned as Open Space Zone is private land and where private land has been zoned, the appropriate activities will be provided for as a permitted activity.

Consideration

12. Given the statutory direction in s 6 RMA the Panel agrees with the report writer's advice.

Decision

13. There are no changes to the Introduction of Chapter 9.

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) – (e)]

14. There were a number of submissions on this policy that variously seek: public access be limited to the form of esplanade reserves and strips; Policy 9.1.1 be restricted to apply only to Coastal Marine Zone areas and that Policies 9.1.6-9.1.8 better apply to access to the Marina and Port Zones; addition of 'iwi specific areas'; addition of White Bluffs; inclusion of public access policies in the River Management Section of the MEP and inclusion of the Opawa River stop bank as part of an overall cycle network;³ an additional area (f) for conservation land;⁴ clarification on the policy's application to rivers that only flow intermittently and the liability for damages;⁵ amendment to the policy to include the need to protect conservation values and mitigate natural hazards;⁶ identification of parts of water bodies considered 'high priority' for public access;⁷ amendment to Policy 9.1.1 to include the phrase 'zoned Coastal Marine' after 'coastal marine area'.⁸

Section 42A Report

15. The Section 42A Report identifies that the generic nature of the policy providing for public access, as required by s 6(d) RMA as a matter of national importance, prevents many of these amendments being adopted. The focus of the policy is on public access and some of the submissions raise other issues addressed elsewhere in the PMEP. (Policies 9.1.6-9.1.8, for example, recognise that marinas and jetties provide opportunities for public access and give effect to s 6(d).)

³ Bike Walk Marlborough Trust (471.1) and NZWAC (481.3)

⁴ Te Runanga o Toa Rangatira (501.37)

⁵ ME Taylor (472.9)

⁶ FNHTB (716.135)

⁷ Fonterra Cooperative Ltd (1251.300).

⁸ PMNZ, Louise Taylor Evidence, Appendix B_. Section 42A Report, Reply to Evidence, pages 1-2, 3 April 2018.

Consideration

16. Policy 9.1.1(c) should not be restricted to the Coastal Marine Zone as it is a general policy referring to coastal and land areas and there are other policies to address issues such as safety. Similarly, the reference to conservation land is also too specific, particularly as the policy focuses on a broad range of geographical areas and features.
17. In response to the identification of waterbodies, reference to the overlay 'High Priority Waterbodies for Public Access' suggested by PMNZ was omitted from the policy at the time submissions were made. This should be inserted and resolves the issue by identification of high priority areas.

Decision

18. Policy 9.1.1 is amended to read:

'... (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; ...'

19. All other submissions on Policy 9.1.1 are rejected

Policy 9.1.3

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

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

20. This policy relates to minimising the effects of public access on the wider public and conflicts between users.
21. The policy is supported by a number of submitters.⁹ Others seek: inclusion of the wording 'where necessary' as not all circumstances will be appropriate to provide for the disposal of litter or human waste;¹⁰ further provisions relating to trespass, landowner access and effects on neighbouring land use;¹¹ an express exclusion of Port, Port Landing and Marina Zones.¹²

Consideration

22. The proposed inclusion of 'where necessary' in relation to disposal of waste is not supported as it would weaken the policy. The required flexibility is already provided for in the existing policy wording 'steps shall be taken'. The inclusion of reference to trespassing could occur as

⁹ H Thomson (111.1), J Wilson (231.3), NZWAC (481.5), KiwiRail Holdings (873.5) and Fish and Game (509.139)

¹⁰ MDC (91.201)

¹¹ Federated farmers (425.156), DA Sycamore, Evidence; Section 42A Report Reply to Evidence 3 April 2018.

¹² PMNZ (433.44)

that concern could arise, but landowner access as a permitted activity, does not fit the intent of this particular policy¹³ as increased access would likely increase damage and littering by individuals. Again, it is not considered that reference to landowner access is necessary as it is at the discretion of the landowner. The exclusion of Port, Port Landing and Marina zones sought by PMNZ is not supported, as the policy appears to be favourable to operators of the facilities in these zones.¹⁴

23. The inclusion of the words ‘cumulative’ to ‘adverse effects’ and ‘trespass’ sought by Federated Farmers related to the particular effects in this setting of the combination of minor effects that arise from public access. In other parts of this decision the Panel has drawn attention to the fact that the definition of effect in s 3 RMA includes cumulative effects and has not favoured the addition of that word in other settings in the Plan. In this particular situation where that is the primary effect of concern the Panel accepts the Federated Farmers request.

Decision

24. That Policy 9.1.3 is amended by the following:

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...*

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) – (c)]

25. This policy is supported by one submitter;¹⁵ others seek: an additional standard to recognise the requirements of s 229(c) RMA where the site adjoins a river;¹⁶ inclusion in the policy of ‘rivers used for angling’;¹⁷ the deletion of the transfer of ownership of an esplanade reserve from Crown to MDC as this relates to Sounds Foreshore Reserves.
26. This policy does not apply to rivers in a local context, except in circumstances where Policy 9.1.1(a) and (c) apply. Extending the wording of the policy to include adjoining rivers is therefore not supported. Additional wording should be added to the explanation section to clarify this situation. Similarly, ‘rivers used for angling’ are not a priority and do not require explicit mention.

¹³ Section 42A Report, paragraphs 74-75.

¹⁴ Section 42A Report, paragraphs 74-75.

¹⁵ DOC (479.98).

¹⁶ NZWAC (481.10).

¹⁷ Fish and Game (509.144).

Section 42A Report

27. The Section 42A Report states that deletion of transfer of ownership from Crown to Council in the policy is not justified as this submission is likely an over-reaction to the explanation wording where it refers to esplanade reserves being transferred from the Council to the Crown where esplanade reserves are largely owned by the Crown and managed by DOC (such as the Sounds Foreshore Reserve).¹⁸ This ownership, as the explanation provides, enables the Department to manage in an integrated manner access to the foreshore for the general public as well as residents and bach owners with adjoining land.¹⁹
28. The Section 42A Report concluded with a recommendation that the following was added to the explanatory statement:

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. Council will give priority to taking esplanade reserves adjacent to rivers and lakes where (a) and (c) above apply.

Consideration

29. The Panel has taken into account the provisions of s 229 RMA and considers the existing wording of the Policy is consistent with that provision.
30. The Panel has also considered the recommended addition to the explanatory statement but believes that it adds nothing in real terms to the expressions of objective intent in the policy itself. Hence the recommended wording is unnecessary.

Decision

31. The policy and explanatory statement are to be retained as notified.

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) – (h)]

32. This policy relates to the circumstances of waiving, reducing, and increasing the requirement for esplanade strips.
33. One submitter requests the extension of the existing policy to provide for defence lands, existing road reserve, sensitive machinery, network utilities etc, a subdivision involving a

¹⁸ Section 42A Report, paragraphs 95-99. DA Sycamore, Further Evidence, Reply to Evidence, page 5.

¹⁹ Section 42A Report, paragraph 98.

minor boundary only, or where the land is protected in perpetuity, so long as public access is secured along margins of coasts, rivers, lakes etc.²⁰

Section 42A Report

34. The report writer identifies that (h) should remain generic and reference land that is already protected. In terms of (j), 'a minor boundary adjustment' is not defined and could result in allotment of substantially smaller than 4 ha. The other proposed amendments would act to either narrow the policy's force or would result in ambiguity or relate to potential issues such as in Chapter 19 Climate Change.²¹
35. The report writer recommends a new (i) to the policy to identify existing protection mechanisms of legal public access as part of the decision-making process.²²

Consideration

36. We agree that the insertion of the word 'legal' between 'existing' and 'mechanism' in the policy is important to the landowners and farmers of the region.

Decision

37. Policy 9.1.12 is amended by inserting a new (i) as follows:

(i) whether there is an existing legal mechanism in place that provides for public access.

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) – (i)].

38. This policy was supported by two submitters;²³ others seek: amendment to ensure there is no reduction in public access to rivers unless this is unavoidable, and that the policy also applies to the areas 'adjacent to rivers';²⁴ amendment to take into account the presence of marine farms;²⁵ the addition of a criterion taking into account the positive impacts of an activity, subdivision or structure from locating the development in that location;²⁶ inclusion of a further matter referring to restrictions imposed by the Submarine Cables and Pipelines

²⁰ Federated Farmers (425.162) DA Sycamore, Section 42A Report, pages 9-10, 11-15; Reply to Evidence, paragraph 124.

²¹ Section 42A Report, paragraph 100.

²² Section 42A Report, paragraph 100.

²³ DOC (479.99) and KiwiRail Holdings Limited (873.26).

²⁴ Fish & Game (509.145).

