| | |
|---|---|
| **To:** | Marlborough District Council |
| **And to:** | The submitters and further submitters |

**In the matter of** the Resource Management Act 1991

And
**In the matter of** the Proposed Marlborough Environment Plan

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# Decision of the MEP Hearing Panel

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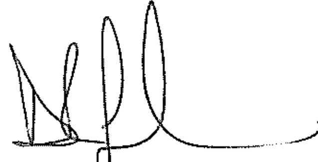
Commissioners: Trevor Hook (Chairperson)
David Oddie
Jamie Arbuckle
Rawiri Faulkner
Ron Crosby
Shonagh Kenderdine

Hearing: Commenced on 20 November 2017 and completed on 29 April 2019

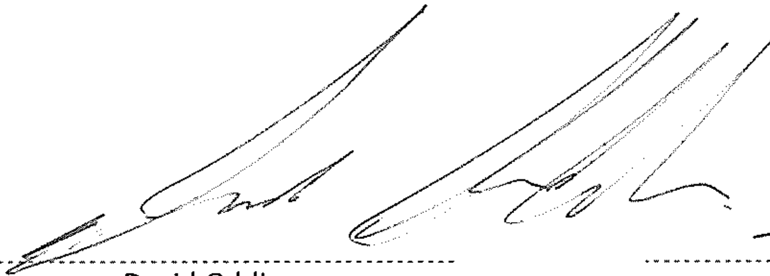
Date of Decision: 20 February 2020

**Decision was made under delegation (Minute D.15/16.133) from the Marlborough District Council:**

Trevor Hook (Chairperson)

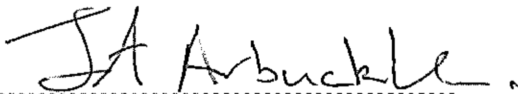


Rawiri Faulkner

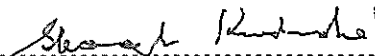


David Oddie

Ron Crosby



Jamie Arbuckle



Shonagh Kenderdine

Dated this 20 day of February 2020

# Introduction to Decisions

**Background Procedural Matters**

**1.0 Delegation**

1.1 At the meeting of the Regional Planning and Development Committee (now Planning, Finance and Community Committee) on 8 October 2015, the Committee delegated the power to the Hearing Panel to hear submissions and make decisions on the Proposed Marlborough Environment Plan (PMEP) (as per Minute D.15/16.133, ratified by minute C.15/16.166). Councillor Hook was also appointed as Chair of the hearings panel at this time.

1.2 At its meeting on 1 December 2016, the Planning, Finance and Community Committee resolved to appoint a hearings panel for the PMEP consisting of four councillors and three independent commissioners, one of whom would have experience in Mātauranga Māori (Minute number A.16/17.202, ratified by Minute number C.16/17.222.).

1.3 The four councillors appointed as commissioners were Councillors Hook, Oddie, Arbuckle and Shenfield.

1.4 The independent commissioners for the MEP hearings panel, Shonagh Kenderdine and Ron Crosby, were appointed by the Planning, Finance and Community Committee at its meeting on 23 March 2017 (A.16/17.e.51). That decision was ratified by the Council on 6 April 2017 (C.16/17.e.54). At its meeting on 29 June 2017, the Council appointed Rawiri Faulkner as commissioner with experience in Mātauranga Māori, to the PMEP hearings panel (Minute number C.16/17.467).

**2.0 Clauses 10 and 16 of the First Schedule**

2.1 Clause 10 of the First Schedule sets out that the Council and therefore the Panel (operating under delegation) must give a decision on the PMEP provisions and matters raised in submissions. Clause 10(2) stipulates that the decision is to include the reasons for accepting or rejecting the submissions, and for that purpose may group them according to the provisions or matters to which they relate, and may include consequential alterations and other relevant matters. Clause 10(3) confirms that a local authority is not required to give a decision that addresses each submission individually.

**3.0 Clause 16 of the First Schedule**

3.1 By Clause 16(2) of the First Schedule, the Council and therefore the Panel (operating under delegation) is empowered to make amendments to alter information, where the alteration is

of minor effect, and to correct minor errors. The Panel has taken the opportunity to make such changes where appropriate.

**4.0 Procedural Minutes**

4.1 Prior to the hearings commencing, the MEP Hearing Panel issued two minutes (Minutes 1 and 2) setting out the procedure for the hearings. Minute 1 set out the proposed procedure and requested feedback from submitters. After consideration of the feedback provided, the Panel made amendments where appropriate before confirming the procedure in Minute 2.

4.2 If submitters were unable to meet the specified procedures they were asked to set out their requests in writing. These requests were considered by the Panel each on its own merits and a minute issued setting out its decision. These minutes were recorded and distinguished by an alphanumeric, being Minute 3 and a sequential letter.

4.3 These initial procedural minutes included the setting of timeframes for the pre-circulation of evidence, legal submissions and restrictions on time available for speaking at hearing, among other aspects.

4.4 These constraints were necessary to allow for the efficient use of time and resources while maintaining submitters' ability to appropriately address their submission points for any given topic. Often discussions during the hearings between the Panel and submitters led to longer sessions occurring. These were productive and the Panel found that the clarification provided by the discussion contributed to their understanding of specific issues. This, however, would often affect timetabling of subsequent submitters and the Panel extend their appreciation to submitters for their patience while they explored these issues.

4.5 Due to the scale of the hearing process, the requirement for pre-circulation of evidence and legal submissions was found to be invaluable to the Panel as it enabled pre-reading of those materials. Questioning of submitters and their experts was highly beneficial to the understanding of the relief requested by submitters and pre-circulation provided a platform from which this could be achieved.

4.6 The Panel wish to commend submitters for their part in adhering to the procedures as set out in Minutes 1 and 2.

4.7 On 4 April 2018, the Panel issued another procedural minute, Minute 11. The need for this minute arose from several submitters seeking changes to PMEP provisions that fell outside the bounds of their original submission. Minute 11 addressed the increasing trend of 'scope creep' and requested submitters carefully consider the content of their evidence and/or

legal submissions to ensure no relief beyond the scope of the relief sought in a submission was being requested, prior to presenting to the Panel, as inclusion of such material unduly wasted time.

4.8 A final procedural minute, Minute 51, was issued on 11 March 2019 providing submitters an opportunity to identify any submission points that had not been previously subject of a hearing notice throughout the MEP hearing process. One request for a further appearance was received in response to this minute but it was not accepted as the matters identified had been the subject of earlier hearing notices.

**5.0 Substantive Minutes**

5.1 Regularly during the PMEP hearing process, the Panel issued minutes to submitters and Section 42A report writers, and occasionally to Council staff or to other parties, to seek further information. This information typically sought to aid the Panel's understanding of the nature of the relief requested in evidence or to gain insight into the implications of granting the relief requested. A total of 56 minutes on substantive matters were issued over the course of the hearing process. The minutes and responses to the minutes were posted on the Council website in a timely fashion.

5.2 The information provided in response to these substantive minutes proved invaluable to the Panel's deliberations. The Panel thanks those that responded to the substantive minutes for their prompt response and the additional effort required post hearing to compile the information requested.

**6.0 Conflicts of Interest**

6.1 During the hearing, there were 16 instances where a commissioner or commissioners declared an actual or perceived conflict of interest on matters raised in submissions.

6.2 In most instances, the Commissioners were aware of the potential conflict through the pre-circulated evidence and raised the issue at the beginning of the hearing of the relevant topic and again at the time of hearing from the relevant submitter.

6.3 In cases of clear conflict once a formal statement was made, the Commissioner stood down from their duties on that particular submission point.

6.4 In some cases it was not clear whether or not a perceived or actual conflict of interest arose. In these situations the commissioner or the chairperson would detail the issue and provide the affected submitter and/or further submitter an opportunity to respond. If the submitter had no issue with the situation that commissioner remained involved.

6.5 For each perceived or actual conflict of interest, the commissioner provided a statement outlining the issue. A record of these statements has been compiled which is attached as an appendix (Appendix 1) to this decision. At the commencement of each topic decision any relevant declaration of potential conflict is listed. Anybody interested can obtain the detail from the appendix.

**7.0 Section 32**

7.1 Section 32 of the RMA directs a local authority making a proposed plan to carry out an evaluation, both before it is publicly notified, and before making a decision on submissions. The evaluation is to examine the extent to which each objective is the most appropriate way to achieve the purpose of the Act, and whether, having regard to their efficiency and effectiveness, the policies, rules and other methods are the most appropriate for achieving the objectives. For the purpose of those examinations, the evaluation is to take into account the benefits and costs of policies, rules or other methods; and also the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods. The local authority is to publish a report summarising the evaluation and giving reasons.

7.2 The Panel notes that in compliance with Section 32, the Marlborough District Council carried out an evaluation of the PMEP before it was publicly notified, and published a sequence of reports summarising the results of the evaluation. The Panel's evaluation with respect to Section 32 is inherent within its consideration of the relief requested by submitters and its decision making process.

**8.0 Section 42A Report**

8.1 The Panel had the benefit of a Section 42A report prepared for each topic. The reports addressed the points of relief requested in submissions on the PMEP provisions within each topic, evaluated the relief requested and provided recommendations to the Panel on whether to accept or reject the relief requested. The volume of documentation involved in the hearing and deliberation process for the PMEP has been immense. There were some 17,000 submission points from over 1300 submitters.

8.2 In accordance with procedural Minutes 1 and 2, this report was provided to submitters who wished to be heard at least 10 days prior to evidence falling due.

8.3 The report writer also attended the hearing, either in person or via Skype to present their Section 42A report to the Panel. The report writer was available to answer questions and

provide advice during the hearing. On hearing the evidence presented to the Panel in person or in writing, the report writer also prepared a Reply to Evidence. This set out whether their initial recommendations had changed after hearing the evidence and/or legal submissions and why.

8.4 The Panel is appreciative of the valuable input that the Section 42A report writers have made to the hearing process and the effort to provide both the Section 42A reports and the Rights of Reply in a timely fashion.

**9.0 Hearing Structure**

9.1 It was evident to the Panel at an early stage that the combination of the extensive nature of the PMEP (being a regional policy statement, regional coastal plan, regional plan and district plan) and the large number of submitters would present a challenge to hearing evidence. The Panel decided to use a topic based approach to hearing submitters as this would allow all submitters on a topic to be heard at the same time. This decision was recorded in procedural Minutes 1 and 2. As it transpired, a topic-by-topic approach allowed the Panel to consider and evaluate the evidence efficiently and effectively. It also allowed the Panel to deliberate on the evidence as the hearing proceeded.

9.2 The Panel understood that topic-by-topic hearings meant that some submitters had to appear on more than one occasion in order to present their submissions on multiple topics (though in some cases they provided written submissions as an alternative to appearing in person due to financial restrictions or time constraints). The Panel would like to pass on their appreciation for the extra effort and expense that the submitters undertook to provide evidence on a topic-by-topic basis. Several submitters made requests to ease this burden, such as to be heard on matters out of turn, and the Panel accommodated this, where it could, to assist.

9.3 To keep its decision to a manageable size, the Panel has also taken a topic-by-topic approach to structuring the decision on the PMEP. A separate and distinct decision has been made on each topic heard. In the case of the “miscellaneous” topics heard on 29 April 2019, the decisions have been incorporated into the relevant earlier topic.

**10.0 Panel attendance**

10.1 As can be expected with such a long process, there were times when not all panel members were able to attend to hear submissions on a given topic. Where this was the case, the panel

member did not take part in the deliberation process on that topic. Generally, health reasons were behind the absence.

10.2 However, of substantial note, was the departure of Commissioner Laressa Shenfield. In October 2018, Mrs Shenfield stood down from her role as a Councillor for the Marlborough District Council. However, the Council determined that Mrs Shenfield could continue as a commissioner to complete the deliberations only on those topics she had already heard (Minute Cncl-118-166). Mrs Shenfield subsequently advised the Panel that as she now lived in Australia she would be logistically unable to continue in the role. The Panel would like to thank Mrs Shenfield for her contribution to the process.

**11.0 Submitter Appearances**

11.1 The submitters who appeared at the hearing to provide evidence to the Panel in support of their submissions at each hearing block are set out in Appendix 2.

11.2 The Panel wish to commend submitters on the constructive manner in which they conducted themselves. The provision of succinct evidence and legal submissions, combined with the efficient use of time afforded to them during their presentations, provided the Panel with more time to question and discuss the evidence and submissions with the submitter, their experts and/or their counsel. The Panel found that exchange particularly useful for testing the evidence and/or submissions.

11.3 In some cases, submitters did not attend the hearing but lodged legal submissions or written evidence instead. The parties who lodged legal submissions and/or evidence for each hearing block are identified in Appendix 3.

**Decision**

**12.0 Interim Decisions**

12.1 From the outset of hearings, the Panel agreed not to issue interim decisions unless the submissions met specific criteria. The criteria were restricted to matters with a limited setting, where a sustainable management purpose would be served and where a particular subject matter could be regarded as entirely discrete from other subject matter in the PMEP. In total, four interim decisions were issued during the hearing process. These are available on the Council website and where appropriate, are incorporated into the final decision document.

## 13.0 Structure of Decisions

13.1 It is important that the topic decision is read as a whole together with the tracked change version of the Plan. The decision on each topic contains the reasons for the Panel's decisions. These comprise either adoption of the reasoning and recommendations of the original Section 42A Report or the replies to evidence, or a specific reasoning by the Panel. (The only exception to that approach relates to the Noise section of the Nuisance topic where the reasoning and recommendations in the responses to Minutes 54 and 59 may have been adopted, rather than the reasoning and recommendations in the Section 42A Report or the Reply to Evidence report. The reasons for that difference in that topic are dealt with in detail at the commencement of the Noise section of the Nuisance topic decision. In respect of that topic the approach to understanding of the individual submission point decisions addressed in paragraphs 13.3 to 13.5 below should be adjusted accordingly to apply references to the Section 42A Report and/or Reply to Evidence in those paragraphs as being references to the responses to Minutes 54 & 59 for that Nuisance topic.)

13.2 The tracked change version of the relevant PMEP provisions forms an integral part of the decision. The source of the change in terms of the topic that the subject matter was dealt with is clearly identified in the track changes version of the plan. This records all amendments (additions and deletions) to the notified PMEP provisions made by the Panel.

13.3 Where the PMEP provisions **remain as notified**, it is because:

a) The Panel has decided to retain the provision as notified for reasons set out in this decision; or

b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to retain the provision as notified as recommended in the Reply to Evidence; or

c) The Panel adopted the reasoning and recommendation of the Section 42A Report to retain the provision as notified in the original Section 42A report.

13.4 Where there is a **change to a provision** within the plan it is because:

a) The Panel has amended a provision for reasons set out in this decision in response to a submission point which the Section 42A report writer(s) does not recommend in their reports; or

b) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the Reply to Evidence; or

c) The Panel adopted the reasoning and recommendation of the Section 42A Report Writer to change the provision to that recommended in the original Section 42A report; or

d) A consequential change has been necessary following on from a decision in either a), b) or c).

13.5 Where there is a **different recommendation** between the Section 42A Report and the Reply to Evidence (i.e., the recommendation by the Section 42A report writer(s) has changed as a result of hearing the evidence of submitters), unless the Panel decision specifically adopts the original report's reasoning and recommendations, the reasoning and recommendations in the (later) reply to evidence has been adopted and it must be taken to prevail.

13.6 There are limited circumstances where the Panel has taken the opportunity to give effect to national policy statements or implement national environmental standards. Where this occurs the relevant decision clearly sets out the nature of the change and the reason for the change.

13.7 Finally, there are limited circumstances where the Panel has decided that **alternative relief** is more appropriate than that requested by the submitters, but still within the scope of the relief sought. This is recorded in the Panel's decision.

**14.0 Topic Decision**

14.1 Each topic has a separate decision. Those topics are as follows:

Topic 1: General

Topic 2: Marlborough's Tangata Whenua Iwi

Topic 3: Natural and Physical Resources

Topic 4: Water Allocation and Use

Topic 5: Natural Character

Topic 5: Natural Character – Technical mapping

Topic 5: Landscape

Topic 6: Indigenous Biodiversity

| | |
|---|---|
| Topic 7: | Public Access and Open Space |
| Topic 8: | Heritage Resources and Notable Trees |
| Topic 9: | Natural Hazards |
| Topic 10: | Urban Environments |
| Topic 11: | Coastal Environments |
| Topic 12 & 22: | Rural Environments, Woodlot Forestry, Conservation Planting and Carbon Sequestration Forestry |
| Topic 13: | Resource Quality (Air) |
| Topic 13: | Resource Quality (Water) |
| Topic 13 & 19: | Resource Quality (Soil) and Land Disturbance |
| Topic 14: | Waste and Discharges to Land |
| Topic 15: | Transportation and Signage |
| Topic 16: | Climate Change |
| Topic 16: | Energy |
| Topic 17: | Subdivision |
| Topic 18: | Nuisance Effects & Temporary Military Training |
| Topic 20: | Designations and Utilities |
| Topic 21: | Zoning and Definitions |
| Topic 22: | Commercial Forestry |
| Misc | Addressed in relevant topic decision |

**15.0 Provision codes**

15.1 The MEP uses a system of codes to identify whether the notified provisions are RPS, regional plan, regional coastal plan and/or district plan provisions. The codes appear immediately prior to the statement of the relevant provision.

15.2 During the course of the hearings, the Panel considered the recommendations of report writers for new objectives, policies, methods and rules. We also heard evidence from submitters seeking new provisions.

15.3 The report writer/submitter did not always identify what code or codes should precede the provision. In these circumstances, and where the Panel has decided to add a new provision, a code has been inserted as a consequential change. In most cases, the relevant code or codes were relatively obvious. The codes appear in the tracked changes version of the Plan.

**16.0 Numbering changes**

16.1 All of the notified provisions of the Plan have a unique identifier (in the form of a provision number). In the Panel's opinion, this is a necessary aspect of any plan prepared under the RMA. It is essential that users of the Plan can reference any relevant provision.

16.2 The Panel's decisions can involve the addition of new provisions or the deletion of notified provisions. The provision numbers in the Plan run in sequence. Where addition or deletion does result from the Panel's decision, it obviously affects the sequence of numbers as a necessary consequence. The Panel has directed that these numbering changes are made as necessary as a consequential change created by the addition or deletion. Typically, this consequential change is not specifically addressed in the following Topic decision documents. This text records the Panel's directed approach to consequential numbering changes in order to avoid the need to repeat the decision in multiple locations.

**17.0 Third Party Documents**

17.1 A number of requests were made in submissions by outside third party organisations other than Council for their Codes, standards (either mandatory or non-mandatory), practice manuals or other controlling instruments to be included by specific standards requiring compliance with them. If that is done it means the Council would be incorporating those documents in the PMEP.

17.2 In almost all those submissions the request made is for a standard to be inserted requiring 'compliance' with the whole document, and commonly those are complex, detailed or lengthy volumes. The Panel considered that for such an approach to pass the reasonable

expectations of adequate public consultation would have required public notification of the volume and its contents, so that submitters had the opportunity to respond. In most, if not all, cases that has not occurred, with the submission request itself being the first time the compliance request has been made. The Panel is most concerned that such a process of inserting what can be costly or onerous obligations is not appropriate.

17.3 Moreover, incorporation within the Plan carries with it the risk of loss of control of what then become statutory Plan provisions as such codes, standards, or practice manuals are commonly updated or amended by their own controlling organisation – which strictly would require a plan change process to be undertaken to comply with the RMA. How that process is to be managed with an outside organisation 'owning' or 'controlling' the base document raises real practical problems at law. For that reason, too, the Panel's view has been that these sorts of documents should not be broadly incorporated without compelling reason.

17.4 Finally, in respect of third party documents of that nature which are made mandatory by other statutory provisions, the Panel was not persuaded that anything is added to an already existing statutory obligation of compliance by incorporation of those documents into the Plan, when they already have their own statutory effect.

17.5 For all of those reasons the approach preferred by the Panel, with few exceptions, has been to provide when expressly directed by the RMA for incorporation of National Policy Statement or National Environmental Standard provisions, but otherwise to adopt an information approach by way of a Method drawing attention to the existence of those third party documents.

**18.0 Mapping Changes**

18.1 The Panel's decision makes changes to the zoning maps and the overlay maps contained in Volume 4 of the PMEP. Volume 4 of the Plan has been updated to reflect these decisions.

18.2 A mapping comparison tool is also available via Council's website so that any submitter can ascertain changes to any zoning map or overlay map as a result of the Panel's decision on submissions.

# Proposed Marlborough

# Environment Plan

# Topic 1: General

**Hearing dates:** 27 – 29 November 2017

**S42A Report Writer:** Paul Whyte

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| MDC | Marlborough District Council |
| NTR | National Transport Route |
| NZCPS | New Zealand Coastal Policy Statement |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| RPS | Regional Policy Statement |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| FIS | The Fishing Industry Submitters |
| Fish & Game | Nelson Marlborough Fish and Game |
| Hort NZ | Horticulture New Zealand |
| MFA | Marine Farming Association |
| NZDF | New Zealand Defence Force |
| NZTA | New Zealand Transport Agency |
| PMNZ | Port Marlborough New Zealand Limited |

## Changed resource management framework

**The relationship between the Regional Policy Statement, Regional Plan, District Plan**

1. The Plan in its Introduction[1] identifies that previously the MDC has had a separate regional policy statement and two geographically-based coastal, district and regional plans (the Marlborough Sounds Resource Management Plan and the Wairau/Awatere Resource Management Plan).

2. The MDC undertook a full review of the Marlborough Regional Policy Statement 1995 and the other plans in accordance with the provisions of ss 79(1)-(4) RMA. The result of this review was that the MDC opted to combine all three plans into this single plan, a result that is enabled through s 80 RMA. The MDC's intention is to provide a simplified and more streamlined resource management framework for all users.

3. There were multiple submitters that challenged the relationship between the Regional Policy Statement (RPS) and plan provisions, given the proposed structure of the PMEP.

4. Various submitters put forward suggestions as to what may be appropriate methods to specifically identify the lower level plan provisions in the document, citing the Christchurch City Plan and the Auckland Unitary Plan.

**Section 42A Report**

5. The Section 42A Report identifies, in the absence of a formal template, there will always be variations in the way plans are presented. The format of this plan is unique in that it now includes the RPS, district, regional and coastal plans in one document. The document meets the requirements of the RMA and can be construed to be set out in a logical manner in the terms of a hierarchy of 'Issue' to 'Method' to 'AER's'.

**Consideration**

6. The PMEP also follows the structure of the operative plans which have been in place for 20 years and, in the report writer's opinion, there has been no evidence that the structure has caused costs to the community or that it has affected the administration of the provisions.

7. Under the heading 'Structure of the MEP', the MDC has set out what Volumes 1 - 6 encompass with relevant explanations as to what each contains. If these are appropriately considered they contain a navigating tool which is very helpful.[2]

---

[1] PMEP Volume 1 Introduction page 1-2.
[2] Section 42A Report, pages 4-5.

8. The matters of table of contents/numbering for chapters and recognition and provisions of linkages as referred to in the New Zealand Defence Force (NZDF) submission are asserted to be appropriate, and page numbers are sought to be added to the respective table of contents of the respective chapters when the PMEP is finalised[3]. The Panel does not agree there is any benefit from inserting the page numbers into the Table of Contents. However, the Panel has made a decision to use tabs to identify separate chapters, each of which have sequential page numbers. The Panel believes that the use of tabs will be sufficient and effective in enabling plan users to find relevant content.

9. To make explicit the various plans subsidiary to the overarching RPS, the Panel asked MDC officers to identify references in the Plan to identify the Regional Plan, the Regional Coastal Plan and the District Plan provisions. The advice received was that the outcome would be too unwieldy and the problem was more readily resolved by a more simple mechanism of emphasising the coding of the RPS.

10. The Panel is cognisant of the important factors that MDC is a unitary council; this is a second generation plan involving resources which have a high degree of connectivity between them; and the opportunity to integrate the management of those resources should be taken by using a combined plan approach. The Panel was not persuaded that there were any material benefits from separating out the RPS from the Plan. The coding provides the appropriate level of direction.

**Decision**

11. The Panel concluded given the integrated nature of the PMEP it was sufficient to only code provisions which are addressed in later decisions.

12. The submission seeking identification of references in the plan to identify the regional plan is accepted only to the extent that the final form of the PMEP uses a method to emphasise which provisions are of an RPS status. Tabs will be used to separate the chapters and maps in the PMEP.

13. The submission from NZDF seeking page numbers in the contents section is rejected.

## Legislative omissions

14. In Chapter 1 Introduction the PMEP sets out the relevant legislation which governs how MDC uses, develops and protects Marlborough’s natural and physical resources. The supporting text identifies the RMA’s single purpose is to promote the sustainable management of these

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[3] Section 42A Report, page 13.

resources.[4] It identifies the reference to ss 6, 7 and 8 in abbreviated form. Nelson Marlborough Fish and Game[5] (Fish & Game) submit that ss 6 and 7 RMA in the Introduction should either be removed or quoted in full.

**Section 42A Report**

15. The Section 42A Report on Introductory matters identifies that all such legislative provisions should be referred to in order to provide the proper legislative context although suggest quoting the text in full would not be necessary. Taking into consideration the submissions on this matter, the report writer provided the following suggestion:

> Section 6 requires the Council to recognise and provide for matters of national importance. These include matters in relation to:
>
> - the natural character of the coastal environment, wetlands, lakes and rivers;
> - outstanding natural features and landscapes;
>
> …
>
> - the management of significant risks from natural hazards
>
> Section 7 contains matters to which the Council must have particular regard to. These include amenity values, kaitiakitanga, ethic of stewardship, quality of the environment, efficient use and development of natural and physical resources, intrinsic values of ecosystems, ~~and~~ efficiency of the end use of energy, the benefits from the use and development of renewable energy, finite characteristics of natural and physical resources, effects of climate change, and protection of the habitat of trout and salmon**.**

**Consideration**

16. The Panel gave this matter earnest consideration and decided that the attempts to summarise s 6, 7 and 8 in the Plan while quoting s 5 in full opened the possibility to error. In the Panel's view it is best to quote all the Part 2 sections in full. The introductory wording to each of those sections needs to reflect the statutory wording.

**Decision**

17. The introduction of Chapter 1 after the quotation of s 5 RMA shall read as follows:

*… (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

---

[4] PMEP Chapter 1 Introduction, page 1-1.

[5] Fish & Game (509.9).

*6 Matters of national importance*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

*(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*

*(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*

*(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*

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

*(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*

*(f) the protection of historic heritage from inappropriate subdivision, use, and development:*

*(g) the protection of protected customary rights:*

*(h) the management of significant risks from natural hazards.*

*7 Other matters*

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—*

*(a) kaitiakitanga:*

*(aa) the ethic of stewardship:*

*(b) the efficient use and development of natural and physical resources:*

*(ba) the efficiency of the end use of energy:*

*(c) the maintenance and enhancement of amenity values:*

*(d) intrinsic values of ecosystems:*

*(e) [Repealed]*

*(f) maintenance and enhancement of the quality of the environment:*

*(g) any finite characteristics of natural and physical resources:*

*(h) the protection of the habitat of trout and salmon:*

*(i) the effects of climate change:*

*(j) the benefits to be derived from the use and development of renewable energy.*

~~*In achieving the purpose of the RMA, the Marlborough District Council (the Council) must have regard to a number of principles set out in Sections 6, 7 and 8 of the RMA.*~~

~~*Section 6 requires the Council to recognise and provide for matters of national importance. These include matters in relation to:*~~

- ~~*the natural character of the coastal environment, wetlands, lakes and rivers;*~~
- ~~*outstanding natural features and landscapes;*~~
- ~~*areas of significant indigenous vegetation and significant habitats of indigenous fauna;*~~
- ~~*public access to and along the coastal marine area, rivers and lakes;*~~
- ~~*the relationship of Maori with their ancestral land and sites;*~~
- ~~*historic heritage; and*~~
- ~~*protected customary rights.*~~

~~*Section 7 contains matters to which the Council must have particular regard to. These include amenity values, kaitiakitanga, quality of the environment, efficient use and development of natural and physical resources, intrinsic values of ecosystems and the benefits from the use and development of renewable energy.*~~

~~*Section 8 requires the Council to take into account the principles of the Treaty of Waitangi.*~~

*To achieve the purpose of the RMA, the Council is required to prepare a range of documents, some of which are mandatory, while others are optional. …*

### Aquaculture submissions

18. MDC has made a decision to not include marine farming provisions in the notified plan and to continue to review these in order to resolve outstanding matters surrounding aquaculture and marine farming. At this stage the Panel have no role in this review process.

19. The Section 42A Report provides an amending statement in the Introduction chapter under the heading 'Changed resource management framework' which we consider helpful, if the relevant submissions from the aquaculture industry have not been assessed at the time the decision is released on the Plan, namely: 'At this time, the MEP does not include the provisions relating to marine farming which are still subject to review.'[6]

20. The submissions of the Marine Farming Association (MFA) and Aquaculture New Zealand (AQNZ), and the submissions supporting them, specifically relate to the aquaculture provisions.

21. One hundred and fifty-eight submissions[7] support the MFA and AQNZ submissions and seek the same relief as that requested by those two associations. These submissions have been received by MDC in terms of its First Schedule RMA statutory obligations. We were advised, however, that the MDC and aquaculture industry are in negotiations to resolve the industry's concerns and issues at the time of the hearing. These submissions and others related to this topic, together with the relevant Section 42A Reports will therefore require analysis at a later date when an aquaculture chapter is proposed as a variation to the plan

22. The Section 42A Report identified that aquaculture is an activity that could be separated off without significantly affecting the remainder of the PMEP. In addition, deferring the PMEP while waiting for an aquaculture section would lead to further delay and expense in issuing of the decision.[8]

23. The lack of reference to marine farming provisions throughout the document nevertheless led to a repetition of submissions referring to their omission. Unless these submissions relate to generic issues relating to the whole of the Plan[9] and are not related to the specific requirements of those involved in the industry, the specific submission points were put to one side as issues needing to be dealt with in the aquaculture chapter.

**Decision**

24. The recommendation is accepted to be added to the last paragraph to 'Changed resource management framework' in the Introduction to the PMEP as follows:

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[6] Laurence Etheredge (879.3).
[7] Section 42A Report, page 32. Austin Carolino and 157 others.
[8] Section 42A Report, page 7.
[9] PMEP, such as Chapter 8 Indigenous Biodiversity, Chapter 5 and 6 Natural Character and Landscape, Chapter 19 Climate Change.

- *manages the actions of all resource users.* At this time, the PMEP does not include the provisions relating to marine farming which are still subject to review.

## Guiding Principles

25. The Plan states that the MDC 'used guiding principles in the development of the objectives, policies and methods throughout the chapters of the MEP. The principles are the philosophy and values that underlie the content of the MEP but do not in themselves have significant objectives or methods'. [10]

**Submissions**

26. Numerous submissions variously support one or more of the principles, seek some amendments, or request that they be deleted.

27. Hort NZ approves of the inclusion of the principles in the Plan and says that, while the respective objectives and methods can be tested against the principles and are useful, they do not derogate from the RMA tests.[11] Port Marlborough New Zealand Limited (PMNZ), in support of AQNZ[12], supports the Guiding Principles but also seeks to amend them to promote economic issues, citing the marine farming industry's submission which notes there is no guiding principle in relation to economic development and requests that a new principle be included'.[13] PMNZ argues for the importance of promoting economic development in the Marlborough region, particularly within those areas which are already modified. It suggests mention of a widening of the range of economic activities such as tourism, recreation, forestry, fishing and marine farming. It was also suggested that as an alternative wording to the principles, the emotive use of language such as 'jewel in the crown' within the final guiding principle should be replaced with language better suited to a planning context.

28. A number of submissions from the forestry industry[14] ask for a review of forestry rules as part of the submissions on the guiding principles. That request will be dealt with at the same time as the forestry topic.

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[10]PMEP Volume 1 Chapter 1 Implementation, Section 42A Report Submission Chapter 1 Introduction pages 1-2 to 1-3 Issue 1.
[11] Hort NZ (769.1).
[12] PMNZ (433), Louise Elizabeth Robertson Taylor Statement of Evidence, 6 November 2017, paragraph 53, pages 16-18.
[13] AQNZ (401.3).
[14] MFIA (962.1-4) and Nelson Forests Ltd (990.1) but this issue is identified in the Section 42A Report under Topic 22 Commercial and Non-Removal Sequestration.

**Section 42A Report**

29. The Section 42A Report indicates that the guiding principles are somewhat generic, sensible, rational and complementary with the RMA. They do not override the requirement for the plan provisions to be in accordance with the RMA. The report also records that the principles are essentially a statement of fact, describing how the MDC went about developing the Plan. *'These principles are identified as the philosophy and values that underlie the content of the MEP but do not, themselves, have specific objectives, policies or methods.'* The report writer recommends retaining them at the beginning of Chapter 1 Introduction.

**Consideration**

30. The principles reflect over 10 years of the development of concepts that have contributed to the development of the issues, objectives, policies and methods now embedded in the Plan. They 'tell a story' and provide the background to MDC's extensive reflections and directions over the years.

31. We do not accept that there is no emphasis on the economics of the region: 'economic prosperity through job and business opportunities' is one phrase in the first of the principles: 'monitoring or enhancing the wellbeing of people and communities, whether in rural, coastal or urban areas therefore contributes significantly to social, economic and wellbeing' is another. Further, a specific principle identifies 'A healthy Marlborough economy requires, a healthy environment'.[15]

32. But the details of economic development or business opportunities are not necessary in statements at such a high order. Nevertheless we find the guiding principles are an important reflection of what MDC has achieved over the decade.

33. The difficulties with including the principles, however, are:

- There are no provisions in the RMA that suggest their inclusion is necessary. They are not referred to either in s 62 (Contents of Regional Policy Statements) or s 64 (Contents of Regional Plans).
- There is clear confusion about their significance to the PMEP. Some of the submissions query whether the policies or rules meet relevant guiding principles (such as those relating to commercial forestry rules). As one submitter put it, 'they read as de facto objectives and policies'.

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[15] MFA (426.1-4) and AQNZ (401.2-4). Counsel Submissions, paragraph 38 page 9.

- PMNZ requests greater input regarding the extensive economic interests that have emerged in the last decade in Marlborough—a submission that lies more appropriately within the PMEP development provisions elsewhere in the document. Alternatively, the company suggests the principles could be deleted in their entirety as they 'add little value to the PMEP once it is being used in practice'.[16]
- Hort NZ considers that the respective plan provisions can be tested against the principles which means they are considered to provide added weight to an economic or business issue as it arises, which legally is quite incorrect.
- Should the principles be cited in the Environment Court or other courts, they are likely to have no weight, might be considered an unnecessary distraction; and the guiding principles could provide an enticement to participants to bolster arguments which face difficulties in RMA terms.
- The word 'principles' may well confuse the stranger to the PMEP with the legal emphasis provided by the principles of the Treaty of Waitangi 1840 (s 8 RMA)—which are not in issue.

34. It is apparent from the Guiding Principles that they contain the philosophy and values that underlie much of the formation and current content of the MEP. The submissions and evidence before us during the hearing indicate a great deal has happened in Marlborough in the past 22 years under MDC's guidance, in its social, economic, commercial and cultural development. Further, the principles acknowledge the legal foundations of the management of its resources as provided for by the RMA. The Panel found them to be a reflection of the advances the region has made, both in innovation and sustainable management.

35. The Guiding Principles are furthermore largely retrospective and not forward-looking.

36. The Panel heard evidence in support of and in opposition to reference in the guiding principles reference to the Marlborough Sounds as the 'jewel in the crown'. While the Marlborough Sounds can justifiably be held up as a unique and iconic coastal environment,[17] its description as being Marlborough's 'jewel in the crown' does not properly recognise the reality of significant loss of its indigenous biodiversity and the build-up of sediment from commercial forestry throughout the coastal marine area.[18]

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[16] PMNZ (433) Louise Elizabeth Robertson Taylor, Statement of Evidence, paragraph 56, page 18.
[17] Chapters 6, 7, 8.
[18] Chapter 8.

**Decision**

37. The Guiding Principles are deleted from the Plan.

## Structure of the MEP

38. The Section 42A Report identifies the submissions on the overall structures of the Plan, and referenced in Chapters 1 and 2 in particular, relating to associated aspects, enabling activities, effects-based rules, references, consistency of terms, contents and rule numbering.

39. At the outset the Section 42A Report identifies that many of the issues raised under this heading are referred to in more detail in the submissions on other provisions in the PMEP.

40. In response to practical requests for minor editorial changes, as presented in evidence and/or outlined in the Section 42A Report, these have been or are being attended to in the final PMEP and we make no further comment in this report.

41. Otherwise several submitters sought a number of amendments set out below.

**Section 42A Report**

42. The report writer recognises that as an integrated plan, the focus of the PMEP is on those issues which flow from Part 2 RMA, such as managing resources to safeguard air, soil, water and ecosystems; avoid, remedy or mitigate adverse effects; and, protect the coast, rivers, wetlands and landscapes. This has led to a more activities-based plan rather than it being effects-based. The approach is not precluded in the RMA (s 80 RMA).[19]

43. Due to its cascade of issues, objectives, policies, rules, standards, methods and AERs, the Plan is enabling to a degree. It makes no reference to non-complying activities but it is not compulsory to do so.[20] The legislation for that activity begins with the word 'if' an activity is described as not falling within the permitted, controlled or discretionary activities. While discretionary activities involve discretions being exercised by the decision-makers, those decisions are based on a range of effects set out in the RMA legislation based on factual evidence. The benefits of non-complying status not being included are identified, for example, in Chapter 4 Use of Natural and Physical Resources.[21]

44. The Panel heard evidence on whether the Plan rules should be amended so that any measurements identified are practical and part of everyday vernacular. It is the extensive

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[19] Beef + Lamb New Zealand (459.1).
[20] Section 87A(5) RMA.
[21] Beef + Lamb NZ (459.11).

professional experience of the report writer that some terms used in the PMEP such as, 'water reflectance' and 'daily average carbonaceous BODS' (referred to in one of the submissions) are not uncommon in plans, especially those of regional plans. The scientific certainty they are seen to provide is considered as part of assessing effects on monitoring of the environment.[22] The methods used may require specialist advice while a number of Methods of Implementation include liaison, research and information that may assist farmers, for example, see Methods 15.M.18, 15.M.21 and 15.M.22.[23]

45. As to the request from Chorus New Zealand Limited and Spark New Zealand Trading Limited for a specific section on infrastructure (because, for example, it is not a specific Part 2 matter),[24] the report writer does not believe it is necessary as it is dealt with in different ways, in a variety of plans throughout New Zealand, as well as different chapters in the PMEP and in relatively defined ways: see topics Use of Natural and Physical Resources, Urban Environments, General, Subdivision and Utilities and Designations. As to the particular application of Network Utility rules, General Rules currently apply; zone network rules apply only if a network utility is specifically identified within those rules. The report writer leaves the subject open to more specific submissions in later topics.[25]

46. Further to cross-referencing objectives, policies, rules, standards and maps, the Section 42A Report suggests that the status quo remain (except as identified in Chapter 3 Marlborough's Tangata Whenua Iwi for cultural matters). This is because insertion is not needed: the issues, objectives, policies, rules, standards, and methods of implementation and anticipated results follow one another in the cascade identified earlier, while the rules additionally refer to appendices and mapping overlays.[26]

47. The Section 42A Report recommends, however, a further explanation be inserted for linkage between a permitted activity and its applicable standard. The report gives as an example, the submission from the New Zealand Transport Agency (NZTA) which identifies that an activity (works in a riverbed) may require a resource consent from a number of rules are ambiguous.[27]

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[22] The use of the term 'Munsell units' does not survive the submissions given in the later reports.
[23] Kevin Wilson (210.1).
[24] Chorus (464.1) and Spark NZ Ltd (1158.78).
[25] Section 42A Report, page 8. We note that the requirement for this amendment occurs throughout a number of chapters.
[26] NZTA (1002.289-293).
[27] Section 42A Report, pages 20-21.

48. NZTA drew attention to what it asserted was an ambiguity arising from the bundling effect in respect of rules in relation to the discharges of sediment that arise from particular activities, for example in a river bed. NZTA asserts it is therefore unclear whether discharges or sediment associated with instream works are authorised by rules under 2.7, or whether consent for this discharge is also needed under the "Discharges to Water" rules. NZTA understands that sediment discharges are authorised by s 14 RMA because there is a Permitted Activity Standard relating (2.8.1.4). The submission asserts there is an ambiguity in Rule 2.7.

49. The report writer agrees on first reading of the relevant provisions, it is not entirely clear what is required. He believes the reference in the introductory paragraph[28] to s 14 RMA is to remove any doubt that the rule does not cover taking, use, damming etc because of the potential overlap between the activities. The introductory paragraph for 2.7 Permitted Activities states: 'Unless expressly limited elsewhere by rule a in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 2.8 and 2.9.'

50. From this the report writer believes that the rule is intended to say that, unless the activity (including a discharge of sediment) is specifically limited elsewhere in a rule, then it is permitted provided it complies with the performance standards. Given that the reference to s 14 RMA could cause confusion, he recommends that 2.7 Permitted Activities is amended to refer to the discharge of sediment as a permitted activity.

51. Rule 2.7 appears to be the only 'regional rule' that requires amendment.

**Consideration**

52. In terms of cross-referencing, as the Panel's assessment of the various topics in the PMEP progressed, we found some issues arising in a number of chapters required cross-referencing to other topics. As an example, from the evidence given in Topic 16 Climate Change, there needs to be additional links into Coastal Environment.

53. In terms of the concerns raised by NZDF with respect to links between permitted activities and the applicable standards, we adopt the recommendations of the Section 42A Report writer.

54. In relation to the 'bundling effect', which concerns NZTA, we accept the amendment to Rule 2.7 recommended in the Section 42A Report, with one grammatical change and the inclusion

[28] Volume 2, Chapter 2 of the PMEP.

of the word 'associated' to limit the discharges with permitted activity status to those actually associated with the principal permitted activity.

**Decision**

55. The following is added to Permitted Activities on page 1-2 of Volume 2:

*There are standards that generally apply to all permitted activities and standards that apply to specific permitted activities which are set out in separate lists. The standards that apply to specific permitted activities have the same headings as the permitted activities to allow for ease of identification.*

56. Rule 2.7 Permitted Activities on page 2-11 of Volume 2 is amended by the following:

*Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities, including the associated discharge of sediment, shall be permitted without resource consent where they comply with the applicable standards in 2.8 and 2.9.*

57. As the Floodway zone has a similar set of enabling rules, the explanatory statement under 21.1. is consequently amended to read:

*Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities, including the associated discharge of sediment, shall be permitted without resource consent where they comply with the applicable standards in 21.2 and 21.3:*

## Relationship of the MEP to other policy statements, standards and strategies

58. Transpower sought several amendments to further clarify the relationship between the various NES's and the PMEP. It also requested a paragraph summarising that the NPS and NES on electricity transmission is incorporated into this section.[29]

**Section 42A Report**

59. The report writer agreed with Transpower's proposed wording changes to the section as they helped to clarify the MEPs relationship with NES. However, he did not recommend the inclusion of specific references to the NPSET and NESETA as these were incongruent with the section.

**Consideration**

60. The Panel acknowledges that the statutory directions in the RMA as to 'compliance' with National Policy Statements and National Environmental Standards should be expressly recorded in the Plan. There may well be further such NPS's or NES's issued during the period

[29] (1198.1)

of any appeals against the Plan provisions and for that reason the list of relevant NPS's and NES's should be expressed as being those which are current as at the date of issue of decisions by Council on the submissions.

**Decision**

61. The paragraphs under the heading 'National policy statements and national environment standards' on page 2-7 are amended as follows:

*… Other than the New Zealand Coastal Policy Statement 2010, central government has ~~three~~ four approved national policy statements:*

- *National Policy Statement on Electricity Transmission 2008;*
- *National Policy Statement for Renewable Electricity Generation 2011; ~~and~~*
- *National Policy Statement for Freshwater Management 2014; and*
- *National Policy Statement for Urban Development Capacity 2016.*

*Central government can also prepare national environmental standards: technical standards relating to the use, development and protection of natural and physical resources. Such national standards provide an opportunity to promote nationally the use of consistent standards, requirements or practices. National standards prevails over existing provisions in plans ~~that require a lesser standard~~. A rule in a plan cannot duplicate or conflict with a provision in a national standard. National environmental standards for air quality, sources of human drinking water, telecommunications facilities, electricity transmission, ~~and~~ managing contaminants in soil and plantation forestry have effect.*

## Other strategies and plans

62. FIS submission[30] suggests that there should be reference to strategies prepared under the Fisheries Act 1996.

63. The Panel agrees with the intent of the Section 42A Report and consider it is appropriate to have regard to plans and strategies prepared under the Fisheries Act in order to achieve integrated management of the indigenous biodiversity of the marine environment.

**Decision**

64. Insert additional paragraph at page 2-8 of Volume 1 at the end of paragraph 2 under the heading 'Other strategies and plans'.

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[30] (710.3)

*Strategies and plans may also be prepared under the Fisheries Act and Council will have regard to these where relevant, such as protecting significant habitats of indigenous fauna in the marine environment.*

## How to Use the MEP

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

65. The EDS submission appeared to suggest a new section was needed to describe the relationship of the various component parts of the PMEP.[31]

### Section 42A Report

66. The report writer assumed the EDS submission went this far in what it was seeking, but obviously struggled to isolate exactly what other instruments the submission related to or to tie that into the exact relief sought.

### Consideration

67. The Panel considers that the text under this sub-heading is useful in understanding how the PMEP co-ordinates all the local authority planning instruments to meet the s 80 RMA requirements. The Panel also determined that it would assist plan users if the current text was repeated at the start of both Volume 1 and Volume 2. However, the last sentence as notified read as follows:

   *In these instances, the policy is able to be changed through the private plan change process.*

68. The Panel does not agree that the statement is complete in its description of how policies can be changed, because it does not acknowledge Council's own ability to propose changes to such policies. The sentence really adds nothing of assistance and is better deleted.

### Decision

69. With the exception of the final sentence, the explanatory text under the sub-heading 'Identifying regional policy statement, regional plan, regional coastal plan and district plan provisions' (which appears under the heading 'How to Use the MEP') is to be repeated under the table of contents in both Volumes 1 and 2. The included text will read as follows:

   *Volumes 1 and 2 contain a combination of the regional policy statement, regional plan, regional coastal plan and district plan provisions. Section 80 of the RMA requires the Council*

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[31] (698.4)

*to identify within a combined document the provisions that are the regional policy statement, the regional coastal plan, the regional plan or the district plan. The Council has identified each provision in the MEP with one of the following notations: RPS (regional policy statement), C (regional coastal plan), R (regional plan) or D (district plan). In some cases, policy may have both an RPS notation and a plan notation.*

## Use of RMA terms

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.

**Avoidance**

71. This issue relates to the nine submissions on the use of an RMA term 'avoid'.[32]

**Section 42A Report**

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.

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].

74. Subsequently, PMNZ raised its concern about the use of the terms 'avoid' and 'prohibit', both in evidence[35] 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

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[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.

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.

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].

**Consideration**

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]

77. The issue arose in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*[39] (*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).

78. To understand the context the relevant requirements of the NZCPS are identified here.

> **Policy 13 Preservation of natural character**
>
> **(1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development;**
>
> **(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and**
>
> **(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character;**
>
> **including by:**
>
> **(c) (i)-(x) [criteria for determining identification of what may be outstanding]**
>
> **(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.**

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[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.

**Policy 15 Natural features and natural landscapes**

**(1) To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development;**

**(a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and**

**(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:**

**(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.**

### The statutory setting for the New Zealand Coastal Policy Statement

79. The MDC is required to prepare the RPS in accordance with its functions under s 30(1)(b) RMA. This includes (inter alia):

> **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.**

80. The definition of 'land' under s 2 RMA includes land covered by water.

81. Section 58(1) RMA relating to the contents of the NZCPS provides for (inter alia);

> **(a) national priorities for the preservation of the natural character of the coastal environment of New Zealand including inappropriate subdivision, use or development.**

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.

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]

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'.**

The Supreme Court held to 'give effect to' is to implement a requirement and 'this is a matter of firm obligation.[41]

[40] See ss 58(1)(a), s 59, s 61(1)(b) s 61(1)(da) RMA for relevant legislation.

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.

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.

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]

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]

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[41] *King Salmon* at [77].
[42] *King Salmon* at [62]
[43] Ibid at [62].

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]

90. To summarise the qualifications around the word 'avoid':

- 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).

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

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[44] Section 6 RMA and the NZCPS policies.
[45] See *Man O War*.
[46] *Man O War*, page 8.

areas of the PMEP where such 'outstanding' characteristics and significant amenity effects are not identified.

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.

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.

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 word in the Plan. Accordingly the RMA terms section of the Plan does not add anything to the statutory and plan definitions.

**Decision**

95. The 'Use of RMA terms' section in the Plan is deleted.

## Volume 2 Introduction: Structure of Rules

96. This issue relates to the submissions on the structure of the rules including activity status and classification, layout and legal effects.

97. Submissions on this subject[47] addressed:

- A simplification of the rules so that the permitted activity standards are permitted alongside the name of the permitted activity as they were in the last plan.
- Utilisation of all six activity classes in the RMA (permitted to prohibited).
- Permitted activity standards to be revised and simplified to focus on adverse effects; and prohibited activity status only used when an activity is to be avoided and a robust s 32 analysis undertaken.
- Bundling regional rules can be confusing.[48]
- Requiring the status of a land use activity that is not provided for should default to a permitted activity status; also rules to specify the policies that need to be referred to.

[47] Department of Conservation, the Oil Companies, Fulton Hogan, EDS, Federated Farmers, NMSF, NZDF, NZTA, Forest & Bird.
[48] NZTA (1002.289-293). Originally submitted under General Submissions on all of the MEP and Issue 2 Structure, Section 42A Report, page 7. This has already been resolved.

- Requiring a listed assessment criterion for all controlled, restricted discretionary and discretionary activities; defined terms to be italicised.
- Providing for a non-complying status in the MEP.
- Amending rules to avoid duplication.
- The fact that the MEP lists the activities and then relists them with standards for each activity listed beneath which makes for unnecessary duplication.
- Listing activity and specific standards under the rule that they directly relate to, or use cross-referencing;
- All regional rules are provided for within the General chapter and identify words defined in Chapter 5 by an asterisk or similar.
- Correcting the recurrent reference in the permitted activity rule introduction statement 'unless expressly limited elsewhere by a rule in the MEP'.
- Recognising rules having immediate legal effect should have tables at the beginning of chapters with rule name as well as section headings, and rule numbers should be inserted to make the tables more useful or delete the summary table and identify the provisions by other means.
- Recognising that there are standards that generally apply to all permitted activities and standards that apply to specific permitted activities and that these are set out in separate lists. The standards that apply to specific permitted activities should have the same headings as the permitted activities to allow for ease of identification.

**Section 42A Report**

98. The Section 42A Report acknowledges there will always be variations in the way plans are presented.[49] The merging of the RPS and district, regional and coastal plans is seen as an innovative (and more efficient) way of proceeding. And a number of such plans already exist—the Auckland Unitary Plan, for example.

99. Chapter 1, Volume 2 provides a comprehensive outline on how the PMEP should be read in terms of its integrated nature (including identifying district and regional rules) and rules that have immediate effect. Careful reading of this assists in the interpretation of the plan. The inclusion of all rules (except for General Rules) in a zone provides a 'one stop shop' (rather than, for example, all the regional rules in one chapter) and reduces the need to refer to separate chapters.

[49] Section 42A Report, page 13

100. Potentially the standards could be included with the activity rather than separately stated but this could lead to repetition. As discussed in the submissions of NZDF and NZTA, it is recommended in the report that further explanation is added to the Introduction in Volume 2 to better describe the linkages.

101. The PMEP utilises all activity classifications except for non-complying activities. Generally activities are either permitted or discretionary. There is nothing in the RMA that precludes such an approach, and this simplifies interpretation and layout. He observes that MDC retains the discretion to refuse applications under a discretionary activity status, and in particular highlights the importance of the objectives and policies in the PMEP when determining applications. Further, the suggestion by one submitter that the consent status of a land use activity that is not listed defaults to a permitted activity status, would mean that MDC would be unable to manage unspecified activities. Such an approach is more suitable for an effects-based plan rather than activities-based plan such as the MEP.

102. In terms of identifying words in the text that are included in Volume 2's Definitions chapter, the report writer considers a more generic approach is appropriate, as discussed in Definitions on page 1-4 of Volume 2. As to the rules having immediate legal effect, these are to be removed upon notification of decisions so there is little point in amending them.

**Consideration and decisions**

103. The fact that the Plan utilises all activity classifications except for non-complying gave rise to some consideration. The indication from some submissions is that non-complying status is seen as a fail-safe option or as missing an opportunity to reflect a policy direction that activities are not appropriate in a zone.

104. It is noted that 68(5)(e) RMA states:

> **68(5) A rule may –**
>
> **…**
>
> **(e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.**

105. Thus the word 'may' indicates that a rule for this category of activity is not mandatory. A non-complying activity is defined as:

> **87A(5) If an activity <u>is described</u> in this Act, regulations (including a national environmental standard), a plan, or a proposed plan as a non-complying activity, a resource consent is required for the activity and the consent authority may - …**

(Own emphasis added)

106. The Panel notes that the plan controls activities and not effects. Non-complying status particularly addresses effects and therefore does not naturally fit into the structure of the notified plan.

107. The Panel is of the view that for an activity to be described as a non-complying activity requires consideration of the factual context in which that activity is being considered. The notified version of the Plan has taken a stance that non-complying activity status is not warranted. There are specific requests by various submitters for non-complying activity status to be described in particular factual settings. Those will be discussed later in the decision in the relevant topics.

108. A decision on status in a general sense is not required at this stage.

109. As indicated in the Section 42A Report, the layout of the rules is not dissimilar to the existing plans and accordingly there is some familiarity for readers. In the Panel's assessment, tabs identifying each chapter would be very helpful for the user.

110. The PMEP is likely to benefit from cross-referencing the permitted activities with the specific standards and we agree with the amendment identified below, provided by the report writer:

> 'Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan ...'[50]

111. As discussed earlier in the decisions, we also agree that the following is added to 'Permitted Activities' on page 1-2 of Volume 2:

> 'There are standards that generally apply to all permitted activities and standards that apply to specific permitted activities which are set out in separate lists. The standards that apply to specific permitted activities have the same headings as the permitted activities to allow for ease of identification.'

112. That 2.7 Permitted Activities on page 2-11 of Volume 2 is amended by the following:

> 'Unless expressly limited elsewhere by rule a in the Marlborough Environmental Plan (the Plan), the following activities, including the associated discharge of sediment,

[50] NZTA (1002.295)

shall be permitted without resource consent where they comply with the applicable standards in 2.8 and 2.9.'

113. As pointed out in the Section 42A Report, the layout of the rules is not dissimilar to existing plans and accordingly there is some similarity for users.

114. Further, many of the submissions lack specificity and the rules (so far identified) comply with the provisions of the RMA apart from cross-referencing.[51]

115. The submissions seeking non-complying activity status as a general matter throughout the Plan are rejected.

116. Other than indicated in previous decisions, all other submissions on the Structure of Rules are rejected.

## Mapping

117. The amendments sought by the relevant submitters include:

- requests for clarification that the planning maps, including demarcated landscapes and the coastal environment line have the status of District Plan Maps and can be amended in response to submissions;
- the colour palette of the maps is amended to assist with zone identification;
- an index system linking individual maps to a page number;
- navigation within hard copy of overlay maps is difficult and page numbers and sequential numbering of overlays are suggested;
- scale of maps in hard copy make it difficult to navigate around, for example, the flood hazard overlays which do have place names have a scale of 1:50,000 whereas providing this detail on the landscape or natural character maps which have large scale maps of 1:220,000 and 1:200,000 is more problematic;
- there is no cross-zoning to allow for business growth;
- there is no provision for residential service retail;
- that the overlays have place names to better orientate plan users.

### Section 42A Report

118. The Section 42A Report indicates that it is not a matter whether there are District Plan Maps given the document is a combined one. All the documents in Volume 4 can be considered maps which have the force of a provision in the Plan and accordingly are subject to

[51] As set out in the Section 42A Report: Permitted Activities, page 1-2 Volume 2.

amendment by submission. The Introduction makes it clear that Volume 4 forms part of the Plan.[52]

119. The accuracy of the overlay maps will be addressed in response to the individual submissions that are made.

120. In terms of the coastal environment line, it is the report writer's understanding that the key stakeholders were consulted in its identification. A methodology was followed to establish the line and this discussed in Chapter 6 Natural Character – particularly Issue 6A, Objective 6.1 and Policy 6.1.2).

