

The Registrar
Environment Court
P O Box 2069
20 Lichfield Street
Christchurch

Attention: Christine McKee

8 May 2020

Dear Christine

Notice of Appeal to the Proposed Marlborough Environment Plan

Please find enclosed our notice of appeal to the Proposed Marlborough Environment Plan.

There are three documents:

1. The Notice of Appeal.
2. A copy of our submissions and further submissions.
3. A copy of the relevant parts of the decision of MDC.

The Notice of Appeal and Appendices have also been emailed to the Marlborough District Council – attention Kaye McIlveney.

The filing fee has been paid electronically to the Environment Court today, using the Reference: ENVCRTH, and Particulars: NELSONFOREST.

Please contact me if you have any questions or require any further information.

Yours Sincerely

A handwritten signature in blue ink, appearing to read 'Heather Arnold'.

Heather Arnold
Environmental Planner

onefortyone.com

Nelson Management Ltd and
Nelson Forests Ltd trading as
OneFortyOne
58A Gladstone Road
Private Bag 5
Richmond, Nelson 7050
New Zealand
Ph: 06 435 8115

Form 7

**Notice of appeal to Environment Court against decision on the Proposed
Marlborough Environment Plan**

Clause 14 (1) of Schedule 1, Resource Management Act 1991

TO: The Registrar
Environment Court
Christchurch

- A. OneFortyOne appeals against parts of the decision of Marlborough District Council on the Proposed Marlborough Environment Plan (PMEP). OneFortyOne is the successor to Nelson Forests Limited. Nelson Forests Limited was purchased on 4 September 2019. The legal entity Nelson Forests Limited remains, but is now trading as OneFortyOne in accordance with its registered Trademark.
- B. OneFortyOne made submissions and further submissions on the PMEP.
- C. OneFortyOne is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
- D. OneFortyOne received notice of the decision on 21 February 2020 and the tracked changes of the PMEP were made available on 3 March 2020.
- E. The decision was made by Marlborough District Council (MDC).

F. The parts of the decision OneFortyOne is appealing are:

1. River Crossings – General Rules – Permitted Activities
2. Dust – General Rules – Permitted Activities
3. Removal or demolition of structures from river beds – General Rules – Permitted Activities
4. Discretionary Activities – General Rules
5. Farm Airstrip or farm helipad – Rural Environment Zone – Permitted Activities
6. Noise – Rural Environment Zone – Permitted Activities
7. Plantation Forestry Replanting – Rural Environment Zone – Permitted Activities
8. Recreational or Special Event – Rural Environment Zone – Permitted Activities
9. Discretionary Activities – Rural Environment Zone
10. Noise – Coastal Environment Zone – Permitted Activities
11. Farm Airstrip or farm helipad – Coastal Environment Zone – Permitted Activities
12. Excavation – Coastal Environment Zone – Permitted and Discretionary Activities
13. Filling – Coastal Environment Zone – Permitted and Discretionary Activities
14. Recreational or Special Event – Coastal Environment Zone – Permitted Activities
15. Plantation Forest Harvesting – Coastal Environment Zone – Restricted Discretionary Activity
16. High Amenity Value Landscapes
17. Identification of sites, areas and habitats with significant indigenous biodiversity value
18. Adverse effects on areas and habitats with significant indigenous biodiversity value
19. Location of new structures
20. Heavy Vehicles

The particular parts of the decision are attached in Appendix B hereto.

G. The **PARTICULAR PROVISIONS APPEALED**, following the topic numeration as set out above in paragraph F, are:

1. **River crossings**
 - a. The references to the National Standard for Plantation Forestry (NES-PF).
 - b. Rule 2.7.5

2. **Dust**
 - a. Lack of reference to the alignment with the NES-PF.
 - b. Rules 2.8.3.1, 3.2.9.1 and 4.2.7.1

3. **Removal or demolition of structures from river beds**
 - a. Lack of reference to the alignment with the NES-PF.
 - b. Rule 2.7.11 - permitted activity and rule 2.9.11 - standard.

4. **Discretionary standards - general - Rule 2.10**

5. **Farm Airstrip or farm helipad - Rural environment Zone - Rule 3.3.2 permitted activity and rule 3.3.2.1 Standard**

6. **Noise Rural Environment zone**
 - a. Lack of reference to the alignment with the NES-PF in rule 3.2.2.
 - b. The exception rule 3.2.3.3.

7. **Plantation Forestry Replanting - new rule 3.3.7.1 (b)**

8. **Recreational or Special Event - Rural Environment Zone**
 - a. Policies 9.3.2, 9.4.1 and 9.4.4
 - b. Rule 3.3.49 (renumbered from 3.3.48)

9. **Discretionary activities - Rural Environment Zone - rule 3.6.1**

10. **Noise Coastal Environment Zone**
 - a. Lack of reference to the alignment with the NES-PF
 - b. The exception rule 4.2.2.3

11. **Farm Airstrip or farm helipad - Rural Coastal Zone** - Rule 4.3.2 permitted activity and rule 4.3.2.1 standard.
12. **Excavation- Coastal Environment Zone** - Rules 4.3.13 and 4.5.5
13. **Filling – Coastal Environment Zone** - Rules 4.3.15.12 and 4.5.5
14. **Recreational or Special Event - Coastal Environment Zone** - rule 4.3.46
15. **Plantation Forest Harvesting - Coastal Environment Zone**-rule 4.5.4
16. **High Amenity Value Landscapes** - policy 7.2.8
17. **Identification of sites, areas and habitats with significant indigenous biodiversity value.**
 - a. Policy 8.1.1
 - b. All significant wetlands identified on the OneFortyOne land until they have been verified on the ground as meeting the criteria of significance.
18. **Adverse effects on areas and habitats with significant indigenous biodiversity value** - policy 8.3.2
19. **Location of new Structures** - policy 11.1.21
20. **Heavy Vehicles** - policy 17.6.1

H. The **REASONS** for the appeal, following the topic numeration set out above in paragraph F are:

1. **River crossings**

- a. With regard to river crossings the MDC has not correctly aligned the PMEP with the provisions of the NES-PF.
- b. Rule 2.7.5 falls within the scope of the NES-PF and applies to crossings of rivers in plantation forests.
 - (i) The PMEP does not define “ephemeral rivers” however it does define “ephemeral” as meaning “river”. “River” is defined as having the same meaning as “river” under the RMA which includes perennial and intermittent rivers. Accordingly, the PMEP cannot introduce a new scope of concept of what may or may not be river.
 - (ii) There is no ability for the MDC to be more stringent under Regulation 6 of the NES-PF to apply rule 2.75 to Plantation Forest river crossings and the decision provides no justification to do so.

2. **Dust**

- a. Regulations 100 and 101 of the NES-PF are applicable to the relevant Plantation Forest activities and therefore the PMEP must provide the appropriate alignment.
- b. There now appears to be misalignment between general rule 2.8.3 and the specific rules 3.2.9.1 and 4.2.7.1. The inconsistencies must be corrected.
- c.
 - (i) The rule would be applied to the Plantation Forest activities not covered by the NES-PF. The deletion of the PMEP note as to how the use of the word “avoid” would be used to interpret this rule, means that that no dust, no matter how insignificant and how minimal any effect, could be discharged or allowed to move across a property boundary.
 - (ii) The rule is inconsistent with policy 14.1.7 which proposes mitigation of effects from dust where there are significant adverse effects.

3. **Removal or demolition of structures from river beds**

If the structures are crossings as governed by the NES-PF then there must be alignment with the NES-PF to allow for such removal or demolition of river crossing structures.

4. **Discretionary standards - general**

Alignment for river crossings with the NES-PF would settle this appeal point. If not settled the reason for the appeal is that there are no controlled activities in the rules section for “Activity In, On, Over or Under the Bed of a Lake or River” – this creates uncertainty and administrative waste in applying for full discretionary consents for *de minimus* matters.

5. **Farm Airstrip or farm helipad - Rural environment Zone**

There is no justification to distinguish between an airstrip or helipad used in a farming operation as compared to a forestry operation.

6. **Noise - Rural Environment zone**

- a. Regulations 98 and 99 of the NES-PF are applicable to the relevant Plantation Forest activities and therefore the PMEP should provide the appropriate alignment.
- b. With regard to other plantation forest activities then the exception for noise from mobile machinery, fixed motors and machinery should be allowed to ensure effects-based equity with other rural production activities.

7. **Plantation Forestry Replanting**

- a. Replanting within an Afforestation Flow Sensitive site is a discretionary activity. This is inconsistent with the Policy 5.3.15 which states *“The policy does not apply to existing plantation forestry or the replanting of that forest following harvest, as the effects of this forestry on water yield are part of the existing environment”* and the rule is inconsistent with the section 32 report.

- b. In terms of Section 85 of the Resource Management Act, not allowing or restricting replanting could render the land incapable of reasonable use.

8. Recreational or Special Event - Rural Environment Zone

- a. The rule provides no protection from reverse adverse effects for plantation forestry from risks associated with the event, such as wild fire.
- b. The permitted activities are generous in their scope and do not address impacts on adjacent communities. The PMEP is the only mechanism available to plantation forestry to address fire risk.
- c. The permitted activity status is inconsistent with the policy direction of Policies 9.3.2, 9.4.2 and 9.4.4. Policy 9.3.2 should be expanded to ensure that the risk from fire is included.

9. Discretionary activities - Rural Environment Zone

There is a disconnect in the PMEP. It is now a controlled activity to harvest trees within 8 m of a significant wetland < 0.25 ha, but a discretionary activity to have wheeled or tracked machinery (for harvesting) within 8 m of the Significant wetland < 0.25 ha. It is by having harvesting machinery close to planted trees, that their felling can be controlled and therefore minimising any adverse effects to the wetland from harvesting. The two activities should be both classified as controlled activities.

10. Noise - Coastal Environment Zone

- a. Regulations 98 and 99 of the NES-PF are applicable to the relevant Plantation Forest activities and therefore the PMEP should provide the appropriate alignment.
- b. With regard to other plantation forest activities then the exception for noise from mobile machinery, fixed motors and machinery should be allowed to ensure effects-based equity with other rural production activities.

11. Farm Airstrip or farm helipad - Rural Coastal Zone

There is no justification to distinguish between an airstrip or helipad used in a farming operation as compared to a forestry operation. They have the same effects.

12. Excavation - Coastal Environment Zone

- a. The new rules mean that excavation for forestry earthworks including maintenance is not permitted, even although excavations (with limits) for other rural production activities are
- b. Policy 22 of the New Zealand Coastal Policy Statement does not separate out the effects of sedimentation from excavations in forestry from other land uses.
- c. There is no policy or factual basis to treat plantation forest excavations differently from other excavations.
- d. The inability to maintain forestry earthworks by excavation as required (e.g. roads, tracks and skid sites) could lead to significant adverse effects on the environment. It is imperative that maintenance is undertaken to ensure the integrity of earthworks, even in the absence of storm events. Furthermore, maintenance excavations are often required when remediation is undertaken after storm events.

13. Filling - Coastal Environment Zone

- a. The new rules mean that filling for forestry earthworks is not permitted, even although filling (with limits) for other rural production activities are.
- b. Policy 22 of the New Zealand Coastal Policy Statement does not separate out the effects of sedimentation from filling in forestry from other land uses.
- c. There is no policy or factual basis to treat plantation forest filling differently from other filling activities.
- d. In forestry earthworks excavation and filling are interrelated and to separate them overly complicates the management of earthworks.
- e. The inability to maintain forestry earthworks by filling as required (e.g. roads, tracks and skid sites) could lead to significant adverse effects on the environment. It is

imperative that maintenance is undertaken to ensure the integrity of earthworks, even in the absence of storm events. Furthermore, maintenance filling is often required when remediation is undertaken after storm events.

14. Recreational or Special Event-Coastal Environment Zone

- a. The rule provides no protection from the reverse adverse effects for plantation forestry from risks associated with the event, such as wild fire.
- b. The permitted activities are generous in their scope and do not address impacts on adjacent communities. The PMEP is the only mechanism available to plantation forestry to address fire risk.

15. Plantation Forest Harvesting - Coastal Environment Zone

- a. Not permitting the harvesting of existing planted trees removes the certainty of realising the value of the crop even although the plantation forest owned by OneFortyOne, within the coastal environment zone, does not drain directly to the Coastal Marine Area.
- b. While MDC can be more stringent than the NES-PF with regard to Policy 22 of the New Zealand Coastal Policy Statement, there has been no consideration as to the standards provided for permitted harvesting under the NES-PF especially those related to managing the discharge of sediment. Accordingly, MDC has not provided justification to be more stringent for harvesting of plantation forests.

16. High Amenity Value Landscapes

The policy has now been amended to in effect to not recognise plantation forest as an existing land use that forms part of the landscape. There is no justification to not recognise all rural productive land uses as existing activities within the rural landscape.

17. Identification of sites, areas and habitats with significant indigenous biodiversity value.

- a. On site verification of any sites of significance must be mandatory. It is in line with Quality Planning and will result in accurate representation of sites of significance. There are a number of sites on OneFortyOne land that have not been ground verified and do not fall within the scope of this policy. Of particular concern are sites on Pt. Section 7 BLK XI Patriarch SD.
- b. As further policy requires avoidance of any sites of significance, the harvesting of existing plantation forests located within these sites would not be permitted. Such inappropriate protection of a planted crop is inconsistent with the concept of protection of significant indigenous vegetation.

18. Adverse effects on areas and habitats with significant indigenous biodiversity value

- a. Where sites have not been verified on the ground within the OneFortyOne estate the harvesting of existing plantation forests and ongoing operations would not be permitted. Such inappropriate protection of a planted crop is inconsistent with the concept of protection of significant indigenous vegetation.
- b. Avoidance of sites of significance must only apply to verified sites.
- c. The policy removes the obligation of MDC from identification of sites of **any** indigenous biodiversity value and imposes an unfair and costly obligation to identify such sites for a resource consent applicant.
- d. The policy leads to non-alignment with the NES-PF where the MDC can only be more stringent for significant natural areas, not for areas where there may be an indigenous biodiversity value.

19. Location of new Structures

- a. The policy does not clearly raise awareness of risks of land instability to the new structure or works that do not originate from the site in which the new structure or works are located.