²⁵ Totaranui Ltd (233.27).

²⁶ Trustpower (1201.88), NI Foran Evidence, Federated Farmers (425.163) DA Sycamore Evidence. Section 42A Report.

Protection Act 1996 in respect of the Cook Strait electricity cable;²⁷ assertion that restricted discretionary activity status would not allow for positive effects.²⁸

Section 42A Report

39. The Section 42A Report considers the requested amendments are generally not relevant to the policy, which relates to the criteria for assessing effects on public access to the coastal marine area, lakes or rivers. Assessment of the positive effects of an activity is already included as part of a (resource consent) application and is not needed in the policy.²⁹ Also the reference to unavoidable is not relevant to the criteria while 'riverbed' areas can be covered by water. The particular characteristics of marine farms can be considered in terms of existing criteria.
40. Amendment to include reference to the Transpower Cook Strait electricity cable is supported, however, as it is a matter that may impact on public access. The new policy highlights restrictions on public access imposed by other legislation.³⁰

Consideration

41. The Panel agrees with the S42A report writer.

Decision

42. Policy 9.1.13 is amended by inserting a new (j) as follows.

(j) whether there are restrictions on activities or access imposed by other legislation including the Submarine Cables and Pipelines Protection Act 1996.

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 may be considered as a means to mitigate that loss.

43. This policy is supported by one submitter;³¹ others seek: amendment to strengthen the requirement for providing alternative access;³² and an addition of a new policy to read: 'The 2005 Maritime New Zealand Guidelines for Aquaculture Management Areas and Marine Farms do not need to be considered in the Marlborough Sounds context.'³³

²⁷ Transpower (1198.22)

²⁸ Federated Farmers (425.163).

²⁹ Section 42A Report, paragraph 107.

³⁰ Ibid.

³¹ Trustpower (1201.94).

³² NZWAC (481.11), Fish and Game (509.146). Section 42A Report, paragraphs 108-109.

³³ MFA and AQNZ, Counsel's Legal Submissions. Section 42A Report, Reply to Evidence, page 6.

Section 42A Report

44. The report points out that the Maritime Guidelines have a wider application than just public access. The guidelines may be best dealt with by a marine farming plan, and are not referred to in the current Plan. The additional policy is not recommended.

Consideration

45. The Panel considers, however, after reviewing NZWAC's submission, that alternative access 'shall' be considered (rather than 'may') as this gives the policy more force in circumstances where existing access is lost. The Panel considers the amendment suggested is important in the context in which it arises so as to ensure a greater commitment by Council to address loss of access.

Decision

46. A minor amendment to Policy 9.1.14 is as follows:

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 ~~may~~ shall be considered as a means to mitigate that loss.

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.

47. This policy is supported by one submitter;³⁴ opposed by two others.³⁵ They seek: inclusion of reference to potential incompatibility with adjoining activities;³⁶ deletion of the reference to 'waterbodies' as not all roads are located adjacent to these;³⁷ additional reference to safety for forestry operations;³⁸ a provision included relating to the stopping of roads.³⁹

Section 42A Report

48. As the policy already refers to 'public land' the additional specificity obtained from deleting the reference to 'waterbodies' is not required (the definition of 'land' in s 2(a) RMA includes land covered by water). The Section 42A Report references the fact that road stopping takes place under the Local Government Act 2002 which involves a public process, rather than

³⁴ Fish and Game (509.147).

³⁵ G and C Robbins (640.5), GV Robb (738.8).

³⁶ Federated Farmers (425.164).

³⁷ NZWAC (481.12).

³⁸ Te Rūnanga o Ngāti Kūia (501.39), NFL (990.214), H Arnold Evidence, Section 42A Report Reply to Evidence pages 6-7.

³⁹ Queen Charlotte Sound Residents Association (504.47).

under the RMA (as acknowledged in the explanation to Policy 9.1.16). Finally, it is not up to the landowner to open the road as it is already public.⁴⁰

Consideration

49. The inclusion of reference to safety considerations relating to forestry operations does not detract from the overall thrust of the policy and should be included. The presence of unformed legal road that has not been formed or used for road purposes and to which the public have right of access potentially forms an important resource for public access purposes. Where possible and appropriate in terms of public safety opportunities should be made.⁴¹

Decision

50. The explanatory statement to Policy 9.1.15 is amended as follows:

The presence of unformed legal road 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 access over unformed legal roads, especially to areas identified as having a high priority for public access in Policy 9.1.1, is enhanced.

Policy 9.1.16

In considering an application to stop any unformed legal road, the Marlborough District Council shall consider the following: [(a) – (e)]

51. This policy is supported by one submitter;⁴² others seek: inclusion of consideration of whether the road is on or near a culturally significant site;⁴³ addition of criteria (f)-(g) relating to whether there is public access at the other end of the unformed legal road, and the existing land use and degree of disruption to the nearby activities;⁴⁴ the deletion of the existing considerations (a)-(e) and replacement of these with a public notice;⁴⁵ minor amendment to include reference to future use;⁴⁶ the deletion of the policy in its entirety as it is a matter best dealt with by the Local Government Act.⁴⁷

Consideration

52. As the policy relates to 'public access' it sits well within the current chapter and should not be deleted. Most of the amendments appear more limiting. The policy is thus focused on 'access'

⁴⁰ Section 42A Report, paragraphs 111-112.

⁴¹ NFL (990.214). Ngāti Kuia (501.39). Section 42A Report, Reply to Evidence, pages 6-7.

⁴² M and K Gerard (424.41).

⁴³ Te Runanga Toa Rangatira (166.52).

⁴⁴ Federated Farmers (425.165).

⁴⁵ NZWAC (481.13).

⁴⁶ NMFH Peter Wilson Evidence, Section 42A Report, Reply to Evidence, pages 7-8.

⁴⁷ Fish and Game (509.148) Peter Wilson Evidence, Section 42A Report, Reply to Evidence, pages 6-7.

factors and accordingly such matters as cultural matters and adjoining activities are better addressed elsewhere.

53. It is accepted, however, that 'future use' is an appropriate amendment and should be included.

Decision

54. The submissions are accepted only to the extent that an amendment is made to Policy 9.1.16 is as follows:

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 ...*

Objective 9.2

Identification of circumstances when public access to and along the coast and the margins of lakes and rivers can be restricted.

55. Submissions on this objective mainly supported the need for such an objective but one by NMFG requested its amendment to ensure it provided clearer direction aligned with the public access purpose of s 6(d) RMA which provides that one of the matters of national importance which plans shall recognise and provide for is as follows:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

Section 42A Report and Consideration

56. The report writer agreed with the need for some clearer identification of that statutory emphasis and recommended an appropriate amended wording for both the objective and the explanatory statement to achieve that. The Panel, too, agreed that clearer direction was needed in Objective 9.2 to ensure the statutory direction was recognised and provided for, but changed the wording slightly from that recommended.

Decision

57. Amend Objective 9.2 and its explanatory statement to read:

Objective 9.2 – ~~Identification of circumstances when~~ 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. ~~can be restricted.~~

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.

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; and**
- (g) in other exceptional circumstances sufficient to justify the restriction, notwithstanding the national importance of maintaining that access.**

58. This policy is supported by a number of submitters;⁴⁸ others seek: the addition of a further subsection to allow access to and along the coastal marine area to manage threats to biosecurity;⁴⁹ the addition of a further subsection to ensure that the restriction does not result in trespass or adverse effects to neighbouring land;⁵⁰ additional provisions to recognise the potential damage vehicles can do to the foreshore;⁵¹ the deletion of (g): 'other exceptional circumstances'.⁵²

⁴⁸ FENZ (993.7), KiwiRail Holdings Ltd (873.28), Port Marlborough Ltd (433.47) and Te Runanga Ngati Kuia (501.41).

⁴⁹ AQNZ (401.114) and MFA (426.119) Counsel's Legal Submissions.

⁵⁰ Federated Farmers (425.166).

⁵¹ Forest & Bird DJ Martin Oral Evidence. Reply to Evidence page 10

⁵² Fish and Game (509.151).

59. Trustpower⁵³ requested in the Public Access and Open Space chapter that where public access may be restricted in the coastal marine area and rivers and lakes, the following be added to the policy (f) 'protect significant infrastructure and network utilities'.

Section 42A Report

60. This submission was inadvertently overlooked by the report writer who subsequently addressed it⁵⁴ by recommending it is appropriate to add these activities (such as hydroelectricity infrastructure) because they are likely to be incompatible with unrestricted access. While the policy does refer to public health and safety, the proposed recommended addition will reinforce this aspect, the amendment to read:

(g) protect significant infrastructure and network utilities

(with consequential change to numbering).