121. Meanwhile there is a table of contents, the planning maps are in sequential order and an index of places, roads etc is in place. Tabs for each individual set of overlays are acknowledged as a welcome addition to the Plan.

**Consideration**

122. With respect to the several concerns of the Marlborough Chamber of Commerce, the scale of the maps appears to be satisfactory as individual lots are marked by cadastral boundaries. In addition, all the zoning and overlay maps are available as a Marlborough District Council Smart Maps which allow the user to zoom in on each layer.

123. The Plan is also informed by the Growing Marlborough district wide strategy the critical analysis of which identified the need for additional business land. The Section 32 Report for Topic 12: Urban Environments identifies that there is sufficient land for both business and industrial development[53] (either through infill or new development).

124. It is also the Panel's view that there is nothing provided by the Chamber of Commerce to indicate that there is a need for additional business land. The Business 2 zoning relates to local neighbourhood shops while Policy 12.5.2 recognises localised shopping and service functions that are designed to meet the needs of the surrounding residential areas.

125. We agree with the report writer's opinion that the issue of whether areas for local shops should be rezoned in new residential areas should be market/developer led. Local shops are discretionary activities in residential zones. No evidence to support that submission was provided at the hearing of the Urban Environments topic.

[52] MEP Volume 1 Introduction; Volume 4, page 1-5.
[53] Section 32 Report, page 25.

126. We acknowledge that some of the shadings of the various colours on the maps, such as green and brown, are similar and accept the recommendation that the MDC make the colours/shadings more distinctive when finalised (particularly as the zones are identified by colour only and not a notation on the map).

127. Other various submissions relate more specifically to Topic 6 Indigenous Biodiversity; Topic 10 Urban Environments and Topic 17 Subdivision as to further residential zoning; Topic 20 Utilities and Designations; Topic 22 Commercial and Non-Permanent Sequestration Forestry and these too will be referred to in later topics.

128. We understand that the scale of the hard copy maps dictates whether overlays can have place names to better orientate plan users. Maps produced at large scale may not be sufficient when searching for property of location specific content. The indexes provide some assistance while crucially the E-Plan enable users to zoom in on a property or locality.

**Decision**

129. The submissions by the Chamber of Commerce seeking additional business land are rejected.

130. The planning maps are to be amended by making the colours/shadings more distinctive when the maps are finalised.[54]

131. The planning maps are to be amended by providing for tabs to identify overlays when the maps are finalised.[55]

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[54] GDC Consulting (2010) Limited (410.1).
[55] NZTA (1002.278).

# Proposed Marlborough Environment Plan

## Topic 2: Marlborough's Tangata Whenua Iwi

| | |
|---|---|
| **Hearing dates:** | 20 – 21 November 2017 |
| **S42A Report Writer:** | Rachel Anderson |
| **Conflicts of Interest:** | None |
| **Interim decision:** | None |

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

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## List of Abbreviations

| | |
|---|---|
| IMP | Iwi management plan |
| IWG | Iwi working group |
| MDC | Marlborough District Council |
| NZCPS | New Zealand Coastal Policy Statement |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| RPS | Regional Policy Statement |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| HNZPT | Heritage New Zealand Pouhere Taonga |
| Hort NZ | Horticulture New Zealand |
| MFA | Marine Farming Association |
| Ngāti Kōata | |
| Ngāti Kuia | Te Rūnanga o Ngāti Kuia |
| Ngāti Rārua | Te Rūnanga o Ngāti Rārua |
| Ngāti Toa | Te Rūnanga o Toa Rangatira |
| Ngāi Tahu | Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu |
| Rangitāne | Te Rūnanga a Rangitāne o Wairau |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Maui |
| PMNZ | Port Marlborough New Zealand Limited |

**Background to Chapter 3: Marlborough's tangata whenua iwi and the RMA**

1. Section 62(1)(b) RMA requires that 'A regional policy statement must state … 'The resource management issues of significance to iwi authorities in the region'.

2. Between 10 March 2007 and 10 December 2013 MDC held 27 hui with Marlborough's tangata whenua iwi working group (IWG) comprising the eight iwi that MDC has formal relationships with - Ngāti Apa, Ngāti Kōata, Ngāti Kuia, Ngāti Rārua, Ngāti Toa, Ngāi Tahu, Rangitāne and Te Ātiawa.[1]

3. Chapter 3, Volume 1, finally emanated from the hui as the IWG sought specifically a standalone, single chapter to represent their interests rather than integrated objectives and policies throughout the document. In particular, Chapter 3 identifies issues of significance to Marlborough's tangata whenua iwi. We are advised in the Section 42A Report that the objectives and policies development in the PMEP respond to the directions from the IWG.

4. The settlement statutes of 2014 post-dating the hui required the Crown's 'Statutory Acknowledgements' to be attached to the plan. These acknowledgements encompassed broad-brush descriptive areas of significant interest to the different iwi which often overlap.

5. Now, several years later, six of the eight Marlborough tangata whenua iwi provide a number of grounds for identifying omissions, adjustments and general concerns about their future roles as identified in the PMEP. The post-settlement era has given iwi renewed confidence to address their interests as a Treaty partner and as kaitiaki iwi involved with the resources and processes administered by the MDC and encompassed within the Plan.

6. As part of our consideration the Panel queried whether a standalone Chapter 3 met the s 6 and s 7 RMA obligations to Marlborough's tangata whenua iwi as identified in those sections. We concluded, based on the general submissions and evidence provided by iwi, that 'the higher order provisions in the RPS' should, as far as possible, be 'woven throughout the rest of the plan to ensure a cohesive approach is taken by its users so that the issues identified in Chapter 3 are not read in isolation. This is the concept of the ki uta ki tai – the management of resources from the mountains to the sea.'[2]

[1] Volume 1 Chapter 3 Marlborough's Tangata Whenua Iwi, Introduction, page 3-1.
[2] Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (Ngāi Tahu) (1189) Legal Submissions dated 13 November 2017, paragraph 38.

## Deeds of Settlement[3]

7. Marlborough's tangata whenua iwi have all signed Deeds of Settlement with the Crown to address breaches of the Treaty of Waitangi/Te Tiriti o Waitangi. The historic claims of each of Marlborough's tangata whenua iwi have been settled as follows:

   - *Ngāi Tahu were settled in the 1990s, culminating in the Ngāi Tahu Claims Settlement Act 1998.*
   - *The settlements for Ngāti Apa, Ngāti Kuia, and Rangitāne are set out in the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014.*
   - *The settlements for Ngāti Kōata, Ngāti Rārua, and Te Ātiawa o Te Waka-a-Māui are set out in the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014.*
   - *The settlement for Ngāti Toa is set out in the Ngāti Toa Rangatira Claims Settlement Act 2014.*

8. In the Deeds of Settlement and associated legislation, the Crown acknowledges that it acted in repeated breach of the principles of Te Tiriti in its dealings with the respective iwi and it apologises for the hardship and suffering that this has caused. These documents also set out the means of redress for each iwi, including cultural redress. The Crown's acknowledgments and apologies are based on historical accounts as described in the applicable legislation/deed.

9. Included within each deed forming part of the respective Te Tau Ihu Claims Settlement Acts is provision for the establishment of a River and Freshwater Advisory Committee. The Advisory Committee is intended to provide a foundation for the participation of iwi with interests in Te Tau Ihu in the management of rivers and freshwater in Marlborough, Tasman and Nelson. The Advisory Committee is intended to work in a collaborative manner with the common purpose of promoting the health and wellbeing of the rivers and freshwater within the jurisdiction of the relevant councils. In undertaking its work, the Advisory Committee is required to be respectful and operate in a manner that recognises that while some resource management issues will be of generic interest to all iwi with interests in Te Tau Ihu, other issues may be of interest primarily to particular iwi.

10. As recorded in the relevant Deed and legislation, Ngāti Tama ki Te Tau Ihu have Statutory Acknowledgements within Marlborough. Prior to the Settlement, the Council understood that the rohe of Ngāti Tama ki Te Tau Ihu was fully within the Nelson/Tasman region. It is

[3] The following information is taken directly from the PMEP Introduction pages 3-2 and -3-3.

acknowledged that Ngāti Tama ki Te Tau Ihu is not referred to in Chapter 3 of the PMEP as that iwi has not been part of the consultation process. However, it is recognised that Ngāti Tama ki Te Tau Ihu is one of the Te Tau Ihu iwi by virtue of the statutory acknowledgements and therefore will be part of the Council - Te Tau Ihu iwi relationship in the future.

11. The tangata whenua iwi who identified the settlements provisions in evidence before the Panel were:

- Te Ātiawa: who asserted the Crown's apology has opened a new and unprecedented post-settlement era of relationships between Māori iwi and central and local government[4] which are ongoing.
- Ngāi Tahu: the Ngāi Tahu relationship with parts of the Marlborough district is acknowledged in the Ngāi Tahu Claims Settlement Act (NTCSA) which includes statutory acknowledgement areas, Tōpuni, dual place names and nohoanga sites. As area of crown land at Te Parinui o Whiti was vested in Te Rūnanga o Ngāi Tahu in fee simple as part of the transfer of mahinga kai properties under the NTCSA.[5]
- Ngāti Kuia: The Whakatau/Ngāti Kuia Deed of Settlement incorporates the cultural values of take ahi kaa roa. It is a core part of its cultural identity. Ngāti Kuia are identified as tangata whenua within the entire Te Tau Ihu region. Ngāti Kuia tupuna has considerable knowledge of places for gathering kai and other taonga, ways in which to use the resources of the awa and whenua, and tikanga for the proper and sustainable utilisation of resources.[6]

## River and Freshwater Advisory Committee

12. Ngāti Toa seeks to include a provision in the PMEP referring to the River and Freshwater Advisory Committee requesting provisions within the Plan to meet its legal obligations. It asserts that there is no reference to the committee in the PMEP, and that it is the responsibility of the three Te Tau Ihu councils to establish the committee as set out in the deeds. [7]

### Section 42A Report

13. It is clear from the Section 42A Report that in the deeds and associated legislation it is provided that the advisory committee is to be established by the Te Tau Ihu iwi, not the MDC. The members of the committee are drawn solely from the eight relevant iwi, and the three

[4] Te Ātiawa, Ian Shapcott Evidence, paragraphs 20-22.
[5] Ngāi Tahu (1189), Tanya Jane Stevens Evidence, paragraph 22.
[6] Ngāti Kuia (166.4) Raymond Smith Evidence, paragraph 5.
[7] Section 42A Report. River and Freshwater Advisory Committee page 15.

councils are to attend meetings at the request of the committee. The responsibility for establishing the River and Freshwater Advisory Committee does not lie with the three Te Tau Ihu councils.

**Decision**

14. The Panel accepts the Section 42A report writer's recommendation which is to reject Ngāti Toa's submission point relating to the River and Freshwater Advisory Committee.[8] This is on the grounds that the committee is to be established by Te Tau Ihu iwi, not the MDC.

## Cook Strait Forum

15. Ngāti Toa sought the following changes to Method 3.M.2:

    a) the addition of an appendix of all statutory acknowledgments.

    b) that any iwi in that appendix must be considered as an affected party on consent applications.

    This issue is addressed later in the decision. However, in the process of discussing those submission points at the hearing the Panel agreed with the submitter that acknowledgment of the existence of the Cook Strait Forum would be helpful in the Plan in ensuring an important relevant aspect of the statutory acknowledgements was recorded.

16. The Cook Strait Forum was created as part of the cultural redress for Ngāti Toa. The Forum, jointly chaired by Marlborough District Council and Wellington Regional Council, brings together local and central government, iwi and other entities with interests in Cook Strait to discuss issues of concern about Cook Strait coastal marine area and to share information.

17. As other councils are involved beyond the Marlborough District the provisions of the PMEP can only recognise the Cook Strait Forum by way of a background acknowledgement in Chapter 3.

**Decision**

18. The request by Ngāti Toa is accepted to the extent that a background statement is included in the Deeds of Settlement section in Chapter 3 at paragraph 3, as follows:

    *… will be of generic interest to all iwi with interest in Te Tau Ihu, other issues may be of interest primarily to particular iwi.*

    *The Cook Strait Forum was created as part of the cultural redress for Ngāti Toa. The Forum, jointly chaired by Marlborough District Council and Wellington Regional Council, brings*

[8] Section 42A Report, page 15.

*together local and central government, iwi and other entities with interests in Cook Strait to discuss issues of concern about Cook Strait coastal marine area and to share information.*

**Spiritual and cultural issues**[9]

19. The issues identified in the PMEP include the principles of the Treaty of Waitangi/Te Tiriti o Waitangi (Issue 3A), kaitiakitanga (Issue 3B), cultural heritage threats (Issue 3C), the mauri of natural resources (Issue 3D), accessing and using cultural resources in traditional ways (Issue 3E), provision of papakāinga (Issue 3F), the importance of consulting iwi (Issue 3H).[10]

20. These issues are seen by Marlborough's tangata whenua iwi as being of fundamental importance concerning their connection to and use of natural and physical resources.

## Issue 3A

**The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are not taken into account.**

21. The MDC is required to take into account and give effect to the principles of the Treaty of Waitangi/Te Tiriti o Waitangi in the exercise of its powers and functions under s 8 of the RMA.[11]

22. Principles of the Treaty, while not stated in the RMA, have been developed through case law and Waitangi Tribunal reports. The provisions provided in this decision are not the beginning and end of the requirement to take into account Treaty principles but are intended to assist in meeting the statutory obligations under the RMA.[12]

**Decision**

23. The issues identified here are to be reflected in other relevant chapters in the PMEP.

## Objective 3.1

**The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are taken into account in the exercise of the functions and powers under the Resource Management Act 1991.**

24. The objective identifies that Marlborough's tangata whenua iwi had developed a management system that is still increasingly practised today and is required to be taken into account within the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. The principles are guidelines to govern the relationship between Marlborough's tangata whenua iwi and the MDC. (The guidelines emanate from the findings of the principles set out in case law from the Courts and reports from the Waitangi Tribunal.)

[9] Section 42A Report, Volume 1 Chapter 3 page 3.
[10] See PMEP Volume 1 Chapter 3 pages 3-8-3-12.
[11] PMEP Volume 1 Chapter 3 page 3-8.
[12] Ngāi Tahu, T Stevens Evidence, page 11.

25. Marlborough's tangata whenua iwi nevertheless are concerned that past decision-making processes under the RMA did not sufficiently reflect the principles. Accordingly, iwi seek mechanisms whereby they can more fundamentally address the failings of the past and develop a more effective relationship with the Council.

26. Ngāti Toa[13], the submitter to this objective, seeks in part an amendment to the PMEP to make explicit what Treaty principles are implicit throughout the document. The iwi's specific concern relates to Chapter 3 where the principles of the Treaty are mentioned but no definitions are provided. Ngāti Toa did not include any added wording for the Panel to consider which may have assisted us in altering the wording of the explanation to Issue 3A or Objective 3.1.

27. Ngāi Tahu supports Objective 3.1 acknowledging that the Treaty principles have been overtly covered in Issue 3A, Objective 3.1 and Policy 3.1.1, but reflects that this identification [should] not be the end of the matter. Ngāi Tahu's drafting throughout Chapter 3 is therefore intended to assist the Council in meeting its statutory obligations in relation to these principles. For as the iwi's representative observes '[the] council's role under the Treaty is to "*give effect to the Treaty vision in the manner expressed in the Resource Management Act*."'[14]

28. In the opening pages of Chapter 3, the Council's position is set out as seen by Marlborough's tangata whenua iwi as partner to the Treaty/Te Tiriti, acknowledging that its position stems from the delegation of functions to local government to manage natural and physical resources of the region under the auspices of the RMA, as well as conferring Treaty obligations.

29. Ngāi Tahu/Ngāti Toa submitted/stated in evidence 'It is the position of Marlborough's tangata whenua iwi that the Council is a partner to Te Tiriti. This position stems from the delegation of functions for managing natural and physical resources to local government through the RMA.'[15] The iwi consider that this obligation also confers Te Tiriti obligations.

30. It is the Council's position, however, that the Crown alone is partner to the Treaty of Waitangi/Te Tiriti o Waitangi. The Council emphasises nevertheless it has its own obligations to Marlborough's tangata whenua iwi.[16] This results in it providing resources relating to the

[13] Ngāti Toa (166.1).
[14] Ngāi Tahu Legal Submissions, paragraph 42 citing *Ngāti Maru Ki Hauraki Inc v Kruithof and Thames-Coromandel District Council* HC Hamilton CIV 2004-485-330, 11 June 2004 at [57].
[15] PMEP, Chapter 3, page 3-1
[16] PMEP, Chapter 3, page 3-2

provisions of the RMA to support particular cultural concerns (s 5, 6, 7 and 8) and with these, developing a consultative relationship in carrying out the Council's management functions.

31. In establishing some understanding of the Treaty principles, MDC at the outset of the chapter identifies six principles that have emerged from the Courts and the Waitangi Tribunal processes that apply to its functions under the RMA:

- *the obligation to act reasonably and in good faith*
- *[recognition of] rangatiratanga*
- *a duty to consult*
- *active protection*
- *partnership*
- *mutual benefit.*

32. The Plan has thus been prepared in the spirit of Te Tiriti and its principles.[17] The point is also made that the list above is not definitive. The principles are constantly evolving as the Treaty is applied to existing and new situations. Nor are specific principles always directly applicable to the range of circumstances that might arise under the RMA.[18] Both it and Marlborough's tangata whenua iwi need to continue to consult and negotiate with each other as to how the principles of Treaty of Waitangi/Te Tiriti o Waitangi should apply to continuing resource management in the region.

**Decision**

33. The Panel acknowledges that the identification of the Treaty of Waitangi/Te Tiriti o Waitangi at the outset of Chapter 3, provides a cloak of principles under which the MDC expects to operate in its ongoing partnership relationships with Marlborough's tangata whenua iwi. Objective 3.1 directly reflects the requirement as set out in s 8 of the RMA and is supported with no change to its provisions.

## Kaitiakitanga

## Issue 3B

**Regard is not given to kaitiakitanga and the ability of Marlborough's tangata whenua iwi to exercise kaitiakitanga is not enabled.**

34. 'Kaitiakitanga' is defined in s 2 of the RMA as:

[17] PMEP Volume 1 Chapter 3 page 3-2.
[18] Ibid pages 3-1-3.2.

*'the exercise of guardianship by tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.'*

35. Under s 6(e) RMA the MDC has a duty to recognise the relationship iwi have with, inter alia, their ancestral lands and waters while under s 7(a) the MDC is required to have particular regard to kaitiakitanga.

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

*'Kaitiakitanga, the environmental guardianship practiced by Marlborough's tangata whenua iwi, has its foundation in the world view that all life and elements within the natural world that support life are connected. As a community we also recognise the existence and importance of these connections. Integrated management attempts to acknowledge and provide for the interconnectedness of natural and physical resources within our environment.'*[19]

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

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

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

## Objective 3.2

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

40. This objective attracted five submissions. HNZPT, FNHTB, PMNZ and Trustpower,[20] all of which seek retention of the provision as notified. The fifth submission from Ngāi Tahu[21] seeks retention of the provision, but with an amendment. This amendment by Ngāi Tahu addresses s 7 of the RMA.

[19] PMEP Volume 1, page 2-2.
[20] HNZPT (768.6), FNHTB (716.16), Trustpower (1201.6).
[21] Ngāi Tahu (1189.14).

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

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

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

**Section 42A Report**

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

44. The report writer is not so confident, however, about the further amendment to the change 'accommodate tikanga Māori' to '*enables'* tikanga Māori. For the PMEP as a whole generally uses the word 'enable' as a signal that there are Permitted Activity provisions giving effect to such references – resulting in potential confusion for users. The word 'accommodate' has a less active intent and does not necessarily signal action would be taken to facilitate something. 'Section 7 RMA requires the Council to manage the use, development of natural resources having particular regard to kaitiakitanga – does this *enable* tikanga?'[22]

**Consideration**

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

46. The phrase 'tikanga Māori' relates to 'Māori customs and practices'.[23] Ms Hariata Kahu for Ngāi Tahu provided a careful explanation of one of these cultural customs and practices. In her brief of evidence she shares her understanding of several cultural values that apply to realms of cultural and natural resource management.[24] That understanding includes

[22] Section 42A Report, page 9.
[23] Section 2 RMA Interpretation.
[24] Ngāi Tahu Summary Statement, PMEP Hearings 20 November 2017. Ms Kahu is Chairperson of Te Runanga Kaikōura Inc which represents the interests of Ngāti Kuri. Ms Kahu has direct links to significant Ngāi Tahu.

kaitiakitanga which embodies for Ngāti Kuri the responsible management of resources. Ms Kahu shares her knowledge as follows:

> *'Although it is a responsibility for all Māori to practice kaitiakitanga, the role of kaitiaki (authorised guardian) is often placed upon appointed mātauranga/tohunga trained individuals and is handed down from one generation to the next. Kaitiaki are the monitors of resource health and wellbeing. Kaitiaki are entrusted with the mātauranga which enables them to interpret signs in the environment, such as environmental indicator species or natural events that can be utilised to understand the changing ecology. Kaitiakitanga in the resource management context means maintaining and enhancing the integrity of life -sustaining the resources we all depend on to survive. While the role of kaitiaki has evolved* ***to accommodate contemporary resource management processes, we are still guided and remain true to our cultural foundations based on mauri and mātauranga****.'* [Our emphasis]

47. With reference to Ngāi Tahu's suggested amendment, there is a fine line between 'accommodates' and 'enables'. Both kaitiakitanga and the exercise of tikanga Māori are living, existing iwi cultural concepts. They endure/exist in the environment as positive cultural forces. The MDC is required to pay them particular regard through the relevant s 7 RMA provisions in its management of the region's natural and physical resources – either by reconciling differences or adapting them to suit the cultural purpose relating to the resource.

48. 'Accommodate' requires adaptation, harmonization, reconciliation. 'Enables' provides someone with the means or authority to do something.[25] It can mean promote or assist.

49. The manner of MDC's management of the region's resources should not 'enable' tikanga Māori, for it suggests a measure of control to be switched on and off by the Council to grant the tangata whenua iwi the means or authority to exercise kaitiakitanga (even if that is not meant), after giving the position particular regard. On the other hand, the word 'accommodates' implies a consistent recognised existence of guardianship of Marlborough's tangata whenua iwi absorbed into the Council's process of managing Marlborough's resources.

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

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

**Decision**

51. Objective 3.2 is amended to read:

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

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

## [New] Objective 3.2

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

53. In response to the hearing and evidence presented, the report writer considered that adding specific provisions at potentially all levels to provide for/recognise kaitiakitanga could be provided.[26] Ngāti Toa[27] seeks a new objective for that purpose to include kaitiakitanga. Policy 3.1.3 provides for kaitiakitanga at a policy level with regard to resource consents. The Section 42A Report recommends that this be rejected as it is iwi who practise kaitiakitanga and the value does not need to be included in policies, methods, rules. Ngāi Tahu[28] in response considers that s 7(a) of the RMA supports a planning approach whereby kaitiakitanga is enabled throughout a plan. Kaitiaki cannot care for the environment if their views, issues or concerns do not form part of the process. A specific objective would facilitate this. Ngāi Tahu proposes the following:

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

54. The Panel reviewed the issue of kaitiakitanga again in the light of iwi concerns that kaitiakitanga is not reflected throughout the plan as they would like. The Panel accepts the

[26] Section 42A Report, Consideration of Evidence Received for Marlborough's Tangata Whenua Iwi Hearing 12 November 2018, page 1.
[27] Ngāti Toa (166.4).
[28] Ngāi Tahu Tanya Jane Stevens Evidence, paragraphs 67-70.

relief sought by Ngāi Tahu. A new Objective 3.2 places emphasis on the development and maintenance of the relationship between the Council and iwi authorities.

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

**Decision**

56. The Panel considered all these issues and took up the iwi suggestions to provide an extra objective to address concerns relating to the management of natural and physical resources in the context of Māori spiritual and cultural values. The new objective is to be included at Objective 3.2 and is to read as follows:

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

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

## Issue 3D

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

57. The opening paragraph of Issue 3D identifies that *mauri* is the life force existing in all things in the natural world, comprising both physical and spiritual qualities. Iwi consider mauri within *all* natural resources must be protected and sustained if the environment is to flourish. As identified, under Issue 3B the responsibility of kaitiaki is twofold. The first is to protect mauri, and secondly there is a duty to pass the environment in a sound state to future generations.[29]

58. The explanation to Issue 3D refers to the importance of 'water bodies' as being particularly significant to Marlborough's tangata whenua iwi. Te Ātiawa in its submission seeks to amend the term by replacing it with 'coastal waters' as they assert 'coastal waterbodies' is defined in the RMA as only including 'fresh water'. The iwi is unclear as a result whether the term 'fresh

[29] PMEP Volume 1 Chapter 3 Matter 2 Issue 3D.

water' extends to 'natural resources' and that, as it stands, the use of 'fresh water' limits any reference to 'coastal water' which is an integral part of Te Ātiawa's guardianship.

59. The report writer considers referencing *coastal waterbodies* as suggested is confusing as a waterbody under the RMA is only freshwater. The Section 42A Report indicates why Issue 3D as notified should be retained:

- *If the definition of 'waterbody' in the RMA is relied on then so should the term 'natural resources' which refers to all water without limitation, that is, as including coastal water.*
- *There are two further references in the Section 42A Report to 'any discharge of contaminants into fresh or coastal waters' and discharge of human sewage and stock effluent to 'water' without limitation to 'fresh water'.*

60. It is recommended that Te Ātiawa's submission should be rejected on the grounds that these references in the issue are enough to draw attention to the fact that coastal waters are part of the iwi's natural resources. In its written evidence, Te Ātiawa offered no further specific wording to amend the reference.

61. Te Ātiawa submitted specific wording change in its evidence at the hearing which clarified its position in favour of a change to Issue 3D.[30] It now agrees to an amendment in the first sentence of the explanation by the inclusion of '*both fresh and coastal*' waters.

**Consideration**

62. The word 'water' has an extended meaning in s 2 of the RMA and identifies at s 2(b) 'fresh water, coastal water', as well as 'geothermal water'. Te Ātiawa has statutory authority as a kaitiaki of part of the Queen Charlotte Sound's water resources (both fresh and coastal) with which it therefore has a special relationship. Marlborough's other tangata whenua iwi are also keen to see that references to iwi issues are scattered throughout the document to provide a stronger integrated resource management system of the region's natural resources in which they are involved. While iwi realise coastal issues in which they have an interest are dealt with in Chapter 13 of the notified plan, they want to approach the RPS in a holistic way.[31]

63. We concluded that the definition in s 2 RMA is more appropriate given Te Ātiawa's strong relationship with coastal waters and the coast. The PMEP also identifies the importance of the

[30] Te Ātiawa (1186.37), Ian Shapcott Evidence dated 6.11.17.
[31] Later iwi submissions to the PMEP suggest bringing up coastal issues into the RPS and then throughout the document.

coast to iwi at the outset of Chapter 3 instead of being just specifically referred to in Chapter 13.

64. Moreover, the Panel considers that Te Ātiawa's amending evidence causes some confusion, as is pointed out by the report writer. To amend the wording in the explanation to this Issue, a straightforward solution requires only a small adjustment by supplanting the current wording with '*Freshwater bodies and coastal waters'.*

**Decision**

65. Te Ātiawa's submission and evidence amending the explanation to Issue 3D is accepted to the extent as further amended by the report writer after the Panel hearing on 6 November 2017. Paragraph two now begins:

*Freshwater bodies and coastal waters* ~~*Water bodies*~~ *are particularly significant to Marlborough's tangata whenua iwi. …*

## Issue 3F

### The provision of papakāinga

66. Issue 3F received two submissions in support, from Ngāi Tahu[32] and FNHTB[33]. Ngāti Toa sought for papakāinga to not be limited to Māori land only[34].

**Consideration**

67. MDC's earlier Section 32 Report states that Objective 3.5 (see above) provides a clear directive from the IWG to address a resource management issue of significance under the PMEP, especially Issue F which relates to papakāinga.[35] The definition of 'papakāinga development' is contained in the New Zealand Coastal Policy Statement 2010 (NZCPS), as 'Development of communal land on ancestral land owned by Māori'.

68. In Marlborough particular iwi and/or whanau retain culturally some limited but significant parcels of Māori land, particularly in the Marlborough Sounds and the vicinity of Wairau Pa. It is land held in multiple ownership and in most cases is not developed, or is developed in a minimal way by its owners. The issue identifies that enabling development of Māori land is directly connected with marae and papakāinga. Māori have a special spiritual and cultural attachment to this land described as 'Māori land'. Te Ture Whenua Act 1993 defines what

[32] Ngāi Tahu (1189.3).
[33] FNHTB (716.5).
[34] (166.15)
[35] PMEP Volume 1 Chapter 3 pages 3-11-12.

constitutes 'Māori land' as land that is regarded as Māori land in terms of that legislation including multiply-owned Māori land and customary land.

69. There is a strong desire among Marlborough's tangata whenua iwi to provide papakāinga. Some land was returned to iwi through settlement processes and is freehold. Freehold title is regarded by Marlborough's tangata whenua iwi as Māori owned land. There are aspirations to exercise rangatiratanga over this land for the betterment of whanau or iwi members. The intention is to develop a small number of houses through to small settlements providing for kaumatua housing, cottage industries, te reo learning facilities. Reference is made to the fact that iwi recognise that their developments need to be mindful of the effects of papakāinga on the surrounding environment such as provisions for water supply and sewage disposal.

**Decision**

70. The first sentence of the explanation is amended to read as follows:

*In Marlborough, particular iwi and/or whānau retain culturally significant tracts of land, for example in the Marlborough Sounds and in the vicinity of Wairau Pā.*

## Objective 3.4

**Opportunities for development on Māori land that meet the needs of landowners and respects the relationship of Marlborough's tangata whenua iwi with lands, water, significant sites and waahi tapu**

71. This objective attracted four submissions. HNZPT and FNHTB[36] seek retention of the provision as notified but with an amendment. The reasons given for their positions include acknowledgement of the right of iwi to develop their ancestral lands within the opportunities provided by ss 6(e), 7(a) and s 8 of the RMA. Ngāti Toa also supports the objective, but with an amendment that seeks the development of papakāinga not to be limited to Māori land only.[37]

72. Ngāti Kuia through Te Whakatu[38] queries what is 'Māori land' in an appearance in support at the hearing. Through the 2014 settlement the iwi received 'cultural redress and commercial properties that are suitable for papakāinga including location, facilities and resources'. The MDC is urged to allow the development on all settlement land, Māori land, whānau whenua and some general land (with customary/cultural history) (for example Anakoha) in order to achieve the potential of the land for the cultural, social, environmental and economic wellbeing of Marlborough's tangata whenua iwi. Limiting the land and activities to which the

[36] HNZPT (768.8), FNHTB (716.18), Ngāi Tahu (1189.16).
[37] Ngāti Toa (166.15).
[38] Te Rūnanga o Ngāti Kuia, Raymond Smith, Evidence, page 2. 'Te Whakatu' is the name of Ngāti Kuia kerēma that have resulted in partial redress of the grievances of Ngāti Kuia in the settlements and has provided some opportunities moving into the 'post settlement world'.

permitted activity status applies does not achieve Objective 3.4. Ngāti Kuia did not specifically refer to that in their submission.

**Section 42A Report**

73. Marlborough's tangata whenua iwi consider that planning policies and rules within former resource management plans have limited how they are able to use their own land.[39]

74. Objective 3.4 is seen by the Council, however, as aiming to strengthen the traditional relationship of Marlborough's tangata whenua iwi with land, water and significant sites by accommodating activities to occur on ***their*** land including papakāinga, marae, cultural activities, cultural use. [Emphasis added.] This will assist in social, cultural and economic development.

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

**Consideration**

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

**Decision**

77. Objective 3.4 remains as notified.

## Objective 3.5

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

78. Objective 3.5 attracted three submissions.[40] HNZPT and FNHTB seek retention of the provision, as notified, with Ngāi Tahu supporting the provision subject to amendments. These particular amendments sought are:

[39] Section 42A Report. Matter 4 Opportunities for development on Māori land, page 18.
[40] HNZPT (768.9), FNHTB (716.19), Ngāi Tahu (1189.17).

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

79. The reasons given for the amendments are that, based on the explanation to the objective, they provide greater clarity to plan users and the outcome sought through this objective. And, that the wording 'involve Marlborough's tangata whenua iwi' has been proposed because as without iwi involvement, it will be difficult to give consideration to/recognise and reflect their cultural values. And finally, the wording as to their relationship with lands and water waahi tapu and waahi toanga is also included as many key decisions will relate to s 6(e) RMA matters which will require the insight, views and guidance of iwi.

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

**Section 42A Report**

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

- *The objective would change from considering iwi values in the decision-making process to having iwi involved in making it.*
- *The explanation to the objective includes discussion on iwi involvement at a plan writing level in the implementation monitoring of the Plan, and it also references ongoing involvement in decision-making processes; this suggests iwi would be involved in all decision-making processes following such a high-level directive.*
- *The explanation to the objective is seen by the report writer as somewhat ambiguous, and she considered the wording of (related) Policy 3.1.3. That sets out the matters decision makers must consider – that is, if the application is likely to affect the relationship of iwi and their culture and traditions.*

- *This process then triggers the provisional involvement that is provided for in Method 3.M.7 Decision making processes - which states, depending on the circumstances, a commissioner with expertise in tikanga Māori will be appointed to a committee charged with hearing and deciding an application. The Council will support iwi members to be certified commissioners and provide opportunities for the tangata whenua to become involved.*

82. The report writer is not convinced about that part of the Ngāi Tahu amendment seeking reference to certified commissioners charged with hearing applications is appropriate. It may establish an objective that gives iwi greater involvement in decision-making than intended. She is also concerned with the proposed change in wording from '*give particular consideration*' to '*recognise and reflect*'. The existing wording of the current objective seeks a consideration of values which leaves room for a determination that there may be none. It seems to be a move away from an objective with discretion (see also Policy 3.1.3) to one that is more absolute.

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

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

**Consideration**

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

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

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

**Decision**

87. The Ngāi Tahu submission is accepted in part as is that of PMNZ[41] with the deletion of the word 'reflect'. HNZPT and the FNHTB submissions are also accepted in part to the extent that parts of the objective not amended are retained as notified.

88. Objective 3.5 is amended as follows:

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

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

*<u>This can be achieved through Mana Whakahono ā Rohe agreements.</u>*

## Policy 3.1.1

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

90. This policy reflects how management of resources will be carried out in relation to Marlborough's tangata whenua iwi.

91. Submitters to this policy included FNHTB,[42] Ngāi Tahu[43] and Ngāti Toa[44] in part, Federated Farmers,[45] Trustpower Ltd[46] and the Fishing Industry.[47] FNHTB seek retention of the provision Policy 3.1.1 as notified. Ngāi Tahu[48] seeks minor wording changes that in its view correct the drafting of Policy 3.1.1 which it believes reads more like an objective. Federated Farmers also support the policy in part and seek amendments.[49]

92. Ngāti Toa seeks the addition of a new part (f) to Policy 3.1.1 which recognises that the principle of consultation requires both parties to have the time and resources to consult appropriately.

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[41] PMNZ (433).
[42] FNHTB (716.20).
[43] Ngāi Tahu (1189.18).
[44] Ngāti Toa (166.1).
[45] Federated Farmers (425.3).
[46] Trustpower (1201.1)
[47] This is the name under which a large number of interests are gathered.
[48] Ngāi Tahu (1189.18).
[49] Federated Farmers (425.3).

93. Federated Farmers seek also to delete part (d) from Policy 3.1.1 which relates to recognition of the rights of tangata whenua and the status of iwi as distinct from that of interest groups and members of the public. The organisation also considers that (d) is a duplicate of (a) that relates to taking Te Tiriti into account. And in any case the submitter has doubts that iwi do have a higher status than any other party under the RMA.

94. Trustpower initially sought to delete part (e) from Policy 3.1.1 - the right of iwi to define their own preference for sustainable management of natural and physical resources where their preference is not inconsistent with the RMA. The company considers that (e), as it stands infers that iwi will define what constitutes management of natural and physical resources when that is actually the role for decision-makers on resource consent applications and statutory planning documents. Further, it says the policy incorrectly suggests that the sustainable management of natural and physical resources will be achieved where activities are 'not consistent' with the RMA.

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

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

**Section 42A Report**

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

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

99. At the hearing Ngāi Tahu offered two new methods in its evidence – raising and promoting the awareness of Te Tiriti for decision-makers, and with regard to IMP, recognising the right of iwi to state their preferences in relation to environmental management. The first suggestion is for the MDC to develop a training course for all councillors and decision-makers; the second is for

the Council to work with iwi in developing management plans to better enable iwi to participate in RMA processes. Ngāi Tahu recognises that there will be costs associated with both methods to be borne by Council. While these do not need to be unreasonable they are said to be necessary to the Council's particular obligation to iwi.[50]

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

101. With regard to the issues raised by Ngāti Toa as to time and resources to consult appropriately, the Section 42A Report indicates these are linked to the partnerships to be developed between iwi and the Council (Method 3.M.1). This method also contains scope to consider time and resources when expressing how partnerships will manifest themselves, while Method 3.M.4 references cultural impact assessments and cultural value reports, which under 3.M.6 are the responsibility of applicants in terms of costs. Through the IWG process Council already provides resourcing in the Long Term Plan and Annual Plan. The report writer acknowledges that while time and resourcing for iwi is generally recognised as being an issue that needs to be addressed, it is not appropriate to reference funding in the manner sought. It may be interpreted that Council itself will fund consultation and implies it is promising something that may not be able to be delivered.

102. The report writer considered Trustpower's submission as follows:

> *I am comfortable with some of the amended text offered, that which related to plans/documents, however I disagree with the deletion of the part of (e) referring to the RMA. It appeared that the submitter was confused by the language. To understand the full meaning of part (e), it needs to be read in context of the whole policy, i.e. "Management of natural and physical resources in Marlborough will be carried out in a manner that … recognises the right of each iwi to define their own preferences for the sustainable management of natural and physical resources, where this is not inconsistent with the RMA". So, if the preferences of an iwi are not consistent with the RMA, then management of a natural or physical resource would not be carried in the way preferred by the iwi concerned.*

103. At the hearing Trustpower no longer sought deletion of part (e) but offered amended wording to clarify, and addressed the matter raised about the interpretation of how the reference to

[50] Ngāi Tahu, Tanya Jane Stevens Evidence, paragraphs 71-78.

not be inconsistent with the Resource Management Act 1991 is to be interpreted. The report writer recommends that the amended text for Policy 3.1.1(e) be accepted in part with (e) amended as follows:

> *(e) recognises the right of each iwi to define their own preferences, <u>through management plans and other documents</u>, for the sustainable management of natural and physical resources, where this is not inconsistent with the Resource Management Act 1991.*

**Consideration**

104. We revisited Ngāi Tahu's original submission suggesting minor amendments to Policy 3.1.1(a)-(e) to make it more directive/clearer, and particularly to incorporate the amendment sought by Ngāti Toa in italics which the report writer recommends. We agree with these amendments, as set out below. In addition, Trustpower's amendment is a practical addition to Policy 3.1.1(e) and we accept its qualifying statement as assisting general understanding of how the management of resources by iwi may be identified. We also consider that the reference to the RMA in the policy is essential in order also to understand the bounds of iwi preferences.

105. As to Federated Farmers' challenge to the status of iwi under the RMA, Ngāi Tahu are of the opinion that (d) is consistent with s 8 RMA. We are very clear that the references to the Treaty in ss 6, 7 and 8 together with the numerous provisions relating to the Statutory Acknowledgements provide iwi with a status in keeping with the undertakings made by the Crown when it signed the Treaty of Waitangi in 1840 and Article Two of that Treaty. The Council is required to take these into account in its decision-making management.[51]

106. The Panel are also cognisant of recent amendments to the RMA which provide for the inclusion Mana Whakahono ā Rohe agreements at the request of iwi authorities which must be responded to by local authorities. That reality needs to be identified in issue 3G by addition at the end of the explanatory statement of an acknowledgement of the right of iwi authorities to now seek Mana Whakahono ā Rohe agreements. A similar recognition needs to be inserted as an addition to the explanatory statement in Objective 3.5 and as an additional policy in 3.1.1.

**Decision**

107. The submission of FNHTB is accepted in part to the extent that parts of the policy not amended below are retained as notified.

[51] Marlborough Environment Plan, Chapter 3, pages 3.1-2.

108. Ngāi Tahu's and Ngāti Toa's minor amendments to Policy 3.1.1(a)-(e) are accepted as set out below, as is Trustpower's clarification to Policy 3.1.1(e). The policy now reads:

*Policy 3.1.1 – Management of natural and physical resources in Marlborough will be carried out ~~in a manner that~~ by:*

*(a) ~~takes~~ taking into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, including kāwanatanga, rangatiratanga, partnership, active protection of natural resources and spiritual recognition;*

*(b) ~~recognises~~ recognising that the way in which the principles of the Treaty of Waitangi/Te Tiriti o Waitangi will be applied will continue to evolve;*

*(c) ~~promotes~~ promoting awareness and understanding of the Marlborough District Council's obligations under the Resource Management Act 1991 regarding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi among Council decision makers, staff and the community;*

*(d) ~~recognises~~ recognising that tangata whenua have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the Resource Management Act 1991 accords iwi a status distinct from that of interest groups and members of the public; and*

*(e) ~~recognises~~ recognising the right of each iwi to define their own preferences through management plans and other documents for the sustainable management of natural and physical resources, where this is not inconsistent with the Resource Management Act 1991.*

*(f) recognising the right of iwi to invite the Council to enter into mana whakahono ā rohe agreements.*

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

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

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

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

### Policy 3.1.2

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

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

112. Marlborough's tangata whenua iwi have the detailed knowledge of their ancestral lands, water, knowledge of their customs, their sacred places, their taonga. The significance of consultation in that regard is that the MDC acknowledges it has obligations to Māori as a result of the provisions of the RMA, especially through ss 6, 7 and 8. This includes applying one of the principles of the Treaty of Waitangi/Te Tiriti o Waitangi – the importance of early consultation.[52]

113. The word 'expects' in Policy 3.1.2 generated a number of submissions from Ngāi Tahu and Ngāti Toa for iwi, Friends for the Community, and the remainder from industry and the primary sector.

114. Ngāi Tahu,[53] FNHTB,[54] and KiwiRail[55] seek the retention of the policy as notified. KiwiRail also seeks the retention of Method 3.M.4 Consultation as notified. PMNZ, Trustpower, Ravensdown Ltd, Hort NZ, and the Oil Companies,[56] with the exception of Federated Farmers, all support an amended policy with some differing variations/amendments. Parts of the Ngāi Tahu and Oil Companies' submissions seek new policies.

115. Ngāi Tahu considers that the policy to consult early with iwi is an appropriate expectation consistent with best practice. It observed, however, that the policy is directed only at applicants, whereas they assert the MDC have a partnership relationship (implying the need for consultation) arising from the Treaty principles extant in s 8 RMA and its duties generally

[52] PMEP Volume 1 Chapter 3, Policy 3.1.2, page 3-15.
[53] Ngāi Tahu (1189.19).
[54] FNHTB (716.21).
[55] KiwiRail (873.2).
[56] Ravensdown Ltd (1090.2), Trustpower (1201.2), Hort NZ (769.4), Oil Companies (1004.1), Federated Farmers (425.5).

under Part 2 matters. The iwi seek a separate policy to make this clear ('the Council will consult') as consultation is currently only implicit in the framework of objectives and policies in the plan.

116. Ngāti Toa[57] seeks new rules/methods and a new appendix and overlay that includes site areas and habitats that are culturally significant. The purpose of this is to ensure timely engagement between stakeholders and the Council. This document would contain a caveat that not all information is disclosed by iwi and that the overlay is only a starting point for full consideration of and consultation with Māori.

117. Federated Farmers consider Policy 3.1.2 is overly onerous, inefficient, and imposes significant costs and uncertainty on applications with no clear benefits. It seeks that Policy 3.1.2 and Policy 3.1.4 are merged, but with the outcome in the report writer's opinion, that the combination of the two policies effectively removes all reference to consultation with iwi altogether.[58]

118. The Oil Companies seek amendments to Policy 3.1.2 to substitute the word 'encourage' for 'expect' for applicants to consult early in the development of a proposal. They also seek either via a new policy or method a process whereby: it can be determined with certainty what is likely to be of significance to iwi; who should be consulted; and some considerations are established as to engagement expectations relating to such matters as contact and response times, information sharing protocols and cost recovery by iwi.

119. Ravensdown Ltd seeks that Policy 3.1.2 is amended so that it applies only to plan changes. Its reason is that the RMA does not require consultation with any party requiring a resource consent application and there may be occasions when consultation is not necessary or possible. Federated Farmers submitted in support of this approach as it also underpins consistency with the way in which the RMA is constructed.

120. Hort NZ also seeks the substitution of the word 'expect' early consultation by 'encourage'. But it also seeks to replace the remainder of the policy with the words where 'the scale and significance of the impact will affect cultural values'. The latter approach is problematic because the new wording suggested appears to represent a contractual agreement between the applicant and iwi. And in reality it is the Council and iwi to establish the circumstances in which a proposal may affect them. As currently worded in this submission it appears as though iwi are the decision-maker about the appropriate scale and significance of a project.

[57] Ngāti Toa (166.1).
[58] Section 42A Report Consideration of Evidence Received for Marlborough's Tangata Whenua Iwi Hearing.

121. PMNZ has a number of general concerns regarding the practicalities of the consultation provisions in the PMEP. In particular, it seeks a resolution of the two opposites:

(a) submitters who seek the inclusion of general 'requirements' that applicants and/or the Council be required to consult with mana whenua in relation to applications for consent; and

(b) submitters who seek that, while consultation with iwi should be encouraged where appropriate, it should not be mandated in all situations.

122. The company reinforces its early submission that the wording of Policy 3.1.2 should 'encourage' and not 'require' consultation.

123. Trustpower supports Policy 3.1.2 in part, seeking an amendment also requesting that 'expected' be amended to 'encouraged'. This is because the MDC has no authority to require a resource consent applicant to consult with any party and it is unclear how the PMEP anticipates that the expectation for consultation will manifest itself. While there is no obligation for a consent applicant to consult under the RMA, however, it is carried out as 'best practice' (supporting Ngāi Tahu's approach).

124. In another submission point,[59] Ngāi Tahu seek a new policy as follows: '*The Council will consult with tangata whenua iwi on applications that may have an impact on the relationship with land, water, wahi tapu or wahi taonga, or otherwise on their cultural values.'*

**Section 42A Report**

125. In the opinion of the report writer the concerns of Ngāi Tahu are addressed through Methods 3.M.4 Consultation, 3.M.3 Consideration of iwi management plans (IMP); and through the requirements under Method 3.4.2 Recognising statutory acknowledgements. These better require a summary of all resource consent applications lodged with Council to be provided to iwi prior to a s 95 RMA decision as to whether to notify an application being made under the PMEP. Ngāi Tahu's draft policy is recommended to be rejected.

126. We have already observed that MDC had been supportive of the inclusion of sites of significance to iwi and initially sought that those be identified and mapped throughout the lengthy IWG process in time for implementation into the PMEP. This identification and mapping, however, did not eventuate because some iwi did not wish to have sites identified in the PMEP – a matter recognised by Ngāti Toa and other iwi at the hearing.

[59] Ngāi Tahu (1189.20).

127. In that vacuum the report writer identifies that Ngāti Toa’s concerns are also addressed through Method 3.M.2 as Statutory Acknowledgements recognise the particular cultural, spiritual, historical and traditional association of an iwi with an identified site/area. As noted earlier, her recommendation is that sites of significance should be added to the PMEP but by way of a variation or plan change as it will require consultation with all iwi and landowners. Marlborough’s tangata whenua iwi, including Ngāti Kuia, support this approach.

128. In the absence of any specific new provisions from the Oil Companies to assess, the report writer reiterates that Methods 3.M.2 Recognising statutory acknowledgements, 3.M.3 Consideration of management plans, 3.M.4 Consultation and 3.M.6 Cultural impact assessment and cultural value reports, all provide PMEP users with guidance as to the various ways in which they can ascertain ‘what is likely to be of significance to iwi’ together with the relevant iwi to approach for consultation. The report suggests it would not be appropriate for the PMEP to have provisions regarding engagement expectations, such as contact and response times, information sharing protocols and cost recovery by iwi, as those expectations would be a matter between the relevant iwi and the applicant for a particular proposal.

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

**Issues arising**

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

**Legal requirements**

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

> **36A No duty under this Act to consult about resource consent applications and notices of requirement**
>
> **(1) The following apply to an applicant for a resource consent and the local authority:**
>
> **(a) neither has a duty under this Act to consult any person about the application; and**

**(b) each must comply with a duty under any other enactment to consult any person about the application; and**

**(c) each may consult any person about the application.**

131. Thus, while there is no duty under the RMA for applicants or local authorities to consult any person about an application for a resource consent and requirements (s 36A(1)(a)), the section also applies to a notice of requirement issued under ss 168, 168A, 189 and 189A. If other legislation outside the RMA requires consultation then applicants and local authorities must abide by that duty to consult (s 36A(1)(b)) around issues arising under that legislation.[60]

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

133. Section 95E(1) RMA requires the consent authority to decide if a person is affected in relation to an activity, if the activity effects are minor or more than minor. (This appears to the Panel to contemplate that a council may need to consult to identify who or what organisation is an 'affected person'.) Section 95E(2)(c) requires that consent authorities must have regard to every relevant statutory acknowledgement made in accordance with an Act identified in Schedule 11 RMA. This schedule includes the various settlement deeds relating to Marlborough's tangata whenua iwi and its significance is further referred to elsewhere.

134. In Schedule 4 RMA, clause 6(1)(c) as to 'Information required in application for resource consent' directs that information for resource consents must include a mandatory assessment of the actual and potential effects on the environment. Schedule 4, clause 6(1)(f) requires the identification of the persons affected by the activity, any consultation and any response to their views.

135. Schedule 4, clause 6(3)(a), however, identifies that reporting the persons affected by a proposal does not oblige an applicant to *'consult any person'* or '*create any ground for expecting an applicant will consult'.* This appears to relate back to the fact that there is no duty for applicants to consult under s 36A(1). But it does not exclude s 36A(1)(c), leaving it open for applicants to consult if they consider it is appropriate.

136. Schedule 4 7(1)(a) requires a mandatory assessment of effects on those in the neighbourhood and, where relevant, the wider community – including cultural effects. And Schedule 4 7(1)(d) requires an assessment of any effect on natural and physical resources having spiritual or

[60] Local Government Act 2002.

cultural value. Both these provisions identify the need for the relevant iwi to be involved in consultation by the applicant.

**Resolution of expect/encourage**

137. Under s 36A(1)(a) RMA there is no 'duty' for an applicant to consult with anyone on resource consent applications. Under Schedule 4 clause 6(3)(a) reporting that someone is affected by a proposal does not create a duty or obligation for an applicant for a resource consent to consult any person. 'Obligate' is defined as a limit on 'a person legally or morally', and 'obligation' is defined as [the] 'constraining power of law, *duty*, contract'.[61] Thus 'duty' and 'obligation' are interchangeable and is one reason why we do not consider Ngāi Tahu's suggested policy of an obligation on council to consult, has traction.

138. We have concluded the word 'expects' sets up the *probability* of consultation. It sets up just as high a threshold as 'requirement'; but with the application of Section 36A(1)(a) and Schedule 4 clause 6(3)(a) as to resource consent applications and plan changes, no person is *obliged* to consult or give any grounds for doing so.

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

**Where to find relevant information**

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

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

142. This process is now encapsulated in s 95 RMA providing steps for the MDC to assess whether applications should be notified or non-notified. Recent RMA amendments to the resource consent limited notification provisions were introduced as part of the Resource Legislation Amendment Act 2017 (s 95B RMA). In identifying which parties should be notified as part of the new step-by-step analysis, Step 1 involves determining whether there are any affected

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

protected customary rights groups or Customary Marine Title groups, or whether the proposed activity is on or adjacent to any land subject to Statutory Acknowledgement. Where there are no affected groups, the analysis then shifts to Step 2 (identifying whether limited notification is precluded). Where iwi groups are not affected, consultation is not required.

**Statutory Acknowledgements**

143. A great deal of spatial information is set out in the MDC's Statutory Acknowledgements and the associated maps may be accessed on the Council website: https://www.marlborough.govt.nz/your-council/tangata-whenua/te-tau-ihu-iwi-statutory-acknowledgements and as concluded from the material supplied from the Section 42A Report, we also support Methods 3.M.2 Recognising statutory acknowledgements and 3.M.3 Consideration of iwi management plans. Ngāi Tahu had one of the first (very extensive) IMPs that is now referred to by consent authorities in the Canterbury region. IMPs may be considered significant repositories of information if addressed as Method 3.M.3 suggests (see further at Policy 3.1.4).

**Considerations for consultation**

144. As described above, Marlborough's tangata whenua iwi were reluctant to divulge any further information as to places, waters, land and cultural issues until they had the opportunity to further liaise with MDC and consider a plan change to the PMEP as to what would be considered relevant information and to consult with landowners.

145. PMNZ's counsel helpfully proposed a list of requirements that might be considered for any anticipated meetings of iwi, landowners and Council to overcome some of the uncertainties we experienced with the suggestions in the submissions identified above. We record them here to avoid further delays and costs to the parties.

(a) The areas in which applications will be subject to those requirements.

(b) Which activities within those areas require consultation.

(c) Which iwi must be consulted in relation to each of those areas.

(d) What the cultural values for Marlborough are and how they are to be recognised and provided for.

(e) Engagement expectations, including matters such as response times, information sharing and cost recovery by iwi.[62]

[62] PMNZ Legal Counsel Submission, paragraph 34.

**Consideration**

146. After reading and hearing submissions, assessing the information in the Section 42A Report and addressing legal questions, we determined that Policy 3.1.2 requires amendment to the phrase 'an applicant will be 'expected' to consult early. The word 'encouraged' is to be substituted instead, with the addition of the phrase 'best practice'. This will provide applicants with a more realistic impetus to independently consult iwi (even outside of the Statutory Acknowledgements process).

147. We also concluded that early consultation with Marlborough's tangata whenua iwi is to be encouraged as it will ensure that relevant cultural considerations are adequately identified and taken into account prior to the advanced development of proposals or plan changes. This will also mitigate any potential disruption that can arise from consultation occurring at a late stage of development.

**Decision**

148. Policy 3.1.2 is amended as follows:

*Policy 3.1.2*

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

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

### Policy 3.1.3

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

149. This policy attracted six submissions. FNHTB seeks retention of the provision as notified.[63] Three others – Ngāi Tahu, HNZPT and PMNZ[64] – support the provision with amendments, and two oppose in part – Transpower and Fulton Hogan.[65]

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

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

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

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[63] FNHTB (716.22).
[64] Ngāi Tahu (1189.21), HNZPT (768.10), PMNZ (433.2).
[65] Trustpower (1201.3), Fulton Hogan (717.8).

153. Ngāi Tahu submits that while consultation and notification of resource consents is implicit in the policy, making it explicit provides greater direction in understanding how the policy is to be implemented. Therefore it considers that an amendment requiring decision makers shall '*consult with, and notify resource consent applications to iwi, and ensure that* …

154. Ngāi Tahu's submission is challenged by both Federated Farmers and PMNZ. In the Farmers' opinion it is unclear how the amendment would relate to small resource consents that might be required for farming activities. They say amendment should be limited to large-scale resource consents or plan change applications. PMNZ also considers in relation to subclause (d) of Policy 3.1.3 that it is unclear how the physical health of waterbodies will be considered and how in fact compliance with the provision would be demonstrated. It says the PMEP already contains robust provisions for the protection of waterbodies and (d) duplicates a number of these. PMNZ also considers some aspects of the policy go beyond cultural matters and some requirements are unduly restrictive of proposals for use and development within the Port and Marina Zones. PMNZ's submission is supported by a further submission by MFA and AQNZ but the reasons given by the latter suggest that it only refers to amendments to the rule applying to the Coastal Marine Zone.

155. HNZPT seeks amendment to Policy 3.1.3 subclause (e) by deleting 'how' and replacing it with '*that* traditional and *cultural* Māori uses and practices relating to natural and physical resources such as mahinga maataitai, waahi tapu, papakainga and taonga raranga *will* be recognised and provided for'. The reasoning advanced is that the use of the word 'traditional' in subclause (e) is too limited as it lacks the linkage of particular uses and practices to a particular time and does not provide for their ongoing evolution and change. The word 'cultural' is also said to be informed by the language of the RMA.