- b. MDC has extensive data concerning unstable land and the past practices of allowing structures to be located below unstable slopes should now be properly considered, taking into account all the risks.

20. **Heavy Vehicles**

- a. The policy ignores the reality that commercial forests are largely situated in rural areas that are not accessed by national and arterial routes. There also needs to recognition that heavy traffic associated with the harvest of commercial forest is temporary in the timeframes of growing the forest crop. The policy description does not provide clarity as to which primary production activities are exempt from the policy, and is therefore open to interpretation.
- b. The policy, as amended, now would require logs to be transported from Taylor Pass via the Awatere. There is no recognition of the increased cartage costs, increased carbon emissions from longer trucking routes, the suitability of alternate routes or the costs that would need to be incurred to upgrade substandard roads (pavement, width, sight distances, drainage etc.)

- I. OneFortyOne seeks, following the topic numeration set out above in paragraph F, the following **RELIEF**:

1. **River crossings**

Rule 2.7.5 to be identified as falling within the scope of the NES-PF.

2. **Dust**

- a. Insert provisions identifying the application of the NES-PF.
- b. For forestry activities outside of the NES-PF replace the general activities rule 2.8.3 with the format used in rules 3.2.9.1. and 4.2.7.1.

3. **Removal or demolition of structures from river beds**

Align the rules to the NES-PF and provide that the rules do not apply to structures crossing rivers in Plantation Forests.

4. **Discretionary standards-general**

- a. Align the rules on cascading of activity status with the NES-PF.
- b. Establish controlled activity rules for minor non-compliance with permitted activity standards, where the effects of the activity are known and the impacts are minor.
- c. Only default non-compliance of permitted activity standards to full discretionary if the effects are unknown, difficult to quantify or when there is a risk of significant adverse effect.

5. **Farm Airstrip or farm helipad-Rural environment Zone**

Amend this standard to apply equally to forestry land and operations.

6. **Noise Rural Environment zone**

- a. Insert provision identifying the application of the NES-PF.
- b. For forestry activities outside the scope of the NES-PF amend the exemption sub-section b) to also include forestry activities.

7. **Plantation Forestry Replanting**

Amend sub-section (g) to not apply to the replanting of existing plantation forests in an Afforestation Flow Sensitive Site.

8. Recreational or Special Event-Rural Environment Zone

- a. Amend the permitted activity standards to provide for fire risk to the rural environment.as follows:

“An event which is advertised for general public admission meets the following conditions:

- (iv) should the event be located in the high fire risk area (as shown on the MEP planning maps) & occurs between 1 October and 30 April, a fire preparedness plan is provided to the Rural Fire Authority for management in terms of its powers under the Forest Rural Fire Act 1977, & adjacent landowners fourteen working days before the activity commences, which provides sufficient detail to satisfy the purposes for which it is required including:*
- (a) the location, time & duration of the event and the number of people expected to attend the event;*
- (b) risk reduction measures including: briefing information for participants; management of spark hazardous activities (including smoking, lighting of fires & barbeques); length & dryness of grass; & a cancellation procedure for the event if the Build Up Index (BUI) of the nearest remote access weather station forecasts or has a BUI reading of 80 or more, or a Fire Weather Index forecasts or reads 24 or higher;*
- (c) fire readiness measures including water and equipment for firefighting; number of people on site trained in firefighting to NZQA or NZ Fire Service TAPS module standards; location of safe site areas; an evacuation plan with a stay/go procedure & at least two escape routes to safe areas; a plan of how emergency services will access the site; an emergency notification process for organisers & attendees & a tested communication plan for phone or radio for communication with emergency services.”*

- b. Amend the policies to provide for recognition and the management of the risks to the wider environment /community from events such as wild fire.

9. Discretionary activities - Rural Environment Zone

Amend the rules to ensure that wheeled or tracked machinery (for harvesting) may be used to extracted existing planted trees within 8 m of a significant wetland as a controlled activity.

10. Noise Coastal Environment Zone

- a. Insert provision identifying the application of the NES-PF.
- b. For forestry activities outside the scope of the NES-PF amend the exemption subsection b) to also include forestry activities.

11. Farm Airstrip or farm helipad - Rural Coastal Zone

Amend this standard to apply equally to forestry land and operations.

12. Excavation - Coastal Environment Zone

- a) Amend the PMEP to permit excavations including maintenance for plantation forest earthworks. to the standards as set out in the NES-PF.
- b) Any non-compliance with the standard would classify excavation as a controlled activity and the matters of discretion set out in the PMEP would be applicable.

13. Filling - Coastal Environment Zone

- a) Amend the PMEP to permit filling including maintenance for plantation forest earthworks. to the standards as set out in the NES-PF.
- b) Any non-compliance with the standard would classify filling as a controlled activity and the matters of discretion set out in the PMEP would be applicable.

14. Recreational or Special Event - Coastal Environment Zone

Amend the permitted activity standards to provide for fire risk to the coastal environment as set out in the relief in paragraph 1 8a above.

15. Plantation Forest Harvesting - Coastal Environment Zone

- a) Amend the rule to permit the harvesting of existing plantation forests to the standards as set out in the NES-PF.
- b) Any non-compliance with the standard would classify harvesting as a controlled activity and the matters of discretion set out in the PMEP would be applicable.

16. **High Amenity Value Landscapes**

Retain the policy as was notified in the PMEP.

17. **Identification of sites, areas and habitats with significant indigenous biodiversity value.**

Amend this policy to require that on-site verification is a key component of the identification sites, areas and habitats with significant indigenous biodiversity values.

18. **Adverse effects on areas and habitats with significant indigenous biodiversity value**

Delete this policy.

19. **Location of new Structures**

Explicitly state the following (or with words of similar effect):

“Locate new structures and works to:

(a) avoid them being damaged from the adverse effects of land instability both from within and external to the site; and

(b) avoid any increase in the adverse effects of slope instability that the structure or work may cause.”

20. **Heavy Vehicles**

Rewrite the policy as follows (or with words with similar effect):

“Maintain amenity values in rural and urban areas by:

(a) encouraging the use of national and arterial routes by high volumes of traffic and heavy vehicles;

- (b) *discouraging high volume and heavy traffic use of collector routes and local routes, when they do not need to use these roads to access their freight/produce, particularly where these pass through residential areas*

The current state of vehicle technology in New Zealand means that noise and vehicle emissions can be expected from the operation of vehicles on roads. There is little the MEP can do to modify those conditions. However, the Council can control the extent of these effects by adopting a road hierarchy, which encourages higher volumes of traffic and heavy traffic movements on certain routes and discourages them on others. An exception is made for primary production activities, which need to use collector and local routes to transport produce to processing facilities, Ports or customers."

- J. OneFortyOne attaches the following documents to this notice:
- (a) a copy of our submissions and further submissions
 - (b) a copy of the relevant parts of the decision of MDC
 - (c) Given the direction of the Court, we have not attached the names and addresses of the other relevant submitters.


..... per OneFortyOne

Heather Joy Arnold (person authorised to sign on behalf of appellant)

8 May 2020

OneFortyOne, Private Bag 5, Richmond, Nelson 7050

Telephone: 03 543-8115 (OneFortyOne) : 021 240-0530 (Heather Arnold)

Fax/email: heather.arnold@onefortyone.co.nz

Contact person: Heather Arnold : Environmental Planner

Nelson Forests Limited – Submission on the Proposed Marlborough Environment Plan

1. Submitter Details

Full name
 Organisation
 Contact Person
 Postal Address
 Post Code
 Contact Details : Email Address
 Contact Details : Phone (daytime)
 Contact Details : Phone (mobile)

Nelson Forests Limited
 Heather Arnold
 Private Bag 5, Richmond, Nelson
 7050
 heather.arnold@nelsonforests.com
 03 970-2898
 021 240-0530

Signature (of submitter or person authorised to sign on behalf of submitter)

Date

1 September 2016

2. Trade Competition

Could you gain an advantage in trade competition in making this submission?

NO

3. Council Hearing

Do you wish to be heard in support of your submission?

YES

If you answered 'Yes' to being heard, would

YES

you be prepared to consider presenting a joint case with others who have made a similar submission?

4. Return Submission to

Attention Planning Technician, Marlborough District Council, Box 443, Blenheim 7240
 Fax: 03 520 7496
 Email: mep@marlborough.govt.nz

| | MEP Reference | Oppose Support | Submission | Relief Sought |
|----|---|-----------------|---|---|
| 16 | Permitted Activity 2.7.1 Alteration, repair or maintenance of an existing structure in, on, under or over the bed of a lake or river. | Support | This rule is sensible. | Retain this rule. |
| 21 | Permitted Activity 2.7.5 Construction or placement of a new structure in, on, under or over the bed of an ephemeral river. | Oppose | This rule should equally apply to intermittently flowing water courses. There is no justification for it to only apply to ephemeral watercourses. | Extend the rule for it to also apply to intermittently flowing watercourses. |
| 22 | Permitted Activity 2.7.7 Culvert installation in, on, under or over the bed of a river. | Support in part | This is a practical solution to protect water quality. However there is no provision for the use of the culvert. | Amend this rule to state (or with words of similar effect): <i>Culvert installation and use in, on, under or over the bed of a river.</i> |
| 23 | Permitted Activities 2.7 Installation and use of bridges | Oppose | There are no provisions for installation or use of bridges in, on or over any type of river. | Include new rules as permitted activities for the installation and use of bridges in, on or over a river. |
| 24 | Permitted Activities 2.7 Installation and use of fords | Oppose | There are no provisions for installation or use of fords in, on, under or over intermittent and ephemeral water courses. The installation and use of a ford in times of no surface flow would allow for the efficient use of resources. Stock access to riverbeds in allowed under this scenario in the MEP – the use of fords would have less environmental impact. | Include new rules as permitted activities, for the installation and use of bridges and fords in, on, under or over an ephemeral watercourse and intermittently flowing watercourse when there is no surface flow. |
| 26 | Standard 2.8.3.1 Standards that apply to all permitted activities – dust: The best practicable method must be adopted to avoid dust beyond the legal boundary of the area of land on which the activity is occurring. | Oppose | This rule is stringent compared to the policy that supports it. Policy 14.1.7 states: <i>Recognise that primary production activities in rural environments may result in effects including noise, dust, smell and traffic generation, but that these will require mitigation where they have a significant adverse effect on the environment. The policy only directs mitigation when there are significant adverse effects on the environment.</i> | Delete this rule and replace it with the following (or words to similar effect): <i>The best practical method must be adopted to mitigate the discharge of dust to be no more than minor beyond the legal boundary of the area of land on which the activity is occurring.</i> |