61. Forest & Bird also sought additional provisions to recognise potential damage that vehicles can do to the foreshore.⁵⁵ The Section 42A Report identifies this matter is addressed in NZCPS Policy 13.13.3 which includes reference to NZCPS Policy 20, Policy 13.13.7, and Method 13.M.18 Bylaws.

62. The final report made the following recommendation:

Add the following to the explanation to Policy 9.2.1 "The potential adverse effects on the foreshore by motorised vehicles is addressed in Chapter 13 Use of the Coastal Environment."

The Panel accepts that recommendation but to align more closely with Policy 20 NZCPS inserts the phrase 'or adjacent to' so that the complete wording reads 'on or adjacent to the foreshore'.

Decision

63. Amend Policy 9.2.1 to include a new (g) and consequential changes to numbering as follows:

(g) protect regionally significant infrastructure and network utilities; and

(hg) in other exceptional circumstances sufficient to justify the restriction, notwithstanding the national importance of maintaining that access.

64. Amend Policy 9.2.1 by adding the following to the end of the explanatory statement:

⁵³ Trustpower (1201.89). N I Foran, Evidence. Section 42A Report, Addendum (2018), Reply to Evidence, pages 9-10.

⁵⁴ Section 42A Report Reply to Evidence, page 8 and 9

⁵⁵ Forest & Bird, D Martin Evidence.

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

9.M.9 Liaison

The Council will liaise with the Department of Conservation 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 the Department of Conservation 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.

Section 42A Report and Consideration

65. The Section 42A Report made the following observation about this liaison Method:

170. In terms of 9.M.9 Liaison, Kevin Loe (454.21), Queen Charlotte Sound Residents Assoc (504.49) and Flaxbourne Settlers Association (712.32) suggests that as well as consultation with DOC, landowners and the community also be consulted in terms of vehicle use and upgraded public facilities. Consultation with these parties is likely to occur and given their interests it makes sense to include them.

66. The Panel agreed with that recommendation but also was cognisant of the need, stressed in relation to similar provisions throughout the hearing process by various of Marlborough's tangata whenua submitters, that to meet Part 2 RMA obligations the provision should also include reference to the need to liaise with Marlborough's tangata whenua iwi.

Decision

67. Amend Method 9.M.9 to read:

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.

Open Space

Open Space 1, 2 and 3 Rules

68. A number of submissions were received on the rules in the Open Space 1, 2 and 3 Zones. A number are more appropriate for other chapters, or lack specificity. Those that are identified here seek as follows:

- Clarification as to whether as Open Space 3 Zone covers all the Sounds Foreshore, DOC reserves, Titirangi Farm Park and some privately covenanted land, and if so should there be no exotic plantings or clearance of indigenous vegetation on this land.⁵⁶ (It is the understanding of the report writer that these types of land are included in Method 9.M.1 and the rules in the Open Zone 3 cover the matters referred to.)
- Addition of standards relating to direction of outdoor lighting to the permitted activities in Open Space 1, 2 and 3 Zones⁵⁷ (deferred until Nuisance Effects considered). The report writer considers this issue may need addressing but the standard is not in urban residential zones as stated by the submitter.
- A setback of 5 metres for new buildings adjacent to the rail corridor in respect of reverse sensitivity effects in the Open Space 1 and 3 Zones.⁵⁸ KiwiRail Holdings Ltd requests a setback of 5 metres adjacent to the 'rail corridor' in respect of reverse sensitivity effects in the Open Space 1 and 3 Zones. Provision be made for new emergency service facilities as controlled activities in Rule 18 Open Space 2 Zone and that additional standards be included relating to requirements to provide firefighting water supply and access to buildings⁵⁹ (the existing Renwick Fire Station is located in the Open Space 2 Zone (Rule 18.1.8); the issue is whether fire stations should be controlled where Council can refuse consent or be a discretionary activity.
- Addition of new standards relating to reverse sensitivity noise effects in respect of activities adjacent to ports at Picton, Shakespeare Bay and Havelock in the Open Space 2 and 3 Zones.⁶⁰ This matter is dealt with in Topic 18 Nuisance Effects.
- Addition of a new rule and standards in respect of livestock crossing rivers in the Open Space 3 Zone; these provisions were inadvertently omitted from the Plan and included

⁵⁶ M and K Gerard (424.189).

⁵⁷ NZTA (1002.211), Kathryn Barrett tabled Letter, Section 42A Report, paragraph 182; Reply to Evidence, page 15.

⁵⁸ KiwiRail Holdings Ltd (873.167 and .170).

⁵⁹ FENZ (993.80) tabled letter Liz White advice, Section 42A Report Reply to Evidence, pages 16-17.

⁶⁰ PMNZ (1284.6 and .7).

in other zones.⁶¹ As the Open Space Zone contains some farms, it is the recommendation of the report writer that the rule and standard should be inserted.

- Addition of provision for directional and educational signage in the Open Space 3 Zone.⁶² As the Open Space 3 Zone contains some farms, Wither Hills Reserve and Molesworth Station, the report writer accepts the rule and standard should be inserted – echoing submissions that apply to the Rural Zone, Coastal Environment Zone and to beds of lakes and rivers.⁶³
- Exclusion of Rangitoto ki te Tonga/D’Urville Island and private land from being zoned as an Open Space 3 Zone, to retain riparian rights and rights to refuse people access to cross private land.⁶⁴ The zoning does not preclude the submitter from retaining their riparian rights or refusing people access. The report writer recommends no change is appropriate.
- Freedom camping in Open Space 2 and 3 Zones as provided in Rules 18.1.3 and 19.1.3 is opposed.⁶⁵ The report writer identifies the MDC bylaw is the main determinant of freedom camping but it is under review – see Marlborough District Council Camping Control Bylaw 2012.
- Under Rules 19.1, 19.3 there should be provisions managing stock access to rivers, given that farming is a permitted activity and that in many cases land adjacent to rivers is zoned Open Space 3.⁶⁶
- In respect of all four Open Space zones the erection of pouwhenua or other cultural signage should be a permitted activity.(Te Atiawa)

Section 42A Report and consideration

69. The report writer considers that the 5 metre setback for buildings adjacent to the rail corridor requested by KiwiRail is reasonable for health and safety reasons. But given that the Plan does not have a definition of ‘rail corridor’, we sought further information about other South Island plans in relation to a definition of ‘rail corridor’ and how other district plans had defined the term.

⁶¹ MDC (91.153 and .154).

⁶² Fish and Game (509.409).

⁶³ Section 42A Report, paragraph 194.

⁶⁴ Ragged Point Limited (1086.2).

⁶⁵ D and C Robbins (640.60 and .61), GV Robb (738.60 and 712.33), MJ Robb (936.60 and .61), H. Thomson (113.1), KF Loe (454.124), Timms Family (475.8), Fish and Game (509.421), Flaxbourne Settlers Association (738.61), P Wilhelmus and Ormond Aquaculture (1035.9) and further evidence from SM Wilkes. Section 42A Report, Reply to Evidence, page 19.

⁶⁶ Section 42A Report, pages 24, 27-28.

70. In terms of the Hurunui District Plan, there is no definition of 'rail corridor'. The zones variously require 4 metres from a boundary of any rail corridor in the Rural Zone, a 4 metre setback for yards adjoining the rail corridor in the Residential Zone, and for the Business Zone, 4 metres in the yards adjoining the rail corridor. The Palmerton North City Plan also does not define rail corridor; a rule in the Whakarongo Residential Plan requires no buildings to be located within 25 metres of the Palmerston North to Gisborne railway tracks. In the Rural Zone no building is to be located within 30 metres of the nearest railway track. The Christchurch City Plan Residential Suburban Zone requires buildings, balconies and decks on sites adjacent to or abutting a designated 'rail corridor' to be set back 4 metres from the rail corridor boundary and the same for the Industrial General Zone.
71. The report writer recommends that 5 metres is appropriate in the Open Space 3 Zone which encompasses the Wither Hills and Molesworth Station. Whether it is appropriate for other zones is not identified. The report writer suggests that the mostly similar standards throughout the South Island should be applied to Marlborough.
72. This issue is common to a number of zones and was particularly addressed by the Panel in the context of the urban zones as well as the Rural Zone. The decision reached by the Panel was that the buffer is appropriate to enable safe maintenance of buildings but a buffer of 5m was too large for this purpose. The Panel's view was that a 1.5m buffer for maintenance of buildings was sufficient and the Panel also formed a view that it should be a consistent approach. The detailed reasoning is provided in our decision in both the Urban and Rural Environments.
73. As to the issue of permitted activity status for pouwhenua in the Open Space zones the Panel considered that was appropriate to meet the Part 2 RMA requirements of recognising and providing for the cultural significance of places of importance to Marlborough's tangata whenua iwi. Most areas zoned in this way are under public ownership through the Department of Conservation or Council which will provide a measure of practical control, coupled with the need to meet zone standards for permitted activities.