156. The other amendments sought are for grammatical reasons.

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157. The RMA requires resource management issues of significance to be identified as they have been in Issues 3A-3J. Policy 3.1.3 provisions are developed to respond to these.

158. A recommended amendment to (a) moves the policy away from issues identified by tangata whenua iwi particularly Issue 3B that concerns the lack of accommodation for iwi to exercise kaitiakitanga; thus 'ensure … the ability to exercise kaitiakitanga is maintained' is a much stronger response.

159. The report writer responds also to other suggestions by disputing concerns about the conflict with other provisions. Objective 5.3 has policies that give effect to and only enable water to

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

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

161. The report writer identifies that Policy 3.1.4 does not require iwi to develop IMPs and neither does the RMA. While IMPs are important they do not replace the need for consultation between parties where appropriate. The encouragement[66] set out in Policy 3.1.2 that applicants will consult early in the development of a proposal should assist in providing the certainty referred to in Fulton Hogan's submission.

**Consideration**

162. Issues arising:

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

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

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

[66] See amended to 'encourage' consultation, page 27 above.

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

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

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

**Decision**

167. Policy 3.1.3 is amended as follows:

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

*(a) the ability for tangata whenua to exercise kaitiakitanga is maintained;*

*(b) mauri is maintained or improved where degraded, particularly in relation to fresh and coastal waters, land and air;*

*(c) mahinga kai and natural resources used for customary purposes are maintained or enhanced and that these resources are healthy and accessible to tangata whenua;*

*(d) the special relationship between tangata whenua and nga wai will be recognised and provided for. ~~for waterbodies, the elements of physical health to be assessed are:~~*

~~*i. aesthetic and sensory qualities, e.g. clarity, colour, natural character, smell and sustenance for indigenous flora and fauna;*~~

~~*ii. life-supporting capacity, ecosystem robustness and habitat richness;*~~

~~*iii. depth and velocity of flow (reflecting the life force of the river through its changing character, flows and fluctuations);*~~

~~*iv. continuity of flow from the sources of a river to its mouth at the sea;*~~

~~*v. wilderness and natural character;*~~

~~*vi. productive capacity; and*~~

~~*vii. fitness to support human use, including cultural uses.*~~

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

**Policy 3.1.4**

**Encourage iwi to develop management plans that contain:**

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

168. Three submissions from FNHTB, Ngāi Tahu and Fulton Hogan[67] seek retention of the policy as notified. Four - Federated Farmers, Irrigation NZ, HNZPT and Ngāti Toa – either oppose or support Policy 3.1.4 subject to amendment.[68]

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

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

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

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

[67] FNHTB (716.23), Ngāi Tahu (1189.22), Fulton Hogan (717.9).
[68] Federated Farmers (425.5), Irrigation NZ (778.1), HNZPT (768.11), Ngāti Toa (166.14).

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

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

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

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

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

**Section 42A Report**

175. The Section 42A Report identifies that in combining the two policies and amending the outcome, Federated Farmers in effect seek first the deletion of the policy requiring early consultation by the applicant (Policy 3.1.2), and secondly, replacing it with an additional matter in Policy 3.1.4 for IMP to provide background information for applicants. The two policies seek to achieve different outcomes and involve different parties – one between iwi and applicants and one about the relationship between iwi and MDC. Subsequently the evidence provided at the hearing by Federated Farmers suggests a change in its opinion - the organisation is no longer seeking an amendment to Policy 3.1.4.[69]

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

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

178. In reply to Ngāti Toa's submission seeking MDC's support for developing IMP, the report writer originally believed that the proposed amendment is likely to set up an expectation by iwi that could not be met with regard to funding and resourcing issues. The provision of

[69] Federated Farmers Evidence Kim Louise Reilly paragraphs 20-22.

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

**Consideration**

179. The Panel considers the policy as notified, but including reference in Method 3.M.9 to partnership, also allows the nature of support for the development of iwi management plans to be discussed between the Council and iwi authorities.

180. With respect to Policy 3.1.4, the Panel accepts HNZPT's suggested amendment to Policy 3.1.4(c) making explicit what may be incorporated into IMPs by way of the identification of areas of historic significance as well as cultural.

181. The definition of 'historic heritage' in s 2 RMA means those natural and physical resources that contribute to an understanding of New Zealand's *history* and cultures deriving from all the qualities identified in s 2(b)(i)-(iv). As HNZPT points out, Policy 3.1.4 is an encouragement policy and iwi should be encouraged to identify the range of **heritage** resources of historic or cultural significance.[70]

182. The overall finding results in a positive expression of support for the development of iwi management plans firstly with the word "*support* iwi management plans' which we endorse. Further, the word 'kaitiakitanga' is to be inserted into Policy 3.1.4(a) and minor amendments with the word '*assist'* inserted throughout the explanation to the policy.

**Decision**

**Policy 3.1.4 is amended as follows:**

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

*(a) specific requirements to address the management of coastal waters, land and air resources, including mauri, and in relation to Sections 6(e), 7(a) (kaitiakitanga) and 8 of the Resource Management Act 1991;*

*(b) protocols to give effect to their role as ~~of~~ kaitiaki of water and land resources;*

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

[70] See also Ngāti Kuia, Julia Eason Evidence.

*(d) descriptions of how the document is to be used, monitored and reviewed; and*

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

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

**Policy 3.1.5**

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

183. FNHTB seek retention of the policy as notified. Trustpower Limited also seeks retention, identifying it is consistent with ss 60 and 74 of the RMA as its reason.

184. Ngāi Tahu seeks to amend Policy 3.1.5 with an amendment to 'ensure management plans are *given particular regard to* in resource management decision-making processes'. The proposed amendment recognises that an IMP is an expression of kaitiakitanga as provided for by s 7 RMA. Trustpower opposes Ngāi Tahu's submission on the basis that the submitter's amendment to Policy 3.1.5 as s 104 of the RMA requires 'regard' to other matters not 'particular regard'.

185. Federated Farmers seeks an amendment to 'ensure that IMPs are taken into account in resource management decision-making processes *with regard to the preparation of a regional policy statement or regional or district plans.'* The policy is not seen as clear whether it applies to decision-making or resource consents.

**Section 42A Report**

186. In respect of Trustpower's opposition to Ngāi Tahu's amendment to Policy 3.1.5, the report writer does not agree with Trustpower Limited's interpretation that the context of the submission from Ngāi Tahu (iwi management plans) links directly to s 7 of the RMA, rather than "Other Matters" in s 104(2)(c). With regard to resource consents, s 104 of the RMA states

"…the consent authority must, subject to Part 2, have regard to…". Section 7 of the RMA lists the matters (a) to (j) to have "*particular regard to*". Consideration of an application under s 104 is subject to this, and has to have "*regard*" to the matters listed in s 104(a) to (c).

**Consideration**

187. The Section 42A Report points out that the explanation to Policy 3.1.5 makes it clear that IMPs are considered by the Council as an "Other Matter" under s 104(1)(c) rather than a matter to be given particular regard to relative to s 7(a) RMA. This is on the basis that the policy, including its explanation, is a meaningful outcome of consultation through the IWG process and accurately reflects the Council's view of IMPs.

188. As to the amendments sought by Ngāi Tahu and Federated Farmers for Policy 3.1.5, the wording requested is already in the policy.

189. The Panel is of the view that the role of IMPs is strengthened in Method 3.M.1 Developing partnerships by inserting the sentence after the words 'the principles of the Treaty of Waitangi/Te Tiriti o Waitangi' '*this may include the Council facilitating and practically assisting iwi to develop iwi management plans as a means of expressing kaitiakitanga*' after referring to the principles.

190. The Ngāi Tahu submission received support from Te Ātiawa and PMNZ, the latter because the relief sought will assist in providing certainty to economic users.

191. As to mapping, the report writer notes that the inclusion of sites of significance to iwi in the maps of the PMEP was an issue throughout the IWG process but did not eventuate, with some iwi not wishing to pursue the issue. The suggestion of the report writer is that such mapping occurs as a variation or plan change that would involve interested parties. The report writer notes that this approach appears to be supported by Ngāti Kuia (that is, change should be by consensus such as with IWG and Te Ātiawa).

**Decision**

192. Policy 3.1.5 and its explanation are retained as notified.

193. Method 3.M.1 is amended by adding a new sentence as follows:

*'Developing effective partnerships with Marlborough's tangata whenua iwi will be important in promoting resource management and taking into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi. This may include the Council facilitating and practically assisting iwi to develop iwi management plans as a means of expressing kaitiakitanga. How the partnerships will be expressed on an ongoing basis may be in the form of protocols,*

*memorandums of understanding, strategies or the like. Regardless of what form the partnerships are expressed in, a fundamental component will be simple good faith.'*

## Policy 3.1.7

**Foster a principle of partnership between Marlborough's tangata whenua iwi, the Marlborough District Council and statutory management agencies on an ongoing basis to give effect to Policies 3.1.1 to 3.1.6**

194. The intent of the policy underpins other policies and methods in the chapter supporting a partnership between Marlborough tangata whenua iwi, the MDC and statutory agencies such as the Department of Conservation. Method 3.M.4 Developing partnerships identifies that effective partnerships may be developed in the favour of protocols, memoranda of understanding to facilitate IMP.[71]

195. Two submitters – Ngāi Tahu and FNHTB[72] – seek the retention of the policy as notified and are supported by further submissions from Te Ātiawa. Federated Farmers[73] in the first part of its opposing submission, seeks an amendment to the explanation to the policy. No specific or general wording for such a suggestion was identified. The organisation's submissions, however, suggest:

- *The policy may lead to co-governance, an approach that is asserted to be inconsistent with the RMA or only appropriate for low level planning.*
- *The creation of policies similar to Policy 3.1.7 to include the development of partnerships with other groups such as Federated Farmers and the MDC.*
- *The second part of the Federated Farmers submission seeks to have policies similar to Policy 3.1.7 included in the PMEP relating to the development of partnerships with other groups, such as between farmers and the Council.*

**Section 42A Report**

196. The report writer has not assessed the Federated Farmers submission as it would not be appropriate to add policies of that nature to the Marlborough's tangata whenua iwi Plan chapter as Federated Farmers does not appear to seek the inclusion of iwi in the partnerships they seek through these additional policies.

197. As to the other issues, the Section 42A Report identifies that Policy 3.1.7 and its explanation are not ambiguous. The policy does not discuss co-governance and in any event that approach is not consistent with the intention of the RMA (sustainable management) nor appropriate for

[71] Methods of Implementation 3.M.1, page 3-17
[72] Ngāi Tahu (1189.25), FNHTB (716.26).
[73] Federated Farmers (425.7).

lower level planning. To the contrary, this is a high level RPS policy that clearly sets out the importance of partnerships to give effect to all the policies in Chapter 3 and is supported by a specific method by which to develop partnerships (Method 3.M.1). It is not a policy about decision-making.[74] The explanation to the method reflects the lack of prescription around how a partnership may be developed. This is appropriate and the effective arrangements should not be unnecessarily constrained by boundaries being established in the policy.

198. The report writer recommends that the Ngāi Tahu and Friends submissions are accepted and that Federated Farmers' submission be declined.

**Consideration**

199. We consider from other supporting policies that one day Marlborough's tangata whenua iwi and Council will form partnerships and the evidence throughout the hearing indicates this may well be the case in relation to Statutory Acknowledgements and Mana Whakahono ā Rohe agreements. Method 3.4.1 'Developing Partnerships' provides plenty of scope for this to happen. It identifies protocols, memoranda of understanding, strategies and possibly IMP, while the PMEP is aspirational when it indicates '*Regardless of what form the partnership are expressed in, a fundamental component will be simple good faith'*.[75]

**Decision**

200. The Ngāi Tahu and FNHTB submissions are accepted. Policy 3.1.7 is retained as notified. Federated Farmers' submission is rejected.

## Method 3.M.2

### Recognising statutory acknowledgements

201. These acknowledgements, to be attached to the final PMEP, relate to the hundreds of cultural, heritage and spiritual sites associated with Marlborough's tangata whenua iwi. They will have great value for applications for resource consents and plan changes relating to iwi, and are rich in its cultural history.

202. These are actioned by the statutory provisions provided. The considerations required by s 95B(3) and s 95(2)(c) RMA are sufficient for identification purposes. Section 95E requires a consent authority to decide if a person is an affected person.

203. This Method 3.M.2 attracted submissions from PMNZ and Ngāti Toa. Both support the Method but seek amendments. At the time of the hearing the Panel was advised that PMNZ is no longer seeking a change in the Method so for PMNZ it is no longer in issue.

[74] PMEP Chapter 3, page 3-17.
[75] PMEP Methods of implementation 3.1.1 page 3-17.

204. Ngāti Toa submitted on three aspects of Method 3.M.2.

205. The first amendment sought by Ngāti Toa is to the first sentence of the method to read: '*The relevant trustees for an iwi* ***authority*** *must be provided with a summary of resource consent applications …'* The reason given for this amendment is that the current wording is incorrect and clarity is sought as to what is meant by '*an iwi*'.

206. That the second sentence be amended to '*The Council must have regard to the Statutory Acknowledgement relating to the statutory area.* ***Iwi must be consulted*** *to identify whether* ***they are an affected party*** *in relation to an activity …*' [76]

207. The second sentence to the method currently reads: '*The Council must also have regard to the Statutory Acknowledgement relating to a statutory area when deciding whether the relevant trustees are affected persons in relation to an activity within, adjacent to, or directly affecting the statutory area and for which an application for a resource consent is made'*. [77]

208. The reason given for the amendment is that the sentence of the original provision implies that it is the Council that decides whether iwi are an affected party and this should not be the process. The submitter observes that the Statutory Acknowledgements are in fact the trigger for applicants and the Council to consult.

209. The third amendment Ngāti Toa seeks is an appendix of all Statutory Acknowledgements as the Council is required to record all such information within its resource management documentation.

**Consideration**

210. Statutory Acknowledgements, by statutory directions, are part of Method 3.M.2 and they are part of the existing plans.

211. In relation to Ngāti Toa's final submission, the current wording of the method directly reflects the legislation that sets out the settlements for Te Tau Ihu iwi. The Section 42A Report identified s 27(1) of the Ngāti Toa Rangatira Claims Settlement Act 2014 as the reference point.

212. The current wording of the Method mirrors that legislation in that it states '… a relevant consent authority must have regard to the statutory authority **in deciding** … whether the trustee of the Toa Rangatira Trust **is an affected person** in relation to an activity'. [Emphasis added]

[76] Section 42A Report page 14.
[77] Partnerships are identified in Policy 3.1.7 and kaitiakitanga. Section 42A Report page 13.

213. In the report writer's opinion, it is not appropriate to deviate from the requirements set out in the (current forms) of settlement legislation, an opinion we share.

214. When describing Method 3.M.2 further, the concerns of Ngāti Toa regarding consultation and the identification of affected parties are set out in Method 3.M.4. This includes the requirement under Statutory Acknowledgements for a summary of all resource consent applications lodged with the Council to be provided to iwi prior to the s 95 RMA decision whether to notify an application made. The considerations required by s 95B(3) and s 95(2)(e) RMA are sufficient for identifiable purposes. Section 95E lays down what a consent authority must consider in deciding if a person is an affected person. Section 95E(2)(c) states:

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

215. Ngāti Toa's second submission relates to the fact that Method 3.M.2 referred to 'the relevant trustees for an iwi' as being those who must be provided with a summary of resource consent applications. Ngāti Toa sought clarity regarding the meaning of 'trustees for an iwi' and preferred the phrase 'iwi authority'. The Panel considers this change is appropriate.

216. The submission requesting an appendix of Statutory Acknowledgements is a recognised way for identifying them. The Council does this for the Wairau/Awatere and Marlborough Sounds Resource Management Plans and will also do so for the PMEP. This is a requirement of the new legislation surrounding the Te Tau Ihu Treaty settlements but was not known at the time the PMEP was notified.

217. The third of Ngāti Toa's submissions is accepted as to Method 3.M.2 as sought with the substitution of the word 'trustees' with 'iwi authority', and 'the relevant trustees' with '*the relevant iwi authority*'

**Decision**

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

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

## Method 3.M.3

### Consideration of iwi management plans

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

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

**Consideration**

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

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

**Decision**

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

- *Assist the identification of heritage resources*

## Method 3.M.4

### Consultation

224. Some of Ngāti Toa's concerns are addressed to some extent through Method 3.M.2 Recognising Statutory Acknowledgements as they recognise iwi values with identified site areas.[78] Method 3.M.4 clearly states consultation with iwi by the *Council* **may** result in a cultural impact assessment being required; the Method does not compel an applicant to obtain one as suggested by Trustpower. In the report writer's opinion, it is entirely appropriate for a Council officer to engage in consultation with iwi to better understand the effects of an application if there is an indication that this would be beneficial. It is likely that consultation of this nature would assist the Council in determining if an iwi authority was an affected party in relation to statutory acknowledgments and is therefore consistent with Method 3.M.2.

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

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

**Decision**

226. Following on from an earlier amendment to the PMEP, we consider that an amendment to the first paragraph of Method 3.M.4 is appropriate to encourage rather than expect early consultation. It now reads:

*'… an applicant is ~~expected~~ encouraged to consult early in the development process…'.*

## Method 3.M.5

### Cultural Indicators

227. This Method records that Marlborough's tangata whenua iwi would like cultural indicators based upon human sensory perceptions and spiritual associations, to be used alongside existing environmental indicators in state of the environmental monitoring. This provision did not receive any submissions for or against.[79] The report writer identified, however, that there are some submission points not specifically connected to Method 3.M.5 which may need consideration.

228. Ngāti Rarua's submission[80] contains text that relates to cultural indicators specifically because of the lack of provisions that address the matter. The decision sought is *formal engagement with iwi and the removal of the 'offending clauses' from the plan.*

229. The submission request for a presence and explanation of cultural indicators in the plan indicates there is a lack of them, so now address the term 'formal engagement'. The Method discusses the development of indicators as being within the non-regulatory work space of the Council, developed in partnership with iwi. This is reflected at the Issue level in the last paragraph of Issue 3D which discusses the importance to iwi of developing cultural indicators to complement environmental indicators in state of environment reporting. The matter was an important one at the IWG hui.

230. Ngāti Toa identifies there are three parts to Chapter 3, one of them being 'develop a tangata whenua programme monitoring support, information, guidelines. This could include cultural health monitoring to measure the success of Policy 3.1.[1]'. We support the report writer's opinion that Ngāti Toa may be seeking a method of implementation around cultural indicators but that Method 3.M.5 in fact addresses this concern.

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[79] Other submitters were Te Ātiawa (not on point), PMNZ (not on point) Federated Farmers (lacks specificity).
[80] (1188.1)

231. The provisions around cultural indicators in Chapter 3 reflect the outcome of that formal consultation process. In a discussion at the hearing the Panel was advised that the methodology surrounding cultural indicators was not yet in place. But the MDC is committed to making it a priority. It will be a significant body of work.[81]

**Decision**

232. Method 3.M.5 remains as notified.

## Method 3.M.6

### Cultural impact assessment reports and cultural value reports

233. Trustpower seeks deletion of Method 3.M.6 (Cultural impact assessment reports and cultural value reports) because it does not actively specify a method of implementation. The Section 42A Report identifies while this method may be less directive and more explanatory in nature, in her view it is not disconnected from the objectives and policies. A cultural impact assessment may be a method in which an applicant and iwi respond to Policy 3.1.2, and a cultural impact assessment may be included in an application to assist decision makers in considering the matters set out in Policy 3.1.3. Cultural impact assessments are also referenced in Method 3.M.4, which also links back to Policy 3.1.2. These policies and methods assist in achieving, in particular, Objectives 3.2 and 3.3.

**Decision**

234. Method 3.M.6 remains as notified.

## Definitions

235. In an addendum to the Section 42A Report dated 18 October 2017 the report writer identified that following the completion of that report, two additional submissions should have been included but were overlooked. The two submissions were from Te Ātiawa and relate to the definitions of 'Papakāinga Unit" and 'Marae Activity' notified in the PMEP Volume 2 Chapter 25.

236. The wording of the definition for Papakāinga Unit was discussed by the IWG and in the report writer's observation great care was taken to try and find the right balance between a definition that gives clear guidance as to the activity anticipated to occur when operating under the Permitted Activity Rules for Papakāinga, and a definition that will be too limiting due to its prescriptiveness.

237. The issues that arose included:

- *What is a definition of papakāinga?*

[81] Section 42A Report: Marlborough's Tangata Whenua Iwi pages 7-8.

- *What is a definition of marae activities?*
- *Can marae activity as a permitted activity also be applied to Rural Living and Coastal Living Zones?*

## Papakāinga Unit

238. Permitted Activity Rules for papakāinga are identified in Chapters 3, 4, 5, 7 and 8 and Volume 2 PMEP. Any non-compliance with these rules and standards would require a resource consent that would allow Council assessment of the proposal against the objectives and policies in the Plan.

239. In the rules for the Coastal Zone, Rule 4.1.48 provides for papakāinga as a permitted activity without the need for a resource consent.

240. The relevant Standard 4.3.45 provides for a maximum of five papakāinga units on a Computer Register (4.3.45.1) with a minimum land area of 80 $m^2$ to be provided for each papakāinga unit (4.3.45.2). Setbacks are to the external boundary of the property and do not apply between units on the site.

241. Chapters 3, 4, 5, 8 and 8 Volume 2 all have the same rules and associated standards for papakāinga and papakāinga units**.** One of the standards limits the number of papakāinga units to five per Computer Register. Each chapter has been the subject of a submission in opposition by Te Ātiawa and it seeks also to delete the relevant standards. The reasons behind this approach is because Te Ātiawa considers there is no flexibility within the five unit rule to provide for increasing numbers of aging members.

242. But as the report writer points out, while there is no provision for expansion beyond five papakāinga units to provide for aging members, there is no barrier in the PMEP to iwi seeking a resource consent.

### What is the definition of papakāinga?

243. No definition is provided in the PMEP for 'papakāinga' although the explanation to Issue 3F provides a lengthy description. A definition of 'papakāinga' is contained in the NZCPS Definitions,82 as 'Development of communal land on ancestral land owned by Māori'. While Te Ture Whenua Act 1993 defines what is 'Māori land' as including multiply-owned land and customary land, it does not provide a definition for 'papakāinga'.

244. The notified definition in the PMEP of '*Papakāinga Unit*' is as follows: 'means a traditional Māori settlement area on Māori land and includes activities associated with residential living.'

[82] NZCPS (2010) Definitions page 27.

245. Te Ātiawa seek the following replacement of the definition of '*Papakāinga Unit*' with: 'a self-contained residential unit, used or intended to be used for a permanent residential activity, associated with a marae or tribal housing for kaumātua.'

246. The reason given for the requested replacement of the notified definition is that Te Ātiawa considers it is '*ambiguous, archaic and incorrect'.*

247. Ngāti Kuia query what is 'Māori land'. It identifies through the settlement of 2014 the iwi received 'cultural redress and commercial properties that are suitable for papakāinga including location, facilities and resources. As noted earlier, the MDC is urged by Ngāti Kuia to allow the development on all settlement land, Māori land, whānau whenua and some general land (with customary/cultural history) (for example Anakoha) in order to achieve the potential of the land for the cultural, social, environmental and economic wellbeing of Marlborough's residential iwi'. Limiting the land and activities to which the permitted activity status applies is asserted to not achieve Objective 3.4. 83

**Section 42A Report**

248. In the Section 42A Report Addendum, the definition sought by the submitter is considered more limiting than that notified as it specifies the units would be for permanent residential activity, and only for kaumātua. However, if this is more correct and less ambiguous, and given no other iwi oppose the change sought, the report writer had no concerns from a planning perspective in accepting these changes to the definition. Other wording changes, with the exception of one discussed below, are also acceptable.

249. The one change the report writer does not support is the omission of the words '*on Māori land'* in Te Ātiawa's proposed definition.

250. As discussed in the Section 42A Report, with regard to the submission of Ngāti Toa, Objective 3.4 provides a clear directive from the IWG to address a resource management issue of significance, especially Issue 3F, which is about the provision of papakāinga. This issue is very clear that the enablement of papakāinga is connected specifically to *Māori land,* with references to Te Ture Whenua Act 1993 to clarify what constitutes this land.

**Consideration**

251. In the Panel's view the permitted status provided to papakāinga by the PMEP arises because of the obligations under Part 2 of the RMA to give practical effect to the significance to Māori of being able to provide for their cultural communal living customs on their own land. If that was to be applied to general titles then the necessary controls that flow from the linkages to

[83] Ngāti Kuia, Raymond Smith Evidence, page 2.

customary land would not exist. Issue 3F and its explanation make those linkages to Māori land express in the Plan.

252. The definition of 'Māori land' in Te Ture Whenua Act confines papakāinga to be built on this land which includes multiply owned Māori land and customary land. Issue 3F is very clear on this point, as is Policy 3.1.6 which recognises that papakāinga (and marae) development provides Marlborough's tangata whenua iwi with a range of cultural functions including living, working, cultural activities and recreational where it is of a scale, extent and intensity that is defined by the physical characteristics of the site. Cultural uses are specifically provided for in that way, not excluded as Te Ātiawa argued.

253. We find that Te Ātiawa's objective is too restrictive in that it specifies 'permanent residential activity' confined to 'kaumātua'. And from our consideration of the notified definition of 'papakāinga unit' in the PMEP we are comfortable that cultural use of the facilities is not excluded from the definition in the phrase as it 'includes activities associated with residential living'.

254. However, during its consideration of these issues the Panel concluded that it would be helpful to have a specific definition of 'papakāinga' in the Plan. It also formed the view that the notified definition of 'papakāinga unit' was actually more apposite for the purpose of defining a 'papakāinga', because the notified definition referred to an area rather than a building, and activities associated with residential living, rather than units used for residential activity.

255. The Panel decided that a new definition of 'papakāinga unit' could then be inserted in the Plan based on the proposed wording sought by Te Ātiawa, but without the limitation to permanent residential activity for kaumātua only.

256. As a result of including 'Māori land' within the definition of 'papakāinga' it is necessary to also include a definition of Maori land in the Plan. Māori land is helpfully already defined in Section 4 of Te Ture Whenua Māori Act 1993. The Panel adopts this definition.

**Decision**

257. Insert new definitions for Papakāinga, Maori land and replace the definition of Papakāinga unit in in Chapter 25 Volume 2, as follows:

<u>***Papakāinga*** *means a traditional Māori settlement area on Māori land and includes activities associated with residential living.*</u>

***Papakāinga unit*** *means a ~~traditional Māori settlement area on Māori land and includes activities associated with residential living~~ <u>self-contained residential unit or units, used or</u>*

*intended to be used for residential activity, located on Māori land and associated with a marae or tribal housing*.

***Māori land*** *means Māori customary land and Māori freehold land, as defined in Section 4 of Te Ture Whenua Maori Act 1993*

## Marae Activity

### What is the definition of Marae Activity?

258. The Te Ātiawa submission on 'Marae Activity' proposed an amendment as follows:

> *'means a specific area of land where the primary purpose is the provision of a focal point for social, cultural, and economic activity for iwi, hapū or whānau. A marae may include wharenui and hui activities; kaumātua housing, hostels and wharekai; hangi; papakāinga; whare wairua; Kokiri training and tuition activities; educational facilities and activities and whare wananga; kōhanga Reo, childcare facilities and activities; recreational activities; tangihanga; urupā and burial activities; health facilities; Māori commercial offices; the retail sale of goods manufactured or grown within the Marae property; and tourist visitor services and operations.*[84]

259. The reasons given for the requested amendment are that Te Ātiawa is not clear on what is intended by the reference to economic activity in the definition. Te Ātiawa views the reference as narrow/restrictive, and showing a lack of understanding of the breadth of Māori commercial interests. The submission is supported by Elkington Whānau but lacks specificity.

### Section 42A Report

260. The report writer identified that the wording of the definition for 'Marae Activity' was also discussed by the IWG and again it is her observation that great care was taken to try and find the right balance between a definition that gives clear guidance as to the activity anticipated to occur when operating under the Permitted Activity rules for Marae Activity, and a definition that will be too limiting due to its prescriptiveness.

261. This is demonstrated by the phrase '*A marae **may** include …'* (emphasis added) in the wording of the definition. This tries to capture the essence of marae activity so that Plan users have a sense of what activities could be anticipated on a marae, and part of this is about scale. References such as '*ancillary to the Marae activity'* and '*goods manufactured or grown within the Marae property'* provide a sense of scale, in that there will be key activities that are inherent on marae, and others that should only occur when there is a connection with the marae.

[84] PMEP Chapter 25 page 13.

262. In the report writer's opinion there is nothing in the definition that particularly would prevent a commercial office being on a marae, and when the definition is addressed, there are many instances of activities that could potentially have a commercial component, such as educational facilities, childcare facilities, recreation activities, the retail sale of goods, and tourist visitor services and operations.

263. The report concluded that the spirit of the definition nevertheless is that commercial activities not particularly connected to marae activities are not included, as it is not intended that they be enabled through Permitted Activity rules for marae activity.

**Consideration**

**Permitted Activity provisions for Marae Activity**

264. Volume 2 of the PMEP contains the permitted activity rules, and associated standards, for marae activity and papakāinga that give effect to or implement the provisions of Chapter 3, in particular Objective 3.4 and Policy 3.1.6. Policy 3.1.6 gives effect to Objective 3.4 and sets up the direction for the permitted activity rules. These enable marae activity in Chapters 3 and 5 of Volume 2, which are specific to properties that are currently or proposed to be marae.

265. No submissions (other than Waikawa Marae) were received on the marae activity rules or associated standards in Chapters 3 and 4.

266. The inclusive definition of marae activities provides for a number of 'economic activities' but all will be circumscribed by relevant standards. The amendment to 'Māori Commercial Offices' sought by Te Ātiawa relates to Te Ātiawa being engaged in commerce, trading, business – a much wider activity than envisaged in the Permitted Activities rules.

267. The phrase suggested by Te Ātiawa therefore brings another dimension to the activities already identified for marae activities and implies a much larger scale of activity which had earlier been discounted by the IWG. We respect that intent and are comfortable with the existing phrase in the definition of marae activity which is '*administration offices ancillary to the marae activity'.*

**Decision**

268. The Panel accepts the recommendation of the report writer that the Te Ātiawa submissions on new rules are not added at this time to further enable marae activity.

269. Te Ātiawa's submission on 'Marae Activity' is rejected.

## Customary harvest

270. Ngāi Tahu seek the addition of a new permitted rule as a general rule to apply everywhere with standards for customary harvest. The two standards proposed are that customary harvest must be undertaken in accordance with tikanga and where the material or resource is located on private property, landowner permission must be sought.

271. Customary harvest is described by Ngāi Tahu as the 'sustainable harvest of customary materials or resources for the purpose of wearing or for consumption. It occurs within a framework of tikanga.'

272. Te Ātiawa supports the provision as does Federated Farmers as long as the requirement to get landowner permission is sought.

273. The Section 42A Report is not in favour of these provisions unless the activity is very explicitly defined. The report writer is not sure it could be (or should be). It is likely that, given the examples provided by the submitter, many of the harvest activities may not require any regulation at all, so potentially an explicit permitted activity may lead to unintended restrictions depending how the provision was established. For some matters, such as those controlled by s 14 RMA, there may be confusion as to whether the customary harvest rule applies if water is considered a customary resource, or if the rules established for the taking and use of water would apply. Potentially the same confusion could arise around vegetation clearance rules.

274. With regard to the first standard sought should the rule be added to the PMEP, it is not clear how the Council would establish whether the harvest was undertaken in accordance with tikanga. As to the second standard relating to landowner permission, any person going on to private property has to have appropriate permissions and the enablement of activities in the PMEP does not circumvent this requirement. An explicit standard of this nature on one rule may cause confusion for PMEP users as it may imply landowner permission is not required in cases where it is not stipulated in standards.

275. The report writer's recommendation is to decline the submission.

276. A similar submission was made by Ngāi Tahu in evidence in Topic 6: Indigenous Biodiversity. The Panel has considered the matter of customary harvest in the context of both topics and has decided that it is essential that there is recognition of the importance of customary harvest in the PMEP provisions. This reflects Issue 3E. However the Panel believes the appropriate recognition is provided in both Chapter 3 Marlborough's tangata whenua iwi and Chapter 8 Indigenous Biodiversity. Ngāi Tahu provided a memorandum to the Panel post

hearing on Topic 6 seeking an explicit policy to be included in Chapter 8. The Panel agrees with Ngāi Tahu's recommended wording being inserted in both chapters as described above.

**Decision**

277. A new policy is added as follows:

*Policy 3.X.X - Enable customary harvesting in accordance with tikanga.*

*Customary harvesting is required in enabling Marlborough's tangata whenua iwi to exercise kaitiakitanga and to provide for their relationship with their culture, lands, water and other taonga. Cultural harvest may be for different reasons, including but not limited to, medicinal uses, ceremonial uses, weaving or for consumption. It is important that taonga and other species can be accesses by iwi throughout the District, including from sites and areas that retain significant indigenous biodiversity value. Where particular resources are available on private land, access agreements or case by case permissions from the landowner are essential before entry onto the property is allowed*

## Definition of 'Cultural values'

278. Given that the term cultural values is used repetitively in the Plan and was sought to be included by many submissions in various provisions. As Te Ātiawa sought the inclusion of a definition they were asked by the Panel to propose a definition. The response provided two alternatives for the opening wording, one utilising the word resource and the other utilising the word attribute. Their response invited the Panel to select the word attribute. The Panel believes that both concepts have value as being listed as follows:

> *any natural attribute, resource, area, place or thing (tangible or intangible) which is of physical, economic, social, cultural, historic and/or spiritual significance to tangata whenua iwi.*

279. The Panel have considered the definition and agree with it.

**Decision**

280. The definition of cultural values above is included in the definitions section of Volume 2.

***Māori Cultural values*** *mean any natural attribute, area, place or thing (tangible or intangible) which is of physical, economic, social, cultural, historic and/or spiritual significance to tangata whenua iwi.*

## Waikawa Marae

281. Waikawa Marae Incorporated submitted on Rule 5.1.3 which enables marae activity in the Urban Residential 1 and 2 zones, seeking an amendment to the appellations within the rule to

delete 'Sec 47 Blk XIII Linkwater SD' and 'Waikawa West 6 & 7 ML 6923'. No reason is given but it was identified that the appellations in the PMEP were provided by iwi through the IWG.

282. The submission of Waikawa Marae Committee is supported by Te Ātiawa (who had originally submitted to retain the appellations the marae sought to have removed). Te Ātiawa's further submission is supported by Elkington whanau.

283. The report writer acknowledges, as do the Panel, that the iwi are in the best position to advise what specific properties should be added or removed. Consequential changes to the heading for the standards associated with Rule 5.1.3 are also appropriate.

**Decision**

284. The Panel agrees with the following recommendations:

*5.1.3 Marae activity on:*

*(a) Sec 23, 40, 43 and 46 Blk III Taylor Pass SD and Sec 3 SO 6922;*

*(b) Lot 1 & 2 DP 11713 and Sec 1 SO 426964 ~~Waikawa West 6 & 7 ML 6923 and Sec 47 Blk XII Linkwater SD~~.*

and

*5.3.2 Marae activity on:*

*(a) Sec 23, 40, 43 and 46 Blk III Taylor Pass SD and Sec 3 SO 6922;*

*(b) Lot 1 & 2 DP 11713 and Sec 1 SO 426964 ~~Waikawa West 6 & 7 ML 6923 and Sec 47 Blk XII Linkwater SD~~.*

## Rural and Coastal Living Zones

**Can marae activity be permitted in Rural Living and Coastal Zones?**

285. Te Ātiawa seek the provision of marae activity as a permitted activity also be applied to the Rural Living and Coastal Living Zones. But marae activity rules in the PMEP are specific to properties stated in the rules, as advised by iwi through the IWG. In the absence of specific appellations where marae activity is occurring, or is anticipated to occur, the Section 42A Report identifies the addition of a generic rule to these zones would be inappropriate.

286. The report considers the proposed rules as submitted would create uncertainty within the Rural Living and Coastal Living Zones as to where marae activity may take place. There is also a permitted activity rule regarding the taking and using of water for marae activities, which is included in the Plan on the basis of being utilised for the sites of activity specified in the document. Given the full or over-allocated nature of many of the region's water resources, to

potentially provide a provision enabling marae activities to take place anywhere within the Rural Living or Coastal Living Zones could be inconsistent with the sustainable management of those resources. The Council intends to undertake regular plan change updates to the PMEP once operative so there would be the opportunity to add rules of this nature in the future, but specific as to detail and the land involved.

**Decision**

287. The submission seeking permitted activity status for marae on Rural and Coastal Living Zones is rejected.

## Pouwhenua

288. The PMEP discusses facilitating the identification of sites/areas of cultural significance to the different tribes of Marlborough. Te Ātiawa seeks the inclusion of a permitted rule within all zones of the PMEP whereby a pou or other structure/carving/sign can be erected to identify an area of Māori significance.

289. Following from that, Te Ātiawa seeks that the following permitted activity standard be added to the Permitted Activities listings in Volume 2 Chapters 17, 18, 19 and 20 of the PMEP.[85] Similar submission points came up in Topic 15.

290. The relevant zone rules already contain standards to manage the potential adverse effects of structures on adjoining properties and on amenity values. The Panel considers that the same standards are applicable to managing potential adverse effects of pouwhenua. Therefore in deciding to include a new permitted activity rule in all zones, the Panel has also required compliance with these same standards.

**Decision**

291. Include a new permitted activity rule in 2.34 as follows:

*2.34.x Pouwhenua*

*2.36.x: The pouwhenua must comply with the permitted activity standards for constructing or siting a building or structure with respect to height and proximity to property boundaries applicable for the zone within which the pouwhenua is to be erected.*

292. Add a new definition for 'pouwhenua' to Chapter 25, as follows:

*Carved wooden posts, or other structures, used by Maori to mark territorial boundaries, or places of cultural or spiritual significance.*

[85] The reference to Permitted Activity Standards and Rules Volume 2 around pouwhenua is introduced by Te Ātiawa, Shapcott Evidence, Volume 1 Chapter 7 Public Access and Open Space, pages 8 and 9.

## Maps

293. In drafting the Plan the decision was made to list the appellations of marae sites in the Permitted Activity Rules instead of mapping them as an overlay. Te Ātiawa seek to have the sites mapped on Zone Maps 40 and 42.

294. The Section 42A Report does not recommend mapping the sites as requested. This is in order to retain the consistency with the approach for all marae.[86] The final submissions of Te Ātiawa responded positively to this conclusion.

**Decision**

295. The submission is rejected.

[86] Section 42A Report page 20.

# Proposed Marlborough Environment Plan

# Topic 3: Natural and Physical Resources

**Hearing dates:** 27 – 29 November 2017

**S42A Report Writer:** Liz White

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| CMA | Coastal Marine Area |
| DOC | Department of Conservation |
| FEP | Farm Environmental Planning |
| MDC | Marlborough District Council |
| MPI | Ministry for Primary Industries |
| NESTA | National Environmental Standards for Electricity Transmission Activities 2009 |
| NESTF | National Environmental Standards for Telecommunication Facilities 2016 |
| NGOs | Non-Governmental Organisation |
| NPS | National Policy Statement |
| NPSET | National Policy Statement on Electricity Transmission |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| RPS | Regional Policy Statement |
| S42A Report | Section 42A Report |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| Awatere WUG | Awatere Water Users Group Incorporated |
| Chorus | Chorus New Zealand Limited |
| EDS | Environmental Defence Society Incorporated |
| FENZ | Fire and Emergency New Zealand |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| Hort NZ | Horticulture New Zealand |
| MFA | Marine Farming Association Incorporated |
| MFIA | Marlborough Forest Industry Association Incorporated |
| Nelson Forests | Nelson Forests Limited |
| NMDHB | Nelson Marlborough District Health Board |
| NZDF | New Zealand Defence Force |
| NZTA | New Zealand Transport Agency |
| PMNZ | Port Marlborough New Zealand Limited |
| Port Clifford | Port Clifford Limited |
| QCSRA | Queen Charlotte Sound Residents Association |
| Spark | Spark New Zealand Trading Limited |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

## Overview of Provisions

1. The Section 42A Report gives a brief summary of the contents of the chapter, identifying the issues at which they are directed:[1]

   *This package of provisions relates to the use of natural resources within Marlborough, and in particular, focuses on the reliance on the use of these resources for the District's social and economic wellbeing. This is expressed through the overarching Objective 4.1, which seeks that the District's primary production and tourism sectors continue to be successful and thrive, whilst ensuring that the natural resources on which they rely are sustained. Policies 4.1.1, 4.1.2 and 4.1.3 support the achievement of this outcome through directing that interventions in land use are limited to those necessary to protect the environment and wider public interest in it; generally enabling use of natural resources where it is sustainable; and seeking to maintain and enhance the quality of natural resources. These policies are to be implemented through five methods, being zoning provisions, district rules, regional rules, guidelines and information.*

   *As high level RPS provisions, these provisions guide and direct more specific policies within the MEP, for example those relating to specific resource use.*

## Change of title and Introduction[2]

2. The current chapter title, 'Use of Natural and Physical Resources', is said to constrain content of the chapter to just these resources. Forest & Bird seek to amend language in the provisions to more clearly reflect the purpose of the RMA as set out in s 5, or delete the whole chapter, ensuring that its provisions are captured appropriately in other chapters.

3. The submitter considers that the 'use' and 'development' of natural and physical resources appears to be the primary goal of the planning process, with its emphasis on primary industry, tourism and public infrastructure projects. 'Use' is considered to be only one way of managing resources – the others are 'development' and 'protection'. The Introduction to Chapter 4, Volume 1 in fact includes 'the use and development of natural and physical resources' (paragraph 2).

4. The submitter also is not clear about whether the chapter is to provide integration or how this will include protective measures. It says Issue 5C Method of Implementation (identifying they

[1] Section 42A Report, page 13.
[2] Section 42A Report, paragraphs 57-59.

will be implemented through other specific policies) makes the inclusion of the policies in this chapter irrelevant or of little weight.[3]

5. NZTA resists this notion, pointing out the chapter discusses the 'importance of sustainable management and use and development of natural and physical resources [through Objective 4.1, Policies 4.1.2 and 4.1.3]'. Trustpower also opposes Forest & Bird's overall approach, considering that each of the matters identified in the chapter is a legitimate resource management issue.[4]

6. Other submitters seek the chapter is amended to include provisions relating to road reserves, landscape quality, urban design and public safety provisions.[5] NZ Forest Products agrees Chapter 4 appropriately recognises the prosperity of Marlborough relies on utilising natural resources and the importance of the primary sector. This company, however, seeks specific recognition through clear objectives and policies that recognise the importance of commercial forestry as a primary industry and enable its operations to continue to expand and develop. It says the PMEP should also recognise the importance of infrastructure to support primary industry such as at the interface of the Coastal Marine Area.[6]

7. A submitter seeks that the second paragraph of the explanation to the Introduction discussing s 5 RMA needs to be expanded to provide a more complete legislative framework for the topic, and seeks that the PMEP be expanded to address the concept of natural capital and ecosystem services.[7]

8. Another submitter considers that the first paragraph from the Section 32 Report of the relevant benefits of Policy 4.1.1 be included in the main body of Chapter 4. This paragraph acknowledges the importance of private property rights and the benefit of having it expressed in the policy.[8] Te Ātiawa, on this issue, also seek an addition of the words 'iwi', 'kaitiaki' and 'kaitiakitanga' to the first paragraph of the Introduction.[9]

**Section 42A Report**

9. The Section 42A Report[10] acknowledges the chapter covers a limited range of matters within the broader topic of the use of natural and physical resources.[11] The chapter contains three

[3] Forest & Bird (715.1.2).
[4] Trustpower (1203). Section 42A Report, Issue 5 General Submissions, page 57.
[5] H Ballinger (351.37), M Batchelor (263.6).
[6] NZ Forest Products (995.1).
[7] Section 42A Report, Introduction, page 59. FNHTB (716.27).
[8] Section 42A Report, Introduction, page 59. K Adams (21.1).
[9] Te Ātiawa, Submission, Ian Shapcott, page 12.
[10] Section 42A Report, pages 57-58.
[11] Section 42A Report, page 57.

distinct sections with each of these seeking to provide overarching guidance on topics that are otherwise spread throughout the PMEP. The report emphasises the sustainability of resources with the intent throughout to better ensure integrated management in these areas which is not successfully achieved by their deletion.[12]

10. In responding to questions from the Panel as to whether the underlying concern of Forest & Bird that the current chapter title constrains content to the use of natural and physical resources and that sustainability may be addressed by reconsidering the title to the chapter. The report writer suggested amending the title to 'Management of Natural and Physical Resources' on the basis that these provisions are not more effectively dealt with in other chapters as these provisions address integrated matters that traverse more than one chapter of the PMEP.[13] The intent of these provisions is to better ensure integrated management, which is not better achieved by their deletion.

11. The report writer, on hearing evidence from FNHTB,[14] also acknowledges the paraphrasing of the wording of subsections (a), (b) and (c) of s 5(2) RMA in the Introduction, does not make it clear that there are two components to s 5(2) RMA, and that the second component (the 'sustaining', 'safeguarding' and 'avoiding, remedying or mitigating') is not sufficiently captured in the text. While this does not ultimately affect the provisions within the chapter or their effect, the second component should be referred to, and amended accordingly.

12. The report writer also considers the words supplied by Te Ātiawa are appropriate additions, given the references to 'kaitiakitanga' in Chapters 2 and 3 of Volume 1.[15]

**Consideration**

13. In terms of the retention of the whole chapter, we are satisfied that this provision as an overarching guidance to subsequent relevant chapters better achieves the way forward to more integrated management of natural resources than otherwise. We do not support its deletion.

14. The Panel concluded from the submissions that placing the words 'Sustainable Management' in front of this phrase 'of Natural and Physical Resources' would better achieve the desired outcome sought by Forest & Bird.

15. We note the issue of paraphrasing legal provisions arose in the Introduction to Volume 1 PMEP where ss 6 and 7 RMA subsections were identified in this way. This is one of those

[12] Section 42A Report, Reply to Evidence, page 23.
[13] Ibid.
[14] FNHTB (716.27).
[15] Section 42A Report, Reply to Evidence, pages 25-26.

examples where the differing nuances of the provisions require capturing for their full import to be adequately recognised. We therefore accept that the second paragraph of the Introduction to the chapter should be amended accordingly while noting that the second component of s 5 RMA, in the view of the report writer, is better achieved by way of still paraphrasing rather than quoting full sections. In view of the fact that the Introduction to Volume 1 of the PMEP includes the RMA's full s 5 text, we agree.

16. We also accept the reference to cultural issues should be included in the final paragraph of the Introduction.

**Decision**

17. Chapter 4 is retained.

18. The title to Chapter 4, Volume 1 is amended to read:

*<u>Sustainable</u> <u>Management</u> ~~Use~~ of Natural and Physical Resources.*

19. The Introduction is amended as to read:

*Marlborough's tangata whenua iwi and early settlers flourished in the Marlborough environment through use of the district's natural resources. Indigenous forests, wetlands, rivers and the sea were all larders for tangata whenua. <u>Marlborough's tangata whenua iwi are kaitiaki (guardians) and maintain a cultural responsibility for the sustainability of Marlborough's natural world - kaitiakitanga</u>. From the 1850s, Pakeha settlers...*

*Section 5 of the Resource Management Act 1991 (RMA) recognises that sustainable management includes the use and development of natural and physical resources to provide for the social and economic wellbeing, health and safety of the community.*

*<u>Under Section 5(2)(a)-(c) this use and development must be managed to: sustain the potential for on-going resource use; safeguard the life-supporting capacity of air, water, soil and ecosystems; and address adverse effects on the environment</u>. This chapter contains provisions that acknowledge the importance of using and developing our land, water, coastal and air resources and strategic infrastructure in this respect.. …*

## Issue 4A

**Marlborough's social and economic wellbeing relies on the use of its natural resources.**

20. The explanation to the issue set out details about the primary sector made up of agriculture, viticulture, horticulture, forestry, fishing and marine farming, and their reliance on the quality of Marlborough's natural resources. It is noted that although the resources of the region are currently of sufficient quality to meet the region's needs, they have an inherent vulnerability

to change.[16] Thus, loss of access to, or reduction in the quality of resources, would have a significant impact on all sectors.

21. Reference is also made to the specific natural resources that make up Marlborough's biodiversity. Further reference is made to the intrinsic and amenity values of this environment. While the value of the conservation estate is quantified, ecosystem services are not quantified in a monetary sense. Nevertheless, these services contribute to social wellbeing of the community beyond the primary sector, while sustaining (inter alia) fish and game that contribute to the region's natural capital. Tourism is a sector too that benefits as well as the primary sector, as do recreational opportunities and conservation.

22. Seven submitters support the issue statement as notified. Others seek changes:

- supporting the issue but noting the importance of diversity and capacity for adaptation; asserting that 'business as usual' may not continue; and that tourism based on high carbon-based energy demands may not continue in future;[17]
- amending Issue 4A (and Policies 4.1.2-4.1.3), which currently refer only to 'natural resources', to both 'natural <u>and physical resources</u>', on the basis that the RMA does not separately refer to both, and it is more appropriate for the RPS as a high-level document to refer to them collectively and its enabling philosophy;[18] including the words 'use' and 'development' too would better align with s 5 and 9 RMA and the enabling intent of the RMA envisages change which needs to be recognised over the life of the MEP;[19]
- amending Issue 4A and the explanation to include reference to ecosystem services provided by natural ecosystems and to refer to *natural resources or the environment* on the basis that there is inadequate reference to the contribution non-economic intrinsic values of the environment contributes to social wellbeing;[20]
- recognising that while there is quantification of the conservation estate, there is none for the primary sector: there is, for example, no recognition that Marlborough's primary industries are nationally important (viticulture and marine farming); and no reference is made as to from where the statistics in the explanation are sourced;[21]

[16] Section 42A Report, Reply to Evidence, page 14.
[17] PF Olsen Ltd (149.1).
[18] Forest & Bird (715.2).
[19] Dairy NZ (676.1), MFA (426.9), AQNZ (401.9).
[20] FNHTB (716.28).
[21] Federated Farmers (425.8).

- observing Issue 4A understates the contribution Marlborough's primary sector makes to the regional economy and subsequently its social and economic benefits are understated; requesting MDC undertake a full report on how the statistics given in the explanation to the issue are arrived at (the added value from primary production and reference to the economic monitoring reports that are used);[22]
- requesting an additional paragraph in the issue, specific to aggregate resources, as a significant resource that should be included;[23]
- questioning how the economic contribution that the Queen Charlotte Track makes to the regional economy was arrived at;[24]
- requesting the ecosystem of commercial forestry (habitat recreational access, reducing flooding, carbon sequestration, other non-wood values) also be recognised;[25]
- submitting that the issue be amended to discuss other resource uses that play an important role in Marlborough's wellbeing and requesting that as well as social and economic wellbeing, adding in 'cultural' is important.[26] Te Ātiawa in further submissions suggests the PMEP overstates the benefits of economic activities without similar reference to cultural considerations; Hort NZ supports this submission and also seeks that information is included about its own industry.

**Section 42A Report**

23. The importance of diversity, capacity and flexibility for adaption around water and high carbon-based energy demands is noted and may be a potential response to the issue but its inclusion does not explain in this case what the issue is. No changes to this point are recommended.

24. As to further economic details and reports sought, the issue statement relates to the high-level objective and policies of the RPS associated with the topic. The inclusion of these details does not assist in explaining the issue which is not about how much the economic contribution makes to the region. The crux of the issue is 'about the reliance of the primary sector on the natural resource base (of the region), and the correlation between resource use and prosperity of the district'. [27]

[22] Awatere WUG (548.1).
[23] Fulton Hogan (717.10).
[24] J and T Hellstrom (688.1).
[25] MFIA (962.7). Nelson Forests (990.163).
[26] Te Ātiawa, Hort NZ (referenced Section 42A Report, page 15).
[27] Section 42A Report, page 15.

25. Adding numerous references to the contribution of specific primary industries to the economy sought by some submitters, is not necessary to explain the link between those industries and natural resources.

26. As to various figures provided in the explanation to the issue, the report writer was unable to establish where they came from, noting that they would become out of date over the life of the plan, and the 35 per cent or 7000 employees figures used, does not correspond with one of the monitoring indicators included in the Anticipated Result section at the end of Chapter 4. The report writer recommended the figures should be deleted.

27. Similarly, the question of the financial contribution made by the Queen Charlotte Track to the economy of Marlborough is also questioned by the report writer as to its validity and should also be removed, and the reference recommended made to 'a significant amount' or similar.

28. The amendment to the explanation to refer to use 'and development' is also recommended as not only the 'use' but in some cases 'development' of natural resources is important for the social and economic wellbeing of the district. It better aligns too with s 5 RMA for the inclusion of the word 'development' envisages change.[28]

29. It is not clear in the Section 42A Report, however, as to what would be gained by adding the loss of access to natural resources or the 'environment' rather than only 'natural resources' within the third paragraph to the explanation because there is inadequate recognition of the non-economic values of the environment in the PMEP that contribute to social wellbeing. It is not clear to the report writer whether this amendment would have a significant impact on the primary sector.

30. The reference to ecosystem services is addressed in relation to the submissions from MFIA and Nelson Forests. They seek that ecosystem benefits of commercial forestry should also be recognised within the last paragraph of the explanation to the issue (habitat, recreational access, reducing flooding, carbon sequestration, other non-wood values) and notice is taken in the report that these provide many of the benefits to the conservation estate.

31. The point is made by the report writer that the provision of ecosystems and the contribution these services make to social wellbeing is not limited to the conservation estate but neither is it limited to commercial forestry. She considers it should be separated from its current

[28] Section 42A Report, pages 14-16; Reply to Evidence, page 2. Dairy NZ (676.1), Federated Farmers (425.14), Kim Reilly Evidence, paragraphs 10-13. Awatere WUG (548.1), MFA and AQNZ, Counsel Submissions.

paragraph so that it is a standalone point and amended to refer to the contribution of ecosystem services to wellbeing more generally. This aligns with the comments of FNHTB.[29]

32. Consideration of a more general nature is given to the amendment sought by Fulton Hogan.[30]. Mr Tim Ensor considers that the chapter should be amended to recognise that reference to other activities that rely on the rural resource (such as aggregate) [could] be achieved through the explanation to Issue 4A and a new, broader objective together with amendments. The resource and activity Fulton Hogan particularly refers to is aggregate extraction as of necessity it literally forms the foundation for roads in Marlborough and for a variety of buildings.

**Consideration**

33. Although we have already identified the title to the chapter should be changed in the Introduction, consideration of the wording of Issue 4A emphasises the fact that the issue is unnecessarily limited to the *use* of natural resources.

34. We support the insertion of the word 'development' for the reasons given to the heading of the issue as set out above.

35. We also considered whether the wording 'protection' should also be added to the title of Issue 4A as that too is identified in the wording of s 5(2) RMA as part of the definition of 'sustainable management'. This approach relates more specifically to the amended title to the chapter.

36. But s 12 RMA Restrictions on use of coastal marine area, and s 15 Discharge of contaminants into water already provide protection where necessary, whereas Issue 4A focuses on 'use' (and as amended 'development') [31].

37. The word 'relies' is not the most appropriate approach in the first paragraph of Issue 4A when the legislation is addressing sustainable management and integrated management of Marlborough's resources. We consider that the phrase 'interlinked with' is more apposite.

38. We agree also that the word 'cultural' be inserted to the explanation. As seen in Chapter 3 Marlborough's tangata whenua iwi, cultural considerations are already part of the issues which MDC is required to recognise and provide for as a matter of national importance. As advised in that chapter, cultural considerations will be part of the future with links to economic growth, heritage, tourism and conservation, and should also be linked at the outset to cultural 'wellbeing'. The explanation needs in the Panel's view further expansion to

[29] Section 42A Report, pages 14-16; Reply to Evidence, page 2.
[30] Fulton Hogan (717.1), Timothy Ensor, Evidence, paragraphs 3-11, 14-19.
[31] Dairy NZ (676.1).

recognise the cultural beliefs, practices and tikanga associated with being kaitiaki for natural resources.

39. Quantification of contributions to Marlborough's economy in the issue, however, will be out of date and time-bound (and therefore inaccurate). Greater recognition instead needs to be given to ecosystem services, including carbon sequestration.

40. Federated Farmers, in evidence, provided the Panel an alternative wording to the third sentence of the explanation. The Panel adopts this wording because it recognises that the primary sector still makes a significant contribution to the Marlborough economy.