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| 30 | Rule 2.10 | Discretionary Activities | Oppose | <p>There is no justification for an activity that has minor non-compliance with permitted activity standards to default to a full discretionary activity. The use of this rule category is in direct conflict with the MEP Guiding Principle that states: Ensure that any regulation is in keeping with the scale of the activity regulated. The Council has sought to use permitted activity rules as much as possible to regulate the adverse effects of activities. However, rules requiring resource consent for an activity are necessary when there is a risk of significant adverse effects or when the effects of an activity are unknown or difficult to quantify. Controlled activity rules are required for minor non-compliance with permitted activity standards.</p> | <p>Establish controlled activity rules for minor non-compliance with permitted activity standards, where the effects of the activity are known and the impacts are minor. For example, the length of a culvert pipe.</p> <p>Only default non-compliance of permitted activity standards to full discretionary if the effects are unknown, difficult to quantify or when there is a risk of significant adverse effect.</p> <p>Establish a controlled activity level with clear, focussed matters for control.</p> <p>The controlled activities would include, but not be limited to, the following activities (where they do not meet permitted activity standards):</p> <ul style="list-style-type: none"> • Commercial forest harvesting • Woodlot forest harvesting • Non-indigenous clearance • Indigenous clearance • Cultivation • Excavation • Land disturbance to create and maintain a firebreak • Application of agrichemical into or onto land • Application of fertiliser into or onto land • Discharge of contaminants to air from burning for the purposes of vegetation clearance • Forestry planting • Installation and use of culverts • Installation and use of fords • Installation and use of minor bridges <p>The matters for control could include, but not be limited to, the following:</p> |
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| | | | | <ul style="list-style-type: none"> • The natural clarity of a permanently flowing river, lake, wetland or the sea. • The entry of woody organic material into a permanently flowing river, lake, wetland or the sea. • The restoration of vegetation on any excavation site. <p>Stream crossings:</p> <ul style="list-style-type: none"> • the timing of riverbed disturbance • capacity to convey flow • fish passage |
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| 37 | <p>Standard 3-2.3-3</p> <p>Standards that apply to all permitted activities – noise. The following activities are excluded from having to comply with the noise limits:</p> <p>(a) sirens and call out sirens associated with the activities of the New Zealand Fire Service;</p> <p>(b) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Rural Environment Zone;</p> <p>(c) any fixed motors or equipment, frost fans or gas guns, milling or processing forestry activities, static irrigation pumps; motorbikes that are being used for recreational purposes.</p> | Oppose | <p>The permitted activity standard does not allow for general forestry activities (eg slash raking, harvesting, infrastructure construction, chainsaw use, loading, manoeuvring, etc). Further, processing forestry activities is not defined, which leaves the rule open to interpretation. It is inequitable to provide for noise associated with some rural based primary production activities and not others.</p> | Amend clause b) to also include forestry activities. |
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| 38 | <p>Standard 3-3.2.1</p> <p>Farm airstrip or farm helipad: The airstrip or helipad must be integral to the use of the land on which the airstrip or helipad is located for farming.</p> | Oppose | <p>There is no justification to distinguish between an airstrip or helipad used in a farming operation as compared to a forestry operation.</p> | Amend this standard to apply equally to forestry land and operations. |
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| 45 | <p>Standard 3-3.6.2</p> <p>Commercial forestry planting Plantings must not be in, or within: (g) an Afforestation Flow Sensitive Site</p> | Oppose | <p>The definition of Commercial Forestry Planting means that this standard applies to the replanting of existing lawfully established forests. Policy 5.3.15 states that replanting within an afforestation Flow Sensitive Site would not be affected by the policy. The Section 32 report on the matter of planting in Flow Sensitive Sites also</p> | Amend clause (g) to not apply to the replanting of an Afforestation Flow Sensitive Site. |
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| | | | indicates that the purpose of any rule was to only apply to new plantings and not to the replant of existing trees. The section 32 report does not calculate any cost of not being able to replant an existing forest. There is no calculation of the cost to pay the climate change deforestation levy for the non-replanting of existing forest. Nor is there any evaluation of the cost of existing forestry having to obtain a resource consent to replant. In fact, the section 32 report is very clear that the provisions relate solely to new plantings. In terms of Section 85 of the Resource Management Act, this could render the land incapable of reasonable use. | |
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| 100 | Standard 3-3.48 | Recreational or Special Event | Oppose | <p>Amend the permitted activity standards to provide for fire risk to the rural environment. Tasman District Council has recently held hearings in association with this issue.</p> <p>Refer to the direction taken by the Tasman District Council, as follows: An event which is advertised for general public admission meets the following conditions: (iv) should the event be located in the high fire risk area (as shown on the TRMP planning maps) & occurs between 1 October and 30 April, a fire preparedness plan is provided to the Rural Fire Authority for management in terms of its powers under the Forest Rural Fire Act 1977, & adjacent landowners fourteen working days before the activity commences, which provides sufficient detail to satisfy the purposes for which it is required including:</p> |
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| | | | | | <p>(a) the location, time & duration of the event and the number of people expected to attend the event;</p> <p>(b) risk reduction measures including: briefing information for participants; management of spark hazardous activities (including smoking, lighting of fires & barbecues); length & dryness of grass; & a cancellation procedure for the event if the Build Up Index (BUI) of the nearest remote access weather station forecasts or has a BUI reading of 80 or more, or a Fire Weather Index forecasts or reads 24 or higher;</p> <p>(c) fire readiness measures including water and equipment for firefighting; number of people on site trained in firefighting to NZQA or NZ Fire Service TAPS module standards; location of safe site areas; an evacuation plan with a stay/go procedure & at least two escape routes to safe areas; a plan of how emergency services will access the site; an emergency notification process for organisers & attendees & a tested communication plan for phone or radio for communication with emergency services.</p> |
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| ¹⁹⁰ | <p>Policy 9.3.2</p> <p>Seek diversity in the type and size of open spaces and recreational facilities to meet local, district, regional and nationwide needs, by:</p> <p>(a) identifying areas with conservation value;</p> <p>(b) enabling a wide range of organised sports, recreation and community activities;</p> <p>(c) enabling low-key, everyday recreation and community activities to serve local communities; and</p> | Support in part | <p>Recognition of the risks to the wider environment from temporary activities in these locations is necessary, such as wild fire, trespass and fly tipping.</p> | <p>Add a further clause (e) as follows (or with words of similar effect):</p> <p>(c) recognising and managing the risks to the wider environment/community from temporary events, such as wild fire.</p> |
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| | (d) recognising and protecting the value of open space in the coastal marine area, high country environments and river beds. | | |
| 103 | 3.6.1 Discretionary Activities: Any activity provided for as a Permitted Activity, Controlled Activity or Restricted Discretionary Activity that does not meet the applicable standards. | Oppose There is no justification for commercial forestry planting or harvesting to be discretionary activities if the permitted activity standards cannot be met. Harvesting should be considered under land disturbance rules, not separate commercial forestry harvesting rules. | Provide for commercial forestry planting and commercial forest harvesting to be controlled activities if the permitted activity standards cannot be met. Establish a controlled activity level with clear, focussed matters for control. The controlled activities would include, but not be limited to, the following activities (where they do not meet permitted activity standards): <ul style="list-style-type: none"> • Commercial forest harvesting • Woodlot forest harvesting • Non-indigenous clearance • Indigenous clearance • Cultivation • Excavation • Land disturbance to create and maintain a firebreak • Application of agrichemical into or onto land • Application of fertiliser into or onto land • Discharge of contaminants to air from burning for the purposes of vegetation clearance • Forestry planting • Installation and use of culverts • Installation and use of fords • Installation and use of minor bridges The matters for control could include, but not be limited to, the following: <ul style="list-style-type: none"> • The natural clarity of a permanently flowing river, lake, wetland or the sea. |

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| | | | | <ul style="list-style-type: none"> The entry of woody organic material into a permanently flowing river, lake, wetland or the sea. The restoration of vegetation on any excavation site. <p>Stream crossings:</p> <ul style="list-style-type: none"> the timing of riverbed disturbance capacity to convey flow fish passage |
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| 108 | Standard 4.2.2.3 | Standards that apply to all permitted activities - noise. The following activities are excluded from having to comply with the noise limits: (a) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Coastal Environment Zone; (b) any fixed motors or equipment, frost fans or gas guns, milling or processing forestry activities, static irrigation pumps; motorbikes that are being used for recreational purposes. | Oppose | The permitted activity standard does not allow for general forestry activities (eg slash raking, harvesting, infrastructure construction, chainsaw use, loading, manoeuvring, etc). Further, processing forestry activities is not defined, which leaves the rule open to interpretation. It is inequitable to provide for noise associated with some rural based primary production activities and not others. | Amend clause (a) to also include forestry activities. |
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| 112 | Standard 4.3.2.1 | Farm airstrip or farm helipad: The airstrip or helipad must be integral to the use of the land on which the airstrip or helipad is located for farming. | Oppose | There is no justification to distinguish between an airstrip or helipad used in a farming operation as compared to a forestry operation. | Amend this standard to apply equally to forestry land and operations. |
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| 125 | Standard 4.3.13 | Excavation | Oppose in part | There is no provision in the MEP for the “filling” component of excavation / earthworks. The “Filling” standards only apply to clean fill (material brought on site) and filling within the National Grid Yard. | Amend Standard 4.3.13 Excavation to state (or with words of similar effect): 4.3.13 Excavation (including filling) AND/OR Amend the definition of Excavation to state (or with words of similar effect): Excavation: means to dig out and infill soil or natural material from the ground such that the |
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| 126 | Standard 4-3-13.1 | Excavation in excess of 1000 m ³ must not occur on any land with a slope greater than 20° within any 24-month period. | Oppose | <p>The most recent publicly available draft of proposed NES-PF is an example of effects based regulation. It achieves this by basing rules for excavation on the erosion susceptibility of the land. There will be land above 20° that is low risk and land that is not. The standard should be aligned with the likely approach of the proposed NES-PF.</p> <p>Should the commercial harvesting standards be deleted and the activities incorporated into land disturbance rules, amendments are required to the land disturbance rules/standards.</p> | <p>surface contour of the land is permanently altered. This definition does not apply to Commercial Forestry Harvesting.</p> <p>Review this clause to align it with the provisions of the proposed NES-PF.</p> |
| 127 | Standard 4-3-13.2 | Excavation must not occur on any land with a slope greater than 35°. | Oppose | <p>Excavation for maintenance purposes should be provided on all areas, regardless of slope. Timely maintenance minimises adverse effects.</p> <p>The most recent publicly available draft of proposed NES-PF bases rules for harvesting on the erosion susceptibility of the land. The standard should be aligned with the likely approach of the proposed NES-PF.</p> <p>Harvesting should be considered under land disturbance rules, not separate commercial forestry harvesting rules.</p> | <p>Review this clause to align it with the provisions of the proposed NES-PF.</p> <p>Provide for maintenance excavation as a permitted activity on all slopes/land classes.</p> |
| 128 | Standard 4-3-13.3 | Excavation must not be in, or within: (a) 8m of a river (except an ephemeral river when not flowing), lake or the coastal marine area; (b) 8m of a Significant Wetland; (c) 8m of the landward toe of a stopbank and the depth of any excavation beyond that must not exceed 15% of the distance between the landward toe of the stopbank and the excavation. | Oppose | <p>Excavation within 8 metres of all rivers should be a permitted activity to allow for approaches to stream crossings. The plan has been drafted such that some stream crossings are permitted, but this rule then negates the ability to access and use them.</p> | <p>Amend clauses (a) and (b) to state (or with words of similar effect): (a) 8m of a river (except an ephemeral river when not flowing), lake or coastal marine area, except for the direct approaches to permitted activity or consented stream crossings);</p> |

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| | | | | | (b) 8m of a Significant Wetland, except for the direct approaches to permitted activity or consented stream crossings); Notwithstanding this, any setbacks for plantation forestry should be in alignment with the proposed NES-PF. Limit the rule to only apply to the actual activity of excavation, and provide an exclusion to the standard to ensure that existing infrastructure in this location (as at 9 June 2016) can continue to be used for all purposes and that all traffic can access stream crossings via a direct approach through this area, and that direct approaches to stream crossings can be constructed. |
| 129 | Standard 4-3.13-7 | Excavation: Wheeled or tracked machinery must not be operated in or within 8m of a river (except an ephemeral river or intermittently flowing river, when not flowing) lake, significant wetland or the coastal marine area. | Oppose | There are numerous roads and tracks in the region within 8 m of a river. This standard would not allow any machinery associated with excavation to use these roads. This rule also does not allow for the use of stream crossings, some which will be constructed as permitted activities. | Notwithstanding this, any setbacks for plantation forestry should be in alignment with the proposed NES-PF. Rewrite this standard as follows (or with words with similar effect): <i>Design and construct batters to be at low risk of instability.</i> |
| 130 | Standard 4-3.13-8 | Excavation: Batters and filled areas must be designed and constructed to ensure they are stable and remain effective after completion of excavation. | Oppose | This standard is unobtainable. It is unclear and open to interpretation. The intent of the rule is supported, but it has not been translated into a workable, achievable standard. | Delete this standard. |
| 131 | Standard 4-3.13-9 | Water control measures and sediment control measures must be designed, constructed and maintained in an area disturbed by excavation, such that the area is stable and the measures remain effective after completion of the excavation. The diameter of any culvert used to drain excavation must not be less than 300mm. | Oppose | This standard is open to interpretation as there is no quantification of timeframe. There is also no recognition of force majeure type events. | Delete this standard. |
| 132 | Standard 4-3.13-10 | Excavation: Excavation must not cause any conspicuous change in the colour or visual clarity of a flowing river after reasonable mixing or the water in a Significant Wetland, lake or the coastal marine area, as measured as follows.... | Oppose | A permitted activity with associated standards has been proposed for diffuse discharges from primary production activities. Standard 3-3.13-6 is in conflict with this. | Delete this standard. |
| 133 | Standard 4-3.19-1 | Land disturbance to create and maintain a firebreak: Water control measures and sediment control | Oppose | This standard is open to interpretation as there is no quantification of timeframe. | Delete this standard. |

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| | | measures must be designed, constructed and maintained in all areas disturbed in the creation of a fire break, such that the areas are stable and the measures remain effective after completion of the land disturbance. | | There is also no recognition of force majeure type events. | |
| 6 | Forestry Provisions | | Oppose | No section 32 report has been prepared to justify the new approach to dealing with forestry as a separate industry and as a predominantly discretionary activity in the Coastal Environment Zone, despite the approach being a significant shift away from how the issues were previously managed in the Wairau-Awatere and Marlborough Sounds Resource Management Plans. | Default forestry activities to the rules in the Wairau-Awatere and Marlborough Sounds Resource Management Plans until the proposed NES-PF is enacted. |

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| 136 | 4.3-46 | Recreational or Special Event | Oppose | There is no protection from adverse effects for primary industry from risks associated with the event, such as wild fire. Tasman District Council has recently held hearings in association with this issue. | Amend the permitted activity standards to provide for fire risk to the coastal environment. Refer to the direction taken by the Tasman District Council, as follows: An event which is advertised for general public admission meets the following conditions: (iv) should the event be located in the high fire risk area as shown on the TRMP planning maps & occurs between 1 October and 30 April, a fire preparedness plan is provided to the Rural Fire Authority for management in terms of its powers under the Forest Rural Fire Act 1977 & adjacent landowners fourteen working days before the activity commences, which provides sufficient detail to satisfy the purposes for which it is required including: (a) the location, time & duration of the event and the number of people expected to attend the event; (b) risk reduction measures including: briefing information for participants; |
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| | | | | | management of spark hazardous activities (including smoking, lighting of fires & barbeques); length & dryness of grass; & a cancellation procedure for the event if the Build Up Index (BUI) of the nearest remote access weather station forecasts or has a BUI reading of 80 or more, or a Fire Weather Index forecasts or reads 24 or higher; |
| | | | | | (c) fire readiness measures including water and equipment for firefighting; number of people on site trained in firefighting to NZQA or NZ Fire Service TAPS module standards; location of safe site areas; an evacuation plan with a stay/go procedure & at least two escape routes to safe areas; a plan of how emergency services will access the site; an emergency notification process for organisers & attendees & a tested communication plan for phone or radio for communication with emergency services. |