Decision

74. New rules are inserted as 17.2.1.7 and 19.2.10 and are to read as follows:

A building or structure must not be within 1.5m of the legal boundary with the rail corridor of the Main North Line.

75. That pouwhenua be provided for as a permitted activity in Open Space zones 1-4. The rule detail of how this is to be achieved is set out in Topic 2: Marlborough's tangata whenua iwi decision.

Zoning requests

76. A number of submissions were made requesting rezoning various sections of land in respect of open space.⁶⁷ These variously seek that:

- **Map 3** - Clearwater Reserve, Blenheim is more appropriately zoned as Open Space 1⁶⁸ than Urban Residential 2 as a Council-owned and managed park.
- **Maps 9, 159** - Seymour Square, Blenheim is more appropriately zoned from Open Space 1 to Open Space 2 due to the special events that are held in the square.⁶⁹
- **Maps 35, 37, 138** - Pt Sec 1244, Sec 1260 and Sec 1258 Town of Picton and Lot 4 DP3342 should be rezoned from Open Space 2 to Business 1.⁷⁰ The land is currently open space and used for car parking and access to boats berthing adjacent to the car park. It also provides an important link to the Fisherman Reserve and Coat Hanger Bridge.
- **Maps 35, 37, 138** - Secs 1180 and 1181 Town of Picton, and Lots 1, 2 and 3 DP 7913, Pt Lot 3 DP 1682, Lot 4 DP 3342 and Lot 1 DP 1972 are rezoned from Open Space 2 to Business 1 as this would allow for future commercial opportunities in this area.⁷¹ It is currently zoned for commercial purposes in the MSRMP. (Map page 32 Section 42A Report will be helpful in accurate mapping.) Rezone Secs 1180 and 1181 Town of Picton, Lots 1, 2 and 3 DP 7913, Pt Lot 3 DP 1682, Lot 4 DP 3342 and Lot 1 DP 1972 as Business 1, as set out on page 39 of the Original Report. Note that the map on page 32 of the Original Report will be helpful in accurately mapping the rezoning.
- **Map 219** - Private land property number 182692 on Ward Beach Road be rezoned from Open Space 3 to Rural Environment Zone, as the original zoning was done in error, as shown on Planning Map 219.⁷²

⁶⁷ Section 42A Report, paragraphs 256-284.

⁶⁸ MDC (91.115)

⁶⁹ MDC (91.114).

⁷⁰ MDC (91.255).

⁷¹ MDC (91.256).

⁷² MDC (91.95).

- **Map 80** - An area shown on Planning Map 80 in proximity to Tuamarina be rezoned as the area includes private land some of which is subject to a long term lease which is highly modified agricultural land.⁷³
- **Map 93** - Secs 1 and 2 SO 428440 private land located at Catherine Cove, D’Urville Island zoned Open Space 3 are rezoned to Coastal Living Zone as the titles were subdivided from Crown Land as part of the Treaty settlement processes.⁷⁴
- **Map 111** - Sec 1 SO 429448 private land at Wharf Road, Okiwi Bay zoned Open Space 3 be rezoned to Coastal Living Zone as this land was declared not to be suitable for residential development. Transferred from the Conservation Estate to Ngāti Koata through the Treaty process.⁷⁵
- **Map 114** - Rezone covenanted areas as Open Space 3. Landowner wish. (Refer to tabled evidence General.)
- **Map 114** - Property at Hopai Bay, two areas that covenanted with DOC in Oaheka Peninsula had not been included in the Open Space 3 Zone.⁷⁶
- **Map 124** - Sec 14 Block 1 Linkwater Survey District, which has recently been subdivided, should be rezoned as Coastal Living Zone from Open Space 3 given its private ownership.⁷⁷ Rezone Sections 17 and 18 (part of Lot 5), Section 3 (part of Lot 2), Section 21 (part of Lot 4), Section 15 (part of Lot 6), and Sections 11, 12 and 8 (part of Lot 7) to Coastal Living. Note that the survey plan and subdivision plan on page 37 of Original Report will be helpful in accurately mapping the rezoning.
- **Map 149** – Remove Open Space 3 Zone from true left of Cravens Creek (Mr Tozer has concerns that Open Space 3 Zone along Cravens Creek will result in expectation of public access).⁷⁸
- **Map 219** – Private land (PN182692) is zoned Open Space 3 in error. Rezone private land currently Open Space 3 as Rural Environment.⁷⁹
- W363 Significant Wetland (Planning Map 57) be ‘declassified’ and rezoned to Coastal Marine Zone.⁸⁰

⁷³ Gary Barnett (1258.11).

⁷⁴ Jarvie Family Trust and TM and MS Raumati (11.1).

⁷⁵ Hura Pakeke Trust (498.1).

⁷⁶ M and K Gerard (424.190) Evidence, Section 42A Report, Reply to Evidence, page 20.

⁷⁷ Ashley Cook (520.1)

⁷⁸ Section 42A Report, page 38; Reply to Evidence, page 19-20.

⁷⁹ MDC (91.95), Section 42A Report, pages 32-33, 40.

77. Opposition to a number of zonings were also submitted.⁸¹ Other zoning requests are largely accepted as listed below.
78. The subdivision of DOC and private land in Block 1 Linkwater Survey District at Pinohia, Paradise Bay also requires rezoning of additional lots. These areas shown on SO Plan 481651 should be rezoned from Open Space 3 to Coastal Living as they are now in private ownership (Planning Map 114).
79. In addition, there are a number of sections in the Scenic Reserve which should be rezoned from Coastal Living Zone to Open Space 3 (Planning Map 124). Although there was no specific submission on these areas it is a consequential change from the submission of Ashley Cook and is a rationalization of Paradise Reserve.
80. In terms of Planning Map 80, a title search reveals the area is owned by MDC and is considered as part of an inactive riverbed and as such, zoned Open Space 3. This zoning allows farming as a permitted activity and there is no need for change.⁸²
81. In regard to the declassifying an area from being a Significant Wetland to a Coastal Marine Zone (Planning Map 5), this is better addressed under the Significant Wetlands chapter. However, given that the wetland does not encroach on the submitter's property it is considered unlikely that rezoning is required.
82. Concerns about zoning of Open Space 3 on Planning Map 149 and as a consequence attracting freedom campers are held by one submitter but as explained, the process of mapping here relates to mapping riverbeds and active and non-active channels. The report writer explains that the desirability of zoning 'land' provides the Council with controls. Open Space Zoning appears the most appropriate given that it is public land but farming still permitted. No recommendation is made.⁸³ However, the Panel was of the view that the area involved here is so small that it serves no useful practical purpose to zone it Open Space 3 as it is surrounded by rural zoned privately owned land. It should be zoned Rural Environment on the southern side of Cravens Creek consistent with the zoning of surrounding land.
83. Two submitters⁸⁴ clarified the location of covenanted areas at Hopai – one is zoned Open Space 3 and the other site is Coastal Environment. There is no objection to rezoning the other

⁸⁰ Tim Marshall (137.2).

⁸¹ Te Atiawa further submissions and Mt Zion Trust and AM and WW Scholefield (515.2). Evidence by Mt Zion Trust and others (Reply to Evidence 3 April 2018).

⁸² Section 42A Report, paragraphs 260-262, 264-265, 268-270, 273-275.

⁸³ Section 42A Report, paragraph 272.

⁸⁴ M and K Gerard (424.190).

site Open Space 3 although not critical as there is a covenant in place to protect its attributes: see Planning Map 114.⁸⁵

Section 42A Report recommendations

84. The following are recommended for rezoning:

- Clearwater Reserve, Clearwater Place, Blenheim (Lot 33 DP 372968 (PN530180)) Planning Map 3 is rezoned from Urban Residential 2 to Open Space 1.
- Seymour Square, Blenheim (Lot 1 DP 6917) Planning Map 9 is rezoned from Open Space 1 to Open Space.
- Pt Sec 1244, Sec 1260 and Sec 1258 Town of Picton and Lot 4 DP 3342, Picton Foreshore Planning Map 35 is rezoned from Business 1 to Open Space 2.
- Sections 1180 & 1181 Town of Picton, Lots 1, 2 and 3 DP 7913, Pt Lot 3 DP 1682, Lot 4 DP 3342 and Lot 1 DP 1972 Planning Map 37 are rezoned from Open Space 2 to Business 1.
- Specified parts of Property Number 182692 is rezoned from Open Space 3 to Rural Environment Zone on Planning Map 219.
- Sections 1 and 2 SO 428440 are rezoned from Open Space 3 Zone to Coastal Environment Planning Map 93 as the Coastal Environment Zone is the prevalent type of zoning in the area.
- Section 1 SO 429448 is rezoned from Open Space 3 to Coastal Living on Planning Map 111.
- SO Plan 481651: Sections 17 and 18 (part of Lot 5), Section 3 (part of Lot 2), Section 21 (part of Lot 4), Section 15 (part of Lot 6), and Sections 11, 12 and 8 (part of Lot 7) are rezoned from Open Space 3 to Coastal Living on Planning Map 124.
- Sections 1, 9-10, 13-14, 16, 19-20, and 22-23 on Planning Map 124 are rezoned from Coastal Living to Open Space 3.⁸⁶
- The two covenanted areas on Planning Map 114 are rezoned to Open Space 3 Zone.⁸⁷

⁸⁵ Section 42A Report, paragraph 268.