41. Taking these issues into account, the Panel has accepted the following amended wording for the explanation to Issue 4A:

> *The prosperity of Marlborough has always relied upon utilising and developing the natural resources in the surrounding environment. Historically, the primary sector has driven the local economy. Today, that same sector is still a significant contributor ~~over 35 percent of~~ to the local economy and is a substantial provider of both permanent and temporary employment within the District.*
>
> *… The value of the conservation estate, which makes up 45 percent of Marlborough's land area, should not be underestimated. For example, the use of the Queen Charlotte Track, part of which occurs in the conservation estate, adds a significant amount ~~approximately $10 million~~ to the Marlborough economy annually.*
>
> *There are other ecosystem services ~~provided by the conservation estate~~ that result from different land uses, that although not quantified in a monetary sense, contribute to social wellbeing, such as reducing flood risk, sustaining whitebait catches and other fish and game and carbon sequestration.* [32]

42. We also consider that paragraph five should be broader than just the 'conservation estate' and should include 'carbon sequestration'.[33]

43. In view of the evidence the Panel heard from Marlborough's tangata whenua iwi, we also considered that an addition to the explanation to recognise what these iwi contribute to Marlborough is also appropriate. (Chapter 3 Marlborough's Tangata Whenua Iwi contains more explicit references to some of these issues.)

[32] FNHTB (716.28), MFIA (962.7), Nelson Forests Ltd (990.163).
[33] Section 42A Report, pages 14-16. Reply to Evidence page 2, references FNHTB (716.28), MFIA (962.7), Nelson Forests Ltd (990.163).

**Decision**

44. The Panel accepts the recommendations for amendments to the explanation as identified above, and accepts the further amendments to Issue 4A to make issues as to iwi even clearer as follows:

*Issue 4A – Marlborough's social, ~~and~~ economic and cultural wellbeing relies on the use development and protection of its natural resources.*

*The prosperity of Marlborough has always relied upon utilising and developing the natural resources in the surrounding environment. Historically, the primary sector has driven the local economy. Today, that same sector is still a significant contributor ~~contributes over 35 percent of~~ to the local economy and is a substantial provider of both permanent and temporary employment within the District ~~employs the equivalent of over 7,000 people on a permanent basis~~.*

*…*

*The value of the conservation estate, which makes up 45 percent of Marlborough's land area, should not be underestimated. For example, the use of the Queen Charlotte Track, part of which occurs in the conservation estate, adds a significant amount ~~approximately $10 million~~to the Marlborough economy annually. There are other ecosystem services ~~provided by the conservation estate~~ that result from different land uses that, although not quantified in a monetary sense, contribute to social wellbeing, by reducing flood risk, and sustaining whitebait and other fish and game and carbon sequestration.*

*Natural resources are also highly valued by Marlborough's tangata whenua iwi. The resources have mauri, or life force, and are taonga. Cultural beliefs and practices have developed in association with the use, development or protection of the resources by the iwi over time, including cultural harvest. Those beliefs and practices play an integral role in tikanga and iwi are kaitiaki of the resources within their rohe. The issue records the close association of Marlborough's tangata whenua iwi with natural resources. Further information on the nature of the relationship is contained in Chapter 3.*

## Objective 4.1

**Marlborough's primary production sector and tourism sector continue to be successful and thrive whilst ensuring the sustainability of natural resources.**

45. Twenty-seven submitters support the objective and either seek that it is retained or do not seek any changes. Those who suggest amendments seek: a need to recognise that with use comes responsibilities and a need to recognise that Marlborough's natural resources

contribute a significant proportion of New Zealand's economy – there should be recognition of externalities that are created (not mitigated) and also to address reverse sensitivity effects (and subsequent costs);[34] a reference included to related servicing and processing industries;[35] the final sentence of the explanation to the objective should be amended to read 'The Council can play a role in this by striving to maintain and enhance the quality of our environment *particularly in the Marlborough Sounds*';[36] the objective be amended to 'reflect the Council's intention to promote certainty and equity between land users, allowing rational decisions to achieve optimum environmental outcomes' – what is required is that the Council will not single out any one industry for inequitable treatment.[37]

46. At the outset of assessing this objective, Mr Ensor, on behalf of Fulton Hogan, points out that there is a disconnect between Issue 4B, Objective 4.2 and the relevant policies. The issue is broad, the objective is specific to primary production and tourism, and the policies are broad. This disconnect requires adjustment and, in Fulton Hogan's opinion, requires a suggested new objective.[38]

**Section 42A Report**

47. The report says the objective should state the outcome that is desired rather than explaining how an outcome is to be measured. The report writer initially considered, after assessing these submissions, that there should be no change to Objective 4.1 and its explanation should be retained as notified. Her reasons for doing so include the fact several of the submissions provided no alternative wording to achieve an outcome and that no submitter has identified changes to the objective that are more appropriate for achieving the purpose of the RMA.

48. She identified that the objective should not be considered in isolation. Some guidance is already provided within the chapter as to measuring the achievement of the objective: namely anticipated environmental results and monitoring effectiveness – 4.AER.1.[39]

49. Further, with respect to external and reverse sensitivity effects, there are more specific issues that address these matters elsewhere in the PMEP and they do not necessitate a change to an overarching objective. Also, to specifically identify the Marlborough Sounds with the objective is unnecessary as the objective and its related provisions are specifically targeted to

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[34] PF Olsen Ltd (149.2).
[35] AQNZ (401.12-.18), MFA (426.12-.18).
[36] QCSRA (504.5).
[37] D Hemphill (648.2).
[38] Fulton Hogan, Timothy Ensor Evidence, paragraphs 20-26.
[39] Section 42A Report, pages 16-17.

considering the management of the Sounds in the specific section set aside later in the chapter.

50. The report writer accepts, however, after hearing the evidence of Fulton Hogan,[40] that if the focus remains on primary production and tourism sectors, some amendments to provisions are required, or alternatively (as preferred by the company), the provisions should be amended to provide direction on natural resource use more broadly because the issues, policies and methods range more widely than the objective.

51. The report writer acknowledges that this relates in part to ensuring that the PMEP recognises the importance of these sectors to the district's wellbeing, rather than focusing only on their effects. She also considered how the provisions are given effect to in other chapters of the PMEP, noting that more specific direction on natural resource use is contained in those chapters relating to specific resource use.

52. Taking into account these various factors, the report writer considers the amendment sought by Mr Ensor is appropriate. This would see a broader objective included relating to natural resource use more generally (but still linked to wellbeing), which is implemented through the existing policies. This broader objective would sit alongside the existing, more focused objective, or merging it with broader objective content which retains a level of acknowledgement of the importance of the contribution of the various sectors. It would be appropriate to revisit both objectives following further consideration of the provisions that give effect to them, to ensure appropriate alignment.[41]

53. The Section 42A report writer provisionally recommended the following suggestion from Fulton Hogan to address Issue 4A:[42]

> *Objective 4X – Sustainable use and development of Marlborough's natural resources supports the social, cultural and economic wellbeing of the region.*

**Consideration**

54. The Panel questioned whether a new objective that was more closely aligned with Issue 4A is warranted, or whether it should be managed within the existing Objective 4.1.

55. Retaining it as notified becomes difficult if the intent is to stress the need for integrated management of Marlborough's natural resources and the ongoing sustainable management of the issues laid down in s 5(2) RMA.

[40] Fulton Hogan (717.10, 717.12).
[41] Fulton Hogan, Timothy Ensor Evidence, paragraphs 20-26.
[42] Section 42A Report, Reply to Evidence, pages 1-2.

56. The linking mechanism here between Issue 4A and the subsequent policies is Objective 4.1. It quickly becomes clear on the face of the related issues that a broader objective is preferable because the earlier Issue 4A was unnecessarily limited to the 'use' of natural resources.

57. On reflection, therefore, we consider a broader objective is preferable and Fulton Hogan's proposed wording is helpful to amalgamate with the existing objective.

58. The Panel believe consequential change is also required to introduce text that recognises that access to resources other than land and water are also important for social and economic wellbeing.

**Decision**

59. Objective 4.1 is amended as follows:

*[RPS]*

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

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

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

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

## Policy 4.1.1

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

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

inference that land ownership is implicit in s 9 RMA (within the explanation) is incorrect – further, given the rules in the plan, this is generally the position of most councils.[43]

62. Other submitters consider that:

- It is critical that intervention is only contemplated where there are clear service and economic ecological indications to support it – intervention is only justified when there are well established science, economic and ecological grounds.[44]
- While the policy is supported in part, rules are not drafted to guide the way resource use is undertaken and in relation to Policy 4.1.1, it should be amended to read '*Recognise the rights of resource users by not intervening in the use of land to protect the environment and wider public interests in the environment unless specifically required under the Plan'*.[45]
- The policy should be amended to read:[46] 'Recognise the rights of resource users while only intervening in the use of the coastal marine area where it is identified to ensure sustainable management of the environment. 'Use of private land will reflect sustainable management including protection of the environment and wider public interests in it.' Other reasons include cross-boundary effects, managing natural hazards, other hazards, reverse sensitivity.
- Drafting of the policy implies that the rights of the landowners to use resources is more important than the environment; iwi rights should be referred to, as interests to 'pull through' the matters set out in Chapter 3. The policy should be amended to read 'Recognise the rights of resource users while protecting the environment, and iwi rights and interests' on the basis that it seeks to improve and provide greater recognition and protection for iwi values, beliefs and resources.[47]
- The phrase 'wider public interests' should be replaced with 'greater public good' as the latter is more restrictive and will compel a greater contemplation of the *displacement* of the rights and freedoms of individuals.[48]

[43] Fish and Game (509.16), Ravensdown (1090.4), Fertiliser NZ (1192.2).
[44] PF Olsen Ltd (149.3).
[45] Federated Farmers (425.9).
[46] FNHTB (716.29).
[47] Te Rūnanga o Ngāi Tahu (1189.28).
[48] K Adams (36.3).

- Intervention should only be contemplated where there is a clear resource management issue that requires intervention, not just the wider public interest in the use of land being protected.[49]
- A provision be added to the policy that recognises Farm Environmental Planning (FEP) as a valid tool to deliver positive environmental outcomes while monitoring land use flexibility, better balancing the environment and minimisation of regulation – this is a better alternative to prescriptive activity-based rules.[50]
- An area where intervention is necessary is exotic commercial forestry where various adverse effects can arise such as effects on the coastal marine environment through sedimentation, safety amenity and cross-boundary effects, especially in Port Underwood.[51]
- The policy has the wrong emphasis, as it recognises the rights of resource users rather than controlling the use of land for environmental outcomes (responsibility of a regional council under s 30(1)(c) RMA) and the control of effects from land use and development (responsibility of a territorial authority under s 31(1)(b) RMA).
- Two submitters seek that the last two paragraphs of the explanation to the policy are amended to include reference to the need to control land use where activities have effects beyond their boundary on other people and the environment.[52]

**Section 42A Report**

63. The Section 42A Report identifies it is clear what is intended by the policy's direction and this is expanded in the explanation – further detail having been expanded in the originating Section 32 Report. The policy reflects the public consultation that took place in creating the PMEP and the importance of recognising private property rights, providing a key direction for how the PMEP achieves Objective 4.1. The submitter's reference to s 9 RMA (Restrictions on use of land) should not be accepted as land ownership is not implicit within the section and its relevance is captured in any event within the second paragraph of the explanation.[53]

64. As to the issue around changing the policy and seeking changes to the rules, this would create a circular policy which would then provide no assistance to guide the provisions in the other parts of the PMEP as to when intervention is warranted.

[49] Hort NZ (769.6).
[50] Beef + Lamb (459.12).
[51] Clintondale Trust and Whyte Trustee Company (484.3).
[52] KR and SM Roush (845.1), Port Underwood Association (1042.1).
[53] Section 42A Report, pages 18-20.

65. The report writer says the policy as worded provides better direction and is better aligned with the aims of Objective 4.1 because the definition of 'environment' is so broad, encompassing all interests including ecosystems, people and communities, all natural and physical resources etc. As an example, as currently worded, the policy provides justification to intervene to protect people and communities from the effects of natural hazards where this relates to the effects of private land use. The policy as worded provides better direction and is better aligned with the aims of Objective 4.1 than the alternative suggestion.

66. Further, the report says protection offered landowners does not have more weight than the protection offered to the environment (including ecosystems, people and communities, all natural and physical resources, amenity values, and social and economic conditions); for it expressly provides direction by providing that intervention is appropriate if necessary to protect the environment. The submission adds little value as a high level policy.

67. With reference to iwi rights and interests, the report observes that objectives in the PMEP need to be considered together and it is not necessary or appropriate for different objectives to cover the same issues.

68. In relation to replacing the 'wider public interest' with the 'greater public good', the 'wider public interest' the report states this is not an appropriate driving force for intervention. The breadth of the definition of 'environment[al]' under the RMA covers the wider public intervention in any case, and the phrase 'wider public interest' may be deleted.

69. Reluctance to protecting the environment entirely and replacing it with … 'a resource management issue' … is identified in the report as not appropriate in that it risks other policies in the PMEP driving the level of intervention, not the other way round. Use of the phrase 'protect the environment' too sets a relatively low bar on intervention because 'protection' could be to mean 'no change'. A recommendation is to amend the policy to limit intervention on the use of land to 'where it is justified to protect the environment'.[54]

70. While a submitter considers FEP would deliver a better alternative to prescriptive activity-based rules, the report writer considers this change is too detailed and specific for the nature of the policy which is intended to provide overarching direction across the Plan. There are other ranges of tools that are best left to rule packages.

71. With regard to forestry, the report draws attention to the fact that there are now national rules relating to the activity set out in the National Environmental Standard for Plantation

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

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

72. The initial recommendation of the report writer was to amend Policy 4.1.1 as follows:[55]

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

73. In a subsequent hearing where evidence was presented, several requested the policy be further amended to read: 'Recognise the rights of resource users ~~by~~ while only intervening in the use of ~~land~~ the coastal marine area where it is justified to ~~protect~~ ensure sustainable management of the environment ~~and wider public interests in the environment~~.' [56]

**Section 42A Reply to Evidence**

74. The report writer identifies[57] it is not clear why the policy should apply to the CMA rather than to land. The explanation is clear that this was not the intention of the policy. Section 9 RMA provides for the use of land without consent, unless a plan rule requires one. Conversely, various activities within the CMA require consent, unless a plan rule allows for them as a permitted activity. No change is recommended.

75. The report writer had some concerns with using 'ensure sustainable management' instead of 'protect the environment' because reference to sustainable management essentially refers back to everything encompassed in s 5(2) RMA. That outcome does not provide particular direction about how is the s 5(2) RMA objectives are to be achieved in the Marlborough context. No change is recommended.

76. The report writer further observes that the purpose of the policy is to assist in achieving the objectives of the PMEP (particularly Objective 4.1) rather than directly seeking to give effect to the intent of the RMA. Regardless of whether the policy 'sets out the intent of the RMA', the question should be, would the deletion of the policy better assist in achieving the overriding objective, which it is suggested it would not. No change is recommended.

77. In addition, the report writer notes that the emphasis on resource users (rather than control of use of land) relates again to the achievement of the objective, that is, recognition of the rights of resource users is part of ensuring the continued success of the primary production

[55] Section 42A Report, page 20.
[56] Section 42A Report, Reply to Evidence, page 3.
[57] Section 42A Report, Reply to Evidence, pages 3-4.

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

78. With regard to FEPs, her view remains as set out in the Section 42A Report.[58] Specifically, this chapter provides overarching direction, whereas the use of particular tools to achieve and implement these aims is a more specific matter that should be considered in relation to the provisions that are included within the MEP to give effect to Chapter 4. No change is recommended.

79. The concerns expressed about the use of the phrase 'protect the environment' arise in this context. Thus the report writer takes the position that because the policy direction sets the bar for intervention at the level where there is justification for the intervention for the protection of the environment, the policy direction is saying that only justified intervention will be undertaken to protect the environment.

80. The later part of policy 4.1.1 was the subject of submission challenging the intervention being justified in the 'wider public interests in the environment'. The Report writer summarised her concerns as follows:

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

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

**Consideration**

82. The Panel considered whether Policy 4.1.1 should be retained with some submitters asserting it states the obvious. We consider the policy provides an oversight at the RPS level of the direction in which the subsequent provisions will go, and should be retained.

83. In terms of intervention, this should only occur where there is a clear resource management issue to be addressed that requires intervention, not the 'wider public interest', which sets a

[58] Section 42A Report, pages 19-20.

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

**Decision**

84. Policy 4.1.1 is amended as follows:

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

85. The explanation is amended as follows:

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

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

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

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

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

## Policy 4.1.2

**Enable sustainable use of natural resources in the Marlborough environment**

86. Twenty-one submitters support the policy and do not seek any changes. Others seek that: the policy is amended to refer to the use *and* 'development of' natural resources as its inclusion would provide a clear reference to potential future use of the environment and is consistent with the direction in s 5(2) RMA;[59] the policy does not support or encourage sustainable management and requires change;[60] support the policy but its scope is too wide – it should be extended to add 'by including permitted activity rules where adverse effects are no more than minor, taking into account cumulative effects' (this is seen as consistent with the explanation to the policy and Method 4.M.3); also the reference to coastal space in the explanation should be amended to the 'coastal marine area' to more accurately reflect s 12 RMA;[61] the policy be amended to enable 'use' rather than 'sustainable use' with the addition of 'while managing any adverse environmental effects'. This is on the basis that, while the submitter supports the enabling intent of the policy, the purpose of the RMA is to promote the sustainable management of natural resources through managing effects;[62] the first paragraph to the explanation be amended to state at the commencement of the provisions sentence 'Where the adverse effects are considered minor and there is no potential for environment effects, resource consents will not be required';[63] amend the first paragraph: 'to ensure natural resource sustainability long-term consents (over 20 years) should not be granted in public space'.[64]

**Section 42A Report**

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

[59] AQNZ (401.16), MFA (426.16).
[60] Further submissions from Clova Bay Residents, KCSRA.
[61] FNHTB (716.30).
[62] Ravensdown (1090.5).
[63] Dairy NZ (676.5).
[64] Port Underwood Association (1042.2).

consistent with the discussion in the second paragraph of the explanation and the fact that s 5 RMA refers to managing development as part of sustainable management.

88. The report writer acknowledges that on its own the policy provides limited guidance but from the explanation it is the intention to enable provision for natural resource use where such use is considered sustainable. The outcome is;

- permitted activity status for resource use that has no more than minor effects;
- consideration on a case by case basis beyond this;
- further definition in the PMEP through policies specific to resources;
- the use of an allocation framework.

89. As a result of the submissions, the report recommends that the policy is extended to provide greater detail on this policy. It also recommends that the reference to coastal space be amended to 'coastal marine area' to more accurately reflect the RMA.[65]

90. In response to the submission seeking long term consents to be limited to 20 years, this is recommended to be rejected for a number of reasons. Twenty years is the statutory minimum under the RMA, and prescribing the minimum as a maximum creates inefficiencies. Longer terms than 20 years provide greater certainty for businesses. The report writer also points out it is inappropriate for this statement in an explanation. If Council wants to provide such a direction in the plan, this is usually set at the policy level when there is sufficient reason and support for such a restriction. It would more usually relate to environmental effects.

91. Other submissions are recommended to be rejected either because they do not seek a change in policy or they duplicate what is already set out in the explanation.

92. The recommendation in the Section 42A Report on Policy 4.1.2 is as follows:[66]

'[RPS]

*Policy 4.1.2 – Enable sustainable use and development of natural resources in the Marlborough environment, including through the use of allocation frameworks and permitted activity rules and standards where no more than minor effects are anticipated.*

*Many uses of the coastal ~~space~~ marine area, river beds, air and water resources are ~~prohibited~~ restricted unless allowed by a rule in a regional plan or by resource consent*

[65] Section 42A Report, page 22; s 12 RMA.
[66] Section 42A Report, pages 22-23.

*(see ss 12 to 15 of the RMA). As a principle, the Council will continue to enable access to natural resources where the subsequent use of those resources has no more than minor adverse effects on the immediate or surrounding environment. This will be achieved through the use of permitted activity rules, including conditions where appropriate, avoiding the need for resource consent. Where the adverse effects are considered more than minor or where there is potential for cumulative effects, then resource consents will be required. Policies throughout the MEP help define sustainable resource use and development.*

*The use of allocation frameworks for the coastal ~~space~~ marine area and freshwater will also assist to enable the sustainable use and development of these natural resources. These frameworks will provide certainty about the quantities and/or locations of resources available and the circumstances in which they may be used and developed.'*

93. In evidence, several submitters sought further changes to these recommended amendments: opposing the recommended addition of 'through the use of allocation frameworks' as it neither reflects the intent of the policy nor appropriately fits within its framework; policy [should be] reduced to 'enabling use and development', with no further additions;[67] requesting the inclusion of reference to 'physical' as well as natural resources in the policy; recognising the link between natural and physical resources and the definition of sustainable use; concern regarding additions as being unnecessary and only part of the discussion around the measures by which sustainable use and development of resources will be enabled; [68] today's 'minor effect' may be assessed differently tomorrow; the isolation of the word 'effect' has created problems in the holistic management of the environment; add 'taking into account cumulative effects' to the end of the recommended policy as an improvement but remove reference to the use of allocation frameworks;[69] concern that amendments do not include all matters identified in earlier submissions, and to do so would create a lengthy policy; preference is to add managing any adverse effects (as sought by Ravensdown) as 'this is surely the outcome sought by allocation frameworks, permitting activities with no more than minor effects, policies and the resource consent process';[70] policy does not include 'protection'; a change to refer to 'the use and development of natural resources' rather than 'sustainable use and development'. With reference to 'sustainable use and development' the RMA refers to 'sustainable management'; and as this relates to the use and development of

[67] Federated Farmers, Kim Reilly Evidence, pages 17-26.
[68] Trustpower, Nicola Foran Evidence, paragraph 5.16.
[69] FNHTB, Evidence, page 1.
[70] Fertiliser Association of NZ, C Kelly Evidence, paragraph 14.

natural and physical resources, the words 'sustainable development' should be amended to 'Enable sustainable use and development of natural resources in the Marlborough environment by managing adverse environmental effects arising from the activity'[71] because the policy seeks to enable sustainable use and development, and reference to managing adverse effects better reflects the intent of the RMA.[72]

**Section 42A Reply to Evidence**

94. The range of this evidence on the recommended changes to Policy 4.1.2 indicated to the report writer a level of dissatisfaction with the changes recommended to add greater specification as to how enabling the policy's direction would be achieved.

95. The report writer's agreement that the policy should be further amended included providing direction as to how the PMEP implements enablement as it makes direction clearer. Further, although direction may make the policy lengthy, with other chapters of the PMEP longer policies with subclauses are recommended to be used. And while allocation frameworks may cause concern, this reference was said to be appropriate to retain, because the term is used within the PMEP to enable resource use in the manner anticipated by the policy.[73]

96. Ravensdown's evidence seeks a change to refer to the 'use and development' of natural resources rather than 'sustainable use and development' on the basis that the RMA refers to 'sustainable management' and this relates to use and development of natural and physical resources, not to 'sustainable development'.[74] The report writer's concern is that to meet this suggestion would set a direction to 'enable' resource use and development without limitation. The report writer's understanding of the policy intent is that it seeks to enable resource use where that use is sustainable. She prefers retention of that wording, noting that the additional reference by Hort NZ to managing adverse effects goes some way to addressing her concern.

97. The reply to evidence also identifies that the emphasis on resource users (rather than control of use of land) relates again to the direction in Objective 4.1, that is, recognition of the rights of resource users as part of ensuring the continued success of the primary production and tourism sectors with the intervention identified, being related (in part) to ensuring sustainability of natural resources. [75]

[71] Ravensdown, Memorandum, paragraphs 34-37.
[72] Hort NZ, Lynette Wharfe Evidence, paragraph 4.36.
[73] Section 42A Report, Reply to Evidence, page 5.
[74] Ravensdown, Statement, such as the responsibility of a regional council under s 30(1)(c) RMA and the control of effects from land use and development (responsibility of a territorial authority under s 31(1)(b) RMA).
[75] Reply to Evidence, pages 4-5.

98. The report writer reiterates what has been included earlier – that the chapter provides overarching direction. The use of particular tools to achieve and implement these aims is a more specific matter and should be considered in relation to other provisions that are included within the PMEP to give effect to Chapter 4.

99. The final recommendation is to amend Policy 4.1.2 as follows:

> *Policy 4.1.2 - Enable sustainable use and development of natural resources in the Marlborough environment, while managing any adverse environmental effects, through the use of:*
>
> *a) Allocation frameworks*
>
> *b) Permitted activity standards where no more than minor effects are anticipated and taking into account cumulative effects*
>
> *c) Resource consent processes*
>
> *d) Policies specific to various resources*
>
> *Many uses of ~~the~~ coastal ~~space~~ marine area, river beds, air and water resources are ~~prohibited~~ restricted unless allowed by a rule in a regional plan or by resource consent (see Sections 12 to 15 of the RMA). As a principle, the Council will continue to enable access to natural resources where the subsequent use of those resources has no more than minor adverse effects on the immediate or surrounding environment. This will be achieved through the use of permitted activity rules, including conditions where appropriate, avoiding the need for resource consent. Where the adverse effects are ~~considered~~ potentially more than minor or where there is potential for cumulative effects, then resource consents will be required. Policies throughout the MEP help define sustainable resource use.*
>
> *The use of allocation frameworks for the coastal ~~space~~ marine area and freshwater will also assist to enable the sustainable use and development of these natural resources. These frameworks will provide certainty about the quantities and/or locations of resources available and the circumstances in which they may be used and developed.*

**Consideration**

100. In the Panel's opinion the intent of the policy requires clarification. Policy 4.1.2 should enable use and 'development' to more correctly align with Issue 4A as suggested by AQNZ and MFA.[76] As to the submissions seeking that policy include 'protection'. The concept of 'Protect' is not

[76] Section 42A Report, pages 21-23 (AQNZ, MFA).

relevant in the context of this policy. Sections12 (Restriction on use of coastal marine area) and 15 (Discharges of contaminants into environment) already provide protection unless a rule otherwise provides for use and development – this is what the policy addresses.

101. We also reflect that the reference to 'cumulative effects' in Policy 4.1.2(b) is not necessary as it is included in the definition of 'effect' in s 3 RMA and also the reference to Policy 4.1.2(c) should be deleted too. Resource consents are not a plan mechanism, and resource consent processes are not usually enabling. They are processes utilised to obtain consent to use or develop resources.

102. We queried also whether the policy should refer in the explanation to the coastal marine area and considered that for this particular series of policies the submission is rejected. It ignores the reality that this policy addresses land issues because of the fact that activities on land are allowed by s 9 RMA as of right if there is no rule to the contrary. In the Coastal Marine Area, ss 12 and 15 RMA provide that rules are needed to allow activities. The last sentence of the first paragraph of the explanation needs further expansion as to the differences between s 9 and ss 12 and 15 RMA. Rules are required to enable activity in the coastal marine area.

103. Otherwise we accept the recommendations of the report writer.

**Decision**

104. Policy 4.1.2 is amended as follows:

[RPS]

*Policy 4.1.2 – Enable sustainable use <u>and development</u> of natural resources in the Marlborough environment<u>, while managing any adverse environmental effects, through the use of:</u>*

*<u>(a) Allocation frameworks</u>*

*<u>(b) Permitted activity rules and standards where no more than minor effects are anticipated</u>*

*<u>(c) Policies specific to various resources.</u>*

105. Add "…and development" to the end of the first paragraph of the explanation.

## Policy 4.1.3

**Maintain and enhance the quality of natural resources.**

106. Eight submitters support the policy and do not seek changes. Other submitters seek: that the policy be deleted on the basis that it duplicates s 7(f) RMA and in any event is inherent in

Policy 4.1.2;[77] that the policy be amended to read maintain 'or' enhance, rather than maintain 'and' enhance as 'maintain and enhance' is confusing, and the 'or' better aligns with the terminology used in the National Policy Statement for Freshwater Management Objective 2 which requires maintenance *or* improvement in relation to freshwater quality; it is not possible to both 'maintain' and 'enhance'; enhancement should be limited to 'where degraded';[78] requiring the maintenance of the quality of the environment to protect the quality of natural and physical resources in order to protect the continuing viability of production activities in the coastal marine area;[79] further detail within the policy to improve its clarity and implementation by adding 'Maintain and enhance the quality of natural resources, recognising and reflecting – (a) that a precautionary approach may be required to maintain the quality of natural resources; (b) the intergenerational needs for the quality of natural resources'; supporting the intent of the policy but seeking the enhancement of the quality of resources where there is community desire for this, and subject to the costs and benefits of enhancement having been weighed up seeking the following amendment to the policy: 'Maintain and, where there is community desire and costs and benefits are balanced, enhance the quality of natural resources.'[80] Te Ātiawa seeks to amend the policy by adding 'with the support of kaitiaki' and the addition of a further sentence to the policy explanation regarding consultation with iwi.[81]

**Section 42A Report**

107. In terms of deleting the policy, the Section 42A Report identifies that the policy is an important component to the achievement of Objective 4.1. Policy 4.1.1 is focused on limiting intervention in land use to enable the success of the primary production and tourism sectors. Policy 4.1.2 seeks to enable the *use* of natural resources while ensuring that the use is sustainable. Policy 4.1.3 is more focused on the *sustainability of natural resources* – it requires the maintenance *and* enhancement of the quality of natural resources to assist the resource base to be sustained, contributing to the success of the sectors that rely on this outcome.

108. Conversely, there may be times where in order to achieve Objective 4.1, enhancement of the quality of a natural resource is justified even when it is not degraded, for example, various actions can be taken to enhance the quality of soil to increase its productive use. The report is unsure, however, what is meant by benefits and costs being 'balanced', as sought by

[77] AQNZ (401.19) and MFA (426.19).
[78] Dairy NZ (676.17), Ravensdown (1096.6), Fertiliser Association (1192.4).
[79] Totaranui Ltd (233.8).
[80] Federated Farmers (425.12).
[81] Te Ātiawa, Section 42A Report, Reply to Evidence, page 27.

Federated Farmers, as the direction in s 32 RMA is simply to *consider* the costs and benefits of any approach.

109. The report writer, nevertheless, accepts several submissions to amend the policy to 'maintain *or* enhance'. Her concern is where resources have been degraded there may be times when maintenance will still be the most appropriate course of action because the benefits of enhancement are outweighed by costs.

110. In terms of Te Ātiawa's submission, the report identifies the submitter has not provided details around what support from kaitiaki will be provided, and therefore how the addition would be implemented. As the submission relates to consultation, and as set out in the additions sought in the explanation, it is not appropriate to include directions. The submission also does not align with Policy 3.1.2 and the legal implications of consultation. No change is recommended.

**Consideration**

111. The Section 42A Report identifies that s 7(f) RMA relates to the quality of the 'environment' (in its widest sense) whereas Policy 4.1.3 relates to the quality of the 'natural resources' relating primarily to those supporting the social, cultural and economic wellbeing of Marlborough (amended Objective 4.1). The report writer considers that the policy helps to ensure that appropriate regard has been given to the direction in s 7(f) and that this more specific policy is an important component of the achievement of Objective 4.1.

112. The report writer also states in relation to costs and benefits: 'Given that this policy sits at a high level, it is my view that it is appropriate to retain the broad direction in relation to maintaining *or* enhancing without prescribing when this is to occur.' Policy 4.1.3 provides further detail that it is the maintenance *or* the enhancement of the qualities of the natural resource base that will contribute to the sustainability of the primary production and tourism sectors.[82] We do not accept that recommendation that 'maintenance' and 'enhancement' should be expressed as alternatives.

113. Nowhere in Policy 4.1.3 is the alternative wording recommended by the report writer found. The last lines of the first paragraph of the explanation to the policy identify 'the Council can play a role in [ensuring the sustainability of natural resources] by striving to maintain *and* enhance the quality of the environment', thereby directly reflecting the s 7(f) wording as to maintenance and enhancement of the environment, of which natural resources are a part.

[82] Section 42A Report, pages 23-24.

114. Merely maintaining natural resources as recommended in the Section 42A Report by substituting 'and' with 'or' does not encourage improvement/enhancement of an identified natural resource. The report writer in fact gives as one example that various actions can be undertaken by the farming community to enhance the quality of soil to increase its productive use. Another example is farmland prone to erosion being better protected with the planting of indigenous trees, or farming landowners sympathetic to wetlands on their properties enhancing natural resources with added fencing and setbacks; or planting waterways and margins to protect and enhance the quality of water resources.

115. The word 'thrive' in Objective 4.1 introduces the notion of a need to provide for added value to economic and natural resource values, while restoration, and rehabilitation can enhance the quality of Marlborough's natural resources.

116. The word 'or' is provided for in s 5(2) RMA where sustainable management of natural resources is provided for through 'avoiding, remedying *or* mitigating any adverse effects of activities on the environment'. The use of the word 'or' in that provision addresses remedying *or* mitigating any adverse effects on the environment. That is not the focus of Policy 4.1.3. With the implications in s 5(2) RMA of mitigation of adverse effects, it is more to do with maintenance than it is enhancement. Enhancement is a matter to which authorities must give particular regard in s 7(1)(c).

117. In terms of the substitution of 'and' with 'or' endorsed in the wording of the Section 42A Report and by some of the submitters, we note that s 5 RMA defines the purpose of the legislation as the *promotion* of the management of natural and physical resources at the same time as sustaining these resources to meet the reasonably foreseeable needs of future generations safeguarding the life-supporting capacity of air, water, soil and ecosystems.[83]

118. The RMA legislation in fact provides a number of management tools addressing Marlborough's natural resources in terms of resource consents including by enabling the enhancing of their qualities through conditions on consents. (We note the MFA's submission that offsetting, compensation and substitution are merely offsets against adverse effects.[84])

119. In the course of evidence for Te Atiawa a request was made for this policy to include a requirement for kaitiaki input. The Panel considers it is inappropriate to include such wording at a policy level given the uncertainty regarding resourcing, availability, capacity for iwi to meet the requirements of this policy direction. There is also the potential for difficulties in

[83] Section 5(2)(a) and (b) RMA.
[84] MFA, Counsel Submissions, pages 46-48.

obtaining agreement on Kaitiaki status. Given s 8 RMA there remains an expectation that Council will engage with any affected iwi.

120. Further, by providing for MDC, as part of its management functions, a wider lens to work with Marlborough's tangata whenua iwi, MPI, DOC, fisheries, NGOs, the farming community, and community groups, the PMEP provides for enhancement of increasing the quality of natural resources through other means as set out in the methods attached to this chapter, rather than simply monitoring the status quo.

121. The Panel concludes that there is no need for Policy 4.1.3 to be amended. The MDC has appropriately in s 7 RMA terms given it 'particular regard' to the notified policy. It is worthwhile to note that if Council considers Marlborough's natural resources are significant enough to provide specific encouragement through an overarching policy such as Policy 4.1.3, then it is within its discretion to do so. Equally, if Council does not consider these resources present a profile beyond maintenance (and can demonstrate this), then it has the discretion not to require both maintenance and enhancement.

122. It is not appropriate to change a legislative criterion in s 7(f) RMA for a subset of the environment in a high-level document (RPS) or 'bend' a legal provision to suit a particular activity or activities when it suits merely based on a particular view of elusive costs and benefits arising in respect of the quality of natural resources.

123. The Panel's views expressed above as to importance of potential enhancement need to be recognised by an addition to the explanatory statement.

**Decision**

124. There is no change to Policy 4.1.3 but an additional paragraph at the end of the existing explanation is included as follows:

*The policy seeks to maintain and enhance the quality of soil, air, water and coastal resources given their contribution to Marlborough's social, economic and cultural wellbeing as a base from which enhancement can commence. However, past resource use has degraded some of those natural resources and in these circumstances the policy seeks to enhance resource quality in order to achieve Objective 4.1. The way in which regard will be had to maintenance and enhancement or resource quality is set out in greater detail in subsequent chapters.*

## Method 4.M.4 Guidelines

125. Awatere WUG and Irrigation NZ seek that the final sentence stating that the Council will 'rely on' user groups to implement the guidelines should be amended to the Council supporting these groups and/or further supporting industry organisations. [85]

126. Federated Farmers suggested support for a new method as follows: 'Council will resource priority catchment enhancement projects that develop partnerships between industry, resource users in the catchment.' The report writer recommends no change in this method as it does not come within the parameters of Chapter 4.

**Section 42A Report**

127. The Section 42A Report agrees that methods of implementation should be focused on the actions the Council will take to implement the PMEP with the Council supporting rather than relying on industry and user groups to implement guidelines. The report recommends an amendment to the second to last and last lines of Method 4.M.4 Guidelines as follows: '… the Council will support industry and resource user groups to implement the guidelines'.[86]

**Consideration**

128. The Panel agrees that the method as notified does not reflect the actions the Council will take. We agree with the recommendation to replace 'rely on' with 'support industry and'.

**Decision**

129. Method 4.M.4 is amended as follows:

*The Council will make extensive use of guidelines to assist resource users to carry out their activities according to best practice for environmental outcomes. Guidelines will be developed in consultation with resource users and groups that represent their interests. The Council will ~~rely on~~ support industry and resource user groups to implement the guidelines.*

## 4.AER.1

130. Multiple submitters highlighted concerns with respect to the reliance on public perception surveys in the fourth indicator and sought its deletion. The main concern was the subjective nature of such surveys and the ability to therefore rely on the results.

## Section 42A Report

131. The report writer considered the method to be appropriate and highlighted that the results would be considered alongside other information to determine whether the objectives of Chapter 4 are being met.

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[85] Section 42A Report, pages 25-26.
[86] Section 42A Report, Reply to Evidence, page 7.

### Consideration

132. The Panel agreed with the submitters public perception surveys are not a reliable method for determining whether objectives are being met. The Panel also grappled with this issue in the context of 7.AER.1 as well and came to the same conclusion.

133. Although the Panel agrees with the submitters, it does not consider that the indicator should be deleted. It is important that another appropriate indicator is used to measure whether the Marlborough Sounds Environment is in good health. In this regard, the AERs and associated indicators already included in Chapters 6, 7, 8 and 10 will provide useful information with respect to the state of the natural character, landscape, indigenous biodiversity and heritage values present in the Marlborough Sounds. In removing the fourth indicator, the Panel has therefore decided to replace it with a cross reference to the indicators in those chapters.

134. However, it will also be essential to involve Marlborough's tangata whenua iwi in the consideration of the results of monitoring under the relevant AERs. Iwi are kaitiaki and can contribute to the analysis of the monitoring results.

### Decision

135. Replace the fourth indicator for 4.AER.1 with the following:

    *The ecological, physical, cultural qualities, and amenity values that contribute to the character of the Marlborough Sounds are maintained (and enhanced), as informed by AERs in Chapters 6, 7, 8 and 10 and by consultation with Marlborough's tangata whenua iwi*

## Management of regionally significant infrastructure

#### Background to Issue 4B, Objective 4.2, Policies 4.2.1, 4.2.2 and 4.2.3 and Methods 4.M6, 4.M.10

136. The Panel's decisions on Topic 20: Utilities and Designations have influenced the nature of the provisions under Issue 4B. In particular, that decision adds provisions providing for network utilities to Chapter 4. Therefore this decision should be read in conjunction with the decision on Topic 20.

137. Because of the interrelated nature of a number of the submission points on the various provisions within this topic, this section of the report assesses the submissions which seek changes and additional provisions which relate to the same underlying principle: the importance of regionally significant infrastructure to Marlborough including Network Utilities.

138. There is a degree of overlap between Issue 4B, Objective 4.2 and Policy 4.2.1. They concern some matters of national and regional importance and address omissions, definitions and the status of the relevant planning provisions.

139. The report writer at the outset of the Section 42A Report set out a series of statutory documents which are within the scope of this section of the chapter to address. The National Policy Statement on Electricity Transmission (NPSET), which manages the transmission of electricity within the region or district and the effects of the network on the environment, is one of these. This document is particularly relevant in that it influences the assessment of the relief requested by submissions set out in the Section 42A Report. It is particularly relevant to Issue 4B, Objective 4.2 and related provisions of this section of Chapter 4 because the National Grid is identified as 'regionally significant infrastructure' as well as being nationally significant. The particular policies within the NPSET used in into submissions and evidence by Transpower[87] are reflected in the suggestions made in particular to the PMEP policies and how they are developed.[88]

140. Sections 62(3), 67(3)(a) and 75(3) of the RMA require that a regional policy statement, regional plan and district plan must give effect to a national policy statement, such as the NPSET. The requirement to 'give effect to' is a strong statutory directive compared to other directives in the RMA and was interpreted in the *EDS v New Zealand King Salmon* Supreme Court case as meaning 'to implement'.

141. There is also an issue as to the relevance of the National Environmental Standards for Electricity Transmission Activities 2009 (NESTA). NESTA applies to high voltage electricity transmission lines and covers activities related to the operation, maintenance and upgrading of existing lines but does not apply to the construction of new lines or substations. As pointed out by the report writer, 'this is of some relevance to the management of this regionally significant infrastructure because Chapter 4 contains overarching policy guidelines relating to this infrastructure which includes not only the National Grid, but the telecommunications infrastructure.'[89] While the rules in NESTF (National Environmental Standards for Telecommunication Facilities 2016) prevail over district rules, the PMEP's policies and objectives are relevant in the consideration of any resource consent required under the NESTF or any designation process.'

142. While the telecommunications network is considered nationally significant by Chorus and Spark there are no finer grained provisions to some items of infrastructure of which the telecommunications network is one despite the fact that under Topic 20 Utilities there are a

[87] Section 42A Report, pages 9-10.
[88] Ibid, paragraph 2.
[89] NESFT, Section 42A Report, pages 10-11.

significant number of rules that apply to the range of network facilities identified. There is in essence a policy gap around this particular treatment of infrastructure.

143. The report writer in Topic 3 identified that she would address the ‘gap’ in RPS policy development around network utilities (identified by Fulton Hogan and Transpower) when addressing Topic 20 Utilities and Designations.

144. There was until then no specific policy framework for network utilities despite rules in Volume Two Chapter 2 to do so. The final recommendation made by the report writer in reply to submissions was:

Retain provisions as regional policy statement provisions only, noting that there is currently a policy ‘gap’ in relation to network utilities that therefore needs to be addressed, and reconsider the whole approach as part of Topic 20 - Utilities.[90]

145. The omission was addressed at the outset by the report writer in Topic 20 by providing a recommended objective and a recommended new policy. These are identified below. The new policy follows the numbered sequences following new Policy 4.2.3 of Topic 3.[91]

### Issue 4B

**The social and economic wellbeing, health and safety of the Marlborough community are at risk if community infrastructure is not able to operate efficiently, effectively and safely.**

146. The explanation to Issue 4B explains that infrastructure is a regionally significant resource upon which the community relies to function, needing to be operated efficiently, effectively and safely on an ongoing basis. It also explains that other activities can affect infrastructure and that reverse sensitivity effects can arise on surrounding land uses.[92]

147. Five submitters support the issue statement and seek its retention with no change. Others seek: minor changes to the explanation to remove reference to ‘strategic’ infrastructure in the explanation and seek changes to identify telecommunications as nationally important;[93] another considers that Issue 4B is ‘unduly constrained’ through its reference to ‘community’ infrastructure and seeks deletion of the word; the explanation to Issue 4B understates the national significance of the National Grid and the inclusion of several sentences is sought outlining the existence of and direction in the National Policy Statement on Electricity Transmission – this submitter also seeks reference to the importance of the Grid and its

[90] Section 42A Report, paragraph 45.
[91] Section 42A Report (Utilities and Designations), Matter 1 – Objectives and policy framework pertaining to network utilities, paragraphs 42-55.
[92] Section 42A Report, pages 27-37, 44-45
[93] Chorus (464.4), Spark (1158.77).

regionally and nationally significance;[94] the explanation to Issue 4B also requires amendment to include reference to 'operation' alongside 'maintenance, upgrading and replacement';[95] explicit reference should also be made in the Issue 4B explanation to the role emergency services make to health, safety and wellbeing of people and community in Marlborough.[96]

148. A large number of common format submitters (collectively referred to by the report writer as Group 2) and B. Clarke seek that Issue 4B (and Objective 4.2) are amended to recognise that regionally significant sectors omitted so far from the process are at risk if unable to operate efficiently, effectively and safely; that the PMEP should acknowledge that aquaculture, farming, forestry and viticulture employ people and spread wealth; these sectors should be enabled to grow while recognising and protecting the special qualities of the district and are omitted from this process.[97]

149. Chorus and Spark raise concerns that throughout the PMEP there is reference to 'Regionally Significant Infrastructure'. They consider that all infrastructure is of regional significance, as it allows people, businesses and communities of the region to undertake their day to day lives in a safe and efficient manner, which contributes to wellbeing and health and safety, in line with Part 2 of the RMA. They consider that there is no planning need to determine what is 'regionally significant infrastructure', (or strategic) as identified in the explanation to the issue, and that instead the PMEP should simply refer to "infrastructure". Consistent with this, they therefore seek changes to the explanation not only to Issue 4B, but also to Objective 4.2, Policies 4.2.1 and 4.2.2 and Methods 4.M.7, 4.M.8 and 4.M.9.[98]

150. Transpower, Port Clifford, NZTA and FENZ do not agree that all infrastructure is equal and assert the distinction between regionally significant infrastructure and others should be retained.[99] It is seen by them as particularly important to provide for the operation and development of essential services that may not otherwise meet the (other) restrictive policies of the PMEP.

151. FENZ in evidence considers that provisions in this part of Topic 3 should include emergency services, thus recognising the necessary role emergency services play in providing for the health, safety and wellbeing of the Marlborough community. FENZ makes the point that Issue 4B is the only provision in Volume One PMEP that directly and specifically addresses the social

[94] Transpower (1198.3).
[95] Marlborough Roads (967.4), NMDHB (280.6).
[96] NMDHB (280.7), FENZ (993.1).
[97] Section 42A Report, page 31. Table 2 List of Common Format Submitters, Group 2.
[98] Section 42A Report, page 28.
[99] Section 42A Report, ibid.

and economic wellbeing and health and safety of people and communities as elements of sustainable management.

152. FENZ seeks to amend not only Issue 4B and Objective 4.2 to extend these to emergency services, but to amend Method 4.M.9 in order to provide specific reference to the provision of emergency services and their associated activities. An additional new policy 4.2.x, relating specifically to FENZ, is also provided.[100]

**Section 42A Report**

153. In the Section 42A Report examining the evidence from Chorus, Spark, and PMNZ, the report writer cites s 59 RMA which states the purpose of an RPS is 'to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of Marlborough.'[101]

154. There are several key words in the provisions of s 59 as to 'overview' and 'integrated management' of natural and physical resources. There is a requirement for the MDC to provide for them both. Consequently there is a need for provisions in this section of Chapter 4 to provide an overarching objective for regionally significant infrastructure in order to provide for the integrated management of its resources implemented through the various more specific chapters of the PMEP ('Water' is not considered in this chapter).

155. If the planning provisions applied to all infrastructure however, Policy 4.1.2 would need to recognise and provide for such infrastructure regardless of scale. In the report writer's opinion the nature of the issues surrounding infrastructure is what is necessary to achieve integrated management of the natural and physical resources in the context of Marlborough (as opposed to Auckland where the word 'infrastructure' addresses generally quite different issues and needs).

156. In the report writer's opinion, it is implicit that any objectives within an RPS which respond to the issue must also be of regional significance and this should begin with that acknowledgment in Issue 4B. She acknowledges therefore Transpower's submission to amend Issue 4B to refer to 'regionally significant infrastructure' instead of 'community' as the provisions addressed in the issue explanation are all limited to regionally significant infrastructure already. This aligns with the report writer's conclusion in relation to the Chorus

[100] FENZ, Ainslie McLeod Evidence, paragraph 5.3 and Attachment A.
[101] Section 42A Report, Reply to Evidence, pages 8–9.

and Spark submissions that not all infrastructure should be considered as being of equal significance. The heading to the Issue is recommended to be amended accordingly.

157. It is also accepted by the report writer that some reference to the type of infrastructure to which provisions apply is helpful (that is, that which primarily serves the community, rather than primarily serving a private interest). The report writer has not recommended acceptance of Transpower's submission to delete reference to 'community infrastructure'. Instead the report recommends reference to infrastructure is retained, although in a slightly different form ('infrastructure serving the community'). The report writer considers 'community infrastructure' is not the most accurate reflection of what this term relates to, nor is the term used within the provision itself.[102]

158. Related to this discussion are the changes requested by Chorus and Spark to identify telecommunications as nationally important. PMNZ agrees, citing the port infrastructure at Picton as having this status, as does Transpower relating to its own facilities. The report writer makes the point nevertheless that the issue explanation already states that some infrastructure within the district is also of national importance. Therefore the additional and repeated references to nationally important infrastructure is unnecessary in the opinion of the report writer. Infrastructure that is of national importance will also be of regional significance. There is thus no practical effect from infrastructure being listed within an explanation to an issue as being of national significance.

159. In terms of a reference to the National Grid in the issue statement, the report writer considers the amendments suggested by Transpower simply provide statements about the NPSET and do not assist in explaining the particular issue.

160. If on the other hand, the examples given in Issue 4B are amended to state 'Some infrastructure also has national importance' then the report writer agrees with Transpower, that it is important that reference to the National Grid is made explicit within the PMEP provisions because of the NPSET and its directions recognising its national significance. The report writer acknowledges in this context, that it may also be appropriate to include separate, specific policy guidance in this chapter.[103]

161. Some submitters seek the issue be amended to refer to use and 'development' in order to be aligned with ss 5 and 9 RMA and the enabling intent of the RMA,[104] as sought by the aquaculture industry. They assert inclusion of the word 'development' envisages change and

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[102] Section 42A Report, page 34, bullet point 3.
[103] Section 42A Report, page 29.
[104] Transpower (1198.2 and .3), PMNZ (433.5).

that it is important to recognise that change will need to occur over the life of the PMEP.[105] As is clear from the explanation to the issue, the report writer identifies that it is not only the use, but also in some cases development of natural resources that is important for the social and economic wellbeing of the district. The report writer says the issue clearly recognises that new infrastructure may be required to provide for growth within the district.

162. In terms of including the word 'operation' to Issue 4B (and Objective 4.2), the report writer considers the sentence in the explanation to the issue referring to 'maintenance, upgrade and replace infrastructure' without significant constraint, is an expansion of the word 'operation' as the previous sentence explicitly talks about the importance of being able to 'operate' on an ongoing basis effectively and safely. No change is recommended by the report writer.

163. The submission seeking an amendment to the explanation to support the population and the 'economy' was not considered by the report writer to align with s 5 RMA which is focused on enabling people and communities to provide for their economic 'wellbeing', rather than 'providing for the economy'. The current wording in the explanation to Objective 4.2, which refers to protection and support of the population is considered to already encompass economic wellbeing. With respect to 'upgrading', the report writer does not consider this is necessary on the basis that the explanations to both Issue 4B and Objective 4.2 are clear that (maintenance, upgrading and replacement) are already part of the ongoing operation of infrastructure. Again, no change is recommended by the report writer.

164. In terms of Group 2 submitters, it is the report writer's opinion that the PMEP already recognises the link between Marlborough's social and economic wellbeing and these primary production activities through Issue 4A, Objective 4.1 and related policies. Further, Issue 4B and related provisions are focused on infrastructure and extending these to cover particular primary production activities is neither necessary nor appropriate. Once more no change is recommended by the report writer.

165. As to the submissions from NMDHB and FENZ seeking to be identified as regionally significant infrastructure, (and also in relation to Objective 4.2, Policy 4.2.1 and Method 4.M.10), the report writer considers generally that in relation to the emergency services mentioned that this is likely to be true for a number of facilities and services of importance to the social wellbeing, health and safety of the district but whether or not there is a regionally significant

[105] MFA (426.10).

issue that relates to them, this should be addressed further if additional information was forthcoming from the evidence.[106]

166. The report writer recognises that while the nature of FENZ's services does not fall within the RMA's definition of 'infrastructure', the nature of these services and facilities is not too dissimilar from that of other infrastructure and that it may be appropriate to extend the list in Policy 4.2.1 to include emergency services. She considers that this is dependent on whether the same issues arise in these services requiring special recognition and management.[107]

167. A few minor amendments to the explanation to the issue are recommended by the report writer: 'Additionally' in place of 'Occasionally' in the third to last line to the Issue 4B explanation, with the addition 'and it is also important that this can be developed efficiently, effectively and safely'.[108]

**Consideration**

168. In terms of Issue 4B, the Panel's decision is to include the words 'regionally significant' and 'serving the community' in the statement to the issue, deleting 'community infrastructure'.[109]

169. In terms of the first sentence to the explanation to Issue 4B, the Panel agrees to insert the word 'to' between 'communities' and 'function'.[110]

170. The Panel also agrees with the deletion of the word 'strategic' from the fifth sentence of the first paragraph of the explanation to Issue 4B. Chorus and Spark oppose the use of this word to describe certain types of infrastructure, given the lack of its definition.[111]

171. In order that the issue should reflect that the significance of the development of new infrastructure is also important, the final sentence of the first paragraph of the explanation should be amended in relation to the National Grid to ensure NPSET is fully given effect to.[112]

172. Also, in order to reflect FENZ's addition to infrastructure issues, Issue 4B requires further amendment to recognise the very high value and importance of emergency services to the community's health, safety and wellbeing. This can be achieved by a further amendment with the insertion of the words 'emergency services' to the statement and a further explanation as to the reason for its inclusion added to the end of the first amended paragraph as follows:

[106] Section 42A Report, page 30.
[107] Section 42A Report, page 31.
[108] Section 42A Report, Reply to Evidence, page 11.
[109] Section 42A Report, pages 28-29, 35. Reply to Evidence, page 12.
[110] Section 42A Report, page 35.
[111] Section 42A Report, pages 35-36.
[112] Section 42A Report, pages 29, 36. Reply to Evidence, pages 13-14.

> *Emergency services are essential to the on-going health, safety and wellbeing of the Marlborough community. It is therefore important that emergency services also are able to operate, upgrade and develop efficiently and effectively in a manner that responds to community needs without unnecessary constraints.*[113]

173. The word 'development' is missing in the revision of Issue 4B by the report writer in the second to last line of the first paragraph. The phrase is 'maintain, upgrade and replace' which, in the Panel's opinion, indicates replacing existing regionally significant infrastructure. This appears to become even clearer when the report writer acknowledges the other provisions of this section of the chapter are limited to present regionally significant infrastructure and not future developments.

174. Ms McLeod for Transpower considers 'maintenance, upgrade and replace' in the explanatory text does not unambiguously mean that further developments are provided for as part of an 'ongoing operation'. It is common for RMA policy and planning documents to distinguish 'operation' from 'maintenance upgrading' but what is equally important here is to recognise that provision needs to be made for future upgrade and development. This distinction is also made in relation to the National Grid in NPSET.[114]

175. In relation to all other matters raised in the submission on Issue 4B the Panel agrees with the report writer's recommendations for the reasons set out above.

**Decision**

176. Issue 4B is amended as follows:

*Issue 4B – The social and economic wellbeing, health and safety of the Marlborough community are at risk if ~~community~~ regionally significant infrastructure or emergency services ~~is~~ are not able to operate, upgrade and develop efficiently, effectively and safely.*

*We rely on a range of physical resources to allow our communities to function on a day-by-day basis. These resources include the water, stormwater and waste disposal services provided to townships and small settlements; the transport links within Marlborough and connecting Marlborough to the remainder of the country; the provision of electricity and telecommunications; and, on the Lower Wairau Plain, the drainage of land. Collectively, this infrastructure is regionally significant due to the contribution it makes to our social and economic wellbeing, health and safety. Other infrastructure in (e.g. RNZAF Base Woodbourne) or running through Marlborough (e.g. the National Grid and state highways) also has national*

[113] FENZ, Ainslie McLeod, Evidence, Attachment A.
[114] Transpower, Ainsley McLeod, Evidence, paragraph 62.