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| 139 | 4.6.4 | Discretionary Activities – Commercial Forest Harvesting | Oppose | <p>This activity status is contrary to one of the MEP guiding principles: Ensure that any regulation is in keeping with the scale of the activity regulated. The Council has sought to use permitted activity rules as much as possible to regulate the adverse effects of activities. However, rules requiring resource consent for an activity are necessary when there is a risk of significant adverse effects or when the effects of an activity are unknown or difficult to quantify.</p> <p>There is no justification for commercial forestry harvesting to be a discretionary activity. There is no greater risk of significant adverse effects in NFL's forests in</p> | Provide for commercial forestry harvesting as a permitted activity |
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| | | | <p>this zone than in the rural zone. The effects of the activity are known.</p> <p>The effect of this rule is to render the existing forest as not being able to be harvested (as it is subject to councils' discretion). This means that a forest owner could not make reasonable use of its land and the rule should be deleted or the forest owner compensated for the inability to harvest its forest (with reference to section 85 of the RMA).</p> <p>Harvesting should be considered under land disturbance rules, not separate commercial forestry harvesting rules.</p> | |
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| 177 | <p>Policy 7.2.8</p> | <p>Recognise that some outstanding natural features and landscapes and landscapes with high amenity value will fall within areas in which primary production activities currently occur.</p> <p>In some areas where outstanding natural features and landscapes and landscapes with high amenity values have been identified in the MEP, there are a range of primary production activities taking place. Some landscapes, especially south of the Wairau River, are a product of past and present extensive pastoral farming. In this situation, the continuation of such pastoral farming is not anticipated to threaten the biophysical, sensory or associative values that contribute to landscape significance. This will be reflected in the status of regional and district rules that apply in identified outstanding natural features and landscapes and landscapes with high amenity value in rural areas. Existing land uses within these areas will also have existing use rights under Section 10 of the RMA. Primary production activities currently also occur in the Marlborough Sounds in locations identified within the MEP as having landscape significance.</p> | Support | <p>This policy recognises that existing use rights under section 10 apply for all primary production activities.</p> | Retain this policy |
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| | <p>Rules applying to land uses do require consent for new commercial forestry activity and land disturbance over certain limits. However given the existing use rights under Section 10 of the RMA, existing land-based primary production activity, even within an area of landscape significance, can continue to take place.</p> | | | |
| <p>183 Policy 8.1.1</p> | <p>Identification of sites, areas and habitats with significant indigenous biodiversity value – When assessing whether wetlands, marine or terrestrial ecosystems, habitats and areas have significant indigenous biodiversity value, the following criteria will be used:</p> <ul style="list-style-type: none"> (a) representativeness; (b) rarity; (c) diversity and pattern; (d) distinctiveness; (e) size and shape; (f) connectivity/ecological context; (g) sustainability; and (h) adjacent catchment modifications. <p>For a site to be considered significant, one of the first four criteria (representativeness, rarity, diversity and pattern or distinctiveness/special ecological characteristics) must rank medium or high.</p> <p>To determine whether a site is significant for the purposes of Section 6(c) of the RMA, an assessment needs to be made by the Council or others against consistently applied criteria. The criteria identified in this policy (further explained in Appendix 3), have been used by the Council previously to identify and encourage opportunities for the conservation of natural features on private land in Marlborough and will enable assessments to be made in the future where none have occurred to date. The same criteria have also been used in identifying</p> | <p>Oppose in part</p> | <p>It is important that the criteria for determining sites, areas and habitats with significant indigenous biodiversity values are contained in the plan. However, it should be mandatory that identified sites are validated on-site, not through an aerial photo based identification project. When MDC commenced the process of identifying wetlands, they notified NFL of two potential SNA wetlands. These were verified on site at the request of NFL. One met the criteria to be an SNA and the other did not. NFL was not notified of any further potential SNA wetlands. There are now 10 SNA wetlands identified on NFL land. Nine of these have had no ground verification (to the knowledge of NFL) and should be removed from the plan. Environment Court case law is clear in the need for on-site verification of SNA's before they are included in a plan.</p> | <p>Amend this policy to require that on-site verification is a key component of the identification sites, areas and habitats with significant indigenous biodiversity values.</p> |

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| | | wetlands of significance in Marlborough and in identifying areas in the coastal marine area with significant indigenous biodiversity value. | | | |
| ¹⁸⁶ | Policy 8.3.2 | <p>Where subdivision, use or development requires resource consent, the adverse effects on areas, habitats or ecosystems with indigenous biodiversity value shall be:</p> <p>(a) avoided where it is a significant site in the context of Policy 8.1.1; and</p> <p>(b) avoided, remedied or mitigated where indigenous biodiversity values have not been assessed as being significant in terms of Policy 8.1.1.</p> <p>This policy sets up a hierarchy for decision makers to use when assessing the effects of subdivision, use or development activities on areas, habitats or ecosystems with indigenous biodiversity value. For those sites identified as being significant in terms of Policy 8.1.1, it is important that adverse effects are avoided. This recognises that there are few significant sites remaining on private land, especially in southern Marlborough. Where sites have not been identified as significant through Policy 8.1.1, decision makers can also consider remediation or mitigation options to address adverse effects.</p> | Oppose | <p>The methods proposed by this policy are methods or matters for control or discretion for a resource consent application.</p> <p>Contrary to the description of how “avoid” is to be interpreted in the MEP (page 2-13), the policy does not provide guidance as to how “avoid” is to be applied.</p> | <p>Delete this policy</p> <p>OR</p> <p>Review and rewrite this policy to be a policy. The assessment criteria should be attached as matters for control or discretion for resource consent applications.</p> |
| ¹⁹³ | Policy 11.1.21 | <p>Locate new structures and works to:</p> <p>(a) avoid them being damaged from the adverse effects of land instability; and</p> <p>(b) avoid any increase in the adverse effects of slope instability that the structure or work may cause.</p> <p>Marlborough is characterised by steep terrain and in some locations, unstable geology. Combined with the potential for intense rainfall events, these factors create the potential for slope</p> | Support in part | <p>The policy is supported but does not clearly raise awareness of risks of land instability to the new structure or works that do not originate from the site in which the new structure or works are located.</p> | <p>Explicitly state the following (or with words of similar effect):</p> <p>Locate new structures and works to:</p> <p>(a) avoid them being damaged from the adverse effects of land instability both from within and external to the site; and</p> <p>(b) avoid any increase in the adverse effects of slope instability that the structure or work may cause.</p> |

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| | <p>instability. Examples historically include rock/debris slumps, debris slides or flows, coastal erosion and tunnel gully erosion in various parts of the District. Establishing residential, commercial or industrial development or infrastructure supporting that development or linking our communities in locations prone to land instability will lead to unsustainable outcomes. This policy requires new structures and works to be located in environments that avoid adverse effects caused by land instability. It also addresses the situation of a structure or work exacerbating those adverse effects. The policy will primarily be implemented through the zoning of land and the scale/intensity of activity that the zone rules enable. However, the policy can also be applied in a resource consent context when an assessment of environmental effects for the structure or work identifies a risk of land instability. This includes subdivision undertaken to enable more intensive use of the land. A safe and stable building platform will have to be established for the subdivision of land in certain environments.</p> | | |
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| <p>²³⁰ Policy 17.6.1</p> | <p>Maintain amenity values in rural and urban areas by encouraging the use of national and arterial routes by high volumes of traffic and heavy vehicles and discouraging high volume and heavy traffic use of collector routes and local routes, particularly where these pass through residential areas. The current state of vehicle technology in New Zealand means that noise and vehicle emissions can be expected from the operation of vehicles on roads. There is little the MEP can do to modify those conditions. However, the Council can control the extent of these effects by adopting a road hierarchy, which encourages higher volumes of traffic and heavy traffic movements on certain</p> | <p>Oppose in part</p> | <p>Rewrite the policy as follows (or with words with similar effect): Maintain amenity values in rural and urban areas by: (a) encouraging the use of national and arterial routes by high volumes of traffic and heavy vehicles; (b) discouraging high volume and heavy traffic use of collector routes and local routes, when they do not need to use these roads to access their freight t /produce, particularly where these pass through residential areas. The current state of vehicle technology in New Zealand means that noise and vehicle</p> |
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| | | <p>routes and discourages them on others. An exception is made for some primary production activities, which need to use collector and local routes to transport produce to processing facilities.</p> | | <p>emissions can be expected from the operation of vehicles on roads. There is little the MEP can do to modify those conditions. However, the Council can control the extent of these effects by adopting a road hierarchy, which encourages higher volumes of traffic and heavy traffic movements on certain routes and discourages them on others. An exception is made for primary production activities, which need to use collector and local routes to transport produce to processing facilities, Ports or customers.</p> |
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Further Submission Form

Further submission in support of, or in opposition to, a submission on the Proposed Marlborough Environment Plan



MARLBOROUGH DISTRICT COUNCIL

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

ISO 9001
Document Number:
EAF0006-C11830

Further submitter details:

First Name

Last Name

Organisation (if applicable)

Contact Person (if applicable)

Address for Service

Post Code

Contact Details Email Address:

Phone: [Daytime] Phone: [Mobile]

Email address as preferred address for service? Yes No

Council hearing:

Do you wish to be heard in support of your submission? Yes No

If others made a similar submission, I will consider presenting a joint case with them at a hearing. Yes No

You must indicate which interest you represent:

I represent a relevant aspect of the public interest.

I have an interest in the proposed plan greater than the interest that the general public has.

Specify the grounds for saying that you come within the category selected:

Signature:

Signature of further submitter (or person authorised to sign on behalf of further submitter. Signature not required if you make your further submission by electronic means)

Date

You must serve a copy of your further submission on the original submitter within **five working days** of making the further submission to Marlborough District Council.

Subject to the Resource Management Act 1991, all information contained in a submission including the name and address of the submitter, will be made publicly available. Submitters have the right to access and correct personal information.

Return submission to Marlborough District Council by one of the following options:

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| Post to: Attention Rachel Anderson Marlborough District Council PO Box 443 Blenheim 7240 | Deliver to: Marlborough District Council 15-21 Seymour Street Blenheim | Fax: 03 520 7496 Email: mep@marlborough.govt.nz |
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My further submission relates to: (use a separate form for each original submitter)

Name of original submitter Kerepuni & Central Sounds Association
Address of original submitter 2725 Kerepuni Road RD 2 Picta
Number of original submission 869

Submission Point No.: All parts a firsty Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Excessive regulation goes beyond effects management & impose costs that outweigh the benefits.

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Excessive regulation not justified by effects based assessment.
& impose costs that outweigh benefits

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Relief sort of documents presented are not conclusive nor compelling evidence to support the restrictions sort. & regulations impose costs that outweigh benefits

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

*Retra. sort unjustifiable in relation to effects.
It impose costs that outweigh the benefits*

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Arbitrary restrictions excessive to managing effects
& impose costs that outweigh the benefits

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Excessive regulation without justification & impose costs that outweigh the benefits.

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter

Forest & Bird Protection Society. (Bat)

Address of original submitter

P.O. Box 266 Nelson 6140

Number of original submission

496 ~~3715~~

Submission Point No.:

~~496~~ 496 3715

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Imposing additional restrictions unjustifiable & impose costs that outweigh the benefits.

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter Eric Jorgensen
Address of original submitter P.O. Box 153 Pictou 7250
Number of original submission 404

Submission Point No.: 4.3.6 Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Both the Councils paper & Mr Jorgensen fail to justify an effects based approach to restrictions ~~proposed~~ proposed & impose costs that outweigh benefits

Submission Point No.: Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter

Don Miller

Address of original submitter

20 McCarmacks Rd R.D.1 Pietera 7281

Number of original submission

123 & 238

Submission Point No.:

All points on forestry

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Recommendation to allow part is unjustifiable in effects based management. It impose costs that outweigh benefits.

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter Marlborough Lines Limited - Renae Consulting Ltd
Address of original submitter Davidson Ayson House 4 Nelson St P.O. Box 168 Blenheim
Number of original submission 232

Submission Point No.: All points on forestry Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

The Electricity Act Regulations determine setback distances from powerlines and poles under the RMA are not appropriate. Additional setbacks sought increase costs that outweigh benefits

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter Kathleen McGinty & Alan Carter
Address of original submitter 1028 Wakamarina Road RD1 Hawkebay 7178
Number of original submission 26

Submission Point No.: 26.4 Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Restrictions on forestry operations with no reference to acceptable performance standards is not justifiable & imposes costs that outweigh benefits

Submission Point No.: Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

Submission Point No.: Support Oppose

I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Excessive regulation goes beyond effects management and imposes costs that outweigh benefits.

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Excessive regulation goes beyond effects management.
& imposes costs that outweigh benefits

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Excessive regulation goes beyond effects management and imposes costs in excess of benefits.
Set back from penalties covered by Electricity Act.

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter

NZTA

Address of original submitter

P.O. Box 5084 Lambton Quay Wellington 6145

Number of original submission

1002

Submission Point No.:

All points on forestry

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Excessive regulation goes beyond effects management & imposes costs that outweigh benefits of controls.

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter

Department of Conservation

Address of original submitter

P.B. 4715 Christchurch Mail Centre CkPh 8140

Number of original submission

479

Submission Point No.:

5-17/3-1/4-1

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Restrictions impose costs that outweigh benefits.

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

Submission Point No.:

Support

Oppose

I seek that the whole or part (describe part below) of this submission point be:

Allowed

Disallowed

The reason for my Support/Opposition:

My further submission relates to: (use a separate form for each original submitter)

Name of original submitter
Address of original submitter
Number of original submission

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

No justification given for widening the ~~the~~ prohibition to ALL water bodies as opposed to outstanding :

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Standard on colour change not practical and costs for resource consents outweighs benefits of permitted activity delete last bullet point

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

Confining the points to "Land based activities" fails to address the major contributors to the problem that is boats and septic tank discharges

Submission Point No.: Support Oppose
I seek that the whole or part (describe part below) of this submission point be: Allowed Disallowed
The reason for my Support/Opposition:

The deletion of (except an ephemeral river or intermittently flowing river, ~~with not flowing~~) creates an unreasonable standard where the costs exceed the benefits.