⁸⁶ Section 42A Report, paragraphs 276-284. ⁸⁷ Reply to Evidence, page 20

⁸⁷ Reply to Evidence, page 20

Decision

85. For the reasons given, all of the recommendations are accepted, except for Map 149 where the small isolated Open Space 3 zoning on the southern side of Cravens Creek is removed and replaced with Rural Environment zoning.

Overlay maps

86. There are several submissions relating to the High Priority Waterbodies for Public Access Overlay Maps that seek inclusion of the section of Co-op Drain between behind Brooklyn Drive to Dry Hills Lane; removal of the section of Doctor's Creek and Opawa River as this area is used for a vineyard; inclusion of further information on the Overlay.⁸⁸
87. The Section 42A Report identifies that inclusion of the additional section of Co-op Drain is appropriate to prioritize as it is shown in the Marlborough Walking and Cycling Strategy. The area near Doctor's Creek should be retained as the general intent of the policy remains and there may be other methods to avoid identified constraints. Finally, as discussed in Policy 9.1.1, the reference to 'High Priority Waterbodies for Public Access' had been omitted inadvertently and is now corrected.

Recommendation and decision

88. The overlay map is amended to show the section of Co-op Drain between Brooklyn Drive and Dry Hills Lane.

⁸⁸ PM Gilbert (192.4), Constellation Brands NZ Ltd (631.57), P Rene (1024.2).



Proposed Marlborough Environment Plan

Topic 8: Heritage and Notable Trees

Hearing dates: 12 March and 3 April 2018

S42A Report Writer: Paul Whyte, Brad Cadwallader and John Gray

Conflicts of Interest: None

Interim decision: None

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

Marlborough's tangata whenua iwi. These matters are designed to ensure the cultural and spiritual significance of the site or area is recognised and appropriately provided for in the decision making process.

Archaeological sites

Policy 10.1.9

Except as set out in Policy 10.1.11, primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.

82. Policy 10.1.9 is supported by two submitters.⁴² Others seek: the Council should provide information to applicants regarding the presence of archaeological sites so a full assessment can be identified;⁴³ several amendments mainly relating to the consistency of language;⁴⁴ while another implies the policy should be deleted because it could cause confusion.⁴⁵

Section 42A Report

83. The report writer considers the policy is useful to clarify the MDC's stance in respect of archaeological sites, given the confusion that can arise. He notes that the policy is largely supported by HNZPT and its suggested attachment details information on archaeological sites and also satisfies Ngāti Kuia's submission of support.

Consideration

84. As identified by HNZPT, the policy is inconsistent with other provisions. The Council should provide information to resource consent applicants as to the presence of archaeological sites so that effects can be identified. An amendment is required to reference a new schedule in Appendix 13 (Schedule 5) of archaeological requirements as set out in the Section 42A Report⁴⁶.
85. The report writer (and the Panel) considered the inclusion of a new Schedule 5 setting out the archaeological requirements of the HNZPT Act. This is based on Attachment 2 of HNZPT's submission, headed as 'Schedule of Archaeological Requirements'.⁴⁷
86. The Panel also considered the inclusion of 'Marlborough's tangata whenua iwi' to the heading above Policy 10.1.9 to be appropriate in order to better reflect the policies content.

⁴² I B Mitchell (364.51), Federated Farmers (425.175).

⁴³ Ngāti Kuia (501.47).

⁴⁴ HNZPT (768.35).

⁴⁵ Ngāi Tahu (1189.88).

⁴⁶ Section 42A Report, page 20 and page 38-39.

⁴⁷ Section 42A Report, paragraph 197.

Decision

87. That the heading is amended by the following:

Archaeological sites and sites of cultural significance to Marlborough's tangata whenua iwi.

[RPS, R, C, D]

88. Policy 10.1.9 is amended by the following:

Except as set out in Policy 10.1.11, and the schedule of Archaeological Requirements in Appendix 13 Schedule 5 primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.

89. That a new Schedule 5 to Appendix 13 is inserted as follows:

Schedule 5: HNZTPA Archaeological Site Requirements

This Schedule sets out information to alert the public to their responsibilities regarding archaeological sites. This is relevant with regard to:

1. Demolition/destruction of any structure associated with human activity prior to 1900, whether or not it is scheduled in the Marlborough Environment Plan as historic heritage.
2. Earthworks or other works that may disturb pre-1900 surface or sub-surface archaeological sites or material.

An archaeological site is as defined by the Heritage New Zealand Pouhere Taonga Act 2014 as being any place in New Zealand, including any building or structure (or part of a building or structure), that:

- i. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
- ii. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand.

It is also possible for Heritage New Zealand Pouhere Taonga (Heritage New Zealand) to declare a post-1900 site as an archaeological site.

Consent required from Heritage New Zealand

An authority (consent) from Heritage New Zealand must be obtained prior to the commencement of works noted in 1 or 2 above, and preferably before submitting any resource consent application.

It is an offence to modify or destroy an archaeological site, or demolish/destroy a whole building, without an authority if the person knew or ought to reasonably suspect it to be an archaeological site. For further information, contact Heritage New Zealand. The relevant legislation is the Heritage New Zealand Pouhere Taonga Act 2014, in particular sections 42 and 44 of that Act.

Known or suspected archaeological sites

The following resources may assist in determining if an archaeological site is or may be present:

- Historical heritage items scheduled in the Marlborough Environment Plan in Appendix 13.
- Outstanding Natural Features and Landscapes and Coastal Marine Areas in Appendix 1 with specified archaeological and/or historical heritage values.
- Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (Latest information is on the NZAA website) at www.archsite.org.nz.
- Marlborough District Council GIS information that highlights recorded sites.
- Written and oral histories of the area, including those of Tangata Whenua.

Archaeological discovery without an authority (Protocol)

If an authority has not been obtained and there was no reasonable cause to suspect archaeological sites are present (if there is reasonable cause then an authority should be obtained), the following protocol must be followed when an archaeological site is discovered:

- (a) immediately cease operations;
- (b) inform Heritage New Zealand and the relevant iwi authorities;
- (c) apply for the appropriate authority, if required;
- (d) inform the Council and apply for the appropriate resource consent, if required;
- (e) take appropriate action, after discussion with the Heritage New Zealand, Council and relevant iwi authority to remedy damage and/or restore the site.

Policy 10.1.10

Liase with Heritage New Zealand, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi to develop and implement an appropriate discovery protocol for archaeological sites.

90. This policy is supported by two submitters. Others consider: that a policy is required and notes that such protocols are only used where an archaeological site is suspected;⁴⁸ words should be added in terms of the Council meeting costs of archaeological or cultural impact studies for sites that are accidentally disturbed.⁴⁹

Section 42A Report

91. The report writer considers the policy is useful as it signals the Council will develop a protocol in association with other parties which will be useful as a non-regulatory tool attaching to resource consents. He does not agree with the Council meeting the costs as this will clearly fall on any applicant as anticipated by the Heritage New Zealand Pouhere Taonga Act 2014. In relation to the submissions from Ngāi Tahu, the report writer agrees with the thrust of their submission which provides useful additional information.⁵⁰

⁴⁸ HNZPT (768.37).

⁴⁹ Federated Farmers (425.74).

⁵⁰ Section 42A Report, paragraph 108.

in close proximity to them. The zone will take into account that the potential for adverse effects will vary depending on the size and dimensions of the tree.

Permitted activity rules will be used to enable responsible maintenance of heritage resources, ~~and~~ to provide for interpretive signage and to enable ~~and~~ minor trimming of notable trees.

Land disturbance not involving destruction in places of significance to Marlborough's tangata whenua iwi will be discretionary activities. This, in conjunction with affected party approval, will allow the adverse effects of the land disturbance on the spiritual and cultural values of the relevant iwi to be assessed.