*importance. It is important that this ~~strategic~~ infrastructure is able to operate efficiently, effectively and safely on an ongoing basis for community wellbeing. The ability to maintain, upgrade and replace existing infrastructure without significant constraint is important in this respect. ~~Occasionally~~ Additionally, new infrastructure may be required to provide for growth within the district and it is also important that this can be developed efficiently, effectively and safely.*

*Emergency services are essential to the on-going health, safety and wellbeing of the Marlborough community. It is therefore important that emergency services are able to operate efficiently and effectively in a manner that responds to community needs without unnecessary constraints. …*

## Objective 4.2

**Efficient, effective and safe operation of regionally significant infrastructure**

177. In terms of the objective, some submitters restate support or otherwise for 'infrastructure' or 'regionally significant infrastructure'; others in varying language seek: to extend the provisions of the development of new, and the upgrade of, existing regionally significant infrastructure stressing its importance for future population growth; a change to Objective 4.2 because it fails to give effect to the NPSET, particularly Policies 2 and 5,[115] because it does not contemplate the upgrade and development of the National Grid;[116] Objective 4.2 and related policies should include the regional plan, the regional coastal plan and district plan as well as the RPS; the objective should be expanded to refer to the expansion of existing infrastructure and/or the objective should provide for change over time and/or where it is appropriate Objective 4.2 should be amended to recognise the 'resilience' of significant infrastructure as a key issue; the explanation to the objective should be extended to refer to infrastructure having been developed to protect and support the population 'and economy';[117] limitations should be placed on activities near regionally significant infrastructure including the question of costs and consideration of the effects of restrictions on the use of people's private property; that objectives and policies be included that recognise the effects that infrastructure has as a result to related restrictions on the use of people's private property; that objectives (and policies) should also apply to the location and operation of National Transmission Lines, Grids and Corridors avoiding those where use and development of property for the purpose it

[115] Chorus, Spark, PMNZ, Transpower. [See Transpower, A. McLeod, Evidence paragraph 29. NPSET 14 Policies.]
[116] Transpower (1198.4, .7, .8).
[117] NMDHB (280.7), NZDF (992.3), MFA (426.20).

is already zoned for;[118] the objective is amended 'to recognise that major changes to existing infrastructure may impose significant costs or opportunity costs to third parties who are affected by such changes should consider matters of compensation'.[119]

**Section 42A Report**

178. The report identifies that under s 62(1)(1) RMA the resource management issues identified in an RPS must be those of significance to the region, notwithstanding the report writer's recommendation that the policies should also be district, regional and coastal as well as RPS; in the report writer's opinion the objective(s) within an RPS must be those of significance to the region. Objective 4.2 as notified, is considered therefore as appropriately focused on the overall operation of regionally significant infrastructure. While some submitters seek 'development and upgrading of infrastructure as an 'end goal'' this is said to be inappropriate, with the existing objective implemented through policies 4.1.1 and 4.2.2, the former seeking that the benefits of these items of regionally significant infrastructure is recognised, and the latter how the adverse effects of other activities are managed.

179. The report writer considers initially that extension of the objective is unnecessary on the basis that the explanation to the Objective (and Issue 4B) are clear that maintenance, upgrading and replacement is part of the ongoing operation of infrastructure. Another sentence explicitly talks about the importance of being able to operate efficiently, effectively and safely.

180. In terms of those who are concerned about significant costs and opportunity costs in relation to the objective and how it is implemented through the PMEP's policies and rules together with the impacts of regionally significant infrastructure on private land use options, the report writer agrees that costs and benefits will be an issue with the objective and ultimately how it is varied over time. However, the report acknowledges that the submitter recognises these costs are affected by the significant community benefit that arises through the existence of significant infrastructure. The report says that further consideration will be required as to whether the specific rules required to implement the infrastructure are appropriate in cost/benefit terms.

181. Taking this point further, the report writer points out that the ability to upgrade and replace existing infrastructure is not unconstrained in relation to the objective, as consideration of any particular resource consent application or notice of requirement with respect to designations would need to consider the other objectives within the PMEP including the managing of

[118] K and J Wills (66.33).
[119] PF Olsen Ltd (149.4).

adverse effects. Further consideration would also be required as to whether the associated rules are the most effective to achieve the PMEP's objectives and give effect to the RPS level provisions.[120]

182. As to whether 'resilience' is part of the ongoing operation of regionally significant infrastructure, the report points out this term is part of effectiveness and therefore does not need to be added to the objective.

183. For those who seek that the explanation to the objective is amended to encompass the economy, this addition does not align with the terminology in s 5 RMA, which is focused on enabling people and communities to provide for their economic wellbeing, rather than providing for the 'economy'. The report writer recommends retaining the current wording which refers to protection and support of the population. The report says that already encompasses support for the population's economic wellbeing and is more appropriate than the addition sought.

184. Several submitters sought to expand the existing provisions of infrastructure to the development of new, and upgrade of existing, regionally significant infrastructure. NMDHB seeks an additional objective to be included which recognises the importance of regionally significant infrastructure on the basis it needs to be recognised and provided for. As a consequence of this, NMDHB also considers that additional policies are required to implement these objectives and in particular to account for population growth. MFA and NZDF support this on the basis that an additional objective should provide for change over time and an expansion of infrastructure when it is appropriate.

185. Transpower's amendment to the phrase seeks to add to the ability to 'maintain, upgrade and replace' existing infrastructure by including the phrase 'may include the development of new infrastructure'. [121]

186. While the report writer considers there should be no change to Objective 4.2 itself, she recognises that future development is something that should be addressed to give effect to the RPS provisions for which she recommends the explanation to the objective contain the words similar to those in amended Issue 4B: 'Occasionally, new infrastructure may be required for growth with the district, to ensure its ongoing operation'.[122]

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[120] Section 42A Report, page 34.
[121] Transpower, Ainsley McLeod, Appendix B page 1.
[122] Section 42A Report, page 30.

**Consideration**

187. In terms of the Panel's assessment of the Objective 4.2, we are clear it should remain as the overarching provision with the status of an RPS in this set of provisions on regionally significant infrastructure. There are various other chapters throughout the PMEP that provide more specific objectives relating to specific topics.[123]

188. There is also however change needed to include the term 'emergency services' in the objective and the first paragraph of the explanation.

189. The importance of regionally significant infrastructure is further acknowledged in the explanation to the Objective to foreshadow the inclusion of other infrastructure facilities through the words '*and may include the development of new infrastructure'*.

**Decision**

190. The objective is amended for the reasons set out in the Section 42A Report and the evidence of Ainslie McLeod for FENZ.[124]

*[R]*

*Objective 4.2 – Efficient, effective and safe operation, upgrade and development of regionally significant infrastructure, network utilities and emergency services.*

191. The explanation to Objective 4.2 is amended as follows:

*The community relies on the ~~considerable~~ infrastructure, network facilities and emergency services that ~~has~~ have been developed to protect and support the population. It is essential for the social and economic wellbeing, health and safety of the Marlborough community that this ~~critical~~ infrastructure, network utilities and emergency services continue~~s~~ to operate efficiently, effectively and safely on an ongoing basis. This includes the ability to maintain, upgrade and replace existing infrastructure and network utilities. It may include the development of new infrastructure and network utilities.*

## Policy 4.2.1

**Recognise the social, economic, environmental, health and safety benefits from the following infrastructure, either existing or completed at the time of the Marlborough Environment Plan became operative, as regionally significant: …**

192. The list of regionally significant infrastructure in the PMEP at Policy 4.2.1 is:

(a) reticulated sewerage systems (including the pipe network, treatment plants and associated infrastructure) operated by the Marlborough District Council;

[123] See Section 42A Report, Topic 20, paragraph 40.
[124] FENZ, Ainslie McLeod, Evidence, Attachment A.

(b) reticulated community stormwater networks;

(c) reticulated community water supply networks and water treatment plants operated by the Marlborough District Council;

(d) regional landfill, transfer stations and the resource recovery centre;

(e) National Grid (the assets used or owned by Transpower NZ Limited);

(f) local electricity supply network owned and operated by Marlborough Lines;

(g) facilities for the generation of electricity, where the electricity generated is supplied to the National Grid or the local electricity supply network (including infrastructure for the transmission of the electricity into the National Grid or local electricity supply network);

(h) strategic telecommunications facilities, as defined in Section 5 of the Telecommunications Act 2001, and strategic radiocommunication facilities, as defined in Section 2(1) of the Radiocommunications Act 1989;

(i) Blenheim, Omaka and Koromiko Airports;

(j) main trunk railway line;

(k) district roading network;

(l) Port of Picton and Havelock Harbour;

(m) Picton, Waikawa and Havelock marinas;

(n) RNZAF Base at Woodbourne; and

(o) Council-administered flood defences and the drainage network on the Lower Wairau Plain.

193. The Preamble to the NPSET includes useful background as to its significance for the following provisions. It states that the efficient transmission of electricity on the National Grid plays a vital role in the well-being of New Zealand, its people and the environment. The Preamble also notes that the National Grid has particular physical characteristics and operational/security requirements that have been challenging to manage under the RMA. It also acknowledges the potential significance of some effects of transmission lines (utilities) (including the inability for these to be avoided or mitigated), along with the significant constraints that third party activities and development can place on the network. It notes that adverse effects are

experienced at the local level, while benefits are regional or national, requiring a balanced consideration of effects.[125]

194. Transpower considers that by confining the policy to existing infrastructure as part of the policy, any new assets would not be considered regionally significant in the context of the PMEP; the benefits of these assets are therefore not recognised or provided for contrary to Policy 1 of NPSET. The policy therefore has little or no relevance to the requirements of designations or resource use and development applications for new regionally significant infrastructure. While the PMEP policy framework recognises the significance of the National Grid, it does not enable or provide for it in the way it aligns with the Objective 4.2 and Policies 2 and 5 of NPSET. PMNZ also considers that the policy should not refer to infrastructure that is either consented to or existing at the time the plan became operative.[126]

195. It is considered the policy is retrospective in nature and does not enable upgrades, improvements and additional developments. Transpower considers that the opening statement fails to recognise the dynamic nature of this infrastructure and may unnecessarily constrain its ongoing use and development.

196. By way of relief Transpower seeks either:

    *a. The inclusion of an additional (first) policy to enable the operation, maintenance, upgrading and development of essential network utilities including the National Grid throughout Marlborough.*

    *b. An additional (second) policy which mirrors Policy 18.1.3 (relating to renewable energy generation) and is considered by the submitter to provide greater clarity and direction in terms of how the National Grid is recognised in the Marlborough context.*

197. Marlborough Roads and NZTA supported by Port Clifford, also seek that Policy 4.2.1 is also amended to refer to infrastructure 'authorised as a permitted activity, resource consent or notice of requirement'.

198. A further suggested amendment from Transpower, provides for (e) to delete 'NZ' and substitute '<u>New Zealand</u>'.

199. In terms of amendment to the existing list, Chorus and Spark do not accept the wording in subsection (h) of the list because it is inaccurate in that there were cross-references to

[125] Transpower, Ainsley McLeod Evidence, paragraphs 20-28.
[126] Section 42A Report, page 29.

definitions that do not exist in the relevant statues for telecommunications and radiocommunications. While these were potentially recognised and corrected by the report writer, the Radio Communications Act 1989 does not define a 'network'. A definition in the Radio Communications Act supports a more explanatory and extensive definition. The provision is recommended to be amended accordingly to read:

> *(h) Telecommunications networks, as per the definition of ~~a~~ network, ~~for the purpose of telecommunications, as defined~~ in section 5 of the Telecommunications Act 2001, ~~or~~ and equipment facilitating ~~the purpose of~~ radiocommunications~~,~~ as per the definition of radiocommunications ~~defined~~ in section 2(1) of the Radiocommunications Act 1989.*[127]

200. Another query from Marlborough Roads and NZTA concerns whether 'district roading network' (which is undefined in the PMEP) in (k) includes State Highway Network. The submitters consider 'road network' is more appropriate as it is frequently used with the terminology elsewhere in the PMEP particularly in Volume 1, Chapter 17 (Transportation).

**Section 42A Report and Consideration**

201. The report writer accepts the amended provisions of this section of the chapter and recognises what they are aimed at achieving are largely focused on recognising the importance of existing infrastructure and the need to promote its ongoing operation and effects on it from other activities. She agrees that if additional infrastructure is built or consented to within the lifetime of the PMEP it is appropriate that it is recognised, protected and managed in the same way. Using the National Grid as an example, if this was to be extended the provisions which constrain particular land uses and subdivision should apply equally to new infrastructure. Policy 4.2.1 therefore should not be limited only to infrastructure existing or consented to at the time the PMEP becomes operative. Such a change would better achieve Objective 4.2 and ensure that infrastructure of regional significance is appropriately recognised ensuring its ongoing operation. The report writer also considers that the policy could be strengthened by extending it to 'recognise and provide for' the benefits identified.[128]

202. With respect specifically to the National Grid, the report writer accepts that it is necessary to give more explicit guidance on the development of the new National Grid infrastructure in order to give effect to NPSET.

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[127] Chorus (1158.4) and Spark 464.6), Tim Anderson, Evidence, paragraphs 33-37.
[128] Section 42A Report, pages 29-30.

203. The first policy suggested by Transpower is not recommended as it is largely duplicated by Policy 4.2.1. The report writer recommends that with slight changes to better reflect the direction in NPSET, the second policy is to be adopted.

204. The suggested second policy identified should be limited to the National Grid because the same circumstances do not arise in relation to other infrastructure which is identified in Policy 4.2.1. The policies required by NPSET (Policy 2 and policies 3 – 8) are those generally replicated in the second policy proposed by Transpower. The report writer also considered that the policy can be strengthened by extending it to recognise *and provide for* the benefits identified.

205. The report writer therefore recommended amendment to Policy 4.2.1 as follows:

> *Policy 4.2.1 – Recognise and provide for the social, economic, environmental, health and safety benefits from the following infrastructure, ~~either existing or consented at the time the Marlborough Environment Plan became operative~~, as regionally significant …*

206. The amendment to Policy 4.2.1 recommended by the report writer includes the words 'Recognise and provide for the social, economic, environmental, health and safety benefits from the following infrastructure…'.

207. Transpower considered the words 'and provide for' should be deleted as the provisions in this chapter should not explicitly direct development of new infrastructure. Any direction should be considered as part of the overarching provisions of the PMEP. How the benefits are recognised in subsequent provisions would then be balanced against other provisions in the PMEP providing more specific direction on development.

208. The report writer considers that a definition of road network, which was also sought, is unnecessary as it is self-evident in the context of Chapter 17 which contains provisions which give effect to this component of Policy 4.2.1.[129]

209. In terms of listing regionally significant infrastructure included in an Appendix, as sought in another submission, this amendment is not accepted by the report writer as the list is relatively brief and there is little benefit in moving it.[130] Nor does 'regionally significant infrastructure' require a definition as the items listed in practice define the term and these are within the definition of 'infrastructure' in s 2 RMA.

[129] Marlborough Roads (967.4), NZTA (1002.9).
[130] Federated Farmers (425.15).

**What should additional regionally significant infrastructure include?**

210. In terms of the policy and the list, two submitters support the wording as notified. There are a number of submissions that seek changes to treat other activities in the same or similar manner as proposed for infrastructure or to extend what is defined as regionally significant infrastructure. They include: a new policy to recognise the essential nature that emergency services make to the health, safety and wellbeing of people and the communities of Marlborough, in the same way as infrastructure, but through a range of methods and requiring a consequential change to Method 4.M.9;[131] recognition that healthcare services and facilities are regionally significant infrastructure with these explicitly listed in Policy 4.2.1;[132] that Policy 4.2.1 is amended to specifically recognise infrastructure used for commercial purposes at Elaine Bay (Tennyson Inlet), Oyster Bay (Port Underwood), Okiwi Bay (Croisilles Harbour);[133] extend reference to the Port of Picton and Havelock Harbour to include Shakespeare Bay;[134] extend Policy 4.2.1 so that it applies to all reticulated water supply networks and water treatment plants, not just limited to those operated by the Council;[135] extend the RNZAF base at Woodbourne and refer to 'and other defence facilities';[136] a query whether the district roading network includes state highways - reference to the 'road network' is more appropriate as it is consistent with the terminology used elsewhere in the PMEP;[137] rather than referring to 'strategic facilities' and including reference to the various legislation that defines these, reference 'telecommunication and radiocommunication issues';[138] amend the policy to include the list of regionally significant infrastructure in an appendix;[139] define regionally significant infrastructure;[140] add to list of regionally significant infrastructure wine and aquaculture development;[141] critical items are not identified such as irrigation and on-farm drainage;[142] recognition and provision for the material and processes that contribute to construction, operation and maintenance of existing infrastructure, ensuring materials needed (aggregates) are available;[143] policies and objectives (in Policy 4.2.1 and elsewhere) should recognise that quarries are an essential part of flood protection (as are

[131] FENZ (993.37).
[132] NMDHB (280.8).
[133] AQNZ (401.20) and MFA (426.20).
[134] Federated Farmers (425.15).
[135] Irrigation NZ (778.9).
[136] NZDF (992.4).
[137] Marlborough Roads (967.4). See Vol 1 Chapter 17 Transportation.
[138] Chorus (464.6), Spark (1158.3).
[139] Federated Farmers (425.15).
[140] Marlborough Roads (967.4) and NZTA (1002.9).
[141] Group 2 submitters.
[142] Federated Farmers (425.15).
[143] Fulton Hogan (717.13).

MDC administered flood defences);[144] transport infrastructure associated with primary industry should be included in regionally significant infrastructure.[145]

**Community and emergency services**

211. In the report writer's opinion there is a distinction between community facilities and services and the types of infrastructure defined in Policy 4.2.1; the latter largely reflect the type of infrastructure involved in the definition of infrastructure in the RMA.[146] As a result the ability to operate efficiently, effectively and safely is far less affected by the provisions in the PMEP and are influenced by matters outside the Council functions under the RMA.

212. FENZ seeks a policy framework to support the rules included in Volume Two PMEP as notified. Ms McLeod's evidence also sought a new Policy 4.2.X specific to these services which the report writer supports in a recommendation.[147]

213. NMDHB seeks to amend the issue to recognise *healthcare services and facilities* that would include the Wairau Hospital, emergency services, general practices and community support services. Policy 12.3.2 seeks to provide for appropriate community facilities to reside within residential environments where they meet a community need and are in keeping with the character and amenity of the zone.[148] The report writer therefore considers the PMEP already takes into account the provision of community facilities. In relation to the Wairau Hospital, the activities are managed as a scheduled site.[149] There is no change recommended to the notified provisions relating to the Wairau Hospital in the PMEP.

**Infrastructure used for commercial purposes**

214. Group 1 submitters seek generally in Chapter 4 to recognise that the infrastructure used for commercial purposes identified by AQNZ and MFA (Elaine Bay, Oyster Bay, Okiwi Bay, Havelock, Shakespeare Bay, Port of Havelock and Picton) be recognised as regionally significant infrastructure.

215. Shakespeare Bay, however, is already within the Port Zone. With respect to the Port of Picton, the report writer points out the bay itself is within the Port Zone. As such, change is not necessary. In terms of other *smaller* ports and airports Omaka and Koromiko, and whether there any inconsistency between ports and airports in terms of the significance of operations, the report writer accepts that a level of judgement is required in determining what meets the

[144] Simcox Construction (1151.1).
[145] NZ Forest Products (995.8).
[146] Section 2 RMA.
[147] FENZ, Ainslie McLeod, Evidence, paragraph 5.11(e). Section 42A Report, Reply to Evidence, pages 10-11.
[148] Section 42A Report, page 31.
[149] Volume 4, Appendix 16-3-16-4.

threshold of significance. In terms of Elaine Bay and Oyster Bay, they are zoned as Port Landing Zone in recognition of their use and that zoning provides for that use as such.

216. In the report writer's opinion, Elaine and Oyster Bay meet the threshold for regionally significant infrastructure as set out in Issue 4B in which case she recommends it would be appropriate to include them. Okiwi Bay is not recommended due to its limited size and restricted storage space for marine farm purposes. And while Elaine Bay and Oyster Bay have cranes or lifting equipment on the wharves together with more fuel facilities, these are not present at Okiwi Bay.[150]

**Irrigation schemes**

217. Federated Farmers and Hort NZ consider irrigation schemes and on-site drainage are of such important value to the region as to be included in regionally significant infrastructure. In the report writer's opinion the primary benefits of the infrastructure identified by these submitters are private benefits for landowners and owners of commercial premises and localised. Any benefits to the wider community are included in the list.

218. In terms of community water reticulation, storage and reticulation and the amendment to remove 'networks operated only by Council', the report writer accepts Kim Reilly's evidence for Federated Farmers that there are benefits 'well beyond the farm gate' and therefore of public and private benefit.

219. But the report writer considers that while some irrigation schemes may meet the threshold of regional significance, the level at which this is met has not been identified within the submitter's evidence. A solution in relation to water reticulation schemes might be that an appropriate threshold would be if the reticulation scheme was aligned with the NESDW (National Environment Standard for Sources of Human Drinking Water) which sets out greater restrictions on other activities which may affect a supply that provides drinking water for 501 people or more.[151] The Register of Drinking Water Suppliers shows that Council operated schemes are all below this threshold except for the Woodbourne RNZAF Base. This base is already listed within Policy 4.2.1 as operated by the Council,[152] reflecting the size of the public benefit of such schemes.

**Decision**

[150] See also assessment under Coastal Environments, Chapter 13. Addendum to Report, 12 March 2018.
[151] Section 42A Report, page 32.
[152] Section 42A Report, page 32, citing http://www.esr.cri.nz/assets/WATER-CONTENT/Images-and-PDFs/RegisterOfSuppliers-2017a.pdf

220. The amended wording for Policy 4.2.1, to three items in the list, and to the explanation, is as follows:

*[RPS, R, C, D]*

*Policy 4.2.1 – Recognise the social, economic, environmental, health and safety benefits from the following infrastructure, ~~either existing or consented at the time the Marlborough Environment Plan became operative~~, as regionally significant:* [153]

- *(a) reticulated sewerage systems (including the pipe network, treatment plants and associated infrastructure) operated by the Marlborough District Council;*
- *(b) reticulated community stormwater networks;*
- *(c) reticulated community water supply networks and water treatment plants operated by the Marlborough District Council;*
- *(d) regional landfill, transfer stations and the resource recovery centre;*
- *(e) National Grid (the assets used or owned by Transpower ~~NZ~~ New Zealand Limited);*
- *(f) local electricity supply network owned and operated by Marlborough Lines;*
- *(g) facilities for the generation of electricity, where the electricity generated is supplied to the National Grid or the local electricity supply network (including infrastructure for the transmission of the electricity into the National Grid or local electricity supply network);*
- *(h) Telecommunications networks, as per the definition of ~~a~~ network, in section 5 of the Telecommunications Act 2001, and equipment facilitating radiocommunications, as per the definition of radiocommunications defined in section 2(1) of the Radiocommunications Act 1989.*

*~~Strategic telecommunications facilities, as defined in Section 5 of the Telecommunications Act 2001, and strategic radiocommunication facilities, as defined in Section 2(1) of the Radiocommunications Act 1989;~~* [154]

- *(i) Blenheim, Omaka and Koromiko Airports;*

[153] Section 42A Report, Reply to Evidence, pages 15-15.
[154] Chorus and Spark (1158.4)(464.6), Tim Anderson, Evidence, paragraphs 33-37.

*(j) main trunk railway line;*

*(k) ~~district roading~~ road network;*

*(l) Port of Picton and Havelock Harbour, Elaine Bay and Oyster Bay;*

*(m) Picton, Waikawa and Havelock marinas;*

*(n) RNZAF Base at Woodbourne; and*

*(o) Council administered flood defences and the drainage network on the Lower Wairau Plain.*

*The policy identifies infrastructure considered regionally significant due to its contribution to the social and economic wellbeing or health and safety of a large proportion of Marlborough's population, or because of its strategic importance nationally. These benefits will be taken into account when developing district and regional rules and when considering resource consent applications, notices of requirement and plan change requests. This policy recognises the significance of the infrastructure whether it is existing or consented at the time that the MEP becomes operative, or developed subsequently.*[155]

### Policy 4.2.2

**Protect regionally significant infrastructure from the adverse effects of other activities.**

221. Several submitters support the policy, either explicitly seeking it to be retained or do not seek changes. Others seek: 'other activities' to be amended to refer to 'subdivision use and development' to achieve greater consistency with Policies 10 and 11 NPSET;[156] also a change is required in the explanation where it refers to the NPSET to refer to reverse sensitivity on the network being avoided 'to ensure that the National Grid is not compromised' rather than being avoided 'as much as possible'; another does not consider that it is always appropriate to protect infrastructure from the adverse effects of other activities, such as existing farming activities;[157] the policy amended to read 'Avoiding adverse effects where practical on regionally significant infrastructure'; the protection of infrastructure is more akin to the outcome that is sought, rather than a course of action;[158] the policy be extended to refer to 'including reverse sensitivity and cumulative effects';[159] changes to the policy explanation to

[155] Consequential amendment: PMNZ (433.7), Marlborough Roads (967.4), NZDF (992.4), NZTA (1002.9), Transpower (1198.5).
[156] Transpower (1198.6).
[157] Federated Farmers (425.16).
[158] Hort NZ (769.5).
[159] Trustpower (1201.9).

remove reference to 'avoiding establishment of incompatible activities in close proximity to infrastructure in the first place' replacing it with in 'locations where reverse sensitivity effects may arise'.[160]

**Section 42A Report and Consideration**

222. The initial recommendation of the report writer in response to some of these submissions was as follows:

> *Protect regionally significant infrastructure from the adverse effects of ~~other~~ subdivision, use and development activities that may compromise its operation, and in addition, in relation to the National Grid, that may compromise its maintenance, upgrading and development.*
>
> *In respect of the electricity transmission network, it is a requirement of the National Policy Statement on Electricity Transmission (NPSET) for decision makers, to the extent reasonably possible, to manage activities to avoid reverse sensitivity effects on the network and to ensure that the National Grid is not compromised ~~as much as possible~~.*

223. In evidence, Federated Farmers strongly maintains it is not always necessary to 'protect' infrastructure from the adverse effects of other activities.[161] The report writer considers what is sought in this submission repeats Policy 4.1.1 and does not address the issue of managing reverse sensitivity. The policy's intention, as understood by the report writer, does not require protection from all adverse effects but as identified by Hort NZ,[162] only those that may compromise the operation of regionally significant infrastructure thus avoiding many of the matters raised in original submissions of Trustpower, NZTA and Transpower, and repeated in evidence.[163] Therefore the report writer agrees that protection for *all* adverse effects goes beyond what is necessary to achieve Objective 4.2.

224. Hort NZ considers the suggested policy provides a more stringent policy framework than that directed in NPSET (Policy 10 of that document) thus the caveat of 'to the extent reasonably possible' should be included in the explanation, to reflect Policy 10 NPSET.[164]

225. Transpower in evidence recommends 'including the maintenance, upgrade and development of the National Grid' to 'operation' at the end of the provision.

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[160] NMDNB (280.9).
[161] Federated Farmers, K Reilly Evidence.
[162] Section 42A Report, pages 38-39; Reply to Evidence, page 17.
[163] Chorus (464.7), Spark (1158.5), Trustpower (1201.14).
[164] Hort NZ, L Wharfe, Evidence, page 18.

226. The report writer accepts Ms McLeod's concerns for Transpower that the amendments to the policy as recommended limit 'compromise' to 'operation' and in terms of the National Grid the matters that may be compromised (and must be managed) are broader. The report writer also notes the comments from Ms McLeod that at least in respect of the National Grid, the initial changes ignore the 'reverse sensitivity' aspects of Policy 10 NPSET.

227. The report writer has concerns nevertheless that the phrase 'as far as practicable', which is sought by Transpower, is however slightly different to that used in NPSET which is 'to the extent reasonably possible' as suggested by Hort NZ.

228. Overall, the report writer accepts Hort NZ's points about amendments to the explanation but suggests it would be more appropriate to insert the wording used in Policy 10 NPSET earlier in the sentence. She also noted the minor correction sought by Ms McLeod better reflects NPSET.

229. The report writer considers that while the wording 'protect' is more stringent than the wording used in NPSET, she prefers the notified wording.[165] Within the explanation, the report writer prefers Hort NZ's request in respect of the words 'as much as possible' to reflect Policy 10 NPSET.

230. In terms of Transpower's first submission it is the report writer's understanding that the 'other' activities referred to in these managed within the PMEP to implement the policy are 'subdivision, use and development activities'. As such the change sought provides greater clarity as to what is agreed to. In terms of changing the explanation where it refers to reverse sensitivity effects on the network 'being not compromised' this should be amended to 'as much as possible'.

**Decision**

231. Policy 4.2.2 and the explanation is amended as follows:

*[RPS, R, C, D]*

*Policy 4.2.2 – Protect regionally significant infrastructure from the adverse effects of ~~other~~ subdivision, use and development activities that may compromise its operation, including the maintenance, upgrade and development of the National Grid.*

*The effective and efficient operation of regionally significant infrastructure can be ~~protected~~ ensured by avoiding the establishment of incompatible activities in locations (for example, those in close proximity to the infrastructure)~~, in the first place~~ where reverse sensitivity effects*

[165] Section 42A Report, Reply to Evidence, pages 17 and 18.

*may arise. This policy recognises that there has already been significant investment in the infrastructure and that there are usually considerable difficulties relocating the infrastructure in the event of conflict with other land uses. In respect of the electricity transmission network, it is a requirement of the National Policy Statement on Electricity Transmission (NPSET) for decision makers, to the extent reasonably possible, to manage activities to avoid reverse sensitivity effects on the network ~~as much as possible~~ and to ensure that the National Grid is not compromised.*

### [New] Policy 4.2.3

232. Transpower had proposed in its submission a new policy to address effects of upgrade and development. The report writer recommended Transpower's suggestion that the additional policy be as suggested.

233. Transpower, in evidence, sought minor changes to the new Policy 4.2.3 relating to the National Grid and NPSET. The report writer accepts these are appropriate and better encapsulate the NPSET direction as well as implementing and giving effect to Objective 4.2 and to achieve the purpose of the RMA.

234. Given that the Panel has accepted Transpower's proposition that the objective and policies need to enable further upgrade and development of the National Grid, the Panel also accepts that there needs to be new policy as suggested by Transpower to outline the effects to which regard must be had in respect of such upgrades and developments.

**Decision**

235. For the reasons given, the additional policy is amended as follows:

*[RPS, R, C, D]*

*Policy 4.2.3 - When considering the environmental effects of National Grid activities, to have regard to:*

*(a) the national, regional and local benefits of sustainable, secure and efficient electricity transmission;*

*(b) the technical and operational requirements that constrain measures to avoid, remedy or mitigate adverse effects;*

*(c) the extent to which any adverse effects have been avoided, remedied or mitigated by route, site and method selection for new infrastructure or major upgrades;*

*(d) the extent to which existing adverse effects have been reduced as part of any substantial upgrade;*

*(e) the extent to which adverse effects on urban amenity have been minimised;*

*(f) whether adverse effects on outstanding natural landscapes, areas of high natural character, town centres, areas of high recreation value and existing sensitive activities, have been avoided.*

*Central government has recognised the importance of electricity transmission through the National Policy Statement on Electricity Transmission (NPSET) which came into effect in 2008. The NPSET establishes that the need to operate, maintain, develop and upgrade the National Grid is a matter of national significance. The objective of the NPSET is to recognise the national significance of the National Grid by facilitating its operation. maintenance upgrade and development while managing adverse effects of, and on, it. When considering an application for resource consent(s) or notice of requirement for National Grid activities the Council will have regard to the positive and adverse effects on the environment associated with the activity. This policy provides guidance on the matters that are relevant to this consideration, which reflects the particular direction in the NPSET.*

## Provision for Utilities

### [New] Objective 4.2A

236. The report writer's recommendation in Topic 20 was to include new provisions for Chapter 4 providing a further Objective 4.2A for network utilities identified as applying to district and regional plans as follows:

*[D, R]*

*Objective 4.2A - Network utilities provide for the social and economic wellbeing and health and safety of the community, while their adverse effects are appropriately managed.*

**Consideration**

237. As noted, the report writer agreed in the opening chapter of Topic 20 that if policies 4.2.1 and 4.2.2 are extended to be regional, coastal and district plan provisions, Objective 4.2 should also be similarly extended.[166]

238. The Panel concluded that it was better to add 'and network utilities' to the end of Objective 4.2 and to its explanation which would confirm its RPS status. The recommended objective, Objective 4.2A, identified above is therefore not required because of that change.

[166] Topic 20, Utilities, paragraph 43-44.

**Decision**

239. The suggestion by the report writer of a new Objective 4.2A is rejected.

## [New] Policy 4.2.4

240. The proposed new policy is:

> *Policy 4.2.4 - Provide for the upgrade and development of network utilities, while ensuring that any adverse effects are avoided, remedied or mitigated to the extent practicable.*

For the reasons that are now described, the report writer suggested this solution which flows from the amendment to Objective 4.2.

241. The category under which each provision is identified in the preceding section of Chapter 4 proceeded with the recognition that the RPS applied to all provisions identified – Objective 4.2 and Policies 4.2.1 and 4.2.2. The Council resolved that these provisions are intended to provide the high-level overarching direction over other more finely grained provisions with the PMEP.

242. Transpower, however, consistent with the approach taken to give effect to the NPS for Renewable Electricity Generation 2011, considers the RPS category should apply to the regional plan, the regional coastal plan and district plan provisions. Transpower asserted that with 'the absence of the policies also being regional, coastal and district-level provisions, there is a potential gap between the overarching guidance within the chapter and the specific rules intended to implement them. There are no finer grained policies relating to all items of the infrastructure identified (in Policy 4.2.1) particularly 'network utilities'.[167]

243. The report writer makes a recommendation that with the exception of Objective 4.2 which remained as an RPS, policies 4.2.1 and 4.2.2 should be stated as being RPS, district, coastal and regional provisions.

244. As a result of evidence lodged, the report writer further considered that if policies 4.2.1 and 4.2.2 are extended to regional, coastal and district plan provisions, then Objective 4.2 should also be similarly extended 'because the policies must be achieving a regional, coastal and district plan objective' (not just giving effect to an RPS provision).

245. In assessing this issue, the report writer notes that other chapters provide more specific objectives and policies. Thus provisions elsewhere should address the development of significant infrastructure providing direction that appropriately recognises its benefits as

[167] Section 42A Report, page 28.

relevant. An alternative approach identified is to include specific objectives and policies in the PMEP for network utilities to be placed before the rules in the Chapter 4 provisions.

246. The report writer's final conclusion was to recommend Objective 4.2 and Policy 4.1.1 being retained as RPS provisions only, because they relate to all regionally significant infrastructure, while there are more finely grained provisions at the other levels in other chapters to give direction to particular infrastructure (such as provided by the Picton Port Zone).[168] Policy 4.2.2 meanwhile should be a RPS, district and regional provision in order to achieve the overarching aim of Objective 4.2 as well as providing the policy guidance at the district and regional plan levels which is then implemented through the rule framework in the PMEP.

247. New and upgraded infrastructure, however, required more specific direction in relation to development and upgrade in the assessment of the provisions of Topic 20 Utilities.

**Decision**

248. An additional policy is included as follows as Policy 4.2.4[169] to provide for the upgrade and development of network utilities; this policy is coded 'C' in addition to 'R' and 'D':

*[R, C, D]*

*Policy 4.2.4 - Provide for the upgrade and development of network utilities, while ensuring that any adverse effects are avoided, remedied or mitigated to the extent practicable.*

*It is important that network utilities are able to be developed and upgraded, in order to provide for the social and economic wellbeing and health and safety of the community. However, this must be balanced with the need to manage the adverse effects of such infrastructure. Consideration of the management of these effects needs to take into account the logistical, technical and operational constraints associated with network utilities. Reference must also be made to the relevant policy direction in other parts of this plan, for example, where located within an Outstanding Natural Landscape, or involving the removal of indigenous biodiversity, the policy framework relating to those will be relevant.*

## [New] Policy 4.2.5

249. The report writer, in acknowledging Ms McLeod's evidence for FENZ as comprehensive, had indicated that an amendment to extend the application on emergency services into the wording of Topic 3 Use of Natural and Physical Resources could be appropriate.

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[168] Topic 20 Utilities, Section 42A Report, paragraphs 43-46.

[169] The policy was numbered 4.2.3 in the original Section 42A Report on Utilities but as noted at pages 18-19 of the Final Report, the report writer had already recommended a new Policy 4.2.3 during Topic 3. FENZ, Ainslie McLeod, Evidence, Attachment A.

250. Mc McLeod in her Attachment A included a recommended policy as follows:

*Policy 4.2.x Recognise the essential nature of emergency services by:*

*(a) providing for the development and on-going use of emergency service facilities;*

*(b) requiring adequate property access for emergency vehicles and appropriate access to, and supplies of, firefighting water; and*

*(c) enabling emergency services activities, including emergency services training.*

*The policy recognises that emergency service facilities; emergency services training; and the need for adequate access and water supply for emergency response purposes is essential for the health, safety and wellbeing of people and communities. The policy provides for emergency services, and associated activities, throughout Marlborough.*

*…*

251. The Panel largely accepted the wording of the policy but with a few minor amendments as follows:

- replace 'providing for the' in recommended (a) with 'enabling appropriate';
- insert 'in the urban environment' to the end of the recommended (b);
- insert 'appropriate' between 'enabling' and 'emergency services' in the recommended (c).

252. The limitation on access for firefighting and access to, and provision for, firefighting water reflects other decisions made by the Panel in respect of requests by FENZ for additional standards in the zone rules in respect to both of these matters. Those decisions record that the Panel accepted the relief requested in urban environments but not in coastal or rural environments. The reasons for those decisions are set out in the relevant topic decision. The decision with respect to (b) reflects those other decisions.

**Decision**

253. Policy 4.2.5 is inserted as follows:

*Policy 4.2.5 Recognise the essential nature of emergency services by:*

*(a) ~~the~~ enabling appropriate development and on-going use of emergency service facilities;*

*(b) requiring adequate property access for emergency vehicles and appropriate access to, and supplies of, firefighting water in the urban environment; and*

*(c) enabling appropriate emergency services activities, including emergency services training.*

*The policy recognises that emergency service facilities; emergency services training; and the need for adequate access and water supply for emergency response purposes is essential for the health, safety and wellbeing of people and communities. The policy provides for emergency services, and associated activities, throughout Marlborough.*

## Methods of implementation 4.M.6 to 4.M.10

### 4.M.6 Identification

**The electricity transmission network will be identified on the planning maps. This will allow other methods to be applied to manage the adverse effects of third parties on the transmission network.**

### 4.M.7 Zoning

**Recognition will be given to regionally significant infrastructure by providing, where appropriate, explicit zoning for the infrastructure. In conjunction with the application of district rules, zoning will assist to enable the infrastructure to operate efficiently and effectively.**

### 4.M.8 Designations

**Encourage requiring authorities (as defined by Section 166 of the RMA) to utilise designations as an effective means of identifying and protecting regionally significant infrastructure. Designations can then be explicitly included in the MEP.**

### 4.M.9 District and regional rules

**Rules will be used to enable activities associated with the maintenance, alteration, minor upgrading and replacement of regionally significant infrastructure. Standards will specify the extent of works involved with any of these activities.**

**Rules will be used to control the proximity of land uses in river beds that could have adverse effects on regionally significant infrastructure. This includes development within the National Grid corridor.**

**A buffer corridor for the National Grid transmission lines will be established through rules within which activities will be managed to reduce the risk of electrical hazard, the potential for reverse sensitivity effects and adverse effects on the structural integrity of the National Grid. The width of the corridor will vary depending on the activity, type of National Grid asset and the sensitivity of the network to the activity. This method gives effect to Policy 11 of the NPSET.**

**In addition to the rules in the MEP, the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 establishes various classes of activity for certain activities relating to existing transmission lines.**

### 4.M.10 Affected party status

**Where the grant of a resource consent application may adversely affect regionally significant infrastructure, the owners and operators of the infrastructure will be served notice of the application as an affected party. Transpower NZ is required to be served notice if a resource consent application may affect the National Grid under Regulation 10 of the Resource Management (Forms, Fees and Procedures) Regulations 2003.**

254. There were a significant number of amendments sought in a range of submissions to methods in this chapter which in broad terms the report writer agreed with.

**Section 42A report**

255. The report writer's assessment of the Methods include: agreement with Transpower seeking an amendment for Method 4.M.6 'Identification';[170] agreement in principle with Method 4.M.7 'Zoning' recommending a change in wording which reflects this particular method relating to zoning;[171] change to Method 4.M.8 'Designations' to include the word 'developing';[172] changes agreed to Method 4.M.9 'District and Regional Rules' with recommended alternative wording, and substituting 'activities' instead of 'land uses in river beds';[173] and rules will be used to 'enable appropriate' emergency services activities and facilities, substituting 'provide for' a number of changes agreed to Method 4.M.10 'Affected Party Status' (with the caveat that trying to identify every provision where this may occur and cross referencing all such rules is inefficient and unwieldy).[174]

**Consideration**

256. The Panel has considered each of these amendments and agrees with the recommendations that have been made by the report writer for the reasons set out in the report and/or below as follows:

257. 4.M.6 : The Panel agrees that Transpower's request for identification of the National Grid reflects the policy approach in the NPSSET and in other parts of the decision has not accepted the requests of NZTA to have reverse sensitivity buffer areas identified.

258. 4.M.7: The Panel agrees that the wording recommended as set out in the decision below accurately reflects the way the PMEP provisions will work for zoning as required by the decisions the Panel has made.

259. 4.M.8: The amendment recommended in respect of the Method for designations appropriately enables development of the National Grid as required by the NPSET.

260. 4.M.9: The Panel is satisfied the report writers recommended wording meets the requirements of the NPSET and NESETA and related regulations for rules to make provision for the National grid and its protection from reverse sensitivity.

261. 4.M.10: Method 4.M.10 relates to situations where service is required to provide infrastructure operators to protect infrastructure which is regionally or nationally significant.

[170] Transpower (1198.9).
[171] Chorus (464.8), Spark (1158.6).
[172] Transpower (1198.10).
[173] Transpower (1198.11).
[174] NZTA (1002.15), Transpower (1198.12). FENZ, Ainslie McLeod, Evidence, Attachment A.

The Panel agrees that the recommended amendments provide that opportunity for protection.

**Decision**

262. Amend Methods 4.M.6 to 4.M.10 as follows:

*4.M.6 Identification*

*The National Grid ~~electricity transmission network~~ will be identified on the planning maps. This will allow other methods to be applied to manage the adverse effects of third parties on the National Grid ~~transmission network~~.*

*4.M.7 Zoning*

*Recognition will be given to regionally significant infrastructure by providing, where appropriate, explicit zoning for the infrastructure. This, in conjunction with the application of district rules specific to infrastructure, ~~zoning~~ and the use of designations, will assist to enable the infrastructure to operate efficiently and effectively.*

*4.M.8 Designations*

*Encourage requiring authorities (as defined by Section 166 of the RMA) to utilise designations as an effective means of identifying, developing and protecting regionally significant infrastructure. Designations can then be explicitly included in the MEP.*

*4.M.9 District and regional rules*

*Rules will be used to enable activities associated with the maintenance, alteration, ~~minor~~ upgrading, development and replacement of regionally significant infrastructure and network utilities. Rules will also be used to enable emergency services, activities and facilities. Standards will specify the extent of works involved with any of these activities.*

*Rules will be used to control the proximity of activities ~~land uses in river beds~~ that could have adverse effects on regionally significant infrastructure. This includes development in the vicinity of within the National Grid ~~corridor~~.*

*A buffer corridor for the National Grid transmission lines will be established through rules within which activities will be managed to reduce the risk of electrical hazard, ~~the potential for~~ avoid reverse sensitivity effects and ensure that ~~adverse effects on the structural integrity of~~ the National Grid is not compromised. The width of the corridor will vary depending on the activity, type of National Grid asset and the sensitivity of the network to the activity. This method gives effect to Policy 10 and Policy 11 of the NPSET.*

*~~In addition to the rules in the MEP, t~~The Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 ~~establishes various classes of activity for certain activities relating to~~ contain separate rules for the operation, maintenance, upgrading, relocation or removal of existing National Grid transmission lines. The Resource Management (National Environmental Standards for Telecommunication Facilities) Regulations 2016 contain separate rules for telecommunication facilities and activities associated with the establishment of such facilities. Where activities are managed by these Regulations, no rules in the MEP apply to such activities.*

*4.M.10 Affected party status*

*Where the grant of a resource consent application or approval of a Notice of Requirement may adversely affect regionally significant infrastructure, the owners and operators of the infrastructure will be served notice of the application as an affected party. Transpower New Zealand Limited ~~NZ~~ is required to be served notice if a resource consent application may affect the National Grid under Regulation 10 of the Resource Management (Forms, Fees and Procedures) Regulations 2003*

## Objective 4.3

**The maintenance and enhancement of the visual, ecological and physical qualities that contribute to the character of the Marlborough Sounds.**

263. Seven submitters support the objective and either explicitly consider it should be retained or do not seek any changes. Others give conditional support on the basis of an additional new objective (4.3A);[175] others again seek: the objective be deleted on the basis that it may preclude changes to the visual, ecological and physical qualities of the Sounds which creates an inherent difficulty in the objective being able to be achieved; that it is ludicrous to state that the Marlborough Sounds are iconic – it is a working landscape with periodic change part of the norm;[176] that the objective is extended by providing that 'the appropriate recognition of land use activities has created the landscape' – these are legitimate activities that have formed its character;[177] that an additional objective is added after Objective 4.3 namely 'Use and development occurs with the ability of the environment to sustain its life-supporting capacity'.[178]

264. Another submitter considers it is unclear why there are not similar sections for other parts of the district (there has been significant environmental degradation in this area as a result of

[175] MFA (426.26) and AQNZ (401.26).
[176] D A Hemphill (648.8).
[177] PF Olsen Ltd (149.6), Ernslaw One (505.5), Nelson Forests Ltd (990.?).
[178] EDS (698.9).

cumulative land use within Marlborough, Nelson City and Tasman District;[179] a further submitter seeks that the objectives (and policies) are amended to recognise the importance of forestry within the Marlborough Sounds – that it is part of the area's visual character, with temporary adverse effects from activities such as tree felling;[180] another submitter considers that in discussing the need for precaution within the explanation to Objective 4.3, there is no mention made of needing to relate this to established baseline science and measures.[181]

265. Te Ātiawa seeks that the explanation to the objective is amended to formally recognise and include Te Ātiawa in the meaning of the objective;[182] yet another submitter also has concerns about the explanation because the current wording suggests that 'the Council intends to subordinate resource use to subjective environmental values' without sufficient regard to the area being a working landscape; another submitter considers it is important that historic heritage values are also maintained and enhanced as these are important contributions to the character of the Sounds. Yet another submitter considers there should be a distinction between the Inner and Outer Sounds to account for the development apparent in the Inner Sounds.

266. Te Ātiawa seeks to amend the Objective 4.3 explanation: 'The Marlborough Sounds are deeply valued by Marlborough's tangata whenua iwi who have strong cultural ties both historic and contemporary. As tangata whenua, they carry a cultural responsibility for sustainable outcomes.'

**Section 42A Report**

267. A number of submitters seek to delete the words that the Marlborough Sounds is considered to be 'our jewel in the crown' in terms of its natural assets in the opening words of the objective's explanation:

> *The Marlborough Sounds is a truly exceptional place – it is considered to be our "jewel in the crown" in terms of natural assets.*

268. These objections come largely from the forestry sector with MFA and AQNZ seeking a new objective to be added in order to 'Recognise that the visual, ecological and physical qualities of the Marlborough Sounds have been altered by cultural and social use and those uses have become part of the character of the Marlborough Sounds and do not detract from it'. These submitters assert that New Zealanders have a positive view of the aquacultural industry and

[179] FNHTB (716.34).
[180] NZ Forest Products (995.5).
[181] PF Olsen Ltd (149.6).
[182] Te Ātiawa (1186.38).

consider that other activities are more likely to have an impact on the characteristics of Marlborough.

269. The outcome sought through the objective, as identified in the Section 42A Report, is that the particular qualities identified in the issue, which relate to the Marlborough Sounds' character, are maintained and enhanced. In the report writer's opinion the changes sought by the submitters – essentially to recognise that the various activities they represent have influenced the area – do not in fact relate to the outcome sought. A new objective proposed by PMNZ, for example, does not specify an outcome. What the issue and the objective are seeking is to maintain and enhance the visual, ecological and physical characteristics that contribute to the area's special character.

270. With regard to the use of the word 'iconic', it is the report writer's understanding that this reflects the feedback from community consultants during the review process. 'Iconic' is used to reference the area as a whole, not individual areas within the Sounds. In that context the report writer is comfortable with the use of the word.

271. Further, the report writer considers that to distinguish between the Inner and Outer Sounds is inappropriate. The character of the area as a whole, as well as its geography means that integrated management is required to ensure that the outcome sought is achieved. The decision such as is sought by some submitters does not achieve that outcome. The report writer observes that the process of identifying the qualities and values that contribute to a particular area as a whole will necessarily take into account the extent to which these are present or not in the various parts of the Sounds. The provisions within the PMEP will then only need to be targeted to protecting the qualities and values from inappropriate activities in areas where they exist. Excluding part of the area is not an appropriate way to achieve the purpose of the RMA.[183]

272. In the discussion in the explanation to Objective 4.3 recognises the need for precaution, there is no mention made of needing to relate the precautionary measures to established baseline science. (There is a range of factors beyond science and baseline measures alone that will influence the exercise of precaution.) EDS considers that Chapter 4 could identify that use and development should only occur within the capacity of the environment/within environmental limits. Several industry submitters oppose this as limits (such as bottom lines) for each resource have not been described and they have particular concerns in relation to landscapes which are open to the vagaries of individual judges and courts. This could lead to subjectivity,

[183] Section 42A Report, page 46.

confusion and uncertainty. They consider it is impossible for the level of complexity proposed to be detailed within a single policy – a situation with which the report writer agrees.

273. In terms of Te Ātiawa's submission, the report writer accepts that it identifies the significance and connection of the area for iwi which will be relevant matters in identifying and managing effects on the cultural as well as visual, ecological and physical qualities that contribute to the character of the Sounds.[184] An amendment in the light of this submission is justified.

**Consideration**

274. The words 'unique' and 'iconic' are not within Issue 4C although the word 'unique' legitimately, in the Panel's opinion, qualifies the issue in terms of the geology, with the rugged landform sloping away from the shoreline to prominent spurs and ridges on the skyline. This in turn creates diversity with variation in geology, soils, topography, tidal range and currents in both the character and ecology of the Marlborough Sounds.

275. In addition, the objective refers to the environment as dynamic with an ability to absorb change. We endorse all of Issue 4C and Objective 4.3 with the exception of the phrase 'jewel in the crown'. This is too emotive in a planning document even if it is used in the explanation to Objective 4.3. In our view it is hierarchical in nature and does not reflect the purpose of integrated management as identified in Policy 4(a)-(c) NZCPS, providing for the integrated management of natural resources and activities that affect the coastal environment, nor from Policy 6(1)(a)-(c) Activities in the Coastal Environment – all of which point to sustainable management of the area's multiple resources rather than dominance of any one activity or quality.

276. In terms of the precise wording of the objective – the 'maintenance and enhancement' issue – we queried whether the words 'where appropriate' or 'where degraded' should qualify 'enhancement' as submitted by Federated Farmers. This recommendation was supported by the Section 42A Report writer following on from her agreement to a disjunctive interpretation of the phrase in Policy 4.1.3.

277. The Section 42A Report observes that Federated Farmers originally sought deletion of reference to 'enhanced' entirely from the objective, and the change sought is a compromise – enhancement should not be directed in all cases.[185] The report writer considers the phrase is problematic, because the term 'where appropriate' reflects the desire set out in Policy 4.3.4 and the intent (as understood) is to encourage enhancement where possibly appropriate but

[184] Te Ātiawa, Ian Shapcott Evidence, page 18.
[185] Federated Farmers, Kim Reilly Evidence, paragraphs 43-44.

not require it in all circumstances.[186] Our reasons given previously on Policy 4.1.3 remain, and for the same or similar reasons.

278. In terms of the report writer's initial recommendation, we did not accept it as stated in that it retains the phrase 'jewel in the crown'. We queried whether some aspects such as landscape and seascape issues referred to in the explanation to Objective 4.3 should be removed from the objective and left to specific later chapters. Our conclusion is to retain most of them for they are important for a number of reasons. Landscapes contain wildlife, surface values, colours, beauty of the skyline – some of which are intangible. Others indicate Māori mythology and links through whakapapa, urupā, fishing places, and burial sites. These factors require recognition of the importance of maintenance and enhancement of cultural qualities in the objective. Others indicate the activities of early European explorers and family links – farming, beaches, nature conservation walks and heritage landscapes.

279. Marlborough's tangata whenua iwi cultural ties and their kaitiaki responsibilities need recognition in the objective and the explanatory statement as requested in evidence by Te Ātiawa.

280. As to the 'visual' qualities of the landscape, the RMA s 7(c) uses the term 'amenity values' which is defined in s 2 as follows:

> **amenity values means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes**

Therefore the term amenity values is much broader than just aesthetic amenity especially in the context of the Marlborough Sounds and therefore the word 'visual' should be amended in the objective to 'amenity' values.

281. The Panel also took the view that the explanatory statement to the Objective required amendment to reflect that change in wording for the Objective. The Panel also considered the explanatory statement required amendment to capture the concept that the Objective seeks to maintain existing qualities and amenity values which form the character of the Marlborough Sounds environment as a base from which enhancement can commence, particularly where past resource use has degraded the environment.

**Decision**

282. For the reasons given, Objective 4.3 is amended as follows:

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[186] Section 42A Report, page 48.

*[RPS]*

*Objective 4.3 – The maintenance and enhancement of the ~~visual~~, ecological~~,~~ ~~and~~ physical, cultural qualities and amenity values that contribute to the character of the Marlborough Sounds.*

283. The explanatory statement to Objective 4.3 is amended as follows:

*The Marlborough Sounds is a truly exceptional place~~– it is considered to be our "jewel in the crown" in terms of natural assets~~. The landscapes and seascapes within the Marlborough Sounds and the ecology and natural processes that occur within them are unique and highly valued. Marlborough's tangata whenua iwi have particularly strong cultural ties to the Marlborough Sounds, both historic and contemporary. As tangata whenua, they carry a cultural responsibility for sustainable outcomes.*

*The objective seeks to maintain the ecological, physical, cultural qualities and amenity values that contribute to the iconic character of the Marlborough Sounds as a base from which enhancement can commence. ~~This objective seeks to maintain and enhance these qualities to~~ This will ensure that the community and visitors to the district can ~~continue~~ anticipate improvement of ~~to enjoy~~ this environment now and into the future. This does not mean that use and development of natural and physical resources cannot occur within the Marlborough Sounds, ~~but an element of~~ precaution needs to be exercised to ensure that resource use is complimentary to the ~~visual~~, ecological, physical, cultural qualities and amenity values that give the Marlborough Sounds ~~its~~ this iconic character.*

*In some locations, both on land and in the coastal marine area, past resource use has degraded the ecological, physical, cultural qualities or amenity values. The objective in these situations is to enhance the qualities and/or values to restore and rehabilitate the unique character of the Marlborough Sounds. This could be achieved through both regulatory and non-regulatory means. However, an important tool will be encouraging people and community to engage in their own enhancement efforts and activities.*

## Policy 4.3.1

**Integrate management of the natural and physical resources within the Marlborough Sounds environment**

284. There is a direction through s 59 RMA that the purpose of an RPS is expressed as being to achieve integrated management of the natural and physical resources of the whole region.

285. NZCPS Policy 4 Integration provides for integrated management of natural and physical resources in the coastal environment and activities that may affect them. The benefits of

Policy 4.3.1 are that the Council, as a unitary authority for the past 22 years, is well placed to achieve the integrated management of its resources through its policy making and consenting functions.[187]

286. There is general support for the policies above by seven submitters who support both Policy 4.3.1 and Policy 4.3.2, six support Policy 4.3.3 and eight support Policies 4.3.4 and 4.3.5.

287. In relation to Policy 4.3.1, one submitter identifies that the policy deals only with one aspect of the integration of the management of resources, namely that of land and coastal resources within the Council's frameworks. He notes other agencies such as DOC, MfE and MPI also have related management responsibilities; these together with the community work collaboratively. The submitter seeks an enabling policy to further the opportunity to implement integrated management of the Marlborough Sounds marine environment.[188]

**Section 42A Report**

288. The report writer observes that caution needs to be exercised by the Council to not give 'direction' to these agencies but to work collaboratively with them in achieving Objective 4.3. Rather than providing an additional policy which is already covered by the proposed wording of Policy 4.3.1, the report writer recommends discussion around the explanation to Policy 4.3.1 and that a further method be added at the end of this section of Chapter 4. The drafting proposed is intended to focus on the Council pursuing discussions with other parties to ultimately assist in the achievement of Objective 4.3 rather than trying to direct other agencies, or step outside the Council's functions under the RMA.

289. The report writer recommends the following additions to the explanation of Policy 4.3.1 as follows:[189]

> *In addition, there are other agencies, including the Ministry for Primary Industries, the Department of Conservation and the Ministry for the Environment, who have statutory responsibilities that influence the management of natural and physical resources within the Marlborough Sounds. The Council can take active steps to facilitate discussions with these agencies regarding their management roles and how they can work together to best integrate the management of natural and physical resources to maintain and enhance the qualities that contribute to the character of the Marlborough Sounds.*

[187] MEP Section 32 Evaluation Report 9 June 2016.
[188] E Jorgensen (404.2).
[189] Section 42A Report, page 56.