B

Decisions from the MEP Hearing Panel Full Report and Topic 22 Forestry Decision Report – 20 February

2020

| Submission # | MEP plan provision | Decision |
|--------------|--------------------------|---|
| 18 | Permitted Activity 2.7.1 | <p>Nothing noted in the Full Decision report on our submission point Temporary dams – Policy 5.2.22 and Rule 2.7.1</p> <p>2.7.1. Alteration, repair or maintenance of an existing structure in, on or over the bed of a lake or river.</p> <p>365. 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.¹⁶</p> <p>366. The Reply to Evidence acknowledged that need, as had the original report. It recommended the following wording amendment for rule 2.7.1:</p> <p><i>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.</i></p> <p>367. The Panel agreed with that recommendation but considered that a slightly different wording was required.</p> <p>Decision</p> <p>368. Amend rule 2.7.1 to read:</p> <p><i>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.</i></p> <p>369. Amend Standard 2.9.1 heading as a consequence to read:</p> <p><i>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.</i></p> <p>¹⁶(1201.38)</p> |
| 21 | Permitted Activity 2.7.5 | <p>Nothing noted in the Full Decision report</p> <p>Topic 22 Decision Report:</p> |

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| | | <p>20. As a matter of law, the Panel considers that by statutory regulations all plantation forestry is required to be managed by the NESPF and does not require the reference throughout the PMEP to NESPF. There are also numerous other provisions where a similar inclusion of that phrase has been recommended.</p> |
| 22 | Permitted Activity 2.7.7 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 23 | Permitted Activities 2.7 | Nothing noted in the Decision report or the Topic 22 Forestry Decision Report |
| 24 | Permitted Activities 2.7 | Nothing noted in the Decision report or the Topic 22 Forestry Decision Report |
| 26 | Standard 2.8.3.1 | Nothing noted in the Decision report in response to our submission point or the Topic 22 Forestry Decision Report. |
| | | <p>Use of RMA terms</p> <p>70. The Section 42A Report identifies that this section of the PMEP is intended to provide guidance on how the relevant terms are used in the Plan and the necessity for users to read the explanations and methods to aid in interpretation.</p> <p>Avoidance</p> <p>71. This issue relates to the nine submissions on the use of an RMA term ‘avoid’.³² Section 42A Report</p> <p>72. In terms of the word ‘avoid’, some of the submissions suggest alignment with the case law was established by the Supreme Court in the King Salmon case.³³ The Section 42A report writer suggests that the word ‘avoid’ in the PMEP, that has been defined in the King Salmon case as ‘not allow’ or ‘prevent the occurrence of’, is somewhat superfluous, given that established case law. He considers that the inclusion of the RMA terms section in the Plan is not essential and suggests it could be deleted. While no submission expressly requests the deletion of the RMA terms section, some submissions, such as the Marlborough Chamber of Commerce, initially requested withdrawal of the whole plan which enables consideration of a deletion of the section.</p> <p>73. Nevertheless, in the alternative, the report writer proffered the opinion ‘...that the section is intended to assist the reader in interpreting the defined terms in relation to the various provisions of the PMEP rather than an interpretation of case law or the wider meanings of the RMA, the section could stay’³⁴.</p> <p>74. Subsequently, PMNZ raised its concern about the use of the terms ‘avoid’ and ‘prohibit’, both in evidence³⁵ and legal submissions.³⁶ The company bases its concerns on a further submission to that of Raeburn Property Partnership requesting the removal of the word ‘prohibit’ and words to similar effect such as ‘avoid’ in the PMEP. Counsel submitted that the unqualified use of directive language, including ‘avoid’ and ‘prohibit’, should be carefully considered by councils in policy and plan documents so that these do not frustrate the development of significant infrastructure in a particular area as it could be prohibited otherwise.</p> <p>75. It is argued that in PMNZ’s circumstances, as a nationally significant port resource, it may be unrealistic to ‘avoid’ adverse effects; instead Policy 6.2.3 (as an example) should use the words ‘avoid, remedy or mitigate’³⁷</p> <p>Consideration</p> <p>76. In contrast the Panel notes the word ‘avoid’ occurs throughout the PMEP. Policy 6.2.3, for example, requires ‘Where natural character is classified as high or very high, avoid any reduction in the degree of natural character of the coastal environment, environment or freshwater bodies’.³⁸</p> |

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| <p>77. The issue arose in Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd³⁹ (King Salmon) through the identification of an outstanding natural landscape and features ((s 6(a), (b), (c) RMA) and through the requirements of the New Zealand Coastal Policy Statement (NZCPS) Policies 13(1)(a) and (b) and 15(1)(a) and (b).</p> | <p>To understand the context the relevant requirements of the NZCPS are identified here.</p> <p>Policy 13 Preservation of natural character</p> <p>(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development;</p> <p>(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and</p> <p>(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character; including by:</p> <p>(c) (i)-(x) [criteria for determining identification of what may be outstanding]</p> <p>(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.</p> <p>Policy 15 Natural features and natural landscapes</p> <p>(1) To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development;</p> <p>(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and</p> <p>(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment; including by:</p> <p>(c) (i)-(x) (Identification issues) (d) ensuring that regional policy statements, and plans, maps or otherwise identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.</p> <p>The statutory setting for the New Zealand Coastal Policy Statement</p> <p>79. The MDC is required to prepare the RPS in accordance with its functions under s 30(1)(b) RMA. This includes (inter alia):</p> <p>The preparation of objectives and policies in relation to any actual or potential effects of the use, development or protection of land which are of regional significance.</p> <p>80. The definition of 'land' under s 2 RMA includes land covered by water.</p> <p>81. Section 58(1) RMA relating to the contents of the NZCPS provides for (inter alia):</p> <p>(a) national priorities for the preservation of the natural character of the coastal environment of New Zealand including inappropriate subdivision, use or development.</p> |
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| | <p>82. Thus one of the requirements for determination is whether the development, use or subdivision of land is inappropriate in its legal and factual context.</p> <p>83. The NZCPS has its place at the top of the hierarchy of national policy statements. It is embedded within the relevant legislation as a priority for the protection of natural character of the coastal environment with the regional control managed through regional plans.⁴⁰</p> <p>84. It is important to note that s 67(3)(b) RMA provides that: A regional plan must 'give effect to ... (b) any New Zealand Coastal Policy Statement and any regional policy statement'.</p> <p>The Supreme Court held to 'give effect to' is to implement a requirement and 'this is a matter of firm obligation.'⁴¹</p> <p>85. In the King Salmon case the Port Gore plan change to accommodate aquaculture did not comply with s 67(3)(b) RMA because it did not 'give effect' to the particular relevant NZCPS policies quoted above because the Board of Inquiry on the issue at first instance had found the Port Gore (Papatua) site had outstanding natural qualities.</p> <p>86. The first point to make is that the relevant NZCPS provisions relate only to Policy 13(1)(a) (Preservation of natural character) and (b) and to Policy 15(1)(a) and (b) relating to natural features and landscapes (including seascapes). The requirement of 'avoiding' outstanding natural character in areas of the coastal environment and outstanding natural features and outstanding natural landscapes, as well as avoiding significant adverse effects on these characteristics (the latter in Policy 13(1)(b) (first part) and Policy 15(1)(b) (first part), falls within the purposive intent of the s 5 RMA provision the purpose of the Act.</p> <p>87. NZCPS Policy 13(1)(a) and (b) and Policy 15(1) (a) and (b) provide for the word 'avoid' as applying to those sites which have 'outstanding' natural character, natural landscape or natural features or where there are significant adverse effects on those characteristics. In order for those features or landscapes to be termed 'outstanding' requires a rigorous assessment, through an identification process set out in NZCPS Policies 13(2) and 15(c), undertaken by experts. The qualification of the word 'outstanding' must be achieved before they attract avoidance from 'inappropriate' developments. The word 'avoid' in s 5(2)(c) RMA and NZCPS Policy 13(1)(a) and (b) and Policy 15(a) and (b) has been held by King Salmon to mean 'not allow' or 'prevent the occurrence of'.⁴²</p> <p>88. The word 'inappropriate' used in s 6(a)(b) RMA is heavily influenced by the context in which it arises, with the decision-making local authorities' obligations varying, depending on the nature of the area in question and the size of the intended modification. In the King Salmon case 'the area' in question was in Port Gore, Marlborough Sounds, an area previously found to have some locations of outstanding natural landscape character. The Supreme Court in King Salmon held that areas which are 'outstanding' receive the greatest protection in the requirement to avoid significant adverse effects. It is only in this context that the word 'avoid' appears to mean inappropriateness requiring 'not allow' or 'prevent the occurrence of' the activity.⁴³</p> |
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| | <p>89. The word 'avoid' must also be informed by the specific legislative requirements that surround it.⁴⁴ In the coastal environment where natural character, features and landscapes may be seen as outstanding, the qualifying factor of whether the development, use and subdivision is 'inappropriate' may or may not exist in such a context. This evaluation of inappropriateness is based on matters of fact.⁴⁵</p> <p>90. To summarise the qualifications around the word 'avoid':</p> <ul style="list-style-type: none"> • The proposed subdivision, use or development to which it relates must be occurring in an environment, the effects on which are controlled by national policy statements, national environmental standards or other national direction. • It applies only to areas of outstanding natural character, natural features, or natural landscapes including seascapes. • Whether a work or development in these areas is inappropriate is not only a question of location in the coastal environment but one of fact in relation to the scale of the development.⁴⁶ • It also applies to significant adverse effects on natural features and natural landscapes in the coastal environment. • The characteristics which make up outstanding natural character and natural features, landscapes (including seascapes) are identified by experts in addressing NZCPS Policy 13(2)(a)-(g) and Policy 15(c)(i), (ii), (iii), (v), (vi), (ix) and (x). • That identification is to be addressed through regional policy statements, plans, maps or other areas where the protection of such matters requires rules, policies or objectives. • The word 'avoid' in relation to other adverse effects of activities on other natural features and natural landscapes in the coastal environment is not exclusive of other options where a developer, subdivider or user may avoid, remedy or mitigate other adverse effects—see the second parts of NZCPS Policies 13(b) and 15(b). <p>91. We consider that to remove the word 'avoid' from throughout the PMEP therefore is an over-reaction to its use as a directive in particular situations. Nonetheless, the point made is recognised by the Panel as requiring careful scrutiny of the use of the word 'avoid' in other 44 Section 6 RMA and the NZCPS policies. Topic 1: General Page 24 of 30 areas of the PMEP where such 'outstanding' characteristics and significant amenity effects are not identified.</p> <p>92. Two counsel, one for PMNZ and the other for MFA and AQNZ, both acknowledged in questions from the Panel that the word 'avoid' in its unqualified meaning is appropriate to use to protect 'outstanding characteristics and to protect against significant amenity effects.</p> <p>93. The reference to 'avoid' has particular weight where the Plan has identified an outstanding characteristic requiring preservation or protection from inappropriate developments. Its importance will be context related.</p> <p>94. The words described in the 'RMA terms' section of the Plan are generally statutory terms or commonly used in the Plan and they should carry their statutory meaning, otherwise they will carry the normal meaning of the</p> |
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| | <p>word in the Plan. Accordingly, the RMA terms section of the Plan does not add anything to the statutory and plan definitions.</p> <p>Decision</p> <p>95. The 'Use of RMA terms' section in the Plan is deleted.</p> | |
| <p>32 PMEP Issue 7 How to use the MEP Chapter 2, pages 2-12-2-13. 33 Environmental Defence Society Inc v King Salmon Company Limited (2014) NZSC at [24]. 34 Section 42A Report, page 30. 35 PMNZ Louise Taylor Statement of Evidence, paragraphs 35-44. 36 PMNZ Counsel Submissions, paragraphs 11-17. Topic 1: General Page 20 of 30</p> <p>37 This terminology is used in s 5(2)(c) RMA ('avoiding, remedying or mitigating any adverse effects of activities on the environment'). 38 PMEP Chapter 6, pages 6-7. 39 [2014] NZSC 38, [2014] 1 NZLR 593. Topic 1: General Page 21 of 30 40 See ss 58(1)(a), s 59, s 61(1)(b) s 61(1)(da) RMA for relevant legislation. Topic 1: General Page 22 of 30 41 King Salmon at [77]. 42 King Salmon at [62] 43 Ibid at [62]. Topic 1: General Page 23 of 30 45 See Man O War. 46 Man O War, page 8.</p> | <p>Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report</p> <p>Standard 3.2.3.3</p> <p>The following activities are excluded from having to comply with the noise limits:</p> <p>(a) sirens and call out sirens associated with the activities of the New Zealand Fire Service;</p> <p>(b) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Rural Environment Zone;</p> <p>(c) any fixed motors or equipment, frost fans or gas guns, milling or processing forestry activities, static irrigation pumps; motorbikes that are being used for recreational purposes.</p> <p>Standard 4.2.2.3</p> <p>The following activities are excluded from having to comply with the noise limits:</p> <p>(a) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Coastal Environment Zone;</p> <p>(b) any fixed motors or equipment, frost fans or gas guns, milling or processing forestry activities, static irrigation pumps; motorbikes that are being used for recreational purposes.</p> <p>109. Various submitters (149.11, 167.26, 336.9, 425.514, 440.8, 962.147, 990.39) sought the inclusion of the phrase 'or forestry' to subclause (b) and another sought subclause (a) refer to 'emergency services' rather than 'New Zealand Fire Service' and supports that fire sirens are exempt; and 'recreational' in subclause (b) is amended to 'primary industries'.⁵¹Marlborough</p> | <p>30 Rule 2.10</p> <p>37 Standard 3.2.3.3</p> <p>108 Standard 4.2.2.3</p> |

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| | <p>District Council sought in its submission (91.195) that subclause (b) be amended by including reference to 'forestry' as well as the other activities; and further said (91.4) that subclause (c) of the exclusions in this clause had been inserted in error and requested that subclause be deleted.</p> | |
| 110. | <p>A similar set of submissions related to Standard 4.2.2.3 which is the equivalent provision in the Coastal Environment zone.</p> | |
| | <p>Section 42A Report</p> | |
| 111. | <p>The report writer proposed the inclusion of the wording 'or forestry' in (b) as sought in various submissions and recommended deletion of subclause (c) as sought by MDC.</p> | |
| | <p>Consideration</p> | |
| 112. | <p>Plainly sirens for emergency services should be exempt and are to be included in the exemption lists at (a) of this rule. Plainly they should also be exempt in Standard 4.2.2.3 in the Coastal Environment zone as well.</p> | |
| 113. | <p>As the NES on forestry now addresses all forestry operational issues, the reference to forestry is no longer required as the NES fixes forestry noise standards.</p> | |
| 114. | <p>The Panel was not surprised to read the MDC acknowledgment that subclause (c) was inserted in error because it would inhibit a range of primary production activities and agrees to its deletion on the basis that some level of noise control.</p> | |
| | <p>Decision</p> | |
| 115. | <p>Standard 3.2.3.3 (Rural Zone) is amended as follows:</p> | |
| | <p><i>3.2.3.3 The following activities are excluded from having to comply with the noise limits:</i></p> | |
| | <p>(a) sirens and call out sirens associated with the activities of the New Zealand Fire Service emergency services;</p> | |
| | <p>(b) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Rural Environment Zone;</p> | |
| | <p>(c) any fixed motors or equipment, frost fans or gas guns, milling or processing forestry activities, static irrigation pumps; motorbikes that are being used for recreational purposes.</p> | |
| 116. | <p>Standard 4.2.2.3 (Coastal Zone) is amended as follows:</p> | |
| | <p><i>4.2.2.3 The following activities are excluded from having to comply with the noise limits:</i></p> | |
| | <p>(a) sirens and call out sirens associated with the activities of emergency services;</p> | |
| | <p>(ab) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Coastal Environment Zone;</p> | |
| | <p>(b) any fixed motors or equipment, frost fans or gas guns, milling or processing forestry activities, static irrigation pumps; motorbikes that are being used for recreational purposes.</p> | |
| | <p>⁵¹ Marlborough District Council (91.195), Nelson Marlborough District Health Board (280.123)</p> | |