A prohibited activity rule will apply to the loss, partial demolition, or demolition or removal or destruction of Category 1A heritage resources or the destruction of sites and places of significance to Marlborough's tangata whenua iwi

Method 10.M.5

Discovery protocol

129. The original method was recommended by the S42A Report to be amended to include the wording 'and there is no reason to suspect the presence of archaeological sites'. HNZPT requests that in addition to archaeological sites, Council will provide information relating to areas where there is reasonable cause to suspect the presence of unrecorded sites.⁶⁸ In the report writer's opinion, and the Panel's, it is difficult for Council to provide this information without expert knowledge and he does not recommend its inclusion.⁶⁹

130. The report writer's recommendation is to improve the wording of Method 10.M.5 as it is confusing. This may be achieved with the removal of the phrase 'and there is no reason to suspect the presence of archaeological sites'.⁷⁰

Consideration

131. Sylvia Allan for HNZPT and Ngāi Tahu gave evidence of the difficulties relating to an accidental discovery protocol (ADP) to be applied when finding unexpected archaeological sites during the implementation of a consent. Both witnesses consider that a protocol should be developed, including a statement on its limitations and its relationship with any necessary archaeological authority under the Heritage New Zealand Pouhere Taonga Act.⁷¹ The Panel agrees with those views.

⁶⁸ HNZPT (768.43).

⁶⁹ Section 42A Report, paragraph 133.

⁷⁰ Ibid, paragraph 139.

⁷¹ HNZPT, Sylvia Allan Evidence, paragraphs 3.8-3.9; Ngāi Tahu, Tanya Stevens Evidence, paragraphs 79-80.

Decision

132. That 10.M.5 Discovery protocol is amended by the following:

In conjunction with Heritage New Zealand Pouhere Taonga, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi, the Council will develop, maintain and implement a discovery protocol for archaeological sites where an archaeological authority has not been obtained. This will detail the procedures to be followed if any feature, artefact or human remains are discovered or are suspected to have been discovered. Information will be included within the protocol on the rohe of different iwi to enable people to make contact with the relevant iwi. The protocol will assist in ensuring that the relevant provisions of the Heritage New Zealand Pouhere Taonga Act 2014 can then be applied. The protocol will be included in Appendix 13 containing the Schedule of Archaeological Requirements.

Anticipated Environmental Results and Monitoring Effectiveness**10.AER.1 and 10.AER.2**

133. In respect of 10.AER.1, which relates to the protection and identification of heritage resources making a significant contribution towards Marlborough historic heritage, one submitter requests that the extent of the monitoring of effectiveness is increased and more focused.⁷² The report writer generally agrees with the changes although noting that as demolition of Category A items and the destruction of 'Schedule 3' items is a prohibited activity, some amendment is appropriate.
134. In respect of 10.AER.2, which relates to notable trees making a significant contribution towards Marlborough's historic heritage and amenity values, one submitter seeks that the surveys should be carried out at 7 year intervals, not 10 years, and that the wording concerning the ambit of the survey needs to be expanded to make it clear the survey should not only identify the condition of notable trees but also be required to identify any remedial action arising from such survey.⁷³
135. In the report writer's opinion some of the requested matters are not anticipated environmental results but rather relate to methods, in which 10.M.1 refers to the Standard Tree Evaluation Method (STEM) method⁷⁴ to assess trees. An assessment within 10 years of the PMEP becoming operative appears reasonable and no change is required to 10AER.2.⁷⁵

⁷² HNZPT (768.45).

⁷³ KCSRA (869.49).

⁷⁴ Section 42A Report, page 60 Report of John Gray, Report of Cadwallader Tree Consultancy, Assessment of Submitted Trees.

⁷⁵ Section 42A Report, paragraphs 140-141.

Decision

136. That 10.AER.1 is amended as follows:

...

No loss of Category 1A heritage resources and no destruction of Schedule 3 heritage resources as measured through the grant of resource consent applications to demolish, partially demolish Category 1A heritage resources.

Limited loss, if any of other heritage resources as measured through the grant of resource consent applications to modify such resources.

The instances of archaeological site damage recorded by Heritage New Zealand Pouhere Taonga decrease.

Maintain or improve resident satisfaction with the heritage activity of the Council as measured by customer satisfaction surveys. ...

137. The submission seeking amendment to 10.AER.2 is rejected.

Heritage Resources Rules 2.24-2.27

New Rule - 2.24 Permitted Activities

138. HNZPT submits that provision should be made for the creation of one sign associated with heritage resources by including a new Rule 2.24.4 for limited signage as a permitted activity.⁷⁶ That is asserted to be important for information and interpretation purposes.

139. This was agreed by the report writer⁷⁷ who suggests some limited signage should be identified, given there is currently no provision of this type of activity. The size should be not greater than 0.5 square metres.

140. As to a limit on the size of the heritage signage requested the Panel decided to increase the size of the sign to 2 square metres, and remove the recommended (b) from the standard as it is unnecessary due to it being covered by other statutory means and does not relate to the heritage value for which the permitted activity is being allowed. The Panel's view was that with the common combination of illustration panels and interpretive descriptions at heritage sites. There is no requirement for a discretionary activity class as the PMEP does not have a great number of restricted activities in order that it is kept simplified.

⁷⁶ HNZPT (768.53, .54).

⁷⁷ Section 42A Report, paragraph 163.

Proposed Marlborough Environment Plan

Topic 11: Coastal Environments

Hearing dates: 9 – 12 and 16 April 2018

S42A Report Writer: Debbie Donaldson and Ken Gimblett

Conflicts of Interest: Yes

Interim decision: Yes

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

sewage as in the Marpol Regulations. The provisions of NZCPS Policy 23(1) indicate that more extensive reach as does Policy 23(5).

444. Scrutiny of Policy 23(2)(a) and (b)(i)(ii) provides two step provisions relating to the discharge of human sewage:

- The discharge of human sewage is not allowed directly to water in the coastal environment if it has not been treated; and
- it is not allowed even if it has been treated, unless there is adequate consideration of alternative methods, sites and routes for the undertaking, and there is an understanding of the effects on Māori values informed by an understanding of Policy 23(2)(b)(ii).

445. The latter reference has been taken from the Marpol Regulations Clause 3. But this does not provide an override of Marpol by NZCPS Policy 23. The wording applies for consideration in the process of choosing methods, places and systems of treated discharge from the larger land based facilities noted below and from there to the coastal environment.

Policy 15.1.9

Enable point source discharge of contaminants or water to water where the discharge will not result:

(a) in any of the following adverse effects beyond the zone of reasonable mixing:

(i) the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;

(ii) any conspicuous change in the colour or significant decrease in the clarity of the receiving waters;

(iii) the rendering of freshwater unsuitable for consumption by farm animals;

(iv) any significant adverse effect on the growth, reproduction or movement of aquatic life; or

(b) in the flooding of or damage to another person's property.

And;

Rule 16.7.4

Discharge of treated or untreated human sewage into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

446. In relation to amending Policy 15.1.19, Yachting NZ submitted that there needs to be a clear distinction between policies for discharges from land and from ships. MDC confirmed this in its submission, seeking amendments to the wording of Policy 15.1.19 and Rule 16.7.4 to clarify the application of this policy and the rule to apply to the discharges from land based activities to coastal water avoiding the confusion that this policy also may apply to discharge from ships.¹²⁶ (NZCPS Policy 23 would have benefited from that definitive distinction).

¹²⁶ MDC (95.156, .157). The Section 42A Report writer acknowledged in a memorandum to her evidence on Policy 15.1.19 that her recommendations now accepts these submissions were not reflected in her original report where she had recommended that the Policy be retained as notified.

447. The Section 42A Report writer notes that the amendments to Policy 15.1.19 as submitted by MDC will ensure the application of this policy is clear and will apply to land based activities only.¹²⁷ In a memorandum, the report writer wished to clarify the matter – that MDC’s submission is accepted and that Policy 15.1.19 is recommended to read:

15.1.19. – Progressively work toward eliminating the discharge of human sewage to coastal waters from the land-based activities in the Marlborough Sounds, with the exception of regionally significant infrastructure.

448. Prohibited Activity Rule 16.7.4. is recommended to be amended to read:

16.7.4. Discharge of treated or untreated human sewage from land-based activities into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

449. PMEP Chapter 15 Resource Quality (Water, Air, Soil) amendment may seem to be beyond the influence of the NZCPS Policy 23. But it provides a series of policies (Policy 15.1.18, 15.1.19, 15.1.20) with each one noted ‘This policy gives effect to Policy 23 of the NZCPS’.¹²⁸

450. The NZCPS Policy 23(2)(b) use of the phrase ‘treated human sewage’ implies how it will approach land-based discharge as amended in PMEP Policy 15.1.19 except for regionally significant infrastructure.