**Consideration**

290. The Panel recognises the need to promote integration of management of the Marlborough Sounds environment between the Council's functions and those of the Crown and across the various Crown agencies. The Panel's view is that rather than amending the policy itself that is best achieved by amending the explanatory statement as recommended by the report writer and inserting a new method 4.M.12 in the PMEP. That method will state:

4.M.12 Collaboration and Liaison

There are a number of Crown and other agencies with statutory responsibilities that influence the management of the natural and physical resources within the Marlborough Sounds. The Council will take steps to encourage discussions with these agencies to facilitate a discourse on the respective management roles of each party and how they could be better integrated to achieve Objective 4.3.

**Decision**

291. The Panel accepts the submissions to the extent that an additional paragraph is added to the explanatory statement to Policy 4.3.1 as follows:

*In addition, there are other agencies, including the Ministry for Primary Industries, the Department of Conservation and the Ministry for the Environment, who have statutory responsibilities that influence the management of natural and physical resources within the Marlborough Sounds. The Council can take active steps to facilitate discussions with these agencies regarding their management roles and how they can work together to best integrate the management of natural and physical resources to maintain and enhance the qualities that contribute to the character of the Marlborough Sounds.*

292. The Panel inserts a new method 4.M.12 as follows:

4.M.12 Collaboration and Liaison

There are a number of Crown and other agencies with statutory responsibilities that influence the management of the natural and physical resources within the Marlborough Sounds. The Council will take steps to encourage discussions with these agencies to facilitate a discourse on the respective management roles of each party and how they could be better integrated to achieve Objective 4.3.

### Policy 4.3.2

**Provide direction on the appropriateness of resource use activities in the Marlborough Sounds environment**

293. Seven submitters support Policy 4.3.2. Other submitters seek that the policy is amended to recognise the need for well-founded data or baseline trends, and sound peer-reviewed science, and use these to inform consideration of the potential significance of adverse effects and the impacts of activities on the values and qualities identified in the Marlborough Sounds;[190] another submitter has concerns about the use of the term 'unique' and 'iconic' and how they may be used in the resource management decision-making context. Values identified do not include those from the working landscape such as forestry and agriculture, and specify where these qualities and values can be found in the PMEP to recognise the importance of these for the Marlborough Sounds (for example, through an appendix), as well as a schedule of activities and characteristics of the Marlborough Sounds.[191]

294. Another submitter considers that Policy 4.3.2 should be deleted as it is already covered in other policies, and this and other policies contradict Issues 4A and 4B;[192] another seeks a minor amendment to Policy 4.3.2 to use the word 'may' instead of the word 'will' in relation to determining whether particular activities will/may have significant effects. This submitter also seeks policies stating that they must include *avoidance of the proliferation of subdivisions along the coastal margin.*[193]

**Section 42A Report**

295. In regards to the use of the terms 'unique' and 'iconic' in Policy 4.3.2, the identification requires taking into account any influence that historic and existing activities have on these qualities and values. In terms of the wording itself, the report writer considers that it needs to clearly relate to the outcome sought – that is, the visual, ecological and physical qualities that contribute to the Marlborough Sounds are maintained and enhanced. Policy 4.3.2 directs that it is these qualities and attributes that are to be identified and protected from inappropriate activities. It is not appropriate to extend this direction to the identification of some sort of cataloguing of activities in the Marlborough Sounds and the impact such activities have on the environment, because it is not required to achieve Objective 4.3.

296. A change recommended however is to retain the proposed wording of the policy but include specific reference within the policy explanation to acknowledge that the Sounds' character

[190] PF Olsen Ltd (149.7), D Hemphill (648.9).
[191] Federated Farmers (425.20).
[192] PMNZ (433.11), Louise Taylor Evidence, paragraph 115.
[193] QCSRA (504.8).

has been and is influenced by past and present activities within the area and the identification of the particular values that is required needs to be undertaken with this in mind.

297. The report writer does not consider cross-references to other provisions are appropriate. Method 4.M.11 makes it clear that provisions are given effect to throughout other policies. She is comfortable with use of the term ‘iconic’ and similarly ‘unique’ as these will assist in determining the types of values and qualities that the policy directs be identified.

298. In response to the submissions relating to data and peer-reviewed science, it is the report writer’s opinion that both need to be carefully considered in the assessment of provisions relating to the PMEP, but they cannot be relied upon alone. Community and cultural values are often not based on science, data and trends alone but must be made based on the professional views of qualified and experienced experts. It is inappropriate to consider otherwise.

299. In terms of PMNZ’s submission requiring deletion of the policy because it is already covered in other provisions, the report writer considers the policy is not duplicated in other policies and overlays but is implemented through them. This policy requires identification of the qualities and values which the objective seeks are maintained and enhanced and is a necessary step in achieving the objective.

300. QCSRA’s minor amendment to the policy seeking the explanation to the policy use the word ‘may’ instead of ‘will’ is recommended as it better reflects that consideration of effects (in this context) is based on what is anticipated to arise rather than definite knowledge.

301. The report writer recommends the explanation to Policy 4.3.2 as follows:

> *In order to determine whether particular activities in the Marlborough Sounds ~~will~~ may*[194] *have significant adverse effects, it is necessary to identify the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds. These qualities and values are identified in the objectives and policies of other chapters, where criteria to help define appropriate activities are provided. In some cases, these qualities and values are also mapped and/or scheduled in the MEP. The identification of the qualities and values of importance required under this policy will also need to take into*

[194] QCSRA (504.8).

*account the effects that past and present activities have had, and continue to have, on the character of the Marlborough Sounds.*[195]

302. KCSRA in evidence appears to oppose this recommended change in the Section 42A Report as the submitter considers that 'it may be taken to suggest that effects of existing activities are a baseline even where these effects of existing activity are unacceptably adverse and open to being avoided, mitigated or remedied through consent renewal or review processes'. On this basis the submitter seeks deletion of the change, or clarification that 'the process of quality and value identification for protection should include improved qualities and values that are attainable through consent processes for an existing activity'.[196]

303. The Section 42A Report writer identifies that the change recommended has been a result of a number of submitters raising concerns that this section of Chapter 4 does not adequately take into account the modification that has already occurred within some parts of the Marlborough Sounds. While she understands the concerns of KCRSA (and agrees with the sentiment), her view is that the amendments do not result in the identified concern arising, and therefore no change is required.

304. Te Ātiawa seeks to amend Policy 4.3.2 to add 'including iwi cultural values'.[197] The report writer considers it is not appropriate to add 'including' into the policy drafting. The policies already encompass all values that contribute to the unique and iconic character of the area, and it is not helpful to single one out for mention. No change is recommended to include specific extra reference to iwi cultural values.[198]

**Consideration**

305. The Panel has already made amendments to the wording of Objective 4.3 and its explanatory statement to ensure the concept of establishing a base from which maintenance of the qualities and values which form the character of the Sounds can be protected – with the emphasis being that it is a base from which enhancement is encouraged, particularly where past resource use has degraded the environment. The Panel agrees with the Section 42A Report recommended changes to the explanatory statement to the policy which effectively capture and apply those concepts in the Objective.

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[195] Federated Farmers (425.20). Also relates to PF Olsen Ltd (149.6); AQNZ (401.14); Federated Farmers (425.19); MFA (426.14); Ernslaw One Ltd (505.5); D Hemphill (648.7, .8); Group 1 submitters (submission point 4); Group 2 submitters (submission points 7 and 8).
[196] KCSRA (869.4).
[197] Te Ātiawa, Ian Shapcott Evidence, page 8.
[198] Section 42A Report, pages 43-47. Reply to Evidence, pages 19-22.

**Decision**

306. For all the above reasons, we consider that the amendments to the explanation to Policy 4.3.2 are accepted as recommended:

*In order to determine whether particular activities in the Marlborough Sounds ~~will~~ may have significant adverse effects, it is necessary to identify the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds. These ecological, physical, cultural qualities and amenity values are identified in the objectives and policies of other chapters, where criteria to help define appropriate activities are provided. In some cases, these qualities and values are also mapped and/or scheduled in the MEP. The identification of the qualities and values of importance required under this policy will also need to take into account effects that past and present activities have had, and continue to have, on the character of the Marlborough Sounds.*

## Policy 4.3.4

**Enhance the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds**

307. One submitter seeks that this policy is also deleted because it is considered vague and unlikely that any activities that result in adverse effects on the environment will gain consent. It is also apparent that the specific values associated with the Marlborough Sounds and elsewhere are identified in other chapters in the PMEP.[199] Another submitter also seeks the policy be deleted on the basis of concerns about its implementation. It is difficult to enhance outstanding natural character and the submitter considers whether it will mean that every consent within the area will be required to show that enhancement is achieved.[200]

308. Te Ātiawa in evidence sought to amend Policy 4.3.4 to include 'iwi cultural values'.[201]

**Section 42A Report**

309. The report considers that the wording of the policy goes beyond what is necessary to achieve the outcome sought and may conflict with Policy 4.3.2 which directs that the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds are identified and then protected from inappropriate activities: Policy 4.3.4 directs that these are enhanced.

310. As such, 'there is tension between when protection from inappropriate activities should occur and when enhancement should occur'.[202] The explanation to Policy 4.3.4 and the Section 32

[199] PMNZ (433.13).
[200] Federated Farmers (425.21).
[201] Te Ātiawa, Ian Shapcott Evidence, page 8

assessment indicate that the intention is not to require enhancement in all cases nor, in the report writer's opinion, is that the outcome sought in Objective 4.3.

311. The recommendation is for changes to Policy 4.3.4 to provide greater guidance when enhancement is considered (rather than deleting the policy and therefore providing no guidance around the enhancement aspect of Objective 4.3) as follows:

> *Policy 4.3.4 – Encourage the enhancement of ~~Enhance~~ the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds.*
>
> *Objective 4.3 seeks to maintain and enhance particular qualities of the Marlborough Sounds environment. Policy 4.3.2 generally provides direction relating to the identification and maintenance of these qualities. Policy 4.3.4 signals that beyond this, enhancement of these qualities should be encouraged. ~~This means that the Council can manage the use, development and protection of natural resources to enhance the qualities and values that contribute to the character of the Marlborough Sounds~~. This can occur through regulatory methods. For example, environmental enhancement may be a means of remedying or mitigating the adverse effects of resource use and development. Resource consent applicants and the Council should have regard to these opportunities when preparing or processing resource consent applications. Other opportunities may exist beyond the use and development of natural resources. The implementation of non-regulatory methods to enhance particular parts of the Marlborough Sounds environment, particularly the landscape and biodiversity, will make significant contributions in this regard. These non-regulatory methods are signalled throughout the MEP.*

**Consideration**

312. This amendment picks up where Federated Farmers had sought an amendment to Objective 4.3 with the insertion of the words 'where appropriate'. The amendment sought in evidence by Te Atiawa was not able to be adopted by the Panel as its submission did not explicitly seek that relief.

313. As pointed out then in the Panel's consideration of s 7 RMA Other Matters, s 7(f) reflected in the wording of Policy 4.1.3, Section 7(f) provides:

[202] Section 42A Report, pages 52-53.

> **In achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources shall have particular regard to …**

314. The word 'encourage' before the word 'enhancement' as recommended in the report writer's amendment does not detract from the MDC's option to have particular regard to the development and protection of the qualities and values that contribute to the unique and iconic character of the Sounds when these are more clearly highlighted in Volume 1's Chapter 6 Natural Character, Chapter 7 Landscape, and Chapter 8 Indigenous Biodiversity.

**Decision**

315. Policy 4.3.4 and its explanatory statement are amended as follows:

*Policy 4.3.4 – Encourage the enhancement of ~~Enhance~~ the qualities and values that contribute to the unique and iconic character of the Marlborough Sounds.*

*Objective 4.3 seeks to maintain and enhance the ~~particular~~ ecological, physical and cultural qualities, and amenity values, of the Marlborough Sounds environment. Policy 4.3.2 generally provides direction relating to the identification and maintenance of these qualities and values. Policy 4.3.4 signals that beyond this, enhancement of these qualities and values should be encouraged. ~~This means that the Council can manage the use, development and protection of natural resources to encourage the enhancement of enhance the ecological, physical, cultural qualities and amenity values that contribute to the character of the Marlborough Sounds.~~ This can occur through regulatory methods. For example, environmental enhancement may be a means of remedying or mitigating the adverse effects of resource use and development. Resource consent applicants and the Council should have regard to these opportunities when preparing or processing resource consent applications. Other opportunities may exist beyond the use and development of natural resources. The implementation of non-regulatory methods to enhance particular parts of the Marlborough Sounds environment, particularly the landscape and biodiversity, will make significant contributions in this regard. These non-regulatory methods are signalled throughout the MEP.*

# Proposed Marlborough Environment Plan

# Topic 4: Water Allocation

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

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

**Conflicts of Interest:** None

**Interim decision:** No

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

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## List of Abbreviations

| | |
|---|---|
| FMU | Freshwater Management Unit |
| PMEP | Proposed Marlborough Environment Plan |
| MALF | Mean Annual Low Flow |
| MDC | Marlborough District Council |
| NPSFM | National Policy Statement for Freshwater Management |
| RMA | Resource Management Act 1991 |
| WRU | Water Resource Unit |

**Submitter abbreviations**

| | |
|---|---|
| AWUG | Awatere Water Users Group |
| DOC | Department of Conservation |
| EDS | Environmental Defence Society Incorporated |
| FENZ | Fire and Emergency New Zealand |
| Fish & Game | Nelson Marlborough Fish and Game |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| Ngāti Kuia | Te Rūnanga O Ngāti Kuia |
| Ngāi Tahu | Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu |
| Ngāti Toa | Te Rūnanga o Toa Rangatira |
| NZTA | New Zealand Transport Agency |
| NZDF | New Zealand Defence Force |

# Water Allocation

## Background

1. This chapter approaches the decision making on the basis that recognises the major issue is complex in that it is addressing water availability predominantly in the Wairau Plain and also in other catchments where limits on volumes of surface flows and aquifer levels are either directly or indirectly linked. By way of example, on the Wairau Plain, two-thirds of the surface flow is absorbed into the Wairau Aquifer within a relatively short distance downstream of Conders Bend and surface flows and aquifer levels there are directly interlinked. The evidence is that the southern valley aquifers will either have direct or indirect linkages to the Wairau Aquifer. It is very difficult to deal with each of these issues separately and for this particular decision we have therefore approached all of those contributing issues to the fixing of limits on surface flows and aquifer levels in the one substantial consideration.

2. As a consequence the format used for the discussion of limits on surface flows and levels in aquifers will be different in this topic decision from that utilised generally in other topic decisions because the interrelated evidence of submitters and report writers will be addressed as part of a general consideration. However, the important Te Mana o te Wai issue, which is at the commencement of this topic decision, does follow the normal format. Other decisions following the consideration of limits on surface flows and aquifer levels similarly revert to that decision format.

3. One of the most pressured public resources in a dry climate province like Marlborough is the freshwater resource available from its aquifers and surface flows in rivers and streams. Chapter 5 of Volume 1 of the PMEP addresses that issue and is entitled 'Allocation of Public Resources'.

4. The RMA (s 67(1)(a)) requires that all regional councils must give effect to a National Policy Statement in their various plans. In accordance with the parlance required by the National Policy Statement for Freshwater Management 2017 (NPSFM 2017) each of those resources are called a Freshwater Management Unit (FMU) in the PMEP. The FMUs are mapped in Volume 4 of the PMEP as part of the Overlays section..

5. The NPSFM was first issued in 2011, amended in 2014, and again in 2017. (As if that was not enough of a moving target, as this present decision was being written, the Government has announced an intent to issue a further amended NPSFM. The draft of that was released for public response in early September, 2019, but as it will not be operative before our decisions are released we need only address the 2014 and 2017 versions.) The 2014 version of the

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

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

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

7. That recognition of Te Mana o te Wai for the first time provides a statutory base to the fundamental concept of a sustainable bottom line being necessary to be fixed in plans for each FMU. The purpose of the bottom line is to protect the life force in ecological and water quality terms of a river (or FMU) for it to be able to maintain its mauri – the essence or life force of an FMU. The concept is relevant then not only to maintenance or restoration of water quality, but also to maintenance of water quantities within FMUs to maintain Te Mana o te Wai.

8. The PMEP has two appendices, 5 and 6, which are directly relevant to the both the concept of Te Mana o te Wai and the objectives and policies in Chapter Five of the PMEP which govern the allocation principles expressed in those objectives and policies. Those appendices are entitled:

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

   *Appendix 6 - Environmental Flows and Levels*

9. Appendix 5 contains two schedules, Schedule 1 – Water Resource Unit Values, and Schedule 2 - Water Quality Classification Standards. Schedule 1 is particularly relevant to the allocation of water resources, as it identifies and describes the values of what are described as Water Resource Units, which for practical purposes relate to the FMUs in Appendix 6.

10. Appendix 6 fixes the allocation quantities able to be sustainably taken while maintaining environmental flows and levels. Appendix 6 is comprised of a number of schedules the most important of which, for the purposes of this decision, are Schedule 1 – Quantity Allocations for Water Takes, and Schedule 3 - Minimum Flows and Levels for Water Takes.

11. Schedule 1 of Appendix 6 fixes maximum quantities able to be sustainably taken expressed on a daily basis for surface FMUs, and on an annual basis for subsurface aquifer FMUs. Of particular significance in the Awatere, but potentially increasingly in the Wairau catchment, for some FMUs the surface flow allocations are divided into three classes A, B and C. C class takes are for very high flow storage takes (usually in winter), B class only available for higher

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

12. Schedule 3 of Appendix 6 provides the 'bottom line protections' for FMUs by fixing aquifer levels and surface flow volumes at which abstraction must cease, or in some cases where rationing of takes commences on a reducing basis until cessation. It also fixes the monitoring location where those flow or level assessments are to be made. An important exception is the Wairau Aquifer which does not have cut-off levels fixed for reasons that will be traversed later.

13. Another background document which must be referred to at this introductory stage is the Proposed National Environmental Standard on Ecological Flows and Water Levels. That document was released as a draft for discussion by the Government in 2008 as an interim measure pending the setting of limits in a regional plan.

14. The nature of this draft was expressed as follows in 2008:

> *The Proposed National Environmental Standard on Ecological Flows and Water Levels is to promote consistency in the way we decide whether the variability and quantity of water flowing to rivers, ground water systems, lakes and wetlands is sufficient.*
>
> *It would do this by:*
>
> > *- setting <u>interim</u> limits on the alteration to flows and/or water levels <u>where limits have not been imposed through regional plans</u> or water conservation orders*
> >
> > *- providing a process for selecting the appropriate technical methods for evaluating the ecological component of environmental flows and water levels.*
>
> *(Panel's underlining for emphasis)*

15. It is important to emphasise the interim nature of this proposed standard, which has never become operative, largely because it has been superseded by the 2011 NPSFM and the two later 2014 and 2017 versions of the NPSFM.

16. With the massive development and expansion of the viticulture industry in the Wairau and Awatere catchments in recent decades, the FMUs in those catchments have come under pressure, particularly in dry summers towards the end of the irrigation season as river flows and aquifer levels reduce. In drier recent years flow rates and aquifer levels have reached the point where cessation of takes has either had to occur or has been on the brink of occurring.

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

**Submissions**

18. A major issue, both in submissions and in evidence at the hearings, was the surface flow rates fixed in the Wairau River itself. In essence, the flow rates fixed in the PMEP were challenged by some submitters, particularly led by Fish & Game[1], as being unsustainable in terms of protection of in-stream ecological values, particularly for the habitat necessary for the trout fishery.

19. Another major feature identified in various policies, and in the limits contained in the schedules to Appendix 6, is the complex interrelationship between surface flows and subsurface aquifers, particularly in the major Wairau Springs aquifer areas, but generally in relation to all aquifer FMUs other than the Wairau. The levels fixed for aquifers in Schedule 6, particularly in the Wairau catchment, were consequently the focus of considerable attention both in submissions and in evidence at our hearings.

20. In addition to those issues, most of which attracted significant input by way of evidence at the hearings, we also considered a very large number of other submissions on the various aspects of water allocation. (As has occurred generally in the PMEP decision, to save unnecessary repetition, where we agreed entirely with the reasoning and recommendations of the Section 42A Report or Reply to Evidence we have not repeated those conclusions.)

21. Much of the content of this decision will, therefore, be occupied with addressing submissions focussed on the Te Mana o te Wai and sustainability concepts, as reflected in various policies of the Plan and in Appendix 5; and the two major issues of the effects of allocation of resources on Wairau surface flows and aquifer levels as set in Appendix 6 – both of which had many sub-sets of issues related to them raised in submissions.

## Te Mana o te Wai

22. The NPS states:

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

[1] 509.37

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

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

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

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

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

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

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

24. Objective 5.2 then provides:

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

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

26. The suite of policies provides as follows:

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

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

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

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

*(a) protect the mauri of the waterbody;*

*(b) protect instream habitat and ecology;*

*(c) maintain fish passage and fish spawning grounds;*

*(d) preserve the natural character of the river;*

*(e) maintain water quality;*

*(f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and*

*(g) maintain amenity values.*

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

*(a) prevent physical damage to the structure of the aquifer;*

*(b) prevent headwater recession of spring flows;*

*(c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;*

*(d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;*

*(e) maintain groundwater quality; and*

*(f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).*

**Submissions**

27. Ngai Tahu[2] supported the objective but sought that it be strengthened to recognise and protect the inherent values of the water resources themselves stating:

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

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

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

**Section 42A Report**

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

**Consideration**

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

**Decision**

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

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

[2] 1189.035

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

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

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

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

*(a) Te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people); and*

*(b) values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits.*

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

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

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

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

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

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

**Limits to Allocation of Water**

34. As the aquifer replenishments, and aquifer levels restricting takes, (which drove a large number of the submissions on aquifer allocations), are both interrelated with Wairau surface flows, either directly or indirectly, it is best to record conclusions first on those surface flow rate issues.

35. Policies 5.2.4, 5.2.5, 5.2.11 and 5.2.13 combine with Appendix 6 to set limits on the total amount of water available to be taken from FMU's in accordance with Policy B1 of the NPSFM 2017. Policy B1 of the NSPFM requires the environmental flows and/or levels to be set together with allocation limits. Policies 5.2.4 and 5.2.11 also have relevance to the values protected by the setting of limits so were set out above when considering Appendix 5.

36. The other policies relevant to limit setting in Appendix 6 are policies 5.2.5 and 5.2.12, 5.2.13:

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

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

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

## Wairau Surface Flow Rates & Aquifer Levels submissions

37. A range of submissions were lodged in respect of Objective 5.2 and its related policies coming from quite markedly differing positions, particularly in relation to the Wairau surface flows and the related more southern Wairau aquifer levels. The basic cut-off rate for takes in the lower Wairau is set in Appendix 6 at 8 cumecs at Barnetts Bank (a recorder location on the north bank of the Wairau just upstream of the Tuamarina Bridge over SH 1).

38. Some submissions from the irrigation sector essentially sought variously modification of these policies so as to enable continued takes without reduction; or incremental rationing or reductions over time; or some level of prioritisation as restrictions start to apply; or even prioritisation for what were asserted to be 'essential' or 'survival' activities, i.e. activities which could not survive the cut-off of water at all, or which would fail to survive extended cut-offs of supply. In summary those types of submissions came from the end of the spectrum that asserted the PMEP restrictive provisions were too harsh, and needed relaxing to some extent.

39. At the other end of the spectrum were a range of submissions seeking to support the Te Mana o te Wai or sustainability bottom lines in the PMEP; or, as in the case of Nelson Marlborough Fish and Game (Fish & Game), expressly seeking that the PMEP restrictions be raised in the Wairau to at least 13 cumecs, but preferably greater than that, and increased also in other catchments so as to provide greater protection for Te Mana o te Wai, or sustainability of natural habitat.

40. In essence, the position adopted by the report writers in respect of the major Wairau resource adopted a position of support for the PMEP as notified. In practical terms that constituted a position lying somewhere between the positions of those seeking reduced flow rates or aquifer levels before cut-offs are triggered for irrigation takes, (which inherently reduces the level of protection derived from residual flows), and those seeking amended provisions retaining greater residual flows in the river.

41. A clear example of these differing positions adopted in the submissions and the PMEP provisions arose from the Fish & Game request in respect of the Wairau seeking greater protection for in-stream values, by flow rates being fixed much higher than the PMEP provides. As mentioned above, the figure of 13 cumecs was stressed as being a minimum flow rate to sustain natural habitat supporting a trout fishery.

42. The Fish & Game arguments in support of that proposal are a useful start-point from which to commence a consideration of the relevant objective, policies and appendices in the PMEP.

That is because consideration of their request for increased river flows in the Wairau will traverse or encompass most of the issues raised in other submissions adopting either a similar approach, or an opposing approach. That is so whether the issue being considered relates to the values sought to be protected by residual flow rates or aquifer levels, or the actual flow rates or levels fixed themselves.

43. In the Panel's assessment the arguments each way on the residual surface flow rate largely came down to a choice between a methodology used in the PMEP based on decades of practical observation, coupled with experienced hydrological assessment of daily extraction fluctuation effects, as against a calculated artificial assessment of what are described in hydrological terms as 'naturalised' flows as provided for in the 2008 draft Proposed National Environmental Standard on Ecological Flows and Water Levels (hereafter 'draft 2008 NES').

44. The case advanced by Fish & Game was that its methodology, provided to the Panel and described by its expert hydrological witness Ms Watson was based on an attempt to 'naturalise' Mean Annual Low Flows (MALF) by adding back into the record of measured flows in lower reaches, those extractions caused by other activities or takes. That approach was based on the draft 2008 NES methodology which was advanced before the Panel as being a methodology we should give effect to as being contained in an NES, albeit a draft one.

45. The primary flaw with this methodology is that it is of course an artificial or 'constructed' method of ascertaining flow rates. That 'constructed' naturalised flow rate is then advanced as being, in an ideal world before the extractions occur, what should be regarded as the 'natural' flow rate for that surface flow.

46. As was stated in the introduction to this part of the decision, this 'naturalising' methodology in the draft 2008 NES was only ever suggested to assist those regions where plans did not set flow rates or aquifer levels, and it was expressly stated to be an interim measure.

47. It bears repeating that the wording in the introduction to the draft 2008 NES was as follows:

> *It would do this by:*
>
> *- setting <u>interim</u> limits on the alteration to flows and/or water levels where limits <u>have not been imposed</u> through regional plans or water conservation orders*
>
> *(Panel's underlining for emphasis)*

48. That is simply not the situation with the PMEP. The PMEP specifically sets flow rates and aquifer levels at which cessation of takes are required, i.e. limits <u>have been imposed</u>, which are specifically designed to maintain the bottom line environmental values.

49. Moreover, the Panel has also taken into account the fact that the draft 2008 NES was only ever issued in draft form, and it was never made operative. It is not for the Panel to speculate as to why it was not taken through the full range of consultation and decision-making to be made operative. But what can be taken into account is that the 'naturalising' methodology has no binding statutory force.

50. And the Panel was not persuaded either that it was a reliable base against which to impose such hard practical effects as irrigation cut-offs with their devastating financial impacts on production, when a valid practical, tested and measured alternative methodology was available which was used for setting limits in the PMEP. That was particularly so when the artificially constructed or 'naturalised' flows are compared to the hard practical factual base upon which the daily flow rates and aquifer levels were set in the PMEP.

51. We also accept that daily flow rates, in particular for a surface water FMU like the Wairau, have no definitive 'natural' precisely measurable constant figure. That is because a range of natural and man-made influences can affect exact flow rates on any particular day depending on the time of day the rate is measured. And for aquifers, drawdown effects from irrigation pumping usage throughout a day (or night even) can make for potentially significant fluctuations in aquifer levels.

52. For surface flows in the Wairau, one example alone shows that the nature and extent of those fluctuations can be very graphic. At the Branch River catchment some 40-50 kilometres up the Wairau Valley from the crucial flow rate measurement point at Barnetts Bank is the Trustpower hydro scheme. It is essentially a run of the river scheme with limited storage capacity. However, it has sufficient storage that its releases of stored water can be varied to maximise the return on hydro power generated to enable releases to be planned to coincide with high electricity income return periods. Commonly that might occur with two or three day separation periods between releases.

53. Depending on both quantity and duration of releases from the Branch Scheme the increases in downstream flow rates can vary significantly in the lower reaches, but releases can commonly increase the flow rate downstream significantly for a period of time. Sometimes at low flow rates that can be by a factor of nearly double the residual flow rate.

54. One of the arguments raised in relation to these issues by Fish & Game was that a serious risk to natural habitat can arise if a flow rate is set so low as to result in 'flat-lining' of flows which are unnatural. The Panel struggled to understand how such a proposition could be seriously advanced in relation to the Wairau. The frequent Trustpower releases from the Branch power

scheme alone remove any reality to 'flat-lining' risk. They are significant flows of up to approximately 5 cumecs in volume. Normally the fluctuations are about 20% of flow which when compared to lower flow levels will often be close in volume to the low flows themselves. In addition irrigation takes also cause fluctuations of significant sizes necessitating the policy response in Policy 5.2.6 of a daily average for flow assessment as follows:

> *Policy 5.2.6 – For rivers, establish whether the flow has reached the management flows set in the Marlborough Environment Plan on the basis of 24 hour averages (midnight to midnight).*

55. Such fluctuations make the measurement of daily flow rates and decisions as to cut-offs very challenging. But flow rate monitoring of measured surface flows at low levels, and actual measurement of aquifer levels can still get much closer to reality than a calculated annualised 'naturalising' of flows by adding back in calculated volumes on an annualised basis.

56. A further, major apparent flaw in the evidence as to attempted 'naturalising' of flows was the lack of any realistic attempt to quantify the effects on surface flows of the significant infiltration which occurred to the Wairau Aquifer from natural processes, and how that was impacted by the re-watering that occurred through the diversion of Waihopai waters into the Gibsons Creek system as part of the Southern Valleys Irrigation Scheme (SVIS). In general terms it was described to the Panel that up to two thirds of the flow upstream of the Waihopai junction could be absorbed into the aquifer between there and the Barnett's Bank recorder position near Tuamarina.

    Similarly, the effects on surface flows of forestry plantings, (which in recent years have expanded into the upper Waihopai catchments in a major way), and the harvesting of mature forests, (which is now occurring on a significant basis in various catchments such as the Wairau and Pelorus), were not well addressed in the 'naturalising' approach. Yet those effects are likely to be potentially significant and complex on surface flows downstream.

57. Given all of the complexities of the various major inputs and extractions, both natural and man-made, into and from surface flows, the Panel accepts that a considerable level of experienced observation and judgment is required to set cut-off flow rates or levels in such a markedly fluctuating scene. In the Panel's view, use of close long term observations and recording of actual outcomes is far more reliable as a base when assessing and setting flow volume limits and aquifer levels, than attempting a well-nigh impossible task of trying to artificially re-create a 'naturalised' flow or level.

58. The PMEP cut-off limits have been set based on the experienced judgment of objective Council engineering staff with decades of experience.

59. The Marlborough region is fortunate to have had the same professional senior staff objectively observing and managing these resources for some decades. Professional hydrological personnel such as Mr Peter Davidson and Mr Val Wadsworth have had decades of experienced observation of actual measurements over a range of seasonal effects and drawdown pressures, to be able to respectively develop the aquifer level and surface flow cut-off levels so as to maintain a level of ecological sustainability. They have had the added advantage of being able to set those rates and levels in close consultation with Mr Peter Hamill a highly experienced freshwater ecologist, who similarly has had the benefit of practical in-stream observations and research in Marlborough's rivers for decades over a range of seasonal and drawdown effects.

60. A report as to the minimum surface flows required to sustain the Wairau in-river ecology at a level which maximised habitat for trout was advanced by Fish & Game in the form of a Cawthron report 2505 prepared by J. Hay & J.N. Hayes in 2014 addressing the Wairau River Sustainable Flow regime based on a cut-off of takes measured at 8 cumecs at Barnetts Bank. That report by two experts in trout habitats and species concluded that increased flows above 8 cumecs would provide much enhanced in-stream habitat conditions for trout. The Panel also had before it a report by J.D.Stark (Stark Environmental Report 2014) which commented on the Cawthron report by Hay & Hayes. The Stark report agreed with the base proposition in the Cawthron report that increased flows would provide better in-stream habitat.

61. However, significantly the Stark report also concluded that while the lower cut-off might mean a lesser number of individual trout may be able to be sustained in such low flow conditions, that did not mean there would be a change in species composition or a loss of species such as trout inhabiting the river in overall terms. The Section 42A Report at paragraph 303 made it plain that Mr Hamill agreed with those conclusions.

62. The Panel had before it evidence from Fish & Game of the gathering of trout in large numbers (approx. 300) in a deep pool at the mouth of the Waikakaho 2019 in severe drought conditions. Fish & Game advanced that fact as being indicative of a serious problem with low flows at or about the 8 cumec volume.

63. However, that evidence accords with other evidence from the Stark report and Mr Hamill that such outcomes were to be expected, i.e. that in low flow conditions trout will either head for higher flows upriver, (upstream of where natural reduction in flows occur into Wairau

aquifer), or will seek refuge in deeper colder water where colder subsurface flows enter the Wairau from, in this case, the Waikakaho gravels.

64. Mr Hamill's views were particularly persuasive with the Panel when he emphasised that if the 8 cumec cut-off had not worked there would be evidence of serious prejudice to trout fishery in the Wairau, or widespread trout mortality, and that there is an absence of any such evidence. In fact to the contrary, the evidence is that the trout fishery in the Wairau is still healthy, and according to Mr Hamill the natural fishery is also resilient and bounces back after each drought event.

65. Furthermore, the Panel has had the benefit of being able to assess Mr Hamill's views against the outcome and reliability of their joint hydrological and ecological management of these fluctuating physical factors by reference to other objective factual markers.

66. One of the strongest arguments against propositions that the Wairau levels are fixed too low is the very evidence that Fish & Game have provided of the Wairau being a nationally significant trout fishery and, most importantly, continuing to be so. Similarly, too, in respect of their arguments about the levels of the Pelorus smaller catchment flows.

67. Particularly given the increase in return frequency of lower flow rates in the last two decades, if the Fish & Game proposition was correct, one would have expected there to have been a very strong body of evidence available of widespread obvious trout mortality, or at the least, of massively reduced trout population figures showing up on drift dives or on catch records. No such dramatic or strong body or evidence of those types of outcomes was provided. And that is probably not too surprising given the evidence the Panel heard of the ability of trout to move upriver in low flow conditions, or to seek refuge beside streams with underground flows such as the Waikakaho, or to be sustained by intermittent releases from the Branch power scheme.

68. Whatever may be the reasons for trout survival, the outcome is clear from the Fish & Game evidence that a strong sustainable nationally significant trout fishery has been maintained in the Wairau over recent decades even with a low flow cut-off of 8 cumecs. That situation of a continued strong trout fishery would not exist had the Council's minimum flow rate been too low. That reality provides strong objective support for the proposition advanced by the report writers that the 8 cumecs cut-off provided for in the PMEP has worked over recent years in protecting the habitat for trout sufficiently to enable an international fishery in the Wairau to be maintained.

69. The Panel was not persuaded by the evidence of Ms Watson or the other Fish & Game witnesses that the artificial 'restructure' involved in her attempt at 'naturalising' flows was either accurate or sufficiently reliable to rely upon, or that there was even any need to attempt to apply such a 'naturalising' approach.

70. Similar conclusions were reached by the Panel in respect of the conflicting evidence in respect of flows in the Pelorus and Kaituna systems. The long experience of the report writers in the Pelorus feeder catchments in the upper Rai system and the Kaituna was similarly persuasive, supported again by evidence of a sustained trout fishery of importance once again in the Pelorus, despite commonly recurring periods where some of the feeder catchments dried out over lengthy distances. The Panel accepted the evidence of Mr Hamill in that respect.

71. The thrust of his and Mr Wadsworth's evidence was that those Rai sub-catchments had relatively restricted small, thin aquifers and in sustained drought periods, regardless of effects of irrigation use, would dry up for lengthy distances. (And the same conclusions applied for the Kaituna). While those events naturally would result in some limited mortality for fish species and other in-river fauna, both natural and introduced which were caught in the last remnant pools of dry river stretches, the great bulk of the population survived by either withdrawing up or downstream to higher flow areas, or in the case of some particularly resilient native species, by survival in wetted remnant gravel or mud areas. When flows recovered the full riverbed length would be re-occupied.

72. In short, the report writers' evidence was that the species in these rivers had methods of adapting to inevitable periods where surface river flows ceased and the volumes at low flows were so small that the cut-off levels fixed in the PMEP, which were conservative, had little real effect on extending the duration of dry riverbed periods and probably none in reality on the length of dry river beds in physical terms.

73. In the Awatere catchment once again the evidence of long-term close observation of closely controlled cut-off limits was highly persuasive for the Panel. The limits in that catchment did not really come under serious criticism as they have been proven to work in practice, and as far as Fish & Game were concerned that fishery is also adversely affected by the heavy siltation load carried in the Awatere.

74. As to surface flows Policies 5.2.4, 5.2.5, 5.2.11, 5.2.12 and 5.2.13 as they combine with Appendices 5 and 6 are retained as notified.

**Request by users for decreased cut-off levels or volumes**

75. As described earlier, several submitters at the other end of the spectrum asserted that cut-offs for takes from aquifers based on the surface flow volumes or aquifer levels in the Wairau were too harsh and/or unfair or illogically inflexible.

76. Alternatively, others suggested that their particular activities were so sensitive to any cut-off in supply that they should be treated differently and be allowed what some submitters described as a 'survival' allocation.

77. The Panel's views on the arguments about cut-offs fixed in relation to surface flows in the Wairau are really sufficiently described above that they do not need repeating. The levels have been fixed based on long expert experience of what minimum flow levels are needed to be maintained so as to maintain Te Mana o te Wai or the sustainability of natural habitats and riverine fauna.

78. The criticisms of the cut-off levels for aquifers were predominantly in respect of two separate issues – the unfairness asserted as to cut off aquifer levels for the Springs aquifers when the Wairau aquifer had no aquifer level cut-offs; and the second – the illogicality of cut-off levels when extractions in the southern valleys aquifers may not be directly affecting the relationship between aquifer levels and surface flows.

**Wairau aquifer and Springs FMUs issue**

*Policy 5.6.2 - Manage the potential for groundwater takes in proximity to spring-fed streams on the Wairau Plain to cause a recession of the position of headwaters of the streams by establishing aquifer minimums below which the taking of groundwater must cease.*

79. The treatment of the identification of the interlinked aquifers under the Wairau Plain is achieved in the PMEP by overlay mapping of different FMUs in Volume 4 under the title of Freshwater Management Unit Map 1. The naming of individual aquifers on that map are as follows:

> *Wairau Aquifer – the largest physical aquifer area encompassing the northern plain area from the Wairau/Waihopai junction to the sea*
>
> *Lower Waihopai – FMU includes surface flows as well as some areas of aquifer*
>
> *Omaka River – which includes part of the aquifer system surrounding Woodbourne.*
>
> *Omaka Aquifer – western most Southern Valleys aquifer*
>
> *Brancott- Southern Valleys aquifer immediately adjacent to east of Omaka*
>
> *Benmorven – Southern Valleys aquifer adjacent to east of Brancott*

*Southern Springs – Wairau aquifer adjacent to north of Benmorven*

*Taylor – FMU includes surface flows as well as some areas of aquifer*

*Rarangi Shallow – includes some overlap with north east corner of Wairau aquifer.*

*Riverlands – FMU includes aquifers in Riverlands area*

80. However, the overlay Freshwater Management Unit Map 3 provides more detail of the Wairau Aquifer breaking it down further with the following FMU identifiers being mapped in the central Wairau Aquifer area from north to south:

*Northern Springs Sector*

*Central Springs FMU*

*Urban Springs FMU*

81. The boundaries of these FMUs do not follow strict road lines or river lines as between the Northern Sector and the Central Springs. The northern boundary of the Northern Springs aquifer uses as its eastern boundary the line of SH 1. The southern boundary uses the junction of Murrays Road, Mills and Ford Road and SH 1 as the easternmost start point, and then follows a straight line to the west to almost intersect with Hammerichs Road just below its intersection with Giffords Lane.

82. The southern boundary of the Southern Springs uses the line of Old Renwick Road and Lansdowne Street as the boundary with the Urban Springs FMU to the south. To the east it uses the line of SH 1.

83. The hydrological evidence was that all of these aquifers, including the Wairau Aquifer, are directly inter-related, but that the Springs aquifers have different sensitivities in ecological terms in that they break out to the surface of the plain forming surface flows downstream, such as Spring Creek. These aquifers also provide water supply for numerous aquifer sourced rivers, streams and creeks of a similar nature to Spring Creek, or supplement other surface flows from underground spring sources sourced from the various aquifers.

84. The PMEP has cut-off levels for these three Springs aquifers but the Wairau Aquifer does not have a cut-off level set yet as there is inadequate data held by Council as to the rates and volumes of takes because of a lack of metering of those factors until recent years when renewals of take permits have enabled the imposition of conditions requiring metering. Particularly in the case of the Northern Springs Sector and Central Springs FMU, their monitoring wells are respectively within the Wairau Aquifer or very close to its boundary in

terms of above ground distance, and they and the Wairau Urban Springs aquifers all have levels set requiring cut-offs to protect surface water flows, whereas the Wairau Aquifer does not.

85. The practical result of the differentiation in treatment of the various aquifer cut-off levels or flows was described graphically in evidence by Mr James Jones. He described how in the Rapaura area in high summer drought conditions one could drive down Hammerichs Road and see desperately dry land and crops to the east within the Northern or Central Springs FMUs unable to be irrigated as levels requiring cut-off had been hit.

    Yet identical land and crops to the west within the Wairau Aquifer FMU, only a hundred metres or so away in an upstream direction, were still being irrigated because the Wairau Aquifer does not have cut-off levels set yet. The same outcome occurs, of course, for the Wairau Urban Springs aquifer where cut-offs can occur while takes still continue from the Wairau Aquifer.

86. (A different issue arises further to the east immediately adjacent to the sea where the Wairau Aquifer is divided into three FMUs in overlay Freshwater Management Unit Map 3. Those FMUs are identified as follows from north to south:

    *Wairau Aquifer Coastal North FMU*

    *Wairau Aquifer Coastal Central FMU*

    *Wairau Aquifer Coastal South FMU*

87. However, the principal rationale for those FMUs having cut-off levels set is to protect against over-allocation given the risk that might lead to of devastating adverse effects of salt-water intrusion – see Policy 5.2.12.)

88. A common characteristic, however, for both the coastal and springs aquifers is that once again over decades practical close observations have occurred by highly experienced Council staff of the relationship between the aquifer levels and sustainability of surface flows on the one hand for the Springs aquifers, and on the other for the coastal aquifers the relationship between aquifer levels and the pressures needed to be maintained within them to ensure salt-water intrusion effects do not move inland.

89. In other words the levels needed to be maintained so as to ensure maintenance of Te Mana o te Wai within the aquifers and the sustainability of the surface flows that they provide for, or the aquifer pressures that need to be sustained to avoid inland movement of salt water, have

been able to be assessed and fixed based on those decades of experienced observation and measurement.

90. The Panel accepted the criticism from many submitters that on the face of matters it was unfair to have no aquifer level set for cut-offs of takes from the main Wairau Aquifer when other adjacent aquifers had cut-off levels set. That was explained by the report writers as being the unfortunate result of historical takes not always being metered and hence there was not the accuracy of take information available across the whole of the Wairau Aquifer to be able to set a similarly protective aquifer level cut off just yet. However, as renewals of consents have been occurring, meters have been required to be installed and during the term of the PMEP it is expected sufficient data will be able to be gathered with sufficient accuracy to enable a more appropriate level to be set.

91. The Council has adopted already as a public record of commitment, the following programme to address this gap in the aquifer level setting for the Wairau Aquifer which Policy B1 of the NPSFM requires to be set:

*Progressive Implementation Programme for Implementing Policy B1 of the National Policy Statement: Freshwater Management 2014*

*Wairau Aquifer Minimum Water Level*

| Stage | Description | Due Date |
|---|---|---|
| Stage 1 | Assessment of information held to identify gaps in knowledge. | 31 December 2015 |
| Stage 2 | Technical investigations to collect, analyse and report data that will support the establishment of an environmental water level for the Wairau Aquifer. The work will include gathering water use information, further investigations of the mechanism in which the Wairau Aquifer is recharged from the Wairau River and the development of a fully calibrated model for running management options. | 31 December 2020 |
| Stage 3 | Preparation and notification of plan changes to introduce a Wairau Aquifer minimum water level. If necessary, the plan changes will include methods and timeframes for applying minimum level restrictions to water users. | 31 December 2024 |

92. The apparent inequity that can result in the interim, with cut-offs in the Springs aquifers sometimes occurring while cut-offs are not required in the Wairau Aquifer, is unfortunate. However, it is a situation that should prove to be short-lived, as it is expected that sufficient Wairau Aquifer data will be available by 2024 for the setting of an appropriate Wairau Aquifer cut-off level by plan change process.

93. Because of the possibility of this inequity arising in the interim, which undermines public confidence in the Springs aquifer level settings, the Panel urges Council to give priority in

resourcing the work needed to assist with the gathering of data and planning to support an early plan change process to set an appropriate Wairau Aquifer cut-off level.

94. Having considered all these issues the Panel accepts that there is not sufficiently accurate data available to attempt at the moment to set such a definitive cut off level in the Wairau Aquifer and that that will have to await the Plan change process which Council is obligated to carry out to comply with the NPSFM, and which it has already committed publically to a timeline to achieve.

95. The Panel has decided, though, that a new policy and method should be inserted as recommended by the report writers to link the setting of a minimum aquifer level for the Wairau FMU to a review of the notified levels established for the three Springs FMUs and to record a new Method for limit setting in the Wairau Aquifer by including a reference in the Plan to the Progressive Implementation Programme. The Panel made some limited amendments to the recommended wording for the explanatory statement for the new policy and method so that the decision was they should read as set out in the following decision:

**Decision**

96. That the cut-off levels in the Springs aquifers remain as notified in the PMEP and submissions seeking their deletion or amendment to enable greater use be rejected.

97. Insert a new policy and explanatory text as to process for setting of a new minimum aquifer level in the Wairau Aquifer as follows with the new policy following on Policy 5.2.4:

*To implement a programme of investigation in order to establish minimum flows and/or levels for the Wairau Aquifer FMU in accordance with Policy 5.2.4 and Policy 5.2.11 by 2024, including a review of the minimum levels already established for Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU.*

*Policy B1 of the NPSFM requires the Council to set water quantity environmental flows and/or levels for all Freshwater Management Units. Environmental flows and/or levels are defined in the NPSFM as a type of limit which describes the amount of water in a freshwater management unit, and must include an allocation limit and a minimum flow or level.*

*At the time of notification of the MEP, the Council did not hold the resource use and environmental data required to set a minimum flow or level for the recharge sector of the Wairau Aquifer FMU. For this reason, the Council adopted a programme of progressive implementation that was publicly notified on 2 April 2015. That programme sets a date of 2024 as a target for establishing this minimum flow or level.*

*In recognition of the hydraulic connections within the wider Wairau Aquifer FMU, a review of the minimum levels in Schedule 3 of Appendix 6 of the MEP for the Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU and Wairau Aquifer North Springs FMU will occur alongside the programme of investigation for establishing the minimum flow or level for the recharge sector of the Wairau Aquifer FMU.*

*This policy establishes a commitment to a progressive programme of investigation to collect and analyse environmental data required to establish the minimum flow or level. The minimum flow or level of the Wairau Aquifer FMU will be added to the MEP by plan change or upon review.*

*If, as a consequence of the review of the minimum levels for the Wairau Aquifer Urban Springs FMU, Wairau Aquifer Central Springs FMU or Wairau Aquifer North Springs FMU, changes to those levels are required, this will also be amended in the MEP by plan change or upon review.*

*This policy assists to give effect to Policy B1 of the NPSFM and the Council's Programme of Staged Implementation adopted under Policy E1 the NPSFM."*

98. And a new Method as follows:

*5.M.x – Setting of Environmental Flows and/or Levels*

*Where the Council has established a Progressive Implementation Programme under Policy E1 of the NPSFM for the establishment or review of minimum flows or levels, the Council will work with all relevant parties including, but not limited to, Marlborough's tangata whenua iwi, water user groups, industry groups, resource users and community organisations to determine any minimum flows or levels to be incorporated or amended by plan change to the MEP.*

### Southern Valleys Aquifers cut-off levels issue

99. The second issue raised by the submissions was most strongly expressed by the very experienced groundwater hydrologist Mr Peter Callander. The thrust of his evidence was that the setting of levels in the southern valleys to protect surface flows impacted illogically or unreasonably in some cases. He accepted the levels set were appropriate for those users wishing to take water from the aquifers in locations or strata where the abstraction could be shown to have a potential direct adverse drawdown effect on the surface flows.

100. However, the point he made forcefully was that various factors including distance from the surface flows, low transmissivity strata, artesian pressures or vertically or horizontally capped aquifer lenses amongst other issues, could result in abstraction at particular locations not causing any discernible drawdown effect on surface flows. His evidence on that lack of

potential direct effects in some locations was compelling, and he asserted that the PMEP rules should allow for discretionary consents to be sought even when the overall aquifer levels for cut-offs had been hit, provided evidence could be adduced to demonstrate a lack of direct drawdown effects on surface flows from particular abstractions.

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101. Mr Davidson accepted that in terms of direct drawdown effects Mr Callander was correct that there will be some well locations where it may be possible on step drawdown testing to demonstrate a lack of immediate direct drawdown on surface flows or other wells. However, the thrust of his response was that on the present uncertain state of knowledge of the interrelationship of the Wairau and southern aquifers and surface flows throughout the southern valleys areas, and the rates of recovery or otherwise in the southern aquifers, a more conservative approach was needed to address potential cumulative effects on aquifers. That was essential because of the realities that aquifer recovery rates in the southern areas in particular had the potential to be slow, particularly for the Ben Morven Aquifer, and there was scientific uncertainty as to the linkages or otherwise between the various aquifers and their relationship with the Wairau Aquifer and the cumulative effects of takes on all those issues

**Consideration**

102. The Panel accepts Mr Callander's point that an absence of direct drawdown effects on surface flows and other wells may be able to be demonstrated by some applicants.

103. However, aquifer management in this southern valleys area is far from being able to be considered at a settled state in terms of the scientific base to an understanding of the broader effects of uncontrolled drawdowns in drought conditions when surface flows have either ceased or are near that state. That is particularly the case where the evidence was that recharge of aquifers like the Ben Morven Aquifer is very slow and apparently from very old water some hundreds of years old, the exact source of which is as yet undefined.

104. So long as that overall state of uncertainty exists the Panel is of the view that the more conservative approach contained in the PMEP notified cut off levels should be maintained. That at least provides a greater certainty based on experienced observation experience that aquifers protected at that level can indeed recover over the recharge period.

105. Once again management of these aquifers can potentially be refined as increased metered data becomes available to Council but on the present level of uncertainty as to cumulative effects the Panel prefers the conservative precautionary approach taken in the PMEP which it

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

**Decision**

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

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

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

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

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

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

**(a) protect the mauri of the waterbody;**

**(b) protect instream habitat and ecology;**

**(c) maintain fish passage and fish spawning grounds;**

**(d) preserve the natural character of the river;**

**(e) maintain water quality;**

**(f) provide for adequate groundwater recharge where the river is physically connected to an aquifer or groundwater; and**

**(g) maintain amenity values.**

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

**(a) prevent physical damage to the structure of the aquifer;**

**(b) prevent headwater recession of spring flows;**

**(c) prevent a landward shift in the seawater/freshwater interface and the potential for saltwater contamination of the aquifer;**

**(d) maintain natural and human use values of rivers and wetlands where groundwater is physically connected and contributes significantly to flow in the surface waterbody;**

**(e) maintain groundwater quality; and**

**(f) prevent long-term decline in aquifer levels that compromises the matters set out in (a) to (e).**

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

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

109. The combination of Appendix 5 then with the policies set out above are intended to ensure the mauri and/or life supporting capacity is maintained at flows or levels and qualities for the identified values for all WRUs.

110. In considering the varying propositions advanced from those different points on the spectrum of views of submitters the Panel also had to consider the detail as to values identified in the NPSFM 2017. It essentially adopts the approach of identifying compulsory national values which Policy CA2 (c) requires each regional council to include in its plans, and other national values which the regional council can include as it "considers appropriate". Appendix One of the NPSFM then sets out separately the Compulsory National Values and the Other National Values.

111. Included in the latter are confusingly two descriptions of 'mahinga kai'. Other features of those optional values are their wide range in nature. They range over matters such as 'Natural form and character' and 'Water supply', food gathering such as 'Mahinga kai' and 'Fishing' to economic and consumptive uses – including by way of example 'Irrigation, cultivation, and food production' to 'Commercial and industrial use' and 'hydro-electric power generation'.

112. Given the wide range of possible values which the NPSFM enables to be identified as optional national values submissions on the interrelated PMEP policies and Appendix 5 once again ranged across the broad spectrum covered by the NPSFM. The submissions ranged from those seeking a relaxation of flows or levels or of water quality standards to enable greater economic or consumptive uses to those seeking more natural values were increased in a protective manner to maintain or enhance water flows/levels or quality.

113. In general terms the Panel was not persuaded that Appendix 5 required urgent or fundamental amendment, other than as to the need to recognise explicitly the concept of Te Mana o te Wai, and that the PMEP otherwise appropriately protected the compulsory values as required by the NPSFM 2017.

114. The Panel took the view that any changes in the PMEP to Appendix 5 that might be seen as warranted in terms of optional national values were best addressed by broader community engagement over time as circumstances changed or developed. In the course of that type of broader community engagement, which the Panel envisaged would use new Method 5.M.X, the knotty issue of deciding on the adoption of whichever descriptor or 'mahinga kai' might be appropriate could also be explored in a manner which involved iwi as part of the whole community.

115. The final issue then that the Panel needed to address in relation to this suite of policies and appendix provisions was the question of whether Policy 5.2.1 should continue to include 'enhance' or not, i.e. is restoration of values a valid issue?

116. Once again submissions on this point came from widely disparate ends of a spectrum. Some pointed out that Marlborough enjoyed a high level of rivers with water quality which was either pristine or of very high quality so that it was argued to be unnecessary or illogical to have a policy requiring water quality to be enhanced. Others argued that removal of the word 'enhance' would send the wrong message that water bodies which were not at a high quality level did not need enhancement and that maintenance of poor or substandard quality was sufficient.

117. The Panel's considers it was important to adhere to the notified wording of Policy 5.2.1 which being expressed in the alternative or 'maintain or enhance' covered the situation. If water quality was pristine or very high quality then it should be maintained, but if of poorer quality the policy should be for it to be enhanced. That approach accorded with Objective A2 of the NPSFM 2017 which is:

> *Objective A2*
>
> *The overall quality of fresh water within a freshwater management unit is maintained or improved …*

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

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

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

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

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

**Decision**

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

## Objective 5.2 – 'Sufficient' Flows and/or Levels?

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

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

**Consideration**

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

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

**Decision**

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

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

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

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

## Flexibility in measuring takes and environmental flows – Policy 5.3.10

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

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

**(b) for 20% of the time;**

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

125. Both EDS and Fish & Game submitted against this policy asserting it enabled the maximums in take rate to be exceeded by irrigators particularly in the Wairau FMU[3].

126. There are fluctuations in instantaneous flows which occur at any particular location along the Wairau because of irrigation drawdowns and Branch River releases. As to the impacts of irrigation take effects, they will inevitably be irregular in timing, location and volume. That is because of the very large number of take locations spread out along the length of the river.

127. Moreover, as the explanation to Policy 5.3.10 emphasises, irrigation systems are not designed to necessarily operate on a 24 hour basis. As a consequence the instantaneous rate on a consent will commonly be higher than the rate calculated over a 24 hour period.

128. A further practical point of importance is because of these fluctuations when flows are at or near the minimum level to have that fixed on an instantaneous basis would literally require

[3] EDS (698.26), Fish & Game (509.66)

irrigators to be constantly monitoring river flows to turn on and off their system as the flows fluctuated below the normal level. That would be an unworkable outcome.

129. This policy is designed to enable that continued flexibility for irrigators, while crucially ensuring that in any event the total of the cumulative 24 hour period take cannot exceed the daily maximum consented take. In the Panel's view this policy is worded in a manner that is consistent with the 24 hour averaging approach set in Policy 5.2.6.