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| 38 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 45 | <p>Standard 3.3.2.1 Standard 3.3.6.2</p> <p>Environmental Flows – forestry impacts - Policies 5.3.15 & 5.3.16 and Standard 3.3.6.2 (g)</p> <p>Policy 5.3.15 – Require land use consent for the planting of new commercial forestry in flow sensitive areas.</p> <p>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 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%.</p> <p>Standard 3.3.6.2(g)</p> <p>3.3.6.2. Planting must not be in, or within: ... (g) an Afforestation Flow Sensitive Site; ...</p> <p>197. The explanation to Policy 5.3.15 sets out the background concerns which have driven these policies and the standard, and emphasises that it only applies to new conversions of pasture to forestry and does not apply to existing planted areas. The relevant parts of the explanation state:</p> <p><i>The water resources most at risk are south of the Wairau River and specific Afforestation Flow Sensitive Sites are identified. The identified land receives low rainfall (in comparison to north of the Wairau River) and contributes runoff to smaller catchments. These factors make the water resource supplied by runoff from the land more vulnerable to changes in water yield.</i></p> <p><i>The policy does not apply to existing commercial forestry or the replanting of that forest following harvest, as the effects of this forestry on water yield are part of the existing environment.</i></p> <p>198. The areas identified as Afforestation Sensitive sites in the PMEP are to the south of the Wairau:</p> <ul style="list-style-type: none"> (i) Wairau Valley Southbank from Ferret Gully (just east of the Wye catchment) to Hillersden stream (west of Wairau Valley township); (ii) Southern valleys from Omaka to Taylor catchments inclusive; (iii) Stafford Creek (which flows into the lower Awatere from the north and lies east of SH 1) above the water storage dams; (iv) Flaxbourne catchment. <p>199. Many of those areas are well-recognised for a range of reasons in the PMEP as being low rainfall areas with thin or very small aquifers downstream, and can be contrasted with the high rainfall areas to the north of the Wairau.</p> |

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| | | <p>200. A number of submissions supported the policies but the generic submission on Issue 5C by Nelson Forests Limited against any provision limiting or controlling commercial forestry planting in particular identified limitations on planting within Afforestation Sensitive sites. For that reason the Section 42A Report has addressed the submission as being opposed to these policies.</p> <p>201. The thrust of the Nelson Forests Limited opposition, which is a view shared by other forestry industry submitters, asserts that the policy effectively means that Council through a planning mechanism in the PMEP is choosing which industries are entitled to access water supplies. The submission goes so far as to suggest that downstream water users should provide their own storage to mitigate any effects of forestry planting upstream. Further it is argued that afforestation should be encouraged as a necessary outcome of climate change mitigation – because of its carbon absorbing effects. And finally it is asserted that regeneration of native species would have similar effects.</p> <p>202. EDS on the other hand seek that the policy is extended to all new forestry plantings, not just those in the Afforestation Sensitive catchments.</p> <p>Section 42A Report</p> <p>203. The Section 42A Report identified that the areas involved totalled about 711km² or about 6.8% of the area covered by the PMEP and importantly that all those areas identified receive less than 1500mm of rainfall where it is recognised that water yield is reduced by forestry planting. On that issue the report referred to the fact that there was by now a considerable volume of scientific studies demonstrating that forestry can reduce mean flow stream output by between 35% and 80% depending upon rainfall levels and the nature of the country involved. Forestry can and does intercept rainfall before it hits the ground. In low rainfall areas the report writer expresses the view that reduction in low flows may be expected to be at the higher end of the spectrum.</p> <p>204. But even on the figures provided in the report the 5% flow reduction rate specified in Policy 5.3.16 would still allow planting of between 6% and 14% of a catchment.</p> <p>205. Regeneration of native species is recognised as being theoretically possible but not realistically so. The report writer's view is that in these drier areas native regeneration will be of small species far less likely to intercept rainfall in any volume before it reaches the ground because it will not form a canopy density remotely comparable to plantation forestry.</p> <p>206. Finally the four zones of Afforestation Sensitive sites each have particularly vulnerable flow sensitive resources downstream of likely areas for forestry conversion. They are in the form of surface capture for storage, or subsurface aquifers, or small surface spring fed streams.</p> <p>Consideration</p> <p>207. The Panel noted that this suite of policies and standards was not prohibitory in nature, but</p> |
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| | <p>rather identified valid issues which required addressing in any consent application involved. The Panel also accepted that the evidence is very strong that in such low rainfall areas a high probability exists of plantation forestry canopy intercepting significant percentages of rainfall before it even reaches the ground and that the root systems will accentuate that reduction in flow effect.</p> <p>208. Well planned proposals taking those factors into account will still enable some albeit very limited plantings in these areas if the total catchment effect is kept below 5%.</p> <p>209. Contrary to the arguments raised by the forestry submitters the Panel's view is that the potential risk of adverse effect to sustainability of not controlling flows in these very low rainfall catchments could be very serious. The control measures proposed in the PMEP are not an issue of balancing one extractive use against another. It is a precautionary measure to ensure a recognisable adverse effect on sustainability is avoided. That adverse effect potential exists regardless of whether the purpose of the planting is for production or carbon retention. The effects of potential changes from climate change also warrant this precautionary approach.</p> <p>210. A different issue of a more technical nature arose from the combination of Policy 5.3.16 and the associated Rule 3.3.6 and Standard 3.3.6.2. Various submissions sought amendment of them to enable replanting of existing forests.</p> <p>211. The Section 42A Report recommended acceptance of those submissions in respect of replanting by an amendment to the explanatory statement on Policy 5.3.16 and an addition to Standard 3.3.6.2. However, in doing so it addressed the relief it recommended using in part the terminology 'non-permanent sequestration forest'.</p> <p>212. In other parts of the Panel's broader decision on forestry issues in the Use of the Rural Environment Topic it has deleted references to 'non-permanent' sequestration forestry and consequently in respect of this Policy and Standard a similar approach is required for consistency. In the same decisions the Panel has changed 'commercial' to 'plantation' and that also needs amendment here.</p> <p>Decision</p> <p>213. 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.</p> <p>214. Amend Policy 5.3.16 as follows: <i>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%.</i></p> |
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| | | <p>216. Amend the last sentence explanatory statement to Policy 5.3.16 to read as follows: <i>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</i></p> <p>217. Amend Standard 3.3.6.2 (g) to read as follows: <i>(g) an Afforestation Flow Sensitive Site, unless replanting harvested plantation forest that was lawfully established.</i></p> |
| | | <p>Topic 22 Decision Report Standard 3.3.6 Commercial forestry planting and carbon sequestration planting (non-permanent) Consideration</p> <p>64. As a consequence of the previous amendment to Rule 3.3.6 (as 'replanting' is no longer covered by 'planting'), it is necessary to include a new standard in 3.3. for replanting as set out in the Reply to Evidence.³³</p> <p>65. The Panel considered that reference to the NESPF was unnecessary. The prefix 're' should be inserted before 'planting' in the two recommended standards.</p> <p>66. This standard requires a corresponding rule in 3.1.</p> <p>Decision</p> <p>67. Insert a permitted activity rule in 3.1.x as follows: 3.1.x <i>Plantation forestry replanting</i></p> <p>68. Insert a new standard for replanting is as follows:³⁴ 3.3.x <i>Plantation forestry replanting</i> 3.3.x.1 <i>Replanting must not be in, or within:</i> (a) <i>8m of a Significant Wetland;</i> (b) <i>an Afforestation Flow Sensitive Site.</i> 3.3.x.2 <i>Replanting must not be within such proximity to any abstraction point for a drinking water supply registered under section 69J of the Health Act 1956 as to cause contamination of that water supply.</i></p> <p>³² As set out in the S42A Report. ³³ Section 42A Report, Reply to Evidence, page 3. ³⁴ Section 42A Report, Reply to Evidence, page 3</p> |
| 100 | | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 190 | Standard 3-3-48 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 103 | Policy 9.3.2 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 112 | 3-6.1 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 125 | Standard 4-3-2.1 Standard 4-3-13 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |

Rule 4.5.5

Restricted Discretionary Activities – consequential change

86. The definition of 'Plantation [notified as commercial] forestry harvesting' has been amended as shown above.

87. 'Earthworks' is defined in the NESPF as follows:

earthworks—

(a) *means disturbance of the surface of the land by the movement, deposition, or removal of earth (or any other matter constituting the land, such as soil, clay, sand, or rock) in relation to plantation forestry; and*

(b) *includes the construction of forestry roads, forestry tracks, landings and river crossing approaches, cut and fill operations, maintenance and upgrade of existing earthworks, and forestry road widening and realignment; but*

(c) *does not include soil disturbance by machinery passes, forestry quarrying, or mechanical land preparation*

88. MFIA⁴⁴ and Nelson Forests Ltd⁴⁵ seek that the definition of 'commercial forestry harvesting' be amended to include the management of the forest over the harvesting period (as included in the definition of 'commercial plantation forestry planting'). Windermere Forests Ltd seeks that (a) is deleted so that earthworks are uncoupled from harvesting.⁴⁶

89. Another submitter considered that inclusion of earthworks within the definition of harvesting would cause confusion for the plan users compared to the NESPF where earthworks are managed separately to harvesting. Delete earthworks from harvesting in the PMEP and include the NESPF definitions.⁴⁷

Section 42A Report

90. The report writer recommends that the definition of 'forestry harvesting' is amended to refer to or replicate the NESPF.

91. Various parties gave evidence that if earthworks are removed from the definition of harvesting (which is supported), it is necessary to include the NESPF definition in the PMEP and related standards. If the definition of plantation forestry harvesting is replaced with the NESPF definition then the outcome will be that earthworks within 8 metres of a significant wetland, for example, would be permitted.⁴⁸

92. The report writer's understanding is that while it was intended that the harvesting rules within the PMEP would provide a one-stop shop for earthworks associated with harvesting (and hence inclusion of earthworks within the definition), there was not a corresponding exclusion for harvesting from the general rules that might otherwise apply (for example, excavation rules). Therefore, the general rules still capture earthworks associated with forestry, to the extent that these rules can be retained in relation to their application to forestry. However there may be a gap between the consideration of these general rules in previous topics, and specific consideration of how they relate to forestry activities post-NES alignment.

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| <p>93. In the report writer’s view there is no need to add the definition of earthworks from the NESPF unless there are additional rules to be included in the PMEPR specific to managing earthworks associated with forestry.⁴⁹</p> | <p>Consideration</p> <p>94. The Panel was conscious that for the first rotation of plantation forest preparatory works are required to prepare the forestry block for subsequent harvest. In particular, extensive tracking and roading is typically required. Those preparatory works expose the soil surface and, where this occurs on steep slopes, creates the potential for soil erosion.</p> <p>95. During the hearing, the Panel heard evidence regarding the potential for erosion in the Marlborough Sounds and the serious sedimentation consequences that flow from that erosion. As it stands, those preparatory works could be undertaken as a permitted activity under both the Plan and the NESPF. Having heard the evidence, particularly from Mr Don Miller, the Panel felt that it was necessary to exercise stringency not only for the planting and harvesting of plantation forest but also for excavation and filling to construct and maintain forestry roads, forestry tracks or skid sites.</p> <p>96. These earthworks should not be managed as part of commercial forestry harvesting. Under the heading 4.5 Restricted Discretionary Activities the Panel considered that to address the gap identified by the report writer in respect of earthworks in the general rules, it is necessary to add a new restricted discretionary activity standard to the Coastal Environment Zone rules.</p> <p>97. Managing the potential erosion and sediment effects of all activities involved with plantation forestry (planting, preparatory works and harvesting) ensures that the management applied through consenting processes will be integrated. The Panel in making decisions on other topics has determined that integrated management is important in the coastal environment of the Marlborough Sounds.</p> <p>Decision</p> <p>98. A new Restricted Discretionary Activity is inserted as 4.5.5 as follows. <i>Rule 4.5.5 – Excavation and filling to construct or maintain forestry roads, forestry tracks or skid sites.</i> <i>Matters over which the Council has restricted its discretion:</i></p> <ul style="list-style-type: none"> a) <i>effects of sedimentation;</i> b) <i>reduction of sediment loadings in runoff;</i> c) <i>effects on the values of Outstanding Natural Features and Landscape</i> d) <i>effects on Significant Wetlands;</i> e) <i>effects on any drinking water supply regulation under Section 69J of the Health Act 1956.</i> <p>99. Add standard 4.3.13.x, as follows: <i>Excavation must not be associated with the construction or maintenance of forestry roads, forestry tracks or skid sites.</i></p> <p>100. Add standard 4.3.15.x as follows:</p> |
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| | | <p><i>Filling must not be associated with the construction or maintenance of forestry roads, forestry tracks or skid sites.</i></p> <p>44 MFIA (962.118). 45 Nelson Forests Ltd (990.8, .10). 46 Windermere Forests (1236.28). 47 Ernslaw One Ltd, Peter Weir Evidence, Definitions 3, page 5. 48 Nelson Forests Ltd, Heather Arnold Evidence, paragraphs 43-49. 49 Section 42A, Reply to Evidence, pages 3-4.</p> |
| 126 | Standard 4.3.13-1 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 127 | Standard 4.3.13-2 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| 128 | Standard 4.3.13-3 | <p>Standards on cultivation and excavation</p> <p>43. These Standards 3.3.14.3, 4.3.13.3 and 19.3.5.3 apply to the Permitted Activity of excavation under Rules 3.1.4 (Rural Environment), 4.1.13 (Coastal Environment) and 19.1.7 (Open Space).</p> <p>44. Consideration of these submissions must bear in mind that the enabling Rule 3.1.14 received 16 submissions in support seeking its retention as notified, and no opposing submissions seeking its removal. Enabling Rule 4.1.13 received no submissions seeking retention or removal. Enabling Rule 19.1.17 received four submissions in support and none opposing.</p> <p>Standard 3.3.14.3</p> <p>Excavation must not be in, or within 8m of, a ... Significant Wetland</p> <p>45. Several submitters¹⁸ seek the retention of the standard as notified. Another submitter¹⁹ seeks removal of the standard and this was clarified by further evidence. Federated Farmers considers that excavation may occur up to the margin of a wetland where it is clearly defined, provided sediment is appropriately managed and the wetland is not dewatered. The submitter also considers that other provisions relating to cuts and volumes will sufficiently manage risks so a permitted activity can be adequately robust.</p> <p>46. Others support the standard in part and otherwise seek amendment of the standard to ensure that works required to maintain or repair existing farm tracks, access ways, fences and other structures could be undertaken as a Permitted Activity.²⁰</p> <p>47. This is not supported by the Section 42A Report as the potential effects from excavation are substantially more than that of other activities and an 8m buffer is considered necessary. The proposed amendment also introduces uncertainty due to its vague language. Significant Wetlands are clearly defined in the planning maps. The Report Writer points out that it is unclear which provisions the submitter is relating to. 'Volume limits for excavation in the Rural Environment Zone only relate to certain slopes which are unlikely to be in the same place as wetlands ... there are no standards for excavation relating to cuts specifically, particularly in relation to wetlands.'²¹</p> |