451. Regionally significant infrastructure is defined in Policy 4.2.1(a) as reticulated sewerage systems.¹²⁹ This includes the ‘pipe network, treatment plants (and associated infrastructure)’ operated by the MDC indicating discharge of treated sewage to the coastal marine environment is acceptable as long as it assesses suitable sites, places, routes and identifies Māori concerns in relation to these.

452. An implication of Policy 23(1) (processing and treating on land before discharge) is implied in the reference to the ‘small mixing zones’ in Policy 23(1)(e) as an end process after treating discharge on land to achieve a required water quality standard before discharging to the coastal marine area. In other words the degree of treatment for treated sewage would influence the size of the smallest mixing zone unlike for example the bigger one required for untreated sewage from ships where the 750m distance is necessary.

¹²⁷ Section 42A Report writer, Memorandum 9th April, Use of the Coastal Environment, corrections to S42A Report, 9 April 2018.

¹²⁸ Volume 1, pages 15-19.

¹²⁹ The reference here to ‘sewerage’ is defined as ‘a system of drainage by sewers’, ‘sewage works’ is a place where sewage is treated, ‘waste matter conveyed in sewers’, NZ Pocket Oxford Dictionary, Fourth Edition, page 1049.

453. The NZCPS human waste discharge provisions chiefly relate to treatment in land-based facilities, such as the regionally significant infrastructure, before discharge to the Marlborough Sounds coastal environment.

Decision

454. Policy 15.1.9 is amended to read:

15.1.19. Progressively work toward eliminating the discharge of human sewage from the land-based activities to coastal waters in the Marlborough Sounds, with the exception of regionally significant infrastructure.

455. Rule 16.7.4 is amended to read

16.7.4. Discharge of treated or untreated human sewage from land-based activities into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.

Chapter 5 Allocation of Public Space in the Coastal Marine Area

Outline of plan provisions

456. There are two Section 42A Reports which address the management of the occupation of the CMA generally, and the issue of allocation of use of freshwater resources and Coastal Occupancy Charging (COC).
457. The first addresses the management of the occupation of the coastal marine area (CMA) generally and the relevant provisions are found in Issue 5J, Objective 5.10 and Policy 5.10.1, Policy 5.10.2 and Policy 5.10.3.¹³⁰
458. The second Section 42A Report identifies the specific policies that relate to the proposed COC regime specifically – Issue 5J, Objective 5.10, Policies 5.10.4-5.10. 8 and method statements 5.M.10 and 5.M.11.¹³¹
459. COCs are a resource management issue for the Marlborough region and require a framework within the Plan to provide for their merit.
460. Appendices were provided to illustrate proposed changes.

Relocation of Chapter 5 provisions to Chapter 13

461. Several submitters support the provisions under Issue 5J as notified but seek that the issue, objective and subsequent policies and methods are moved to Chapter 13 Use of the Coastal Environment.

¹³⁰ Section 42A Report (Plan), paragraphs 134-138.

¹³¹ Section 42A Report (COC), paragraphs 16-18.

Proposed Marlborough Environment Plan

Topic 13: Resource Quality (Water)

Hearing dates: 8 – 10 October 2018

S42A Report Writer: Rachel Anderson, Peter Hamill and Peter Davidson

Conflicts of Interest: None

Interim decision: Yes

(Note: A list of conflicts of interest which arose during the process are available to view on the Marlborough District Council Website)

44. This sentence has been copied over from the explanations to Objectives 15.1b-d in error. Those provisions relate to FMUs, Objective 15.1e does not. The fact that the relevant part of the explanation to Objective 15.1e is an error provides the way for the Panel to delete the erroneous sentence.¹⁸

Decision

45. The reference to Map 5 is deleted from the explanation to Objective 15.1e as follows:

... The numeric attribute states for B are specified in Objective 15.1e. ~~The FMUs relevant to this objective are in Freshwater Management Unit – Map 5.~~

Policy 15.1.1

As a minimum, the quality of freshwater and coastal waters will be managed so that they are suitable for the following purposes:

...

(d) Wetlands: protection of aquatic ecosystems and the potential for food gathering.

46. Numerous submissions to this subsection of Policy 15.1.1 request: amendments to the wording such as qualifying the word ‘wetlands’ as ‘Significant wetlands’, and substitution of the word ‘protection’ with the word ‘management’;¹⁹ an amendment to the policy/explanation to recognise that food gathering will not always be appropriate in all wetlands;²⁰ an amendment to the wording as follows: *(d) Wetlands: protection of aquatic wetland ecosystems and the potential for food gathering* – this would better reflect the diverse nature of wetlands.²¹

Section 42A Report

47. The report writers agree in part with PMNZ as throughout the PMEP policies and rules have focused on ‘significant wetlands’. These have been emphasised to provide certainty to landowners as to what area of their property is a wetland with significant values when assessed against the ‘significant’ criteria in Appendix 3. Therefore, it would be appropriate to amend the policy so that it aligns with other wetland provisions.²²
48. In terms of the relief sought by Messrs Hickman and Mehlhopt and the use of the word ‘potential’ in the criteria reflecting community expectations that food gathering should always be undertaken safely in wetlands, this assumption is not a realistic expectation for all wetlands, especially in times of low flow and drought. The report writers support the submission of PMNZ to the extent that Policy 15.1.1(d) should apply only to ‘significant

¹⁸ Section 42A Report, paragraph 186.

¹⁹ PMNZ (433.83).

²⁰ J Hickman (455.56) and G Mehlhopt (456.56).

²¹ Fish and Game (509.172 - part).

²² Section 42A Report, paragraph 203.

wetlands’ for this reference and as a consequence would mean that the text ‘potential for food gathering’ would be confined to significant wetlands only.

49. In terms of these submitters and also for DOC and Fish and Game, the report writers consider that the explanation to the policy assists plan users with the understanding of the word ‘potential’ in its context:

- Food gathering is not a realistic expectation for all wetlands particularly in times of low flow and drought – wetlands need to be managed for appropriate purposes.
- The policy in no way signals that food will always be able to be gathered – just that if it is able to be gathered, it will be done safely.

50. In terms of Fish and Game’s submission, the report writers consider this amendment may be supported for the reasons given in the submission. The following amended wording better reflects the diverse nature of wetlands: *(d) Wetlands: protection of ~~aquatic~~ wetland ecosystems and the potential for food gathering.*

Consideration

51. Policy 15.1.1(d) should refer to ‘Significant’ wetlands for the reasons recommended by the report writers.²³ However, the word ‘aquatic’ ecosystems should be deleted and replaced with ‘wetland’ ecosystems as a broader, more relative term given the values of wetlands signalled in PMEP Appendix 3.

Decision

52. Policy 15.1.1(d) is amended as follows:

(d) ~~Significant w~~Wetlands: protection of ~~aquatic~~ significant wetland ecosystems and the potential for food gathering.

Policy 15.1.2

Apply water quality classifications (and water quality standards) to all surface water, groundwater and coastal water resources, which reflect:

- (a) the management purposes specified in Policy 15.1.1; and**
- (b) other uses and values supported by the waterbody or coastal waters; or**
- (c) where water quality has already been degraded, the uses and values that are to be restored.**

53. Ngāi Tahu seeks an amendment to subsection (b) as follows: *(b) other uses and values, including Tangata Whenua Iwi values, supported by the waterbody or coastal waters; or ...*²⁴

²³ Section 42A Report, paragraphs 203, 218.

²⁴ Ngāi Tahu (1189.104).

54. The submitter is of the view that it is appropriate and in accordance with ss 6(e), 7 and 8 RMA to specifically highlight within this policy that water quality standards should be set so that tangata whenua iwi values are appropriately reflected.

Section 42A Report

55. The report writers are of the opinion that cultural values are already provided for in subsection (a) of the policy, given its link back to Policy 15.1.1 which specifically references management for cultural purposes in (a) and (b), and the management for food gathering in (a) and (d), and where that does not cover all iwi values, preference would be given for those to be specifically referenced in Appendix 5 (and therefore referred to in subsection (b) of Policy 15.1.2 as notified.
56. It is recommended that Ngāi Tahu's submission is rejected as the matters raised are either covered in Policy 15.1.1(a) or they are (should be) picked up through values in Appendix 5 and therefore covered by Policy 15.1.1(b).²⁵

Consideration

57. The Panel considers that 'waterbodies and coastal water values' have particular significance for Marlborough's tangata whenua iwi, and the reference should be included in Policy 15.1.2(b). It is also unknown at this point in time whether these values may be specifically identified by iwi for inclusion in Appendix 5 Schedule 1.²⁶

Decision

58. The following amendment is made to Policy 15.1.2(b):

(b) other uses and values, including the values of Marlborough's tangata whenua iwi, supported by the waterbody or coastal waters; or ...