**Decision**

130. That Policy 5.3.10 is retained as notified and the submissions seeking its deletion are rejected.

## Environmental Flows & Priority issues – Objective 5.3 and Policy 5.3.1

### Objective 5.3 – Enable access to reliable supplies of freshwater

**Policy 5.3.1 – To allocate water in the following order of priority:**
**(a) natural and human use values; then**
**(b) aquifer recharge; then**
**(c) domestic and stock water supply; then**
**(d) municipal water supply; and then**
**(e) all other takes of water.**

131. A closely inter-related issue to those discussed above arose out of submissions on Policy 5.3.1 which gives practical effect to the Objective 5.3 to maintain sustainability, within the limits imposed by the NPSFM directives and the other PMEP Objectives and Policies.

132. A major thrust, identified earlier in the summary of principal issues raised by submissions, came from submissions asserting that particular crops were much more sensitive to a cut off of supply in drought conditions than were other more 'mainstream' crops or activities. Examples included very young newly grafted grape cuttings and hydroponic or glasshouse crops. Amongst those identified were crops such as strawberries, tomatoes and lettuce, to name some of the more major ones, the growers of which appeared before us.

133. The physical in-ground conditions at the time of our hearing on this issue could not have been more dire, as an extended drought was occurring and cut-offs limits were about to be reached imminently.

134. Some of the submitters giving evidence for Hort NZ, such as P.H. Kinzett Limited, Ormond Nurseries Limited and Thymebank, were literally facing a potential cut-off within a day or so. Their evidence was that depending on crop type such a cut-off would lead to crop death and losses within 24 hours for grafted rootstock or at most within five to seven days for other susceptible crops. That would involve losses potentially in the hundreds of thousands of dollars, or possibly if for an extended period, in the millions of dollars. Furthermore, there

would be even greater consequent losses when staff lay-offs and their income loss were taken into account, and other indirect cash-flows ceased for suppliers/contractors reliant on the businesses affected.

135. The evidence was exacerbated even further by the devastating affects described by major viticulturists, such as Pernod Ricard, of young cutting losses which had been planted as new plantings or replacement plantings in the vineyards, if the vines were under two-three years old. The evidence was that extended lack of irrigation could result in extensive losses in the viticulture industry if those new plantings or replacement plantings were lost, and significant ongoing losses would follow as winery supply lessened. Pernod Ricard asserted it would be too costly to consider storage in other locations.

136. Some wineries such as Villa Maria Limited, who asserted they were reliant on sources subject to cut-off levels, also described a devastating economic outcome for them of a strict application of the cut-off limits.

137. All of these submitters sought a relaxation in various forms of the policies and rules in the PMEP so as to enable what were termed 'survival' rates of supply to be available for at risk crops or wineries.

138. However, in the face of the NPSFM 2017 the Panel considered the Council was bound at law to impose surface flow limits and aquifer levels which result in cut-offs as provided for in policies 5.2.5 and 5.2.24 other than for domestic human needs and animal drinking water:

> *Policy 5.2.5 – With the exception of water taken for domestic needs or animal drinking water, prevent the taking of water authorised by resource consent when flows and/or levels in a Freshwater Management Unit are at or below a management flow and/or level set as part of an environmental flow and/or level set in accordance with Policy 5.2.4.*
>
> *Policy 5.2.24 – Impose conditions on water permits to take water requiring users to reduce and cease the authorised take when specified flows and/or levels are reached.*

139. The reality of the application of the NPSFM and regional plans which give effect to it, is that the legal regime for management of water resources recognises that limits must be set to maintain the integrity of water bodies at a minimum sustainable level.

140. If such limits are not imposed the end result would be the type of ecological disaster now faced in Australia in the Darling catchment where water has been taken so far below sustainable limits that the river has literally run dry over extensive distances.

141. As far as wineries such as Villa Maria are concerned the Panel was of the view that the situation was not as extreme as described by the submitter. Apart from anything else the period of cut-offs was unlikely to extend out as far as the peak period of water use by a winery which usually was well after irrigation takes had ceased and natural recovery of aquifer levels had occurred to some extent. Also even in 2019 rainfall broke the drought well before the vintage heavy water demand period arose.

142. Moreover, other options existed such as use of other sources known to be available to it; investigation and greater use of storage water; greater efficiency of water use; investigation of capture and re-use of grey water wash-down water; or private access arrangements directly from Wairau aquifer sources.

143. In terms of the 'survival' exemptions sought, however, the quantities which would be needed cannot be calculated solely on the basis of the needs of existing growers for particular existing crops, because if any such exemptions were allowed, pressure would inevitably mount to allow exemptions for more or new growers, larger crops, or different crops.

144. At some point there has to be a cut-off to maintain the sustainable integrity of surface flows and aquifer structures. Water users have to face up to that reality in their own economic management of their own resources, and plan well ahead for the effect of the application of those limits.

145. That may require the development of highly expensive storage or alternative delivered supplies, but it is not the function of the regional council to make those alternatives available. Storage options, such as in the southern valleys, may require formation of water user groups to develop and plan major or lesser storage options at one or more locations in small feeder catchments, either north or south of the main Wairau River – but again that requires an approach driven by the irrigation user community in consultation with iwi and other community water users. For example, storage of southern valleys water may have an effect on smaller aquifer recharge sources – an issue which needs detailed investigation and consideration. In addition, any such alternative considerations will need to address issues of efficiency in water use and crop rotation planning dates for hydroponic and glass house crops.

146. Some suggestions were made that rationing for 'survival' crops may be possible as cut-off limits loom, but once again if such a solution for particular crops could be agreed upon, that also would have to involve a community driven and agreed approach, not one imposed by the regional council. After all, it is not for the regional council to attempt to decide who in its community must take a financial loss as a result of lack of access to water, and to what extent,

or the type or extent of particularly sensitive crops that may be grown by anyone. Any such outcomes would require broad community consensus, evidence of which was not currently obvious to the PMEP Hearings Panel. That appears to be because the user community has not until now seriously turned its collective or individual minds to those types of alternatives. However, the effects of climate change appear likely to result in more frequent drought periods of possibly longer duration, as a result of which cut-offs to maintain sustainability in both surface flows and aquifer integrity will be more frequent. Given those realities the need for resource users to address potential community responses becomes more pressing.

147. An amendment to the explanation to Policy 5.3.1 as follows was considered by the Panel to be the only avenue open in the PMEP to address such issues:

> *This policy establishes a hierarchy of water uses. The hierarchy reflects the relative value or significance of the uses listed. The term "uses" is broad and extends beyond consumptive use to include intrinsic values, ecosystem services and hydrological functions. The relative priority between the different uses listed in (a) to (e) have been used as the basis for allocating Marlborough's freshwater resources. This does not mean that consumptive use is not valuable or significant, but the application of the policy ensures that critical uses are provided for as a priority.*
>
> *Once those uses are provided for, water can then be made available for the consumptive uses listed in (c) to (e). The application of the policy does influence the reliability of water abstraction for consumptive use. Limits to protect the matters in (a) and (b) will be applied to consumptive water uses. However, those restrictions will be applied progressively, reflecting the relative priority of domestic and stock water supply, municipal water supply and other consumptive takes of water.*
>
> *The only way any other form of prioritisation of access to water could be achieved would be by way of plan change as a result of the development of a proposal resulting from broad community engagement including iwi, utilising the assistance of council facilitation. A method or model for such a community engagement process on any different prioritisation or rationing proposal is contained in Method 5.M.2.*
>
> *Given the NPSFM 2017 directives to protect Te Mana o te Wai and the compulsory national values, such a community engagement process would have to be very broad and on an inclusive basis, particularly involving a water user group or groups to achieve different water access through a range of mechanisms. The process would have to address considerations such as - alternative land use; improved efficiency in water*

*application; assessment of soil saturation & field capacity of soils; larger-scale or small-scale storage possibilities; and/or some form of rationing with a higher level cut-off for general irrigation leaving a small pocket of water allocated for agreed 'survival crops'.*

148. However, the most the Panel is able to achieve is draw attention in this decision to the reality that limits must be set; and having been set, must be adhered to.

149. It is then incumbent on user groups to explore alternative options or water sources, if any are available, with the assistance of council facilitation. That might result in an agreed outcome of some of those options being brought before Council with a view to a community-supported plan change being considered to put them in place.

150. A final consideration, however, in relation to the hierarchy in Policy 5.3.1 arises out of the Panel's earlier considerations as to the inclusion of the concept of Te Mana o te Wai in the Plan. It is very obvious to the Panel that a consequential inclusion of Te Mana o te Wai is needed as the very first in any hierarchy relating to water resources so it needs to be introduced as subclause (a).

**Decision**

151. Add as a new clause (a) to Policy 5.3.1 the following:

*(a) Te Mana o te Wai*

152. Method 5.M.2 is amended as follows:

*…flow objectives for each river (see Policy 5.2.16). Water user groups may also co-ordinate voluntary rationing of water takes in any FMU to delay the onset of restrictions imposed as a result of environmental flows or limits set by this Plan. The method of rationing to be considered is at the discretion of the water user group but may include prioritising the application of voluntary rationing between users or uses.*

153. The explanation to Policy 5.3.1 is amended as follows:

*This policy establishes a hierarchy of water uses. The hierarchy reflects the relative value or significance of the uses listed. The term "uses" is broad and extends beyond consumptive use to include Te Mana o te Wai, intrinsic values, ecosystem services and hydrological functions. The relative priority between the different uses listed in (a) to (f~~e~~) have been used as the basis for allocating Marlborough's freshwater resources. This does not mean that consumptive use is not valuable or significant, but the application of the policy ensures that critical uses are provided for as a priority.*

*Once those uses are provided for, water can then be made available for the consumptive uses listed in (d~~c~~) to (f~~e~~). The application of the policy does influence the reliability of water abstraction for consumptive use. Limits to protect the matters in (a) to (c~~b~~) will be applied to consumptive water uses. However, those restrictions will be applied progressively, reflecting the relative priority of domestic and stock water supply, municipal water supply and other consumptive takes of water.*

*The only way any other form of prioritisation of access to water could be achieved would be by way of plan change as a result of the development of a proposal resulting from broad community engagement including iwi, utilising the assistance of council facilitation. A method or model for such a community engagement process on any different prioritisation or rationing proposal is contained in Method 5.M.2.*

*Given the NPSFM 2017 directives to protect Te Mana o te Wai and the compulsory national values, such a community engagement process would have to be very broad and on an inclusive basis, particularly involving a water user group or groups to achieve different water access through a range of mechanisms. The process would have to address considerations such as - alternative land use; improved efficiency in water application; assessment of soil saturation & field capacity of soils; larger-scale or small-scale storage possibilities; and/or some form of rationing with a higher level cut-off for general irrigation leaving a small pocket of water allocated for agreed 'survival crops'.*

## Methods of maintaining Environmental flows - Rationing, Ballots & Transfer

**Policies 5.2.15 & 5.2.16; Issue 5I and Policy 5.9.1; and Policies 5.4.4 and 5.4.5**

**Policy 5.2.15 – Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.**

**Policy 5.2.16 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.**

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

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

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

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

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

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

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

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

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

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

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

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

154. The PMEP contains a number of policies designed to provide some flexibility in the manner in which takes are authorised so as to ameliorate the effects of allocation limits being full, and the effects of environmental cut-offs, but without impinging on the basic approaches that allocation limits cannot be exceeded, and that cut-off flow limits and aquifer levels cannot be breached. Those methods include rationing, ballot systems when allocation limits have been reached, and transfers of the ability to take in differing periods or for differing purposes, or for application of water taken in differing locations.

**Rationing**

155. The provisions of policies 5.2.15 and 5.2.16 set the scene for a potential rationing approach to water takes:

> *Policy 5.2.15 – Protect flow variability of rivers by using, where identified as necessary, a system of flow sharing that splits allocation of available water between instream and out-of-stream uses.*
>
> *Policy 5.2.16 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.*

156. The necessity for these policies relates to the positioning of the flow monitoring locations in relation to the abstractions caused by irrigation takes. There is a difference in approach necessitated due to the absence of suitable flow monitoring sites downstream of the principal abstraction locations in some catchments. This occurs particularly in the Waihopai and Awatere catchments – in the Wairau the monitoring site at Barnetts Bank is downstream of most abstractions.

157. The policies are designed to ensure that a true flow-sharing occurs between flows needed to be retained in-stream for environmental sustainability and those available for abstraction for out of river uses.

158. The explanation to Policy 5.2.15 explains that rationale:

> *In some circumstances, flow variability above the minimum flow may also be important to sustain the natural and human use values supported by the river. Where this is the case, a system of flow sharing is used to proportionally allocate the water above the minimum flow to both abstractive users and natural and human use values. In other words, a proportion of the water available within the allocation class can be abstracted, while a proportion must be left in the river. The water left in the river will ensure that the taking of water does not reduce river flow to the minimum for an extended period of time. The detail of the flow sharing is river specific and is reflected in the allocation limits and thresholds for taking water in each of the allocation classes.*

159. The explanation to Policy 5.2.16 describes the management method that has been developed in those rivers where the monitoring location is upstream of most abstractions:

> *The management flow that applies in each FMU is the flow measured at the monitoring site, corresponding to an equivalent minimum flow that gives effect to Policy 5.2.4 downstream of abstraction. (Monitoring of flow in the Waihopai and Awatere Rivers over many years has allowed the establishment of a robust relationship between flows at the flow monitoring sites and gauged flows at other locations.)*
>
> *Taking into account the allocation limits, abstraction downstream of the flow monitoring site can result in the non-attainment of the minimum flow that is sought to be achieved downstream. For this reason, the policy requires a proportional reduction in the allocations made by resource consent and consequent rationing of abstraction.*

160. The major issue with the policies are how the flow-sharing is to be fixed and how rationing is to be applied in detail.

161. Those issues led to significant submissions by EDS, Fish & Game, Pernod Ricard, Trustpower, Forest & Bird, DOC, Ngati Kuia and the Awatere Water Users Group (AWUG) amongst others[4]. Most of those submissions sought the retention of Policy 5.2.15 but sought clarification in the Plan as to how flow sharing would occur, i.e. requested criteria; or in relation to Policy 5.2.16 similarly sought more detail to clarify the criteria against which rationing reductions were to be decided and by whom.

[4] EDS (698.20), Fish & Game (509.45), Pernod Ricard (1039.18), Trustpower (1201.33 and .35), Forest & Bird (715.27 and .28), DOC (479.21 and .25), Ngati Kuia (501.02) and AWUG (548.24 and .25)

**Section 42A Report**

162. The Section 42A Report acknowledged that these submissions raised valid issues that needed consideration and recommended some detail be provided by additional amendments to the explanation to Policy 5.2.15.

163. It also raised the concern, though, that the intention of the PMEP in relation to those catchments with upstream monitoring locations was to "*use water user groups to assist with managing water rationing as water flows drop in these catchments. This is demonstrated by the inclusion of Method 5.M.2 in the MEP, which directly references the use of these groups for the Awatere and Waihopai FMUs."*[5]

164. Attention was also drawn to the reference in the recommended change to the explanation to Policy 5.2.15 that a back-up approach if the user community was unable to agree upon a solution would be to ration abstractions progressively in blocks of 20% of the total class allocation. In the Reply to Evidence, the recommendation of a stepped decrease in take by 20% was withdrawn and instead a recommendation made that the stepped drawdown or rationing of takes should be "as required to protect the minimum flow, and in discussion with water user groups where they exist."

**Consideration**

165. As to Trustpower's submission that this policy should only apply to consumptive takes the Section 42A Report at paragraph 541 accepted the rationale for that submission was correct, and recommended an exclusion be added to Policy 5.2.16 to exclude non-consumptive takes such as hydro where the water used was returned to the river. The Panel agreed with this recommendation.

166. Using the important example of the Wairau, the Panel noted that the important aspect of the flow-sharing concept in Policy 5.2.15 was that as B Class cut-off occurs at 30 cumecs that meant flows available for Class A down to the A Class cut-off of 8 cumecs would otherwise leave 22 cumecs apparently available. However, the result of this flow-sharing principle contained in the Plan for each class then, for A Class below 30 cumecs and above 8 cumecs only 15 cumecs, is actually able to be allocated on the 2:1 flow share.

167. The Panel agreed with the recommended amendments to the explanation of Policy 5.2.15 suggested at paragraph 533 of the Section 42A Report which capture that approach in more detail.

[5] Paragraph 538

168. The Panel did not agree with the last two paragraphs of the recommended amendments being placed in the explanation to Policy 5.2.15 as this addresses flow sharing issues. The last two paragraphs are far more relevant to Policy 5.2.16 which addresses rationing issues and should be added to the explanation for that policy.

169. Initially at the hearing AWUG opposed the suggestion of a the recommended default of 20% reductions as being too complex as each reduction requires considerable work in the field of irrigation automation systems. The Panel agreed with the evidence that may be impracticable. However, after the hearings closed a letter was received from the AWUG dated 24 June, 2019 requesting its alternatives no longer be adopted because of the Right of Reply recommendation that no specified reduction occur. The letter continued to seek that that discussion occur with the Awatere Water User Group before rationing levels, if any, are set. In the Panel's view that must be done with the overriding aim of setting any reductions at a level 'required to protect the minimum flow'. The Panel's amendments to Method 5.M.2 will ensure the input AWUG seeks occurs.

170. In the Reply to Evidence, the report writers recommended that the percentage rationing reduction approach in the notified plan be replaced by a community agreed rationing reduction. On the basis of the evidence of a reasonable level of cooperation in the Awatere the Panel had confidence to accept that recommendation but the final decision should remain with Council. The report writers' recommendation was therefore amended by the Panel to that extent.

171. The report writers' recommendations with respect to the involvement of water user groups in rationing through Policy 5.2.15 was noted. However, the Panel considered that community involvement in rationing should be voluntary only for the reason given in the previous paragraph. The Panel considered additions to Method 5.M.2 in this regard.

172. As to Method 5.M.2 there are a number of issues where community or user group responses together with iwi responses have been identified in the decisions on water allocation and use as being vital – including these flow-sharing and rationing issues as well as threshold or cut-off limits or levels and the potential priorities as to their application. An amended wording was adopted in the decision above as to priority issues which also took into account the issues faced for community or water user group and iwi solutions in respect of rationing issues. Hence the decision to amend Method 5.M.2 does not need repetition in this section of the decision, apart from recording the additional reason for that amendment.

173. The Panel considered, though, that it was essential the final decision-making on levels of rationing had to be left with the Council, being the objective decision-maker, as to what was 'required to protect minimum flows' – both to ensure protection of Te Mana o te Wai and sustainability. The addition to Method 5.M.2 was regarded as being sufficient safeguard as to ensure that iwi, water user groups and the wider community voices were heard on any rationing considerations before a final decision was made – but against a background that any inability to achieve agreement between those interests did not prevent a final decision in fact being made.

**Decision**

174. The submissions in respect of Policies 5.2.15 and 5.2.16 are allowed to the extent as follows:

(i) insert amendments to the explanatory statement to Policy 5.2.15 as follows:

*Objective AA1 of the NPSFM requires Council to consider and recognise Te Mana o te Wai in the management of fresh water. The establishment of environmental flows for rivers affords protection to natural and human use values by establishing the minimum flow requirements for those uses and values. In some circumstances, flow variability above the minimum flow may also be important to sustain the natural and human use values supported by the river, including Te Mana o te Wai values identified by the community. Where this is the case, a system of flow sharing is used to proportionally allocate the water above the minimum flow to both abstractive users and natural and human use values. In other words, a proportion of the water available within the allocation class can be abstracted, while a proportion must be left in the river. The water left in the river will ensure that the taking of water does not reduce river flow to the minimum for an extended period of time.*

*Flow sharing will leave one unit of water for instream use for every two units abstracted within a class (referred to as 2:1 flow sharing).*

*The detail of the flow sharing is river specific and is reflected in the allocation limits and thresholds for taking water in each of the allocation classes. Note, there is no provision for flow sharing within any Class A allocation, as flows below the minimum flow are effectively part of the flow share for Class A.*

(ii) Add the following new paragraph to the end of the Explanatory Statement to Policy 5.2.16:

*The abstractions will be limited based on flows recorded at the monitoring site to achieve the minimum flow for management purposes as specified in Volume 3, Appendix 6, Schedule 3, plus any environmental flow share within the Class. As flow at the monitoring site falls from*

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

## Ballots

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

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

175. The submissions on this issue focused on whether tendering or ballots were the best method of providing an equitable allocation of potential rights. The Issue is framed in a manner that reflects the lack of equity that arises from the current RMA 'first-in, first-served' approach.

176. What is offered by this policy is only a ballot approach where as a result of surrenders or acquisition by council further unallocated water becomes available. The options available really come down to three – retention of 'first-in, first-served'; tendering; or ballots.

177. The Panel considered that the first two methods tended to favour those with more resources or deeper pockets. Those with more resources tend to keep a closer eye on what is occurring in the water allocation field and council reactions or review processes, and are more likely to be better placed to be 'first-in' for any unallocated water. Similarly, with tendering those with more resources will have the deeper pockets and be able to place a higher tender.

178. The ballot process on the other hand provides a far more open and level playing field amongst those who may be interested. What is being offered is only a right to apply for a resource consent so if a ballot winner was unsuccessful in an application for consent for any reason then a re-draw of the ballot could occur.

**Decision**

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

## Transfers – Policies 5.4.4 and 5.4.5

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

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

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

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

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

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

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

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

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

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

180. These particular policies are somewhat unique in the PMEP in that they cannot be practically given effect until a further Plan Change has occurred to enable what was described in the PMEP as a system of 'enhanced' transfers of water allocations. As a consequence some submissions sought their deletion on the basis that until the transfer system is actually in place in the PMEP the policies serve no purpose.

181. Other submissions dealt in more detail as to the potential for water to become a tradable commodity.

**Consideration**

182. As to the challenge in respect of these policies creating a tradeable commodity, the Panel is facing a situation where there is full allocation in most FMU's. In a state of full allocation the only means of new or existing users to gain access to water is through gaining access to water that has already been allocated by means of transfer of water permits. Policy B3 of the NPSFM requires regional plans to state criteria by which '*applications for approval of transfers of water take permits are to be decided, including to improve and maximise the efficient allocation of water*.' It is the NPS, therefore, not this Panel or the PMEP, which is requiring a mechanism of transfer of water take permits.

183. The RMA does not otherwise provide the ability to prevent water permits becoming a tradeable asset as the effects of the quantity of the abstraction have already been considered.

184. The Panel recognises the logic behind those submissions seeking deletion of the policies at this stage before a plan change is proposed to actually introduce the transfer system into the Plan.

185. The Panel was also of the view that some purpose was served by retaining the policies as an indicator of future intent so as to encourage thinking as to greater efficiency of water use, by enabling transfers on a far more flexible basis as to use in terms of timing, location and purpose. With allocation being mostly at its limits in most catchments encouragement is needed of greater efficiency of use. If that can be achieved by a more flexible regime of readily

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

186. As to the basic question of whether these types of transfers will be beneficial to greater efficiency of use, the Panel's view was that they had the potential to be useful. In some fully allocated situations they could enable access for water to be used which at present is technically on paper 'utilised' in terms of being allocated, but in fact for some time periods may not be being actually utilised – yet possibly could be made available to other users, even if only for very short terms.

187. In those situations complex RMA consent processes may not be needed in terms of environmental outcome as the environmental outcome is already controlled by the fixing of limits/levels.

188. This system could avoid unnecessary cost and delay which otherwise might possibly result in water not being efficiently utilised.

189. It is a system, too, which will ensure the private transactional process is removed from the RMA consent consideration.

190. Method 5.M.2 will be important to ensure the Plan Change process is community or user group driven in conjunction with iwi – aided by Council facilitation.

191. The word 'enhanced' is not seen as useful guide as in RMA terms that word usually denotes an 'enhancement' or improvement of the environment. Transfers of extractive rights to take water for irrigation use might fall in that category in the eyes of some, but to others taking of water does not 'enhance' a surface flow or an aquifer level, and arguably does the opposite.

192. As this is really a process regime concept to encourage efficiency in process and water use, the Panel decided to instead use the term 'streamlined transfers', thus adopting statutory language from a recent RMA Amendment Act as to the streamlining of processes. The concept involves a 'streamlined' transfer process which is not complicated by the necessity to obtain RMA consents for transfers within allocation limits, and the word 'streamlined' appears in those circumstances to be far more apposite.

**Decision**

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

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

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

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

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

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

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

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

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

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

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

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

## Environmental Flows – reductions on change of use - Policy 5.3.8 (b)

**Policy 5.3.8 – Approve water permit applications to continue taking and using surface water when:**

**(a) a specific minimum flow and allocation limit for the source Freshwater Management Unit is established in the Marlborough Environment Plan;**

**(a) the Freshwater Management Unit is not over-allocated in terms of the limits set in the Marlborough Environment Plan;**

**(b)** **there is to be no change to the intended use of water, or if there is a change in use, this results in a decrease in the rate of take of water; and**

**(c)** **the application is made at least three months prior to the expiry of the existing water permit.**

194. When considering other submissions on Policy 5.3.8 the Panel noted that sub-clause (b) of the Policy required that if there was a proposed change in the intended use of the water that an applicant would have to demonstrate a reduction in water use.

195. The Panel noted that in broad terms the submission of Irrigation NZ[6], by seeking restricted discretionary status for renewal of take consents, was seeking what the Section 42A Report described as an 'easier pathway' for renewal of consents. In the Panel's view that provides scope to make a change to achieve the same intended result that no increase in the rate of take is provided for on renewal, but by wording (b) to the Policy in a different manner. The Panel has made this decision against a background awareness of the policies both in the Plan and the NPSFM which require that in an over allocated FMU that on any renewal of a resource consent a reduction in allocation will have to occur to ensure protection of Te Mana o te Wai and the sustainability of the resource.

[6] (778.44)

**Decision**

196. Amend sub-clause (b) of Policy 5.3.8 to read as follows:

*(b) there is to be no change to the intended use of water, or if there is a change in use, this does not result~~s~~ in an ~~decrease~~ increase in the rate of take of water;*

## Environmental Flows – forestry impacts - Policies 5.3.15 & 5.3.16 and Standard 3.3.6.2 (g)

**Policy 5.3.15 – Require land use consent for the planting of new commercial forestry in flow sensitive areas.**

**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%.**

**Standard 3.3.6.2(g)**

**3.3.6.2. Planting must not be in, or within: …**

**(g) an Afforestation Flow Sensitive Site; …**

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:

*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.*

*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.*

198. The areas identified as Afforestation Sensitive sites in the PMEP are to the south of the Wairau:

(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.

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.

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.

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.

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.

**Section 42A Report**

203. The Section 42A Report identified that the areas involved totalled about 711km$^2$ 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.

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.

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.

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.

**Consideration**

207. The Panel noted that this suite of policies and standards was not prohibitory in nature, but rather identified valid issues which required addressing in any consent application involved.

208. 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.

209. 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%.

210. 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.

211. 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.

212. 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’.

213. 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 consequentially 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.

**Decision**

214. 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.

215. Amend Policy 5.3.16 as follows:

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

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

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

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

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

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

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

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

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

**(a) the purpose of the diversion and any positive effects;**

**(b) the volume or proportion of flow remaining in-channel and the duration of the diversion;**

**(c) the effect of the diversion on environmental flows set for the waterbody;**

**(d) the scale and method of diversion;**

**(e) any adverse effects on natural and human use values identified in the Marlborough Environment Plan in the reach of the waterbody to be diverted;**

**(f) any adverse effects on permitted or authorised uses of water; and**

**(g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.**

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

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

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

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

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

**(ii) permitted or authorised uses of water; and**

**(iii) flushing flows below the dam;**

**(c) the natural character of any waterbody downstream of the dam structure; and have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.**

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

**(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;**

**(b) changes in river bed levels and the effects of those changes;**

**(c) any downstream effects of a breach in the dam wall;**

**(d) interception of groundwater or groundwater recharge; and**

**(e) interception of surface water runoff.**

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

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

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

**Section 42A Report**

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

222. As a consequence the report recommended that Policy 5.2.18 as to diversions remained as notified; that Policy 5.2.19 be amended by adding reference to tangata whenua values; that

Policy 5.2.20 as to damming be retained as notified; that Policy 5.2.21 be amended to recognise the potential value of enabling dams without fish by-passes so as to enable restoration of native species above the dam in certain circumstances and again to include reference to cultural values; and finally, in respect of Policy 5.2.22 in the Final Report inclusion was recommended of references to regard also being had to degradation of mauri, loss of indigenous biodiversity and the positive effects available from damming.

**Consideration**

223. In terms of the policies the Panel reached the conclusion after hearing all the evidence produced that there were a range of potential activities involving diversions and damming activities which could if well-planned have beneficial as well as obvious adverse effects.

224. Those benefits included, by way of example, those from diversions intended to re-water old stream beds, as in Gibsons Creek, which has had major benefits on aquifer recharge rates in the Wairau aquifers. Moreover, that Scheme has in addition enabled the Southern Valleys Irrigation Scheme (SVIS) which has itself taken pressure off the southern valleys aquifers. That occurred just as those aquifers were struggling to cope with irrigation demands, and recharge rates were declining. In addition the SVIS has enabled the irrigation on a much more sustainable basis of over 5,000 ha of land in the southern valleys providing a significant amount of production from what otherwise would have been water short land.

225. Another example has been the major Branch hydro diversion into the Argyle Pond and canal which has enabled a major generation facility with limited effects – and some of those effects have in fact worked well. Fluctuation flows downstream from the Argyle pond releases have to a significant extent assisted in maintaining sustainable varied flows and hence avoiding cut-offs of takes in the lower Wairau.

226. In terms of dams the principal uses have been for hydro generation in the Waihopai in early years, and more latterly on a widespread basis for high flow storage dams principally for C class water. The development of those dams has meant that again pressure at low flow periods has been relieved utilising water that otherwise would principally have flowed to sea. They have opened up large areas of the Awatere and other southern catchments to increased viticultural and agricultural production on what otherwise would have been seriously dry country.

227. While Ngai Tahu's concerns about effects on the mauri of instream damming are recognised, at the same time the value of those storage dams in supporting a greater biodiversity of flora and fauna in the relatively water short Awatere and southern catchments cannot be

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

228. The Panel considers that the existing provisions are not necessarily inconsistent with the concepts of Te Mana o te Wai given that type of positive evidence. The Panel sees it as being important that Te Mana o te Wai is identified specifically in Policy 5.2.21(b) for that reason.

229. As to the issue of fish passage by-passes being required to be considered in every case (Policy 5.2.21(a)), the Panel heard interesting arguments against such a requirement because of the benefits in some smaller sub-catchments of being able to restore habitat for indigenous species. Those species otherwise would be predated by salmonoid species. That arises as a result of the peculiarity of s 7 (h) of the RMA which provides a measure of statutory recognition to the habitat of introduced species of trout and salmon in s 7 (h) of the Act.

230. The Panel also took into account the provisions of cl 43(1) of the Freshwater Fish Passage Regulations 1983. While that provides additional requirements for fish passage on structures in rivers, but those requirements are at the discretion of the Director General (as defined in the Fisheries Act 1983) and can enable dispensations or differing forms of fish facilities which are defined as including fish screens as well as fish passages. The provisions of cl 43 are as follows:

> **43 Dams and diversion structures**
>
> **(1) The Director-General may require that any dam or diversion structure proposed to be built include a fish facility:**
>
> **provided that this requirement shall not apply to any dam or diversion structure subject to a water right issued under the provisions of the Water and Soil Conservation Act 1967 prior to 1 January 1984.**
>
> **(2) Any person proposing to build such a dam or diversion structure shall notify the Director-General and forward a submission seeking the Director-General's approval or dispensation from the requirements of these regulations, shall supply to the Director-General such**

**information as is reasonably required by the Director-General to assist him in deciding his requirements (including plans and specifications of the proposed structure and any proposed fish facility).**

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

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

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

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

**Decision**

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

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

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

*(iv) mauri o te wai; and*

235. Amend the explanation to Policy 5.2.21 as follows:

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

*nature of the river and the natural and human use values it supports. This policy allows these proposal and site specific factors to be taken into account. …*

## Specific issues arising from submissions on diversions and/or damming

236. The Panel also accepted a number of the detailed changes recommended to the suite of standards but in some respects reached different conclusions. Those issues are now addressed.

## Lake Elterwater and its tributaries – Policy 5.2.3 & Rule 2.6.4 & Method 5.M.1

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

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

**(a) Acheron River;**
**(b) Branch River (including downstream of weir to the Wairau River confluence);**
**(c) Chaytor Significant Wetlands - W127, W128 and W129;**
**(d) Goulter River;**
**(e) Goulter Significant Wetland - W35;**
**(f) Kauauroa Bay Significant Wetland - W1026;**
**(g) Lake Alexander;**
**(h) Lake Chalice;**
**(i) Lake McRae;**
**(j) Pelorus River upstream of confluence with the Scott Creek;**
**(k) Pipitea Significant Wetland - W55;**
**(l) Possum Swamp Stream Significant Wetland - W116;**
**(m) Rainbow River;**
**(n) Tarndale Lakes including Bowscale Lake, Fish Lake, Lake Sedgemere and Island Lake;**
**(o) Upper Wairau Significant Wetland - W580;**
**(p) Wairau Lagoons Significant Wetland - W1076;**
**(q) Wairau River upstream of the Hamilton River confluence.**

**This rule does not apply to a take, use, damming or diversion of water lawfully established prior to 9 June 2016, including the take and use of water for an individual's reasonable domestic needs and the take and use of water for the reasonable drinking water needs of an individual's animals.**

**5.M.1 Regional rules**

**Set environmental flows and/or levels for permanently flowing rivers, lakes, wetlands and aquifers to maintain the uses and values supported by the waterbody.**

**Set allocation limits for each FMU to establish the total amount of water able to be sustainably abstracted from the water resource.**

**Apply regional rules to regulate the taking, use, damming or diversion of water in accordance with the policies in this chapter. This includes the use of permitted activity rules to enable the taking, use, damming or diversion of water where the activity will not give rise to adverse effects on natural and human use values supported by the waterbody.**

**A permitted activity rule will enable the construction of bores.**

**Prohibit the taking, use, damming or diversion of water where those activities would adversely affect the significant values of outstanding water bodies.**

**Prohibit the taking of water beyond environmental flows/levels and allocation limits set by rules.**

**Require all resource consents granted for water takes to be measured by pulse emitting meter and recorded by data logger, and require the recorded take and use information to be transferred to the Council by telemetry.**

**Review water permit conditions to impose or alter environmental flows and levels (or other relevant limits) established by rules in the MEP.**

237. Submissions by Mr David Barker and Mr John Hickman featured as being at the opposite ends once again of a spectrum of submitter views as to the treatment that should be accorded the waters, bed and surrounds of this lake, including its contributing tributaries[7].

**Evidence**

238. Mr Barker who lives adjacent to the Lake and who has an extensive background in conservation and indigenous biodiversity work sought protection of Lake Elterwater's waters, its contributing tributaries and its bed by making any damming, diversion or taking of water a prohibited activity.

239. He instanced the history of degradation of Lake Elterwater which in the past in drought years has had cattle grazing on its surrounds, and sometimes in its bed, crops grown, and even cricket matches played on a pitch. Its surrounds had become invaded by large unkempt growths of various willows and weed species. Yet despite that degraded state, in winter or in wet conditions Mr Barker was able to demonstrate a bountiful use by a wide variety of bird species of the lake's waters, and he also gave evidence of abundant indigenous flora and fauna that could and did in such conditions make use of the lake.

240. Mr Hickman's farm has been in his family for generations and it encompasses significant parts of Lake Elterwater's boundaries. In recent times he has gained a resource consent to construct a large dam containing about 2 million cubic metres in one of the contributing tributaries the development and building of which was carried out with the close advice of Dr McConchie who has hydrological expertise and is experienced in dealing with wetlands.

241. The thrust of Dr McConchie's evidence was that the design and manner of operation of the Hickman dam was actually unusually beneficial to the lake's general habitat because its storage element meant that it was able to release stored water in significant quantities to supplement Lake Elterwater's own levels in low flow periods. Moreover, it was also able to operate as a significant feeder habitat for a wide range of species itself. As mentioned in the previous section of this decision his evidence was supported by Mr Hamill's observations.

[7] D Barker (317.2 and .3), J Hickman (455.32)

Their evidence also pointed out that changes in levels during the recent Kaikoura earthquake should assist in retention of more water within the lake.

242. Mr Hickman was also able to describe the general steps that he has taken in recent years to restore the habitats in and around Lake Elterwater. That has occurred both in response to Council pressure as to inappropriate activities such as grazing, cropping and sporting activities in the lake bed, and more positively as a voluntary process as he has undertaken a major effort over some years in fencing off the lake waters, removing weed and willow species, and replanting the surrounds with native species.

**Section 42A Report**

243. For the rather special reasons described above in relation to Lake Elterwater, Mr Hamill did not favour prohibited status on the tributaries as sought by Mr Barker, but did favour prohibited status in relation to the waters of Lake Elterwater itself. The report drew attention to the important fact that the outlet to the lake was raised by the Kaikoura earthquake meaning that the lake will be dry less frequently and increasing the value of its biodiversity.

**Consideration**

244. Lake Elterwater is relatively unique in being a significant body of water in high flow years capable of supporting important indigenous species of flora and fauna, but yet it can dry up completely in drought conditions, and on occasion in the past that has occurred in consecutive years. In respect of the waters of the lake itself the Panel agree with the recommendation that prohibited activity status applies. However, in respect off the tributaries the Panel formed a different view.

245. The habitat values and indigenous species that Mr Barker identified are particularly important in these very dry areas of south Marlborough, but the Panel has been satisfied on the evidence from Dr McConchie, Mr Hamill and Mr Hickman that those values have been recognised and responded to in a significant manner by Mr Hickman.

246. The outcome of Mr Hickman's considerable voluntary works, which are major and ongoing, has been a significant improvement in the overall habitat for both indigenous flora and fauna. And the Panel has accepted the evidence of Dr McConchie and Mr Hamill that the design and method of operation of the recently consented major storage dam on a contributing tributary of the lake has benefits also for the habitat of indigenous species in the general locality, and for the habitat health of the lake itself as a supplement to its natural sources.

247. If prohibited status was now to be imposed on any use of the waters of the lake's contributing tributaries the wrong message would be sent to Mr Hickman as to the value accorded to his

efforts, and if they cease it is highly likely that the lake and its surrounds in such a harsh dry environment would lapse back into the weed infested state they suffered from a few years ago.

248. The recent history of this lake and its management has demonstrated that for it to have any opportunity of providing a sustainable habitat for indigenous species of flora and fauna, it needs active management for environmental rehabilitation, and if possible some additional source of water to supplement natural sources.

249. When the Panel considered the various options advocated of straight out prohibition on use of contributing tributary waters as sought by Mr Barker, against the more constructive beneficial effects from Mr Hickman's work and active beneficial management in recent years, the answer as to where the environmental balance should lie fell in favour of declining the request for a prohibition. In terms of sustainability that is the best outcome.

250. The Panel appreciates that this outcome leaves open the opportunity of future proposals for storage use on other contributing tributaries as a discretionary activity. It has been demonstrated by the Hickman consent and development that integrated control can ensure protection of the mana of the wai of the lake by enhancing the Lake levels rather than to detract from them. Obviously such an outcome would be the principal focus of any further consent proposal.

251. Before passing on to record its decision, though, the Panel wishes to express its appreciation of the efforts made both by Mr. Barker and Mr. Hickman in trying to ensure that in resource planning terms the best possible outcome for Lake Elterwater was achieved. On the Panel's perception all submitters were seeking a similar outcome which was a restoration of indigenous biodiversity values in the lake and its surrounds and contributing tributaries.

252. Their differences really came down to a different approach as to how that was best to be achieved – by prohibition on all water use related to the lake and its contributing tributaries, as compared to an active, beneficial management of integrated water and land uses, which on the evidence it has received has been the Panel's preference.

253. However, the Panel does agree with the final reply to evidence recommendation that the waters of Lake Elterwater itself, excluding its contributing tributaries, should be included as item (s) in the prohibited activity rule 2.6.4. Because of the opening words of the Rule include tributaries and exception should also be recorded there.

**Decision**

254. Policy 5.2.3 remains as notified.

255. That submissions seeking limitations or prohibited activity status for the contributing tributary water of Lake Elterwater be rejected.

256. And add the following clause to the rule:

*(s) Lake Elterwater, but not including its contributing tributaries.*

## Temporary Diversions for significant infrastructure, or for private stopbanks – Policy 5.3.5 & Rules 2.2.18 & 2.3.17

**Policy 5.3.5 – Enable the take and use of water where it will have little or no adverse effect on water resources.**

**2.2.18. Diversion of water associated with the operation of the Drainage Channel Network existing on 9 June 2016, and permitted activities in the Floodway Zone.**

**2.3.17. Diversion of water associated with the operation of the Drainage Channel Network existing on 9 June 2016.**

**2.3.17.1. The diversion must not be in, or within 8m of, a Significant Wetland.**

**2.3.17.2. The diversion must be managed by the Marlborough District Council.**

257. Policy 5.3.5 provides the PMEP with the opportunity through Rule 2.2 to provide for a range of permitted activities which have limited if any real adverse effect on water resources. Temporary diversions in relation to Drainage Channel operations is a good example in rule 2.2.18.

258. The existence of this Policy and the associated rule in 2.2 led to a number of requests once more on a wide spectrum. Some submissions sought the deletion of the Policy as opening the door to permitted activity use of water while others sought that their particular activities were included as for the drainage channel operation rule 2.2.18 along with associated standards 2.3.17.1 & 2.

259. NZTA sought that its temporary diversions needed as part of the operation of regionally significant infrastructure, such as temporary diversions, dams or channels to enable roadworks operations to be carried out[8]. This is a common requirement for roadworks particularly in high flow conditions.

260. Ross Davis, an experienced engineer, on behalf of the Davidson Group sought similar relief to allow the diversions to enable the maintenance of private stopbanks. His evidence was that increasingly individual landowners are constructing stopbanks to protect expanding areas of viticulture or other high value operations[9]. That is particularly so on stretches of the Wairau above the Waihopai confluence where the Council has a policy it will no longer maintain stopbanks. His evidence was that to maintain stopbanks temporary diversion was necessary.

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[8] NZTA (1002.116-118)
[9] Davidson Group (172.3)

**Section 42A Report**

261. The Section 42A Report writer in both the original report and in the Reply to Evidence agreed with the requests made by NZTA and recommended that a new permitted activity be provided for in Rule 2.2 with new standards including as Standard 2 a requirement that the diversion must be managed by NZTA. The report recommendation was as follows:

*Rule –*

*Diversion of water associated with the operation and maintenance of roadside drainage channels.*

*Standard 1 –*
*The diversion must not be in, or within 8m of, a Significant Wetland.*

*Standard 2 –*
*The diversion must be managed by the New Zealand Transport Agency.*

*Standard 3 –*
*The diversion must not cause flooding or erosion of private land.*

**Consideration**

262. The panel agreed with NZTA that for regionally significant infrastructure such as the roading network the operator should be able to carry out temporary diversions or damming necessary to enable repair work to existing infrastructure but not for new developments. The latter should remain the subject of normal consent considerations.

263. However, the Panel was cognisant of the fact from other hearings that the majority of Marlborough's roads are in fact managed by Marlborough Roads Limited. Consequently a standard which limited this new recommended permitted activity to just NZTA would only provide part of the solution required to maintain the roading network in Marlborough which must be done both for maintaining public access along Marlborough's roads but enabling that to be done in safety. In addition there are obvious efficiencies and time and cost savings in extending the permitted activity to all managers of the public road networks.

264. In considering the submission the Panel also decided that temporary damming should also be specifically included for the purposes of the works as the common method of controlling water while roadside channels are repaired will be by temporary damming as much as by diversions. So long as a Standard is imposed limiting the duration of the diversion or damming to the purposes of the maintenance works involved adverse effects will be appropriately constrained.

265. As to private stop-banks the Panel was concerned that objective oversight of river control works by the Council is always warranted as private stop-banks could affect other landowners or potentially have effects on downstream Council works in some locations. That being the case permitted activity status is not appropriate.

**Decision**

266. Add a new permitted activity rule under Rule 2.2 as follows:

*2.2.X Temporary damming or diversion of water associated with the operation and maintenance of artificial roadside drainage channels.*

267. Add new standards to Standard 2.3 as follows:

*2.3.X. Temporary damming or diversion of water associated with the operation and maintenance of artificial roadside drainage channels.*

*2.3.X.1 The temporary damming or diversion must be managed by the Road Controlling Authority.*

*2.3.X.2 The temporary damming or diversion must not be in, or within 8m of, a Significant Wetland.*

*2.3.X.3 The temporary damming or diversion must only be for the purposes of the maintenance works required at the location of the works.*

*2.3.X.4 The temporary damming or diversion must not cause flooding or erosion of private land.*

268. The submission seeking permitted activity status for private stopbank repairs or construction is rejected.

## Efficiency of use and storage

### Objective 5.4 – Improve the utilisation of scarce water resources.

269. In the course of consideration of debates between submitters as to the allocation limits, and threshold cut-off flow limits, or aquifer levels, a constant theme was the need for users to improve utilisation of water resources which requires the addressing of efficiencies in use and alternative sources of supply. Objective 5.4 specifically identifies improved utilisation as an objective for the PMEP.

270. There was no real dispute between submitters at varying ends of the spectrum as to the wisdom of efficiency of use as a concept. Winery re-use of 'grey' water, leaving 'blue' potable water solely for necessary product uses, is but one example. Others in the field for viticulture involve potential for more precise soil moisture monitoring and responses; potential for

reconsideration of dripper location and frequency, particularly for immature plants; and the general need for detailed review of soil types and volumes needing to be applied – to name but some that have been raised in evidence before the Panel.

271. Other significant opportunities exist as described earlier in the decision on this Chapter in relation to storage opportunities – either communal or individual. When the potential effects of climate change are added to the existing level of over-allocation the crucial need for enhanced storage capacity is obvious.

272. The Panel considers that both these issues of efficiency of use and increased storage are both well within the scope of relief seeking that the PMEP provide greater protection of sustainable flows.

273. The PMEP as notified addressed the issue of storage under Method 5.M.6 but with a heading 'incentives'. In fact that method incentives storage and the importance of storage is such that the heading to the method should be 'storage incentives'. The Panel decided to address the efficiency issue by inserting a new method in Chapter 5 of the PMEP which encourages efficiency of use.

**Decision**

274. Amend the heading to Method 5.M.6 as follows:

*5.M.6 Storage incentives*

275. Insert a new method as follows:

*5.M.X Efficient Water Use*

*Encourage efficient water use by sharing information with water users and water user groups. Information gathered through the application of other methods in this Chapter will be provided, including real time water use data and river flow/aquifer level data, the results of research and modelling in terms of reasonable use requirements and sharing information on new technology. The information will be able to be applied by water users to make adjustments to their existing water management regime to ensure the volume and rate of water use match actual water use requirements.*

## Duration of take & use permits – Policy 5.3.14

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

**(a) not be less than 30 years when the take is from a water resource:**

**(i) that has a water allocation limit specified in Schedule 1 of Appendix 6; and**

**(ii) that has a minimum flow or level specified in Schedule 3 of Appendix 6; and**

**(iii) that is not over-allocated; or**

**(b) not be more than ten years when the take is from an over-allocated water resource as specified in Policy 5.5.1; or**

**(c) not be more than ten years when the take is from a water resource that has a default environmental flow established in accordance with Policies 5.2.7 and 5.2.14.**

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

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

**Section 42A Report**

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

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

**Consideration**

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

281. The effects of climate change in Marlborough on water resources are at present unknown. The fact of large and long catchments such as the Wairau, Branch, Waihopai and the Awatere having sources far distant from irrigated use areas may even mean that rainfall in those more westerly and southerly areas increases, while drought effects become more common to the east.

282. Consideration of ensuring Te Mana o te Wai and sustainability requires a more conservative or precautionary approach than 30 year permits.

283. Until monitoring over ten to twenty year periods produces more reliable patterns of water availability and soil moisture retention rates it is better to limit the duration of take/use consents.

284. At the same time the Panel considered it was necessary to take into account both the level of capital investment reliant on take/use consents and the considerable costs of re-consenting too frequently.

285. The Panel did take into account the irrigation efficiency trials being run by the viticulture industry and their potential to have huge effect on water demand for irrigation for viticulture, but until the results of those trials have been verified in real terms over a range of seasons the Panel was of the view that the precautionary approach it preferred to guard against the effects of climate change was warranted having regard to s.7 (i) of the RMA.

286. The Panel decided that it was appropriate to amend the term in Policy 5.3.14 (a) from 30 years to 20 years taking into account all those considerations.

**Decision**

287. Amend Policy 5.3.14 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*that no such opportunity arose in the lapse period. For this reason, a long lapse period of ten years is signalled for water permits to use water by this policy. This will ensure that a system of enhanced transfer has the greatest opportunity to function effectively over time.*

292. There were a number of submissions seeking either that a longer or shorter lapse period apply to different types of activities each seeking in aid the reduction or increase over the statutory default of five years (s125 RMA) as utilised in one or other of these policies.

**Section 42A Report**

293. The report writer referred to the fact that Policy 5.4.1 repeated the approach taken in the operative plans which again was specific to water permits because of the allocation pressures under which such permits were granted.

294. As to Policy 5.4.3 the report writer placed weight on the streamlined transfer system as justifying the extension of the statutory default term of 5 years.

**Consideration**

295. The Panel accepts the recommendations of the report writer that the two policies address matters specific to the stressed environment of location of water permits and that the policies should be restricted to those activities and that they should be retained as notified save for an addition at the start of Policy 5.4.1 allowing for special circumstances.

296. The Panel was of the view that in each case an amendment to the explanatory statements would assist in providing more direction to decision-makers and/or an understanding of why these policies were contained in the Plan.

297. Finally in the course of its consideration of the lapse policies in the Plan 5.4.1 and 5.4.3 it was obvious they should follow each other with the current 5.4.2 being renumbered to Policy 5.4.3.

**Decision**

298. Amend Policy 5.4.1 by an addition at the start of the Policy so it reads as follows:

*Policy 5.4.1 – Unless special circumstances exist that justify a longer period ~~T~~the lapse period for water permits to take water shall be no more than two years.*

299. That the explanatory statement to Policy 5.4.1 be amended by adding a new paragraph prior to the last sentence as follows:

*… infrastructure and avoiding a situation of other potential users being denied access to reliable water supplies through the consent holder's inaction.*

*There may be special circumstances which may warrant an extension to this period, and it will be for consent applicants to describe those appropriately for a decision-maker as part of a consent application. For example, a longer lapse period may be justified for regionally significant infrastructure or due to the scale or complexity of the activity for which the water permit is required.*

*The allocation status of the water resource will be taken into account in terms of considering any applications to extend a lapse period under Section 125(1A) of the RMA.*

300. Amend the existing second sentence of the explanatory statement to Policy 5.4.3 to read:

*A user must, as a minimum, hold a water permit to use water (a water permit to take water may not be necessary depending on the method of water distribution). To improve the utilisation of scarce water resources the streamlined transfer process for use of water may enable an opportunity to use otherwise unutilised water for limited periods of time. ~~Opportunities to utilise enhanced transfer of water permits may be limited in time~~. It would therefore be inappropriate to lapse the water permit to use water on the basis that no such opportunity arose in the lapse period.*

301. Renumber Policy 5.4.2 in the notified Plan as Policy 5.4.3 with notified Policy 5.4.3 being renumbered as Policy 5.4.2.

## Content of Policy 5.4.2 as to the meaning of the phrase 'giving effect to'

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

302. Pernod Ricard sought that this policy be deleted on the basis that there was considerable case law on the issue[10]. Other submissions essentially took the position amendments to the Policy or the explanation could clarify the issue better.

**Section 42A Report**

303. The original Section 42A Report had concluded that while the Policy was intended to be helpful it was probably inappropriate and could be deleted, particularly as since the PMEP was notified:

> *…the MDC resource consent department have developed, and had approved in the courts, conditions precedent for water takes that ensure that even though water may have been taken, if the meters and certification have not occurred the consent will lapse.*
>
> *(Paragraph 1318 Original Section 42A Report)*

[10] (1039.42)

304. No submitter particularly addressed the Policy in the hearings in any definitive manner so the Reply to Evidence continued to recommend deletion.

**Consideration**

305. The Panel decided that in fact the Policy does still serve a purpose in an over-allocated setting to ensure water permits are not left unutilised.

**Decision**

306. Amend Policy 5.4.2 to include the phrase '…take and/or use...' instead of just '…take and use…'

307. Amend the explanation to the Policy to read as follows:

*Section 125(1A)(a) specifies that a resource consent does not lapse if the consent is "given effect to." There was uncertainty during the administration of the previous resource management plans as to what this term meant in the context of a water permit. <u>Many of Marlborough's water resources are fully allocated relative to the limits in this Plan, or are approaching a status of full allocation. There is therefore increasing competition for available water between water users. To avoid the potential for conflict in the community that this competition may cause, and to ensure water already allocated is being used for productive use as intended, it is important to administer the lapse of water permits diligently</u>. To <u>allow this to occur</u>, ~~avoid confusion in the future~~ this policy clearly describes that a water permit is given effect to when, in conjunction with Policy 5.7.4, water is taken from the freshwater resource, the take is measured via an appropriate meter and the water is used for the purpose in which it was granted.*

## Objective 5.7

**Objective 5.7 – The allocation and use of water do not exceed the rate or volume required for any given water use.**

**Submissions and Section 42A Report**

308. A number of submissions were made supporting this Objective but some particularly that by Lion Beer sought that the Objective be reworded to focus encouragement more on methods of allocating water for particular activities. The Section 42A Report did not agree with that and recommended the Objective remain as notified.

**Consideration and decision**

309. The Panel considered that the point made by Lion was worthy of being reflected in the Objective and decided the Objective 5.7 should be replaced with the following:

*Objective 5.7 – <u>To achieve efficient water use for any given activity.</u>*

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

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

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

310. This policy assists to give effect to Policy B4 of the NPSFM.

311. Policies 5.7.2 and 5.7.3 both describe in their Explanations the use of computer methodology, at present primarily in the form of a system called 'Irricalc', which is effectively a tool to ensure that consents to take and use water can be efficiently calculated in terms of quantities needed for particular crops, based on a range of factors including soil types, soil moisture holding characteristics, evapotranspiration rates and climate at particular locations. Some submitters sought that the specific reference to 'Irricalc' in the PMEP should be deleted and a more generic descriptor be provided.

312. The reasons for the request included the lack of control by Council of the methodology and its ability to be changed without going through any formal Plan Change process; the effective practical 'delegation' as a result of control of efficiency of water use to the Irricalc designer/owner; and the effective shutting out of potential other developers of similar methodology and the improvements that they may be able to bring to environmental management.

313. The Section 42A Report writer in the Reply to Evidence on Matter 7 recognised the validity of some of the arguments advanced and recommended that the Policy 5.7.2 wording could be retained but recommended that the notified Explanation to Policy 5.7.2 was amended as follows:

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

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

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

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

**Decision**

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

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

*<u>For non-irrigation uses, the allocation will be assessed on a case-by-case basis.</u>*

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

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

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

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

**Decision**

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

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

*Past methods of determining water use allocations have not accounted for the variation in water demand when growing the same crop in different locations and conditions. The use of ~~"IrriCalc"~~ a reasonable use model in the manner described above will therefore result in improvements in the efficient allocation and use of water and assist to give effect to Policy B4 of the NPSFM.*

*The policy recognises that the calculation is a modelled calculation and may not accurately estimate reasonable use in all circumstances. For this reason, the policy provides resource consent applicants the opportunity to provide property specific information on the factors that influence crop demand that may demonstrate a ~~higher~~ rate that exceeds the calculation provided by the model ~~of water use than IrriCalc would otherwise indicate~~. Examples could include historical measurement of rainfall or the investigation of soil type and plant available water on the property. Regard can be had to such information in determining an appropriate allocation on water permits to use water.*

320. As a consequential change amend Method 5.M.7 to read as follows:

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

## B Class Water Allocation in the Pelorus FMUs

321. Fish & Game sought various amendments to the class allocations in respect of the lower Pelorus, Rai, Opouri, Tunakino, Ronga and Kaituna rivers. In part the amendments they sought arose from their challenge to the sustainable levels in those rivers and their related challenge particularly to the 'short term' water allocations. The allocation of B class was sought to be removed although in some later positions adopted for some of the FMUs it was sought there be a removal of short term water from A class to a new B class allocation.

### Section 42A Report

322. In respect of A class allocation issues the Panel agreed with the reasoning and recommendations of the report writers.

323. In relation to the B class allocations, the factual position outlined to the Panel by the report was that in most, if not all, of those FMUs the A class was fully allocated, but there had been no applications for any uptake of B class water since the Plan was notified.