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| | <p>48. The Report Writer considers the amendment suggested by those seeking an amendment unnecessary. The activities described in their submission are already covered by existing use rights under the RMA and can continue without a resource consent. The Panel agrees.</p> <p>Decision</p> <p>49. Standard 3.3.14.3 is retained as notified.</p> <p>Standard 4.3.13.3</p> <p>Excavation must not be in, or within 8m of, a ... Significant Wetland ...</p> <p>50. Nelson Forests Ltd opposes the standard but seeks amendment to include for an exception for 'direct approaches to permitted activity or consented stream crossings'.²²</p> <p>51. The Section 42A Report rejects this submission. While Significant Wetlands may contain streams within them, stream crossings are not likely to be a permitted activity, and if a stream crossing a Significant Wetland is consented then the standard would apply anyway. Nor would the amendment sought would not adequately protect the values of Significant Wetlands (Indigenous Biodiversity) as sought by the provisions in Chapter 8.²³</p> <p>Decision</p> <p>52. Standard 4.3.13.3 is retained as notified.</p> <p>18 Marlborough Environment Centre (1193.118-122), Rarangi Residents (1089.27), K Loe (454.92-98).</p> <p>19 Federated Farmers (1193.118 and .122).</p> <p>20 G Mehlhopt (456.61), B Pattie (380.8), J Hickman (455.61).</p> <p>21 Section 42A Report, Reply to Evidence, pages 12-13.</p> <p>22 Nelson Forests (990.143).</p> <p>23 Section 42A Report, paragraph 152.</p> | 129 |
| | Standard 4.3.13-7 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| | Standard 4.3.13-8 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| | Standard 4.3.13-9 | Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report |
| | Standard 4.3.13-10 | Nothing noted in the Full Decision report on our submission point or the Topic 22 Forestry Decision Report |
| | <p>Munsell Scale</p> <p>130. The Munsell Scale is commonly used in PMEP permitted activity standards to manage the adverse effects of activities on water quality, and specifically water colour. For example, the standard applies to discharges to water, activities in lake and river beds, specific activities in the Floodway Zone, and, in multiple zones, the activity of non-indigenous vegetation clearance, cultivation, excavation and filling.</p> <p>131. There were a large number of submitters that sought the deletion of the Munsell Scale from the standards in the Plan. The main reason for doing so related to the practicality and effectiveness of using the Munsell Scale. In some cases submitters sought an alternative method of measurement.</p> <p>Section 42A Report</p> <p>132. Given the considerable opposition to the use of the Munsell Scale, the report writers</p> | 132 |

reconsidered its use as a management tool. They concluded that the Munsell Scale is not an effective tool for measuring changes in water colour and have recommended its removal from standards wherever it occurs. This recommendation occurs in multiple locations throughout the Section 42A Report as the report is structured according to provision. They consequently recommended the removal of the definition of “Munsell Scale” in Volume 2, Chapter 25.

133. The alternative methods of measurement were considered by the report writers. The Panel notes that on almost every occasion, the report writers identified similar issues of practicality. This was reflected in their recommendations not to utilise those alternatives.

Consideration

134. As Wilkes RM set out in their submission, the Munsell Scale is currently used to manage adverse effects on water colour in the operative resource management plans. The Panel understands that the ongoing use of the Munsell Scale was recommended to the Council by the Cawthron Institute through the review of the operative water quality standards.

135. The Panel understands and accepts the issues of practicality raised by submitters. It is important that compliance with permitted activity standards is able to be measured.

136. Nobody at the hearing directly sought the retention of Munsell Scale in permitted activity standards.

137. Peter Hamill, Team Leader Land and Water, was one of the report writers. He has considerable experience at the Council with water quality measurement in Marlborough’s lakes and rivers. Mr Hamill recommends against the use of the Munsell Scale from a technical perspective. The Panel relies upon his expert opinion on this matter. For this reason, the recommendations of the report writers are adopted.

138. In doing so, the Panel notes that the recommendation at paragraph 882 of the report did not show the use of “natural” in the standard as an addition (i.e., it was not underlined). The decision below clearly records the use of “natural” as an addition to the notified provisions.

139. In considering the Section 42A Report, the Panel has identified that there are other provisions that utilise the Munsell Scale that are not included in the report (presumably because the provisions did not receive submissions). These are Standard 2.3.23.7 and Appendix 5, Schedule 2. For the same reasons as above, it is appropriate to remove the reference to the Munsell Scale from these provisions also and the Panel makes this decision as a consequential change.

Decision

140. Standard 2.17.1.5 is amended as follows:
After reasonable mixing, the discharge must not cause any conspicuous change in the colour or visual clarity of any waterbody, measured as follows:
 (a) *hue must not be changed by more than 10 points on the Munsell scale;....”.*

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| | <p>141. Standards 2.8.1.4, 2.14.5.7, 21.3.6.5, 21.3.7.6 and 21.3.9.10 are amended as follows: <i>Any discharge of sediment into water [associated with the activity/shaping and beaching/land disturbance/removal] must not, after reasonable mixing, cause a conspicuous change in colour of more than 5 Munsell units or a decrease in clarity of more than 20% for more than 8 hours in any 24 hour period and more than 40 hours in total in any calendar month.</i></p> <p>142. Standards 3.3.9.11, 4.3.8.11, 8.3.8.11, 3.3.12.11, 4.3.11.11, 7.3.8.11, 19.3.4.6, 22.3.9.8, 3.3.13.6, 4.3.12.6, 3.3.14.12, 4.3.13.10, 19.3.6.15, 22.3.7.8, 22.3.6.6, 3.3.16.11, 4.3.15.11, 19.3.5.15 and 20.3.3.8 are amended as follows: <i>[Harvesting/Vegetation clearance/Cultivation/Excavation/Filling/Excavation or filling] must not cause any conspicuous change in the colour or natural clarity of a flowing river after reasonable mixing, or a Significant Wetland, lake or the coastal marine area, as measured as follows:</i></p> <p>(a) <i>hue must not be changed by more than 10 points on the Munsell scale.</i> (b) <i>the natural clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the [harvesting/vegetation clearance/cultivation/excavation /filling/excavation or filling] site.</i> (c) <i>the change in reflectance must be <50%</i></p> | |
| 133 | Standard 4.3.19.1 | |
| 6 | Forestry Provisions | |
| 136 | 4.3.46 | |
| 139 | 4.6.4 | |
| 177 | Policy 7.2.8 | |
| | <p>Nothing noted in the Full Decision report or the Topic 22 Forestry Decision Report</p> <p>Nothing noted in the Decision report or the Topic 22 Forestry Decision Report</p> <p>Nothing noted in the Decision report on our submission point</p> <p>Nothing noted in the Decision report on our submission point except as highlighted or the Topic 22 Forestry Decision Report</p> <p>Policy 7.2.8 Recognise that some outstanding natural features and landscapes and landscapes with high amenity value will fall within areas in which primary production activities currently occur.</p> <p>132. A number of submissions either support or seek to retain the policy; amend the policy to Delete reference to ‘amenity’ and provide specific recognition of aquaculture as an existing primary production activity;⁸⁸ delete the policy;⁸⁹ amend the policy to read ‘Recognise that some outstanding natural features and landscapes and landscapes with high amenity value will fall within areas in which primary production activities currently occur, and accept farming is an appropriate land use involving activities which may modify the landscape’.⁹⁰</p> <p>133. KCSRA argued that the policy should be amended to enable the refusal of marine farm permit applications in order to restore natural character. Consideration of the policy determined that the wording was wider than the original intent of the policy. The landscapes referred to were in South Marlborough not the coastal marine area.</p> <p>Section 42A Report</p> | |

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| <p>134. The report writer accepted the direction in the policy should be stronger to meet the requirements of s 6(a) RMA and NZCPS Policy 15 by providing that primary production activities should be enabled where they do not degrade landscape values. Retention of the reference to primary production more broadly remains appropriate given the stronger direction in the policy.⁹¹</p> | <p>Consideration</p> <p>135. We agree in part with the report writer’s approach, and with Forest and Bird’s submissions to identify that, where primary industries form part of the existing landscape, they are valued and this should be captured (in Appendix 1).⁹²</p> <p>136. We paid close attention to what Federated Farmers were saying in evidence around the relationship between landscapes (ONF, ONL, high amenity landscapes) and primary production. Federated Farmers support Policy 7.2.8 in part, that is, the landscape chapter is the only policy recognising that primary production activities take place in these landscapes; that it is primary production that has shaped the nature of some of the areas; and that landscape values and primary production are closely linked.</p> <p>137. We accept that the scale and character of the modifications to a farming landscape are more appropriate and cohesive than those compared with the modifications created by urban, industrial or network utilities. We accept that structures, crop types, fences and shelter belts change over time in response to changing conditions, and have only a limited effect on an overall impact on landscapes due to scale.⁹³</p> <p>138. Under the <i>Man O’ War</i> case law, the Court of Appeal was asked is it relevant to the identification of an outstanding natural landscape (that is also a working farm) whether the policy framework (for a resource consent) would prohibit or severely constrain its future use for farming; whether in fact the determination of where a landscape is an outstanding natural landscape, should (applicants) take account of a ‘fourth dimension’, that is, future changes over time by reason of that landscape’s character as a working farm. The Court’s answer was no that the continued use as a working farm would not affect the status of the ONL.⁹⁴</p> <p>139. We consider that the policy requires an improvement in the wording to limit scope to South Marlborough by rewording as follows: ‘Recognise that farming in South Marlborough contributes to the values of some outstanding natural features and landscapes with amenity value’. And delete the last paragraph of the explanation that currently refers to the Marlborough Sounds.</p> <p>Decision</p> <p>140. Policy 7.2.8 is amended to read as follows: <i>Policy 7.2.8 - Recognise that farming in South Marlborough contributes to the values of some outstanding natural features and outstanding natural landscapes and landscapes with high</i></p> |
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| | | <p>amenity value will fall within areas in which primary production activities currently occur.⁹⁵</p> <p>141. The explanatory statement to Policy 7.2.8 is amended to read:</p> <p><i>In some areas where outstanding natural features and landscapes and landscapes with high amenity values have been identified in the overlays of Volume 4 of the MEP, there are a range of primary production activities taking place.</i></p> <p><i>Some landscapes, especially south of the Wairau River, are a product of past and present extensive pastoral farming. In this situation, the continuation of such pastoral farming is not anticipated to threaten the biophysical, sensory perceptual or associative values that contribute to landscape significance. This will be reflected in the status of regional and district rules that apply in identified outstanding natural features and landscapes and landscapes with high amenity value in rural areas. Existing land uses within these areas will also have existing use rights under Section 10 of the RMA.</i></p> <p><i>Primary production activities currently also occur in the Marlborough Sounds in locations identified within the MEP as having landscape significance. Rules applying to land uses do require consent for new commercial forestry activity and land disturbance over certain limits. However given the existing use rights under Section 10 of the RMA, existing land-based primary production activity, even within an area of landscape significance, can continue to take place.</i></p> <p>⁸⁸ AQNZ (401.79), MFA (426.83).</p> <p>⁸⁹ Clova Bay Residents Association (152.11), Forest and Bird (715.160), KCSRA (868.15).</p> <p>⁹⁰ Federated Farmers (425.115).</p> <p>⁹¹ S42A Report (Dale), Reply to Evidence, page 27.</p> <p>⁹² Forest and Bird, Deborah Martin Evidence, page 25.</p> <p>⁹³ Federated Farmers, Darryl Sycamore Evidence, paragraphs 48-49.</p> <p>⁹⁴ <i>Man O War Station Limited v Auckland Council</i> [2017] NZCA 24, CA 422/2015, Question of Law A4, page 2</p> |
| 183 | Policy 8.1.1 | <p>Nothing noted in the Decision report on our submission point</p> <p>Policy 8.1.1</p> <p>When assessing whether wetlands, marine or terrestrial ecosystems, habitats and areas have significant indigenous biodiversity value, the following criteria will be used: ...</p> <p>19. For a site to be considered significant, one of the first four criteria (representativeness, rarity, diversity and pattern, distinctiveness) must rank medium or high.</p> <p>Distinction between identification and management criteria</p> <p>20. Forest & Bird sought better distinction between the identification of significance and the management criteria in Policy 8.1.1.¹⁷ Ms Martin considers management criteria should be removed or separated from the ‘significance’ criteria to provide for clarity. She considers too that connectivity/ecological context should be added to the criteria for determining significance. ‘Management’ is important to retain because it gives context.</p> |

21. Criteria (a)–(d) in Policy 8.1.1 are those used for determining significance and can be referred to as the ‘identification’ criteria. The remainder of the criteria (e)–(h) are referred to as having the ‘management’ function. These criteria are used to assist with the distinction of a site being high, medium or low distinction in Appendix 3 along with, for example, prioritising sites for further enhancement or restoration. Appendix 3 to the notified PMEP sets out these issues in table form. Reference was made to an Environment Court case which found the management criteria cannot be included in determining identification of significance and therefore the two distinctions should be split into different policies.¹⁸
22. If the criteria are split into identification and management, it is the report writer’s opinion that it is important to retain the management criteria and a strong link between the policies would be required to ensure the management criteria could still be used to inform the significance criteria. For example, under the representativeness criteria how is it possible to effectively determine what the best example of a habitat is, without taking into account its size, its ecological context and sustainability?¹⁹
23. The elevation of the connectivity/ecological context would mean some sites currently assessed as not significant may become so if they were reassessed.