Appendix 5 Schedule 1 – Waikawa Stream

59. Te Ātiawa lodged a submission seeking the insertion of cultural water quality indicators in Appendix 5 Schedule 1. The submission contained no further information and initially was recommended to be rejected by the report writers.²⁷ In evidence, however, Te Ātiawa clarified its position by seeking a C classification (C for cultural practices) for the following water resource units (WRUs): Kaituna, Rai, Tuamarina, Small Coastal Complex, Small Sounds Streams, Waitohi and Wakamarina. This series of rivers was eventually amended to seek the same classification but limited to the Waitohi River and Waikawa Stream.

²⁵ Section 42A Report, paragraph 235.

²⁶ Section 42A Report, paragraph 243: Appendix 5 is headed 'Water Resource Unit Values and Water Quality Classification Standards', and includes Schedule 1 – Water Resource Unit Values and Schedule 2 – Water Quality Classification Standards.

²⁷ Te Ātiawa (1186.221).

60. In a further submission, Te Ātiawa sought the addition of cultural and aesthetic values and the 'C' and 'A' classifications to WRU (Small Sounds Streams) in relation to the Waikawa Stream.²⁸ In evidence, the submitter accepts the addition of 'C' to WRU 57 in relation to the Waikawa Stream. The report writers made no change to their further recommendations in response.
61. In a third submission Te Ātiawa no longer sought actual indicators to be added but that a placeholder be included to signal the intention to add them at a later time to affirm Council's intention to work collaboratively with iwi to develop cultural indicators.²⁹

Section 42A Report

62. The report writers accepted the submitter's concerns and amended their original recommendation from the Section 42A Report as follows:³⁰

In relation to WRU59 (Waitohi) in Schedule 1, in the column headed 'Water Quality Classifications' make the following addition 'AE, FS, C (Waikawa Stream)'.

63. The report writers considered the placeholder approach was less than ideal and unnecessary as the relief sought is specifically provided for in the existing Method 3.M.5 in Chapter 3 Marlborough's Tangata Whenua Iwi.

Consideration

64. In the course of deliberations, a technical aspect of the recommendations in the Section 42A Report prompted the Panel to seek further guidance from its co-authors relating to a possible outcome for Te Ātiawa in Appendix 5 as to the Waikawa Stream.
65. In deciding whether to grant the relief sought, the Panel considered whether a better outcome may be to define the Waikawa Stream catchment as a separate WRU on the Water Resource Unit Map in Volume 4. Waikawa Stream would then be able to have its separate stream values identified rather than being combined with other Small Sounds Streams but recording a particular different value ascribed for Te Ātiawa.
66. The guidance the Panel sought from the report writers is that, if that course was the one decided, what other values should be identified for the Waikawa Stream in addition to the 'C' for cultural values?³¹

²⁸ Te Ātiawa (1186.222).

²⁹ Te Ātiawa (1186.223).

³⁰ Section 42A Report, Reply to Evidence, page 40.

³¹ Minute 41, Section 42A Report, paragraph 30.

67. The report writers responded that, if the Panel agreed, it would be a better outcome if the Waikawa Stream was identified as its own WRU on the Water Resource Unit Map in Volume 4. In their opinion the following note would be appropriate to be included:

No	Water Resource Unit	Values	Water Quality Classifications
x	Waikawa	<p>Fish Habitat Banded kokopu, koaro, bluegill bully, redfin bully, common bully, inanga, shortfin eel and longfin eel habitat.</p> <p>Riparian Habitat Intact indigenous forest in upper catchment.</p>	AE, FS, C

68. The Panel reflected that the attributes identified by the report writers better reinforced the cultural values recognition sought by Te Ātiawa. Both the indigenous fish species listed by the report writers, together with the fact that the forest in the upper catchment is intact, emphasise the stream’s value to iwi as a place of cultural significance.
69. The term ‘Water Resources Unit’ is very neutral, implying the Waikawa Stream is a general resource along with many others, whereas the approach suggested gives it a particular cultural distinction.

Decision

70. The decision is to insert a ‘C’ classification for cultural purposes in relation to the Waitohi River (WRU59)
71. Create a new WRU in Appendix 5 for the Waikawa Stream as identified by the report writers, as shown above.
72. As a consequential change, insert a new a map for the Waikawa Stream catchment on the map of Water Resource Units.

Appendix 1 Schedule 1 – Lake Argyle

73. Trustpower lodged a submission seeking that the WRU 13 (Branch, including Lake Argyle) be removed.³² The submitter considers that Lake Argyle is an out of river, artificial storage reservoir, which is fed by a canal as part of a hydro electric scheme. And further, that Lake Argyle does not provide all of the values listed in the schedule.

³² Trustpower (1201.156).

		<p>Recreation Highly valued trout fishery. Back country experience. Waterskiing, fishing and model boating</p> <p>Natural Character Very high (Leatham River and Branch River upstream of weir).</p> <p>Hydro Electric Generation</p>	
	<u>Lake Argyle only</u>	<p>Recreation <u>Highly valued trout fishery. Waterskiing, and model boating.</u></p>	<u>CR, F</u>

Cumulative contaminant limits

Policy 15.1.3

To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having regard to the management purposes established by Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.

80. Ngāi Tahu seeks the policy be replaced with the following:³⁴

In consultation with Tangata Whenua Iwi, establish cumulative contaminant limits by 2024 having regard to the management purposes established by Policy 15.1.1.

81. Ngāi Tahu considers that consideration of cumulative effects is consistent with the ethic of ki uta ki tai waterbodies but the current wording of the policy could be interpreted to imply a presumption that waterbodies serve a network-type purpose in receiving contaminants. This is inconsistent with the NPSFM and the values set out in Chapter 3, specifically Objectives 3.1, 3.2, 3.3 and 3.5. Ngāi Tahu’s amendments, however, seek to remove that ambiguity and specifically seek that consultation with iwi is undertaken as part of this work to ensure that cumulative contaminant limits are consistent with iwi values and use of waters.

Section 42A Report

82. The report writers were unconvinced that the submitter’s interpretation was inconsistent with the NPSFM as in Marlborough which has good quality water (due in no small part to previously setting cumulative limits on contaminants in discharge to water).

83. The National Objectives Framework in the NPSFM sets out the future expectations for setting limits to implement the NPS, which includes ‘discussion with communities, including tangata whenua’. The Iwi Working Group meanwhile is an established entity with which the Council works in policy matters related to the PMEP, and the limits could also be added to the PMEP through a formal process under the RMA.

³⁴ Ngāi Tahu (1189.105).

84. The report writers consider all these processes involved in establishing limits will provide an opportunity to consider how they interact with other plan provisions, Chapter 3, Volume 1 and national directives.³⁵
85. Ngāi Tahu's initial submission was rejected as the report writers as noted above do not necessarily agree with the submitter's opinion that the policy is inconsistent with the NPSFM and do not see the policy limiting consultation with iwi as this will occur under the NPSFM.
86. Ngāi Tahu's evidence amended subsequently is as follows:³⁶

Establish limits by 2024, in consultation with Tangata Whenua, that avoid or mitigate the effects of cumulative contamination on freshwater bodies and ~~To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having~~ have regard to the management purposes established by of Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.

Consideration and decision

87. The submitter seeks to change the emphasis in the policy from investigations to setting limits. The Panel considered in the light of these submissions and the recommendations in the reports that the issue may be resolved by adding a new sentence to the explanation to Policy 15.1.3 after the first sentence of paragraph 4 as follows:

This policy establishes a commitment to commence collecting and analysing resource use and environmental data required to establish cumulative contaminant limits. The collection and analysis will include identifying the significance of taonga to Marlborough's tangata whenua iwi and use of water by landowners and the remainder of the community. The use of limits could constrain the land uses that could occur in a catchment (existing and potential) or at least the way in which those land uses are managed. For these reasons, care needs to be exercised in establishing cumulative contaminant limits in respect of water quality. It is also important that the limits reflect the management purposes established by Policy 15.1.1, otherwise Objectives 15.1a to 15.1e will not be achieved. The cumulative limits will be added to the MEP by plan change or upon review.

³⁵ Section 42A Report, paragraph 322.

³⁶ Section 42A Report, Reply to Evidence, page 45.

ANNEXURE C – Parties to be Served with Appeal

Respondent: Marlborough District Council
Kaye.McIlveney@marlborough.govt.nz

Submitters: Waived pursuant to the Minute dated 15 April 2020.