Consideration

24. In the report writer’s opinion it is important to retain the linking mechanisms between identification of sites of significant indigenous biodiversity (wetlands, freshwater, marine and terrestrial systems) and the management necessary to determine what category to place them within (High, Medium, Low - Appendix 3).
25. The most appropriate way to address this issue, given the structure of the PMEP, is, in the Panel’s opinion by using subheadings ‘Identification Criteria’ and ‘Management Criteria’ in Appendix 3 (as well as to Policy 8.1.1) to differentiate between the criteria as amended and to include the wording ‘freshwater’ and ‘marine’ identified in Policy 8.1.1 (a)–(d) and (e)–(h).

Environments to which criteria apply should be comprehensive and clear

26. Eight submitters support the other provisions in Policy 8.1.1. Others seek: the criteria should also apply to freshwater and coastal environments;²⁰ in what instances would Council require an assessment under this policy;²¹ while the criteria provide support in part, it would be useful to have some prioritisation of sites for partnership programmes between Council and landowners, that for a site to be considered significant, one of the first four criteria must rank as high and/or two or more must rank as medium.²²

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27. EDS signals the environments to which the criteria should also apply to freshwater and coastal environments and the criteria should be comprehensive and clear.
28. In Mr Hamill’s view, the addition of ‘freshwater’ to Policy 8.1.1 would ensure that all

environments are treated equally. Dr Urlich advises that the phrase 'coastal environments' is included in the 2011 Ecologically Significant Marine Sites publication.²³ This is because most of Marlborough's estuaries are assessed as ecologically significant marine sites. The extent of the coastal environment is also mapped in the Zoning Maps Volume 4. He recommends no change is required for coastal environments as they are already included.²⁴

Consideration

29. In Mr Hamill's opinion, the addition of 'coastal marine' to Policy 8.1.1 and Appendix 3 is not required. Issue 8A also sets the frameworks for the environment and divides it into sections relating to terrestrial and freshwater, wetlands and marine. And as notified, Policy 8.1.1 includes wetlands, marine and terrestrial ecosystems. Appendix 3 as notified replaces the word 'marine' with 'coastal'. This is seen by Mr Hamill as a drafting error with which the Panel would agree. In his view, the coastal ecosystem is simply a subset of the terrestrial environment, just as alpine and mountain environments. The marine environment, on the other hand, clearly distinguishes it from other environments in that it covers all habitats that are located below mean high water springs.

30. The addition of 'coastal marine' in Policy 8.1.1 would therefore create confusion while Appendix 3 would create further confusion if coastal marine significance criteria could be split from terrestrial, wetland and freshwater environments. The coastal marine criteria would then apply to areas as defined in the coastal environment. Having different assessments between coastal marine and the terrestrial environments could lead to the situation where part of a continuous habitat was determined to be significant and the other part not, based on an arbitrary line drawn on a map.

31. The recommendation is to insert 'freshwater' into Policy 8.1.1 and the title of Appendix 3, and replace 'coastal' in the title of Appendix 3 with 'marine' as set out in the Section 42A Report and the Recommendation Report.²⁵

Decision

32. For the reasons given and the recommendations made by Mr Hamill, the Panel finds that Policy 8.1.1 and the Appendix 3 heading are to be reworded as follows:

Policy 8.1.1 – When assessing whether terrestrial, wetlands, freshwater or marine or terrestrial ecosystems, habitats and areas have significant indigenous biodiversity value, the following criteria will be used: ...
Appendix 3
Ecological Significance Criteria for terrestrial, wetland, freshwater and coastal marine environments ...

33. Policy matters within Policy 8.1.1 are amended as follows:

Identification criteria

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| | | <p>(a) <i>representativeness;</i> (b) <i>rarity;</i> (c) <i>diversity and pattern;</i> (d) <i>distinctiveness;</i> Management criteria (e) <i>size and shape;</i> (f) <i>connectivity/ecological context;</i> (g) <i>sustainability; and</i> (h) <i>adjacent catchment modifications.</i></p> <p>¹⁵ Section 42A Report (MacIennan), page 21. 'The submission points and recommendations associated with Policy 8.1.1, Appendix 3 - Ecological Significance Criteria for terrestrial, wetland and coastal environments, and the mapping of ecologically significant marine sites has been assessed within the "Criteria for significant biodiversity" and "Mapping of ecologically significant marine sites" reports.'</p> <p>¹⁶ DOC (479.71 and .270)</p> <p>¹⁷ Forest & Bird, Deborah Martin, Evidence, paragraphs 30-32.</p> <p>¹⁸ Royal Forest and Bird Protection Society of New Zealand Incorporated v New Plymouth District Council [2015] NZEnvC 219.</p> <p>¹⁹ Section 42A Report (Hamill), Reply to Evidence, page 7; Policy 8.1.1, Volume 4 Appendix 3: Ecological Significance Criteria, page 8.</p> <p>²⁰ EDS (698.62).</p> <p>²¹ NZTA (1002.34).</p> <p>²² Federated Farmers (425.123).</p> <p>²³ Davidson R J; Duffy C A J; Gaze P; Baxter, A; du Fresne S; Courtney S; Hamill P 2011. <i>Ecologically significant marine sites in Marlborough, New Zealand</i>. Co-ordinated by Davidson Environmental Limited for Marlborough District Council and Department of Conservation. Published by Marlborough District Council.</p> <p>²⁴ Section 42A Report (Hamill and Urlich), page 10.</p> <p>²⁵ Section 42A Report (Hamill), paragraph 57; Recommendation, page 9.</p> <p>Nothing noted in the Decision report on our submission point</p> |
| 186 | Policy 8.3.2 | Nothing noted in the Decision report on our submission point |
| 193 | Policy 11.1.21 | <p>Policy 11.1.21 – Locate new structures and works to:</p> <p>(a) avoid them being damaged from the adverse effects of land instability; and (b) avoid any increase in the adverse effects of slope instability that the structure or work may cause.</p> <p>39. A submission was made by D. Miller² with impressively dramatic illustrations of the topographic impacts of earthquake effects on steep ridges. Mr Miller has longstanding geotechnical experience and he was concerned that the PMEP should have strengthened policies and methods to address those risks. The report writer, in his Reply to Evidence, responded only by drawing attention to the fact that Method 11.M.9 records that Council has</p> |

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| | <p>established minimum geotechnical reporting standards. Transpower also made a submission on Policy 11.1.1.21 which sought that it be amended to except regionally significant infrastructure where its location was constrained by operational requirements.</p> | |
| | <p>Section 42A Report</p> | |
| 40. | <p>The report suggested that the exception sought by the Transpower submission appeared to be worded on the basis of a misunderstanding of the intent of the policy, which was not directed at the location of infrastructure, but rather to endeavour to ensure infrastructure was not affected from the adverse effects of land instability.</p> | |
| | <p>Consideration</p> | |
| 42. | <p>The Panel was impressed by the demonstrations and descriptions given by Mr Miller of earthquake risks, and enhanced risk exposure on steep ridgelines particularly by reference to overseas experiences.</p> | |
| 43. | <p>The policy framework requires the location of new structures to 'avoid' damage from adverse effects of land instability and given recent case law, that is a powerful direction in policy terms. It enables and requires a detailed geotechnical assessment where those risks are elevated by slope and potential slope failure. As the Section 42A Report emphasised, Method 11.M.9 also records that minimum requirements for reporting of geotechnical investigations have been adopted. It provides:</p> | |
| | <p><i>11.M.9 Geotechnical reporting standards</i></p> | |
| 44. | <p><i>The Council has established minimum requirements for the reporting of geotechnical investigations. These identify the expectations for geotechnical investigations and the reporting of those investigations. They also set out the reliance that the Council places on the information provided in geotechnical reports so that this is understood and appreciated.</i></p> | |
| 45. | <p>The level of detail required for geotechnical investigations is not readily transferred into rules and/or wording of standards in resource management plans. The use of strong policies and recognition of standards is the most effective way of addressing the issue. The Panel considers the present policy 11.1.1.21 coupled with Method 11.M.9 provides the policy strength required and the flexibility needed to upgrade standards as those standards or practices are developed or enhanced over time.</p> <p>As to the Transpower proposed exception wording the Panel agrees with the S42A Report view that the first part (a) of Policy 11.1.1.21 is not aimed at preventing or restricting the location of infrastructure such as that utilised by Transpower but rather at ensuring the location of infrastructure takes into account adverse effects from land movement which could occur which might damage the proposed infrastructure. This can be made clear by introducing</p> | |

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| | <p>a specific recognition of that factor as a new subclause (b) to Policy 11.1.1.21 with an appropriate addition to the explanation.</p> <p>46. However, the second part of the notified version of (b) of Policy 11.1.1.21 is aimed at ensuring that location of infrastructure avoids any increase in risk of adverse effects of slope instability, and the Panel does not agree that infrastructure should be exempt from such a requirement.</p> <p>47. Transpower is concerned that ‘avoidance’ might frustrate the ability to mitigate risk in a situation where it has no practical alternative, for example in Sounds steep hill country, than to place infrastructure on steep slopes.</p> <p>48. We have emphasised, though, that the phrase used in Policy 11.1.1.21 (b) is unusual in that it requires the avoidance of ‘any increase in risk’ rather than simply requiring avoidance of any risk of slope instability. The use of that phrase implies a level of risk may exist. The aim of the policy is to ensure any infrastructure built does not increase that level of risk. In the Panel’s view that does leave room for an infrastructure provider to mitigate risk in its design in such a manner that it can demonstrate that it has not increased risk of slope instability.</p> <p>Decision</p> <p>49. In the language required by the RMA technically the Miller submission has to be rejected, but in doing so the Panel wishes to record its gratitude to Mr Miller for emphasising an important issue and to recognise the force of the points he was making.</p> <p>50. The Transpower submission is accepted in part.</p> <p>51. Policy 11.1.1.21 is amended to read: <i>Policy 11.1.1.21 – Locate new structures and works to:</i> <i>(a) avoid them being damaged from the adverse effects of land instability; and or</i> <i>(b) in the case of the National Grid, avoid them being damaged from the adverse effects of land instability, or where they cannot be avoided, must be mitigated to the extent that it is practicable to do so; and</i> <i>(b) (c) avoid any increase in the adverse effects of slope instability that the structure or work may cause.</i></p> <p><i>Marlborough is characterised by steep terrain and in some locations, unstable geology. Combined with the potential for intense rainfall events, these factors create the potential for slope instability. Examples historically include rock/debris slumps, debris slides or flows, coastal erosion and tunnel gully erosion in various parts of the District. Establishing residential, commercial or industrial development or infrastructure supporting that development or linking our communities in locations prone to land instability will lead to unsustainable outcomes. This policy requires new structures and works to be located in environments that avoid adverse effects caused by land instability. It also addresses the situation of a structure or work exacerbating those adverse effects. It is recognised that the National Grid cannot always be</i></p> |
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| | <p><i>located to avoid all damage from the adverse effects of land instability and therefore this policy allows for the adverse effects of land instability on the National Grid to be mitigated to the extent practicable, where the effects cannot be avoided. The policy will primarily be implemented through the zoning of land and the scale/intensity of activity that the zone rules enable. However, the policy can also be applied in a resource consent context when an assessment of environmental effects for the structure or work identifies a risk of land instability. This includes subdivision undertaken to enable more intensive use of the land. A safe and stable building platform will have to be established for the subdivision of land in certain environments.</i></p> <p>¹ Interim Decision of the MEP Hearing Panel as to Marlborough District Council's submissions seeking the inclusion of further Floodway zoning in the PMEP</p> <p>² Don Miller (238.1)</p> |
| 230 | <p>Policy 17.6.1</p> <p>Policy 17.6.1 Maintain amenity values in rural and urban areas by encouraging the use of national and arterial routes by high volumes of traffic and heavy vehicles and discouraging high volume and heavy traffic use of collector routes and local routes, particularly where these pass through residential areas.</p> <p>43. Several submitters request various changes that would recognise primary production activities such as farming and forestry activity which rely on the roading network to transport goods. The submitters identify that there are sometimes no available alternative routes, and operators need to use collector and local roads.¹⁸</p> <p>44. The report writer recognises there needs to be an exception to be made for some primary production activities to use collector and local routes to transport produce to processing facilities. The provision should be subject to the caveat that no alternative routes or methods of transport are available. The changes recommended are an amalgamation of changes sought by various submitters.¹⁹</p> <p>Consideration</p> <p>45. The Panel accepts that the emphasis on this policy should be placed on through traffic. Primary production activities rely on the roading network to transport goods. The two aspects 'encouraging' and 'discouraging' of the policy should be split into (a) and (b). The word 'viable' should also be deleted from the suggested addition to the explanation. Whether a route is viable or not may well change from weather events or traffic incidents, which is not what is intended.</p> <p>Decision</p> <p>46. Policy 17.6.1 and its explanation is amended as follows:</p> |

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| | <p><i>Policy 17.6.1 - Maintain amenity values in rural and urban areas by:</i></p> <p><i>(a) encouraging the use of national state highways and arterial routes by high volumes of through traffic and heavy vehicles; and</i></p> <p><i>(b) discouraging high volumes of through traffic and heavy vehicle traffic use of collector routes and local routes, particularly where these pass through residential areas.</i></p> <p><i>The current state of vehicle technology in New Zealand means that noise and vehicle emissions can be expected from the operation of vehicles on roads. There is little the MEP can do to modify those conditions. The Council can control the extent of these effects, however, by adopting a road hierarchy, which encourages higher volumes of traffic and heavy traffic movements on certain routes and discourages them on others. An exception is made for some primary production activities, which need to use collector and local routes to transport produce to processing facilities where no alternative route or method of transport exists.</i></p> <p>¹⁸ Federated Farmers (425.340), Clintondale Trust (484.50), K & S Roush (845.7), Nelson Forests Ltd (990.225) and Port Underwood (1042.9).</p> <p>¹⁹ Section 42A Report, paragraphs 137-140.</p> |
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