324. In respect of the B class issue, the report writers said that they were 'taking a neutral position on whether the B class, as notified for each FMU, is retained'

**Consideration**

325. The Panel took the view that the B class allocations in the Plan are designed to ensure some ability to provide for access to a water resource for utilisation purposes in periods of higher flow. It is for that reason that the minimum flow for the cessation of B class takes is fixed at a higher level than that for A class takes.

326. Fish & Game essentially were advancing the proposition that all of these rivers suffered varying periods of low flows and that if further allocations even of B class water were to be made the consequence would be adverse in effects terms for the river and its associated ecology. The report writers' view was that because there was no apparent current demand for B class water there was no immediately obvious need to make provision for a B class allocation. It is implicit also from the evidence heard in relation to these catchments as well as the Wairau catchments that all experts are agreed that in terms of Te Mana o te Wai the more water that is left in a river the better the outcome in natural environmental terms. However, that of course does not take into account the various human use values which are recognised in the NPSFM provided sustainability is maintained by fixing appropriate allocation levels.

327. Mr Hamill's evidence was that the allocation of Class B waters was fixed in relation to minimum flow levels, which he was satisfied on the basis of his decades of experience, were sufficient to ensure sustainability of the instream ecology.

328. The only argument in favour of making no Class B allocation provision for these FMUs is the general proposition referred to above that more water left in the river the better for its health. Whilst, as we have said, that is always an attractive argument, to accept it here in relation to a possible B class allocation would be to deny the prospect of potential future unknown uses for some one or more of the human use values identified in the NPSFM. Part II RMA requires provision for the needs, not only of the present generation, but also for future generations. In a situation where little if any class A water is available for further allocation it would be contrary to that general RMA purpose to have no provision for a B class allocation.

329. For those reasons the Panel accepts that the minimum flow level settings for the B class allocation in these FMUs is appropriate to protect sustainability and as a consequence that there is scope for a B class allocation in each FMU proposed in the notified plan.

**Decision**

330. The submissions requesting that there be no B class allocation in the Pelorus, Rai, Opouri, Tunakino, Ronga and Kaituna FMUs are rejected.

## Water Allocation – Limited Issues

331. The earlier part of this decision on allocation of water resources has canvassed in a detailed manner the more significant issues where the Panel assessed that there was a considerable level of public interest in the issue, Plan provision, or decision the subject of the submission/s; or where significant input by way of submission and evidence was received. Some issues have also been addressed in that detailed way because the Panel has taken a significantly different view on a major issue from that recommended in the Section 42A Report processes, even if there was not considerable submitter input.

332. By contrast, this final part of the decision on allocation of water resources addresses more limited issues. They include those which have not involved significant input by way of submission or evidence, or may not have involved major public interest issues, but where recommendations by the Section 42A Report writer/s have not been accepted by the Panel in whole, or in part; or where recommendations made by the report writer/s have been essentially accepted by the Panel, but with some modifications, or by completely different provisions being adopted by the Panel.

333. The result is that only limited discussion is needed in this part of the decision. That discussion is limited to a summary of what issue/s underlie the recommendation/s made; the detail of the recommendations made; and finally, the reasons why the recommendation/s have been rejected, or accepted in part, or why changes have been made.

334. In some cases those summaries will be very brief and others more extended. For clarity and ease of locating any issue dealt with in that manner, each separate issue will have its own sub-header and reference to the Plan provision involved.

**Chapter 5 Introduction – Climate Change issues**

335. The Friends of Nelson Haven submission sought that reference be made in the Introduction to the potential effects of climate change on the availability of the water resource in Marlborough[11].

336. The Section 42A Report was neutral about the need to include that in Chapter 5 given that the issue of climate change is the subject of its own Chapter in the Plan. Moreover, the report drew attention to the fact that the potential effects of climate change on Marlborough's water resources are at present still largely unknown particularly as the headwaters of one of its

[11] (716.41)

major catchments, the Wairau, are located in the west where increased rainfall is predicted to be likely to occur.

337. The Panel acknowledged that there is still a state of uncertainty as to rainfall effects of climate change, and as a consequence the availability of water resources in Marlborough, but still felt the issue is so significant in terms of potential effects one way or the other, that it should be mentioned in the Introduction to Chapter 5.

**Decision**

338. Insert as a new final paragraph in the Introduction to Chapter 5 the following paragraph:

*Provisions are included in Chapter X that address the potential implications of climate change in the context of water allocation and use.*

## Prohibited activity status Exemptions for some activities – Policy 5.2.3

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

339. A number of submissions drew attention to the need to ensure existing activities with s.14 RMA protection were not classified as prohibited activities meaning that could not seek to re-consent.

340. The Section 42A Report recognised the validity of that position and said it was recognised in the rules and did not need repeating as an exemption in the policy because policies can be weakened by the presence of too many exemptions undermining the purpose of the policy. However, the final reply to Evidence did suggest a possible wording addition in the explanation to the policy to link with the rule treatment as follows:

> *It is also appropriate to exclude any taking, damming or diversion of water lawfully established prior to the notification of the Plan from this prohibition.*

341. The Panel agreed with the basic reasons for the recommendation and its wording save for a deletion of the recommended opening words and a slight re-adjustment of the order of the recommended wording.

**Decision**

342. Amend the Explanatory Statement to Policy 5.2.3 by adding a final sentence to read as follows:

*Taking, damming or diversion of water lawfully established prior to 9 June, 2016 is also excluded from this prohibition.*

### Flow-sharing and non–consumptive uses – Policy 5.2.16

**Policy 5.2.16 – For resource consent takes from the Waihopai River, Awatere River and other rivers that utilise an upstream flow monitoring site, allocations for the taking of water will be reduced proportionally as flows fall in order to avoid any breach of an environmental flow.**

343. Trustpower which operates the Waihopai power station sought that this policy have an exemption for non-consumptive uses where the same volume of water is returned to the river flow as occurs with its Waihopai scheme[12]. The wording it suggested was:

> *This Policy does not apply to existing non-consumptive takes related to regionally significant infrastructure.*

344. The Section 42A Report recommended that exemption be adopted but also recommended the Explanation to the Policy refer to the amended Explanation to Policy 5.2.15 which the report had recommended.

345. The Panel agrees with the change to Policy 5.2.16 but as it has itself amended the wording and placement of changes as between the Explanatory Statements to Policies 5.2.15 and 5.2.16 the last recommendation is not accepted as being necessary.

**Decision**

346. Add the following sentence to Policy 5.2.16:

*This Policy does not apply to existing non-consumptive takes related to regionally significant infrastructure*

### Tangata Whenua, Mauri and Te Mana o te Wai considerations - Introduction to Chapter 5 (Paragraphs one & two) & Policies 5.2.19, 5.2.21 & 5.2.22 &

**Introduction**

**Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.**

347. A number of submissions by iwi sought greater acknowledgment in the Introduction that water was a taonga. The Section 42A Report acknowledged that, and recommended an amendment to that effect in paragraph one of the Introduction[13].

348. The Panel agreed with that recommendation and its only change to the recommended amendment was to add reference to 'Marlborough's' tangata whenua iwi for consistency throughout the Plan provisions.

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[12] (1201.35)

[13] Section 42A Report, pages 90 and 91

**Decision**

349. Amend the first paragraph of the Introduction to Chapter 5 as follows:

*Introduction*

*Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. Water is a taonga and is essential to all as a life-source. Water is also essential for mahinga kai, and holds particular significance to Marlborough's tangata whenua iwi. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.*

## Te Mana o te Wai - Introduction paragraph two

350. As part of its response to submission requests to strengthen the Introduction to Chapter 5 to recognise the NPSFM emphasis on sustainability the section 42A report had recommended the insertion of a new second paragraph as follows:

> *Sustainable management of the taking, using, damming or diverting of water means safeguarding the life-supporting capacity of freshwater resources, and ensuring there are sufficient flows and/or levels to retain the natural and human use values supported by waterbodies.*

351. While the Panel agreed with that recommendation since the Plan was notified the NPSFM 2017 has introduced the Te Mana o te Wai concept and as set out earlier in this decision effect must be given to that in this Plan. As a consequential recognition of Te Mana o te Wai as required by the NPSFM the Panel decided to insert reference to that concept in the new recommended paragraph to the Introduction.

**Decision**

352. A new second paragraph is to be inserted in the Introduction to Chapter 5 to read as follows:

*Sustainable management of the taking, using, damming or diverting of water means recognising Te Mana o te Wai and safeguarding the life-supporting capacity of freshwater resources, and ensuring there are sufficient flows and/or levels to retain the natural and human use values supported by waterbodies.*

## Tangata whenua values – Policy 5.2.19

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

**(a) the purpose of the diversion and any positive effects;**

**(b) the volume or proportion of flow remaining in-channel and the duration of the diversion;**

**(c) the effect of the diversion on environmental flows set for the waterbody;**

**(d) the scale and method of diversion;**

**(e) any adverse effects on natural and human use values identified in the**

**Marlborough Environment Plan in the reach of the waterbody to be diverted;**

**(f) any adverse effects on permitted or authorised uses of water; and**

**(g) any adverse effects on the natural character of the waterbody, including but not restricted to flow patterns and channel shape, form and appearance.**

353. Submissions by Ngāti Toa and Ngai Tahu specifically, and indirectly by Ngāti Kuia, sought that this policy include reference to tangata whenua values.[14]

354. The Section 42A Report effectively concluded that this reference was unnecessary as sub-clause (c) referred to effects of any diversion on environmental flows having to be considered and those flows had been set amongst other things to address flows set to protect mauri (Policy 5.2.4(a). Then through Policy 5.2.19 cultural values are captured by the phrase 'natural and human use' values. However, the report writer adopted a neutral position if the Panel wished to reinforce those considerations.

355. While the general MEP approach is that each chapter in the Plan must be read taking into account tangata whenua values addressed in Chapter 3 in relation to this policy the Panel considers the request made for a specific reference is particularly apposite given the strongly held views by most iwi submitters in principle against allowing the mixing of waters and the consequent effect on the mauri of individual water bodies.

**Decision**

356. Amend Policy 5.2.19 by including a new sub-clause (a) as follows and re-numbering the existing sub-clauses:

*Any adverse effects on Marlborough's tangata whenua iwi values associated with the waterbody, including mahinga kai*

[14] (166.22 and .62)

## Mauri - Policy 5.2.21

**Policy 5.2.21 – Ensure any new proposal to dam water within the bed of a river provides for:**
**(a) effective passage of fish where the migration of indigenous fish species, trout and salmon already occurs past the proposed dam site;**
**(b) sufficient flow and flow variability downstream of the dam structure to maintain:**
> **(i) existing indigenous fish habitats and the habitats of trout and salmon; and**
> **(ii) permitted or authorised uses of water; and**
> **(iii) flushing flows below the dam;**

**(c) the natural character of any waterbody downstream of the dam structure; and have regard to the matters in (a) to (c) when considering any resource consent application to continue damming water.**

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

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

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

**Decision**

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

*(iv) mauri o te wai;*

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

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

## Damming – effects on 'mauri' – Policy 5.2.22

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

**(a) the retention of sediment flows and any consequent adverse effect upstream or downstream of the dam structure;**

**(b) changes in river bed levels and the effects of those changes;**

**(c) any downstream effects of a breach in the dam wall;**

**(d) interception of groundwater or groundwater recharge; and**

**(e) interception of surface water runoff.**

362. Ngāti Kuia in its submission sought similarly that protection against 'degradation of mauri' be specifically referred to in this Policy. The report writer took a similar view as to that request as for Policy 5.2.21.[15]

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

**Decision**

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

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

## Temporary dams – Policy 5.2.22 and Rule 2.7.1

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

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]

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

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

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

[15] (501.10)

[16] (1201.38)

**Decision**

368. Amend rule 2.7.1 to read:

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

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

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

## Efficiency of use – Objective 5.4

**Objective 5.4 – Improve the utilisation of scarce water resources.**

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

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

**Decision**

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

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

## Provision for non-irrigation uses – Policy 5.7.2

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

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

**Decision**

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

*<u>For non-irrigation uses, the allocation to the user will be assessed on a case-by case basis.</u>*

## Methods of measurement – Policy 5.7.4 and Method 5.M.1

**Policy 5.7.4 – Require water permit holders to measure their water take with a pulse emitting meter, to record water take and use with a data logger, and to transfer the recorded water take and use information by the use of telemetry. Alternative methods of measurement, recording or transfer that provide the Marlborough District Council with accurate water take and use data may be considered.**

**5.M.1 Regional rules**

***…***

***Require all resource consents granted for water takes to be measured by pulse emitting meter and recorded by data logger, and require the recorded take and use information to be transferred to the Council by telemetry.***

***…***

375. A number of submitters on Policy 5.4.7 drew attention to the fact that data measurement and communication methods as with all IT resources have rapidly changed and developed and that the Plan should allow more flexibility. More generic wording as to measurement methods, logging and communication was sought.

376. The Section 42A Report recognised that reality and made a number of recommendations to the wording of the Policy, its explanation and the Method. However the report also recommended a new definition be included for 'telemetry'.

377. The Panel agreed with all the recommended changes save that it did not see the need to add a definition of 'telemetry' which is self-explanatory and it made some minor wording changes to the Method recommended wording.

**Decision**

378. Policy 5.7.4 is amended as follows –

*Policy 5.7.4 – Require water permit holders to measure, ~~their water take with a pulse emitting meter, to record water take and use with a data logger, and to transfer the recorded water take and use information by the use of telemetry~~ record and transfer the information from their water take using a meter and data management system that is capable of recording real time information, and transmitting this to the Marlborough District Council via telemetry**.** Alternative methods of measurement, recording or transfer that provide the Marlborough District Council with accurate water take and use data may be considered.*

379. Amend the second sentence of the last paragraph of the explanation associated with Policy 5.7.4 is amended as follows –

*~~Data loggers~~ <u>Data management systems that are capable of recording real time information</u> provide accurate water take records and their use avoids the need for manual readings.*

380. Amend the seventh paragraph of Method 5.M.1 as a consequential change to read:

*Require all resource consents granted ~~for~~ to <u>take and use</u> water ~~takes~~ to be measured by <u>using a meter and data management system that is capable of recording real time information</u> ~~pulse emitting meter and recorded by data logger~~, and require the recorded take and use information to be transferred to the Council by telemetry.*

## Frost protection issue – Policy 5.7.8

**Policy 5.7.8 – Approve applications to take and use water for frost fighting purposes only where there are no effective alternative methods for frost control on the property.**

381. Frost fighting using water involves the use of very large quantities of water. A number of submitters supported this policy because of the very large water quantities for relatively small areas of protection compared to other methods such as wind machines. Pernod Ricard and Hort NZ on the other hand sought recognition that in some circumstances water for frost protection may be the only method available, or that close proximity of sensitive uses such as residential occupants may make other methods of frost protection impracticable.

382. In the Reply to evidence the report writer suggested that the best response to evidence of the impacts of close residential development limiting other frost fighting options was to add a sentence to the explanation to Policy 5.7.8 as follows:

> *It is also noted that restrictions on the use of alternatives due to proximity to residential activity may mean the use of water can be considered in other circumstances.*

383. 36C. The Panel did not wish to see any lessening of the policy principle militating against frost protection using water because of the large quantities involved in areas where resources may be over allocated. It was prepared to agree with the recommended sentence in the explanation to policy 5.7.8 but wished to change the reference to 'other circumstances' to read 'in those limited circumstances' so as to tie the proposed use to the demonstrable need.

**Decision**

384. Amend the explanatory statement to Policy 5.7.8 by including an additional sentence at the end of the first paragraph, to read:

*<u>It is also noted that restrictions on the use of alternatives due to proximity to residential activity may mean the use of water can be considered in those limited circumstances.</u>*

## Storage and ecosystem health issues – Policy 5.8.1

**Policy 5.8.1 – Encourage the storage of water as an effective response to seasonal water availability issues.**

385. The EDS submission raised the issue in respect of this Policy 5.8.1 that it overweighted the benefits of storage and use of water without balancing the potential adverse impacts on ecosystem health that could arise if the storage methods were not well controlled, through effects of decreased flows or on water quality as a result of the increased use.[17]

386. The report took the view that the limits elsewhere in the Plan on take and use had inbuilt limits and standards which were designed to ensure those sustainability issues were protected. As a consequence retention of te Policy in its notified form was recommended.

387. The Panel considered that the EDS point had merit and that an amendment could and should be made to ensure that balance with sustainability issues was maintained for storage take and use.

**Decision**

388. Add a phrase to Policy 5.8.1 so that it reads:

*Policy 5.8.1 – Encourage the storage of water as an effective response to seasonal water availability issues, <u>while safeguarding ecosystem health</u>.*

## Storage options for different classes of water – Policy 5.8.3

**Policy 5.8.3 – Water may be stored at times other than those specified in Policy 5.8.2 to provide water users with greater flexibility to manage water use on-site, provided that the rate of take does not exceed the authorised daily rate of take for irrigation purposes.**

389. A number of submissions were supportive of this Policy 5.8.3 but some sought amendments to specify that Class A & B waters could be taken in addition to the water available for storage under Policy 5.82 , which in its explanatory statement is identified as being intended to be supplied mainly from Class C allocated waters.

390. The Section 42A Report pointed out that the Explanation to Policy 5.8.3 already referred to the Class A & B water option being available in some circumstances and gives the example of that being particularly in periods of high turbidity in the water, as often occurs in the Awatere at lower flow periods when C Class water is not available for storage. It was stressed that the Class system in the Plan was a method intended to enable effect to be given to various policies in the Plan as to allocation limits.

391. However, the report also stressed that while the Class system could also be used to enable effect to be given to Policies as to environmental limits, the problem is that those policies are

[17] (698.35)

expressed in terms of whether flows are too high or too low, or aquifers levels too low. The report writer was concerned that specifying Classes in storage policies could restrict the flexibility to give effect to policies related to environmental flow protection. As a consequence the report writer did not recommend any change.

392. The Panel accepts the points made by the report writer but considers the explanation to the Policy can be amended to provide more clarity.

**Decision**

393. Amend paragraph two of the explanatory statement to Policy 5.8.3 as follows:

~~The policy also recognises that~~ *Class A and Class B were primarily created to enable access to water as instantaneous takes. Significant abstraction of water over the irrigation season for storage purposes* <u>*over and above the rate of take for irrigation purposes*</u> *has the potential to adversely affect the reliability of existing takes of water (by drawing down river flow/aquifer level at a faster rate than would otherwise have been the case).*

## Definition of 'Municipal Water Supply' – Volume 2 Chapter 25

### Municipal water supply means any water supply owned, managed or administered by the Marlborough District Council

394. The Section 42A Report had recommended acceptance of an amendment to this definition by inserting in the middle of the definition the words "other than a supply exclusively providing an irrigation water supply" after the phrase '...any water supply...' because Council may well hold ownership or manage or administer such exclusive irrigation water supply systems such as the SVIS Scheme.

395. The Panel agreed with that recommendation but preferred to see the addition added at the end of the definition not in the middle of it.

**Decision**

396. Amend the definition of Municipal Water Supply to read:

*means any water supply owned, managed or administered by the Marlborough District Council,* <u>*other than a supply exclusively providing an irrigation water supply.*</u>

## Dust Suppression Permitted Activity request – Rule 2.2

397. Rule 2.2 lists the permitted activities in the General Rules but does not identify the take and use of water for dust suppression. Particularly with its roading maintenance and development

activities in mind Marlborough Roads Limited sought that take and use of water for those purposes be added to the permitted activity list in 2.2.[18]

398. The Panel accepts, as did the Section 42A Report that dust suppression using water was an activity commonly for roading activities which can generate significant dust and cause adverse effects to others, let alone a potential traffic hazard.

399. The Panel agreed with the recommendation to allow up to 20 $m^3$ per day on gravel roads but also sought to impose a standard of 5% of the instantaneous flow of a river if that was the point source of the water taken. The Panel took the view that the limitation on quantity was all that was needed in the field as measurement of instantaneous flows is not easy.

400. Nor did the Panel accept the recommendation that the take relate to the 'road site' as the limitation is on the amount of water so the Panel changed the wording recommended to read 'per water body'.

**Decision**

401. Add to the list of permitted activities in Rule 2.2 the following:

*x. Take and use of water for the purposes of dust suppression on gravel roads up to 20$m^3$ per water body per day.*

*Standard 1 – The take must not occur on more than 90 days within any 12 month period.*

*Standard 2 – The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland.*

*Standard 3 – "Dust suppression on gravel roads must be undertaken by, or on behalf of the Marlborough District Council or the road controlling authority.*

## Permitted activity status for firefighting training purposes – Rule 2.2.8

### 2.2.8. Take and use of water for fire-fighting purposes.

402. FENZ and NZDF in respect of Woodbourne Airbase sought permitted activity status to take and use water not only for emergency firefighting but also for training purposes.[19]

403. The Section 42A Report accepted the need for the emergency firefighting purpose and also in the end for training purposes, but its recommendation was to name only the New Zealand fire Service for that purpose.

[18] (967.9 and .10)
[19] FENZ (993.18) and NZDF, further submission on 993.18

404. The Panel accepts other bodies such as NZDF at Woodbourne have fire services which need to train. It has decided for that reason to expand the description of those entitled to use water for firefighting training purposes.

**Decision**

405. Amend Rule 2.2.8 by adding as follows:

*2.2.8 Take and use of water for fire-fighting purposes* *and firefighting training (when undertaken by Fire and Emergency New Zealand, New Zealand Defence Force, or any other nationally recognised agency authorised to undertake firefighting activities.)*

### Take & Use for Temporary Water Treatment Units – Addition to Rules 2.2 & 2.3

406. The NZDF raised in its submission the need for it to take and use water on exercises or emergencies for water treatment purposes using its portable treatment units.

407. The Section 42A Report recommended such a provision in the final reply to evidence as follows:

> *Rule – "The take, use and discharge to land of surface water for the reasonable use of water treatment units."*
>
> *Standard 1 – "The instantaneous take rate must not exceed 5% of the river flow at the point of take at any time."*
>
> *Standard 2 – "The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland."*
>
> *Standard 3 – "The take, use and discharge must be conducted by the New Zealand Defence Force."*
>
> *Standard 4 – "The take must not occur for more than five consecutive days."*

408. The Panel agrees with the recommendation save for the deletion of the word 'reasonable' from the rule and standard. That word is inappropriate for a rule or standard as it contains an unquantifiable discretion and provides no certainty.

409. The Section 42A Report had recommended as a new Standard 1 a limitation that the instantaneous take rate must not exceed 5% of the river flow at the point of take at any time. This is a common standard utilised in the Plan for other activities where it is not possible to impose fixed quantity limits by way of control. Whilst in relation to dust suppression this standard was not imposed because of that difficulty. It is not feasible to impose a quantity limit on fire fighting activities and for that reason the general form of standard recommended is accepted.

**Decision**

410. Insert a new rule under Rule 2.2 as follows:

*The take, use and discharge to land of surface water for the use of water treatment units*

411. Amend the standards in Standard 2.3 by inserting new standards as follows:

*2.3.x.1 The instantaneous take rate must not exceed 5% of the river flow at the point of take at any time.*

*2.3.x.2 The take must not be from a Water Resource Unit with a Natural State water quality classification, or a Significant Wetland.*

*2.3.x.3 The take, use and discharge must be conducted by the New Zealand Defence Force.*

*2.3.x.4 The take must not occur for more than five consecutive days.*

## Redundant rules – Rule 2.2.7 & Standard 2.3.7

**2.2.7. Take and use of water from the Wairau Aquifer Freshwater Management Unit up to 15m$_3$ per day for any purpose until 9 June 2017.**

**2.3.7. Take and use of water from the Wairau Aquifer Freshwater Management Unit up to 15m$_3$ per day or any purpose until 9 June 2017.**

**2.3.7.1. The take and use of water must have been a lawfully established permitted activity prior to 9 June 2016.**

412. Rule 2.2.7 and is related Standard 2.3.7 and 2.3.7.1 were in the notified version of the Plan to avoid the immediate effects of a rule affecting water for a year until 9 June 2017 to allow resource users time to ensure they had made any necessary applications to continue existing takes at sustainable rates.

413. As the Section 42A Report pointed out once that 'window' of opportunity had expired the rule and standards became redundant. The Panel agrees and that being the case no point is served by retaining those provisions. However, for reasons that were not clear the report did not recommend their deletion, which the Panel sees as being common sense.

**Decision**

414. Delete Rule 2.2.7 and Standard 2.37 and consequentially Standard 2.3.7.1.

## Prohibited Activity Rule 2.6.4

415. This rule provides for prohibited activity status in respect of a large number of water bodies with the introductory wording as to the prohibited activities and the and concluding words as to exemptions being as follows:

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

*(a)…(a list of water bodies follows)*

*This rule does not apply to a take, use, damming or diversion of water lawfully established prior to 9 June 2016, including the take and use of water for an individual's reasonable domestic needs and the take and use of water for the reasonable drinking water needs of an individual's animals.*

416. The submission of Fire and Emergency New Zealand (FENZ) sought an exemption in respect of firefighting activities to be added to the drinking water needs.[20]

417. The Section 42A Report recommended that as s 14(3)(c) RMA only provided for the firefighting exemption water taken or used for emergency or training purposes that the Plan exemption should not be allowed for damming or diversions for those purposes.

418. The Panel took the view that firefighting may well require urgent steps to dam or divert water in a water short area like Marlborough to provide a water source to fight a fire, e.g. such as a temporary pond for helicopters to be able to use monsoon buckets, and that the prohibited activity rule should not apply to those activities either.

419. There is no specific permitted activity rule enabling such temporary damming or diversions specifically for fire-fighting purposes, whereas there is such a specific rule for permitted activity for the take and use for fire fighting in Rule 2.2.8 (which reflects the statutory provision in s 14(3)(e) RMA, the activities would be emergency works for which subsequent consent could be sought under 330A RMA, if needed. The Panel was of the view that the exemption from prohibited activity status would remove uncertainty as to the legal ability to carry out such emergency works or to use s 330A later.

**Decision**

420. Add to the exemption wording at the end of Rule 2.6.4:

*This rule does not apply to a take, use, damming or diversion of water lawfully established prior to 9 June 2016, including the take and use of water for an individual's reasonable domestic needs, ~~and~~ the take and use of water for the reasonable drinking water needs of an individual's animals, and the take, use, damming or diversion of water for firefighting purposes.*

[20] (993.19)

## Rule 2.6.4 (b) - Branch River

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

**(a) Acheron River;**

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

421. NZTA's submission sought an exemption to enable it to carry out works downstream of the weir for the offtake of water into the Argyle canal for the power scheme to enable the maintenance of the SH 63 bridge and its support structures.[21]

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

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

**Decision**

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

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

*(a) Acheron River;*

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

## Clarence River reference in Rule 2.6.5 and elsewhere in the PMEP

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

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

**(b) Clarence River;**

**(c) ….**

425. Ngai Tahu sought in their submission that this reference to the 'Clarence' be amended to refer to the 'Waiau-toa/Clarence River' as that name change has occurred officially.[22]

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

[21] (1002.19)
[22] (1189.115)

**Decision**

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

## Dam wall height standard request – Standards 3.3.19 & 4.3.18

428. The Davidson Group Limited submission on this issue sought that additional safety requirements should be included in Standard 3.3.19 – in particular that a Standard from the Wairau Awatere Resource Management Plan (WARMP) should be carried over into the PMEP controlling dam wall height at 4m as a standard. The point made in the submission was that a small dam on a big highly-ephemeral catchment was not protected in terms of height of dam wall as a permitted activity.[23]

429. The Addendum Report did not express any particular view pointing out that if the submission was addressing only dams in ephemeral rivers then they were not a permitted activity as Rule 3.1.19 only permitted off-river dams. At the hearing Mr Ross Davis for the submitter made it clear the concern was generic and not related solely to dams in ephemeral valleys. In the Reply to evidence on the Addendum report issues the Section 42A comment was simply that the report writers did not have the expertise to provide an expert response.

430. The Panel accepted the evidence of Mr Davis as an experienced engineer with long experience in Marlborough of dam construction that this issue of dam height should be controlled as it was in the WARMP.

**Decision**

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

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

## Ōpaoa River monitoring site location – Appendix 6 Schedule 3

432. The monitoring site for flow levels in the notified PMEP was expressed in the first column as being in respect of the 'Ōpaoa (below O'Dwyers Road). The monitoring site location was expressed simply as 'Hutcheson Street' – and the minimum flow was specified as being '1.500 $m^3$/s adjacent Sec 1 SO 417530'.

433. MDC in a submission sought there was more precision by seeking to change the descriptor of the FMU involved in the Ōpaoa to reflect the river flow being monitored as being from Mills and Ford Road to the confluence of the Ōpaoa and Taylor rivers.[24]

[23] (172.5)
[24] (91.258)

434. The Section 42A Report in its recommendation inaccurately quoted the notified version for the Ōpaoa stipulating instead a minimum flow of ‘0.500 m3/s’ but at a different monitoring site ‘below the confluence of the Ōpaoa and Taylor rivers’. Some other changes were also recommended which did not make a lot of sense to the Panel.

435. At the hearing the Section 42A Report writers agreed the matter needed clarification and the Reply to Evidence was issued with changes detailed. Unfortunately, however, Murphy’s Law applied and some new errors crept into the final recommendations. Those final recommendations, though, did still convey sufficiently the basic intent of the recommendations, enabling the Panel to make a final decision clarifying the issue.

**Decision**

436. The relevant columns in Appendix 6 Schedule 3 as it relates to the Ōpaoa are reworded as follows:

| *Freshwater Management Unit (FMU) ** | *Class* | *Minimum Flow or Level (Management Purpose)* | *Monitoring Site or Method *** | *Management Flow or Level *** (Management Method)* |
|---|---|---|---|---|
| *Ōpaoa (below Mills and Ford Road to the confluence of the Ōpaoa and Taylor Rivers)* | *n/a* | *Minimum of 0.500$m^3$/s at Ōpaoa River immediately above the confluence of the Ōpaoa and Taylor Rivers* | *Hutcheson Street* | *Fully restricted below 1.000$m^3$/s* |
| *Ōpaoa (below ~~O’Dwyers Road~~ the confluence of the Ōpaoa and Taylor Rivers)* | *~~A~~ n/a* | *Minimum of 1.500$m^3$/s adjacent to Section 1 SO 417530* | *Hutcheson Street* | *Fully restricted below 1.000$m^3$/s* |

**Maintenance of sustainability of all water bodies – 5.AER.3**

| **Anticipated environmental result** | **Monitoring effectiveness** |
|---|---|
| 5.AER.3<br>Maintenance of the significant values of outstanding water bodies. | Reassessment of waterbody values at the time of the next review of the MEP. |

437. Friends of Nelson Haven submitted that this AER as worded fails to ensure that a recognised environmental impact of the Plan was to ensure the survival of all water bodies not just significant ones.[25]

438. The report writer agreed with that submission on that point and recommended an amendment to both columns as follows:

*5.AER.3*

*Maintenance of the significant values of ~~outstanding waterbodies~~ wetlands.*

439. And for the monitoring effectiveness method second column:

*Reassessment of ~~waterbody~~ Significant Wetland values at the time of the next review of the PMEP.*

440. The Panel agreed with the general thrust of the Friends' submission but did not accept the recommendation to change the AER from a consideration of water bodies to a consideration of wetlands.

**Decision**

441. Amend the first column in 5.AER.3 as follows and retain the second column as notified.

| *5.AER.3*<br><br>*Maintenance of the significant values of ~~outstanding~~ waterbodies.* | *Reassessment of waterbody values at the time of the next review of the MEP.* |
|---|---|

[25] (716.54)

# Proposed Marlborough Environment Plan

# Topic 5: Landscape

**Hearing dates:** 26 – 28 February and 1 March 2018

**S42A Report Writer:** James Bentley and Maurice Dale

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| BML | Boffa Miskell Limited |
| CMA | Coastal Marine Area |
| HALF | High Amenity Landscape and Feature |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| MHWS | Mean High Water Spring mark |
| MPI | Ministry for Primary Industries |
| MSRMP | Marlborough Sounds Resource Management Plan |
| NPSPF | National Policy Statement for Plantation Forestry |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| ONF | Outstanding Natural Feature |
| ONL | Outstanding Natural Landscape |
| ONFL | Outstanding Natural Feature and Landscape |
| RMA | Resource Management Act 1991 |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| EDS | Environmental Defence Society Incorporated |
| DOC | Department of Conservation |
| KCSRA | Kenepuru and Central Sounds Residents' Association |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| Fish and Game | Nelson Marlborough Fish and Game |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| MFA | Marine Farming Association Incorporated |
| MFIA | Marlborough Forest Industry Association Incorporated |
| PMNZ | Port Marlborough New Zealand Limited |
| QCSRA | Queen Charlotte Sound Residents Association |
| NZTA | New Zealand Transport Agency |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

## Landscape

At the hearing, the submissions relating to Landscape and Natural Character were addressed as one topic, Topic 5, with two report writers providing a S42A Report on each (one on mapping and one on provisions). As part of the Panel's deliberations, they determined that the topics would be more effectively considered separately. This manner of consideration has resulted in a decision document being produced for each, one on Landscape and the other Natural Character.

For ease of reference, the S42A Reports have been distinguished in this Landscape decision by using the following:

| Document Name | Referred to |
|---|---|
| Report on submissions and further submissions Topic 5: Landscapes – Issues, Objectives, Policies, and Methods, Report Prepared by Maurice Dale | Section 42A Report (Dale) |
| Report on submissions and further submissions Topic 5: Landscape – Technical Mapping, Values and Overlays, Report prepared by James Bentley | Section 42A Report (Bentley) |
| Section 42A report – Reply to Evidence – Topic 5: Natural Character & Landscape – Technical Mapping, Values and Overlays, Prepared by James Bentley | Reply to Evidence (Bentley) |
| Section 42A report – Reply to Evidence – Topic 5: Natural Character and Landscape – Issues, Objectives, Policies, and Methods, Prepared by Maurice Dale | Reply to Evidence (Dale) |
| Report on submissions and further submissions - miscellaneous topics, Prepared by a compilation of report writers | Section 42A Report (Misc) |
| Landscape Mapping Recommendations | Mapping Recommendations |

### A background definition of 'landscape'

*An area, as perceived by people, the character of which is the cumulative result of the action and interaction of natural and/or cultural factors*.[1]

*The perception of the landscape is not generally formed by a single glance but a progression of views*.[2]

### Introduction to Chapter 7 Landscape

1. The Introduction to Chapter 7 (Volume 1) introduces the concept of landscapes and sets out the statutory context directing their management in the PMEP. The second paragraph identifies that for the purposes of this chapter, landscapes that are identified for s 6(b) or s

[1] FNHTB (716.70), Michael Steven Evidence, citing that of the International Federation of Landscape Architects (IFLA) Asia-Pacific Region Landscape Character, paragraph 186. Marlborough Aquaculture Ltd, Thomas Carter Evidence (959.1), citing European Landscape Committee, page 11.
[2] MDC, S42A Report (Bentley), page 11 (second paragraph), accepted by Michael Steven, Evidence, paragraph 129.

7(c) RMA reasons are referred to as 'significant' landscapes. The Introduction also describes the five broad landscape areas in Marlborough: the Richmond Range, the Wairau and Awatere River valleys; the mountainous interior; the Marlborough Sounds; and the East Coast.

**Submissions**

2. The submissions in relation to the Introduction seek: an acknowledgement of the lack of knowledge regarding the Marlborough Sounds landscapes,[3] greater clarity round the relationship between the term 'significant landscapes', outstanding natural landscapes (ONL), outstanding natural features (ONF) and amenity landscapes, and how these interact in the planning framework;[4] amendment to the introduction to the explanation of the relationship of how the natural character values/criteria contribute to the identification of outstanding natural character and outstanding natural features and how the provisions of the plan address any overlap in terms of identifying specific areas or features;[5] references to Tasman Bay and Cook Strait to include as two additional landscape areas in the Marlborough Sounds;[6] to amend the introduction to accept a general reference to the cultural values that landscapes hold for tangata whenua iwi as appropriate, given that these values are an associative value of landscape assessment and classification.[7]

**Section 42A Report**

3. The Section 42A Report (Dale) concludes the term 'significant landscapes' is identified in s 6(b), s 7(c) RMA but the phrase could be made clearer including references to such landscapes as being other outstanding natural features or landscapes (ONFLs) or high amenity landscapes identified in the PMEP. He recommends making the appropriate changes in the Introduction, ensuring that the status of those landscapes/features occurs in response to the submission of EDS.[8]

4. In terms of the relationship between natural character and landscape overlays identified in the PMEP, the report writer identifies this is based on the degree of naturalness that is present in an area, based on natural elements, patterns and processes that exist. The landscape overlays are based on a broader range of attributes and include not only biophysical matters but sensory and associative attributes. It identifies that the mapping of high amenity

[3] QCSRA (504.22)
[4] EDS (698.46)
[5] Forest and Bird (715.142).
[6] FNHTB (716.70).
[7] Ngāi Tahu, Tanya Stevens Evidence, paragraph 37.
[8] S42A Report (Dale), pages 15-17

landscapes are those landscapes that fall below the threshold of being classified as an outstanding natural feature (ONF) or outstanding natural landscape (ONL) that is outstanding.

5. The Section 42A Report (Dale) states high amenity areas hold high amenity environmental characteristics and values. These landscapes are referred to generally as 'significant' landscapes. These aspects could also be made clearer for plan users with changes made accordingly in response to the submission of Forest and Bird.[9]

6. The request of QCSRA to include a reference to a lack of knowledge about the attributes that contribute to landscape values in Marlborough is recommended to be rejected on the grounds that it provides an unnecessary specificity within an introduction.

7. Further, reference to the relevant extents of Cook Strait and Tasman Bay were captured within the landscape character area in the Marlborough Landscape Study 2015. It is therefore not necessary to include them as 'broad landscape areas' in the Introduction, as sought by FNHTB.

8. The Section 42A Report (Dale) initially did not accept specific references to the importance of specific landscapes to Ngāi Tahu in Marlborough. They were not recommended unless similar references are also adopted for Marlborough's tangata whenua iwi.

**Consideration**

9. Features are distinct from landscapes as discrete physical elements defined largely by their geomorphological form.[10] The current text in the first line to the Introduction does not recognise that landscapes must be 'natural' landscapes – but 'natural features' are. It is necessary to amend the term 'outstanding natural features and/or landscapes' to 'outstanding natural features and/or outstanding natural landscapes' throughout Chapter 7, Volume 1. The exact wording of the phrase 'outstanding natural landscapes' does not appear in s 6(b) RMA but is implied by the use of the conjunctive 'and' in the phrase 'outstanding natural features and landscapes'. The NZCPS in Policy 15(a) does use the full phrase outstanding natural features and outstanding natural landscapes. For that reason this Plan uses that full phrase.

10. A landscape approach has three stages in assessment:

- identification of the landscape/s or feature

[9] EDS (698.46), Forest and Bird (718.142).
[10] FNHTB, Michael Steven Evidence, paragraph 121 at 121.1.

- determination of whether a landscape or feature can be regarded as a natural landscape or feature, and if so, how natural (referring to a 7-range scale identified by the landscape architects;
- assessment of whether any landscape or feature as a natural landscape or feature is also outstanding.

11. As stated by Dr Steven:

> *Landscapes as they appear to be defined in the BML landscape study do not appear to be defined according to (this) real world perceptual approach. This has significant implications for the manner in which the spatial extent of ONLs are defined.*[11]

12. The Panel queried therefore whether the recommendation in the Section 42A Report (Dale) to attribute the term 'significant landscapes' used in the last line of the second paragraph of the Introduction and elsewhere in Chapter 7, to combine s 6(b) (outstanding) and s 7(c) (amenity values), is legally correct.

13. The Panel concluded the recommendation was incorrect. The word 'significant' appears in only two contexts in s 6 RMA: under s 6(c) relating to the protection of areas of 'significant' indigenous habitats of indigenous protection, and in s 6(h) management of 'significant' risks from natural hazards. NZCPS Policy 15(b) references 'significant adverse effects'.

14. This use of the term 'significant landscape' in this context causes confusion; use of the word in association with landscape is found in 14 contexts throughout Chapter 7 and should be deleted. Whenever it appears it should be changed to 'outstanding natural features', 'outstanding natural landscapes' and 'high amenity value areas' as identified in Objective 7.1.

15. Further, use of the term 'visual amenity landscape', also in the second paragraph to the Introduction, is inconsistent with s 7(c) RMA, NZCPS Policy 15(2) or its definition in s 2 RMA. The definition of 'amenity' in s 2 RMA Interpretation does not mention 'visual' and refers to a different variety of amenity, relating to:

> **… those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes**

16. Section 7(c) RMA does not refer to 'visual amenity'. It is non specific, in that it refers solely to '**maintenance and enhancement of amenity values**'. NZCPS Policy 15(2)(c) refers to a list of

[11] FNHTB, Dr Michael Steven, Evidence, paragraphs 131-132.

values, none of them visual, for example, 'aesthetic' values (iv), 'transient' (vi), 'values shared and recognised' (vii), 'cultural' and 'spiritual' (viii), 'wild or scenic' values (x).

17. MFA and AQNZ provided a definition of 'values' which is helpful here. A 'value' is 'the significance, desirability (or [the] utility of something)'.[12]

18. Whenever the phrase 'visual amenity landscape' is used, it should be replaced with the term 'landscape with high amenity value'; and 'visual amenity' replaced with 'amenity value'. And in the second to last line of the first paragraph to the Introduction, replace the word 'visually' should be replaced with the word 'perceptually'. The word 'perceptually' places the community in the same context as landscape, where it belongs, as it derives from the definition of landscape *as perceived by people.*

19. As a consequential effect from these findings, the last sentence of paragraph 2 should be deleted.

20. A further amendment to the Introduction is also required in the first paragraph to clarify how identification of features as distinct from landscapes will occur, and this should also be provided in paragraph 1 of the text making that distinction.

21. Ngāi Tahu sought that tangata whenua iwi values be specifically recognised in the introduction and provided a specific amendment which should be inserted as the second paragraph.[13] Such values in the context of Marlborough have their own distinction.

**Decision**

22. For the reasons set out above, the following are amended in both the introduction to Chapter 7 and throughout the Plan:

- the phrase 'outstanding natural features and landscapes' is replaced with the term 'outstanding natural features and outstanding natural landscapes';
- 'visual amenity landscape' is replaced with the term 'landscape with high amenity value';
- 'visual amenity' is replaced with the term 'amenity value'.

23. For the reasons identified, the Introduction to Chapter 7 is amended as follows:

[12] MFA, Counsel Submissions, paragraphs 97-98 citing B Garner *Black's Law Dictionary* (9th Ed), Thomson Reuters, 2009.
[13] S42A Report (Dale), Reply to Evidence, page 14.

*Our landscapes provide us with a Marlborough identity and are an integral part of the Marlborough environment. Landscapes are distinct spatial areas influenced by location-specific features, patterns and processes within the environment. These features, patterns and processes can be natural or human-induced (e.g. land use change), and incorporate the biophysical aspects of natural character which are separately addressed within Chapter 6 of this Plan. ~~Natural features within the landscape can also help to define a landscape.~~ The resulting landscape characteristics are expressed ~~visually~~ perceptually, ~~but~~ and can be valued for their ecological significance or for intrinsic reasons (e.g. by providing a sense of place).*

*The Resource Management Act 1991 (RMA) identifies the protection of outstanding natural features and outstanding natural landscapes from inappropriate subdivision, use and development as a matter of national importance (Section 6(b)). Those landscapes that do not meet the threshold of being considered 'outstanding' may still make a contribution to the ~~visual appreciation or~~ amenity values of Marlborough. The RMA seeks to maintain and enhance these landscapes with ~~visual~~ amenity value (Section 7(c)). ~~For the purposes of this chapter, landscapes that are identified for Section 6(b) or 7(c) reasons are referred to as "significant landscapes."~~*

*Landscapes will often have specific values for Marlborough's tangata whenua iwi. Many landscapes are focused on water bodies, the coast, or mountain ranges which incorporate a range of historic and contemporary values for Marlborough's tangata whenua iwi. These values include awa, maunga, trails, māhinga kai, and sites of traditional settlement.*

## Issue 7A

**Resource use and changes in resource use can result in the modification or loss of values that contribute to outstanding natural features and landscapes and to landscapes with high amenity value.**

24. Submissions on Issue 7A include: amend the explanation by replacing references to 'significant landscapes' with '*outstanding landscapes and landscapes with high amenity*';[14] amend the explanation to the issue to include reference to NZCPS 2010.[15]

### Section 42A Report (Dale)

25. The report writer, referring back to the notified Introduction, repeats the preference for the word 'significant' to make the importance of ONLF and High Amenity Landscapes and Features (HALF) clear for plan users. No change is recommended.

[14] Forest and Bird (715.143).
[15] FNHTB (716.71).

26. FNHTB's submission is to include the reference to NZCPS 2010 in the text because this particular document provides further direction and guidance on the protection of landscapes in the coastal environment.[16]

**Consideration**

27. The Panel does not agree that the landscapes identified in s 6(b) and s 7(c) RMA should be jointly referred to as 'significant landscapes', they should refer instead to 'outstanding natural features, outstanding natural landscapes and high amenity areas' as already amended in the Introduction and set out above. Forest and Bird's submission is preferred.

28. In view of the specific reference requirements of landscape issues identified in NZCPS Policy 15 Natural features and natural landscapes, it is important to reference the document in the decision, and this submission too is accepted.

**Decision**

29. Issue 7A is amended to read:

*Resource use and changes in resource use can result in the modification or loss of values that contribute to outstanding natural features<u>, outstanding natural </u>~~and~~ landscapes and ~~to~~ landscapes with high amenity value.*

30. The explanatory statement to Issue 7A is amended as follows:

*Although our landscape is dynamic and will continue to change in response to future resource use, there are some landscapes that the community values above others. The importance of these ~~significant~~ landscapes and the contribution they make to community wellbeing is recognised by the RMA <u>and NZCPS</u>. The value placed on our ~~significant~~ landscapes means that they are often more sensitive to change.*

31. The use of the word 'significant' is also deleted three times in the last paragraph of Issue 7A which is amended to state as follows:

*Issues can arise where the effects of resource use, especially the subdivision, use and development of land result in the loss or degradation of the values fundamental or integral to a landscape being considered <u>important</u> ~~significant~~. As the community gains economic wellbeing from the productive use of natural and physical resources, it can be challenging to balance this against the need to retain the values that contribute to our ~~significant~~ landscapes. Judgements are therefore required to determine appropriate development within our ~~significant~~ landscapes.*

[16] FNHTB (716.71).

32. As a consequential change, the term 'significant landscapes' is replaced by the term 'outstanding natural features and/or outstanding natural landscapes, and landscapes with high amenity value'.

### Policy 7.1.1

**When assessing the values of Marlborough's landscapes, the following criteria will be used:**

**(a) biophysical values, including geological and ecological elements;**

**(b) sensory values, including aesthetics, natural beauty and visual perception; and**

**(c) associative values, including cultural and historic values, and landscapes that are widely known and valued by the immediate and wider community for their contribution to a sense of place.**

33. This policy is based on a Boffa Miskell landscape model entitled 'The Relationship Between Landscape and Natural Character', prepared since the Section 42A Reports (Bentley) were completed.[17]

**Submissions**

34. A number of submissions support the retention of this policy. Others seek: deletion of the policy or amend it to explain how the Council will apply values;[18] amendment to the policy by adding a reference to '*a landscape must meet all or most criteria to be classified as an ONL or ONF and the criteria must be used to determine the spatial extent of the landscape*';[19] reconsideration of associative values to give a broader definition and more weight to cultural values in the overall determination of site/landscape;[20] include the words '*identify and assess the characteristics and values of Marlborough's landscapes using (inter alia) further criteria such as topographical, hydrological and expressions of natural and formative processes*';[21] include the words '*when assessing the characteristics of Marlborough's landscapes and features the following values will be considered'*;[22] amend the policy to include '*landscapes and features'*;[23] amend clause (c) to read '*associative values to include cultural and heritage values*';[24] include those factors that are widely known and valued by the immediate and wider community;[25] amend clause (c) to include *economic wellbeing*;[26] amend the policy to include

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[17] S42A Report (Bentley), page 6.
[18] D C Hemphill (648.26).
[19] Federated Farmers (425.97).
[20] Te Ātiawa (1186.52).
[21] EDS (698.47).
[22] Forest and Bird (715.145).
[23] Trustpower (1201.66).
[24] Heritage NZ (768.14).
[25] Ngāti Kuia (501.26).
[26] Sanford (1040.25).

the presence of water, seas, lakes, rivers and streams;[27] amend the policy to include reference to tangata whenua iwi values.[28]

**Section 42A Report (Dale)**

35. The Section 42A Report (Dale) identifies Policy 7.1.1 is intended to set out the values to be used in assessing Marlborough's landscapes to assist identification of ONF, ONL and high amenity landscapes to implement Objective 7.1. These values are to align with those used in the Marlborough Landscape Study 2015 ('the Landscape Study') to echo values consistent with NZCPS Policy 15(c), and landscape best practice and case law. Listed attributes capture topographical, hydrological and natural and formative processes together with tangata whenua iwi values.[29]

36. The report writer acknowledges that the listed attributes in the PMEP do not fully align with the broad list in the Landscape Study and some changes are recommended in response to submissions by EDS, Ngāi Tahu and Heritage NZ as well as FNHTB.

37. In response to Sanford's request to include reference to 'economic wellbeing', the report writer observes this is not an associative cultural or social attribute of landscapes and is not appropriate to include.

38. The report writer concludes it is also difficult to assess how landscape values are to be applied due to their complexity and the continuing evolution of landscape practice. The methodology applied in this case is set out in the Landscape Study identified.[30]

**Consideration**

39. There is merit in what the Section 42A Report (Dale) concludes above on the subject of landscape. The evidence before the Panel illustrates just how difficult the subject is. Some issues may be resolved; others will need the input of the wider architecture community outside this forum. The amendments recommended for Policy 7.1.1 are set out in the Section 42A Report (Dale) and the Reply to Evidence (Dale)[31] some of which are accepted and some of which are not as we now discuss.

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[27] FNHTB (716.73).
[28] Ngāi Tahu (1189.70).
[29] S42A Report (Dale), page 22, citing listed attributes in the Landscape Study (page 15).
[30] S42A Report (Dale), page 22.
[31] S42A Report (Dale) Reply to Evidence, page 15 and others contained within the Original Report.

**Sensory values**

40. The Section 42A Report (Bentley) identifies that the application of 'sensory values' used in the Landscape Study is first, consistent with NZILA best practice, and secondly, draws from case law which had previously considered how sensory and aesthetic values may be evaluated.[32]

41. The NZILA Best Practice Note 10.1 (not a 'guide') does not refer to a definition of 'sensory values' amongst the other values it provides in its language of assessment.[33] Instead it refers to a notion of 'sensory qualities' without qualification under its Description heading of the three broad categories of landscape attributes for the assessment stages (biophysical, sensory, associative).[34] It repeats 'sensory qualities' in its Language of Assessment – using the word 'attributes' – which is a word used in Chapter 6 to replace the word 'values'.

42. The NZILA Best Practice Note then goes on to describe 'sensory qualities' for assessment stages as 'landscape phenomena as directly perceived and experienced by humans such as the view of a scenic landscape or the distinctive smell and sound of the seashore'.

43. The Panel is aware that the NZCPS (2010) took effect from 3 December 2010. The date of the version of the Best Practice Note is 2 November 2010, where the term 'sensory qualities' was first identified and subsequently carried through into the Marlborough Landscape Study 2015.

44. The phrase 'sensory values' is not part of NZCPS Policy 15 and appears to have been conflated from the term in NZCPS Policy 13 Preservation of natural character (Policy 13(2)) where the NZCPS specifically states that natural character is not the same as natural features, landscapes or amenity values. A definition of 'natural character' is stated in the NZCPS as follows:

> *'Natural character' is the term used to describe the natural elements of all coastal environments. The degree or level of natural character within an environment depends on:*
>
> 1. *the extent to which the natural elements, patterns and processes occur;*
> 2. *the nature and extent of modification to the ecosystems and landscape/seascape.'*

45. In a footnote to this definition of natural character, elements, patterns and processes are interpreted as referring to: biophysical, ecological, geological and geomorphological aspects;

[32] S42A Report (Bentley) page 14, citing 'Including Decision C180/99 Wakatipu Environment Society v Queenstown Lakes District Council'

[33] New Zealand Institute of Landscape Architects, Best Practice Note: Landscape Assessment and Sustainable Management 10.1 (November 2010), page 6.

[34] S42A Report (Dale), page 20.

natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks; and the natural movement of water and sediment.[35]

46. This definition is referred to by Dr Steven who in turn referenced the Boffa Miskell natural character assessment and definition of natural character based upon a natural character study cited in the Section 42A Report (Bentley).[36]

47. The phrase 'sounds and smell of the sea' are not identified in Policy 7.1.1(b).

48. The word 'may' in Policy 13(2) identifies that it is optional to include such matters as listed in NZCPS Policy 13(2)(a)-(h) Preservation of natural character, includes (h) experiential attributes such as the sounds and the smell of the sea described by Dr Steven as 'intangible', 'ephemeral', and collateral to the main attributes elsewhere in the policy. The words 'sounds and smell of the sea' thus have no tangible, physical presence but are still able to be experienced. NZCPS Policy 13 is essentially descriptive.

49. No party to the notified plan (such as EDS) sought 'sensory values'/'sensory qualities' in its evidence of landscape values, and it should be deleted from Policy 7.1.1(b) and from Appendix 1 PMEP.[37] In the PMEP Appendix 1, the word 'perceptual' is one of three categories for assessing landscape values, and that should be retained as notified, for landscape is essentially analysed as an evaluation process.

50. Multiple values contribute to landscape. Primarily, landscape is the expression of natural processes and human activity in and on the land. However, it is also a function of how people perceive the results of this interaction. Those values considered relevant in a Marlborough context are identified in (a) to (c) of the policy. Landscapes may have one or more of these values. The criteria are derived from national and international landscape assessment criteria <u>as well as the NZCPS</u>. More detail on what constitutes the values in (a) to (c) and how the values are assessed is included within the report "Marlborough Landscape Study August 2015" undertaken by expert landscape consultants. The Council will use these values as the basis of any assessment of landscape.

51. The manner in which the submission was lodged by FNHTB led to some difficulties to the Panel in identifying the relief sought on this issue. The submission essentially contained a copy of the evidence we later heard directly from Dr Steven. In that evidence he identified the sensory aspects of smell and sound should have been included only in the Natural Character

[35] S42A Report (Bentley), page 7, footnote 5.
[36] FNHTB, Michael Steven Evidence, paragraphs 80-84.
[37] MFA, Counsel Submissions, paragraph 18.

chapter of the Plan and not the landscape chapter. That could only be achieved by rewording the word sensory to capture the perception aspects that he emphasised. We have endeavoured to ensure that a purposive approach is taken to that request for relief in respect of Policy 7.1.1(b) in reaching the decision described above.

52. The Panel considers other amendments should also be made to Policy 7.1.1:

- The matters (a)-(c) are not 'criteria' but 'factors' – these are circumstances leading to results and the word 'factors' also has its precedent in its use in the definition of 'landscape' above.[38]
- Delete 'visual perception' from Policy 7.1.1(b) and insert 'transient values' as sought by EDS.[39]
- Reference to 'the values of Marlborough's tangata whenua iwi' before the word 'culture' in (c) as these values are relevant to landscape evaluation.[40]
- Replace the text in (c) 'historic values' with 'heritage values'. This term is broader than 'historic' and encompasses all the issues that go to make up heritage values. [41]

53. In relation to Appendix 1 the consequence of the above discussion is that the term 'perceptual values' is retained as notified. In the report writer's memorandum in response to the Panel's minute 15, Appendix 1: Regrouped Landscape Values a number of suggestions were made by the report writer which the Panel needs to record it does not accept. Those recommendations are accepted other than the deletion of the word 'sensory' in all categories which the Panel has decided is necessary, together with the following deletions from those recommendations:

   *i.* *Deletion of the inclusion of the sentence under the heading Perceptual (page 7):*

   *The Marlborough Sounds landscape stimulates all senses. Spatial, auditory, visual and other sensory experiences are all stimulated by the close relationship between the convoluted network of waterways and interlocking peninsulas and islands, which is unique in New Zealand. The seasons and differing weather patterns contribute to the dynamic mix of sensory elements.*

   *ii.* *Deletion of the word 'sensory' under the heading 'Perceptual' (page 10) and also in the text replace 'High ~~sensory~~ values' with 'High <u>perceptual</u> [amenity] values'.*

[38] EDS (698.47) cited in S42A Report (Dale), page 22.
[39] MFA and AQNZ, Counsel Submissions, paragraph 18.
[40] S42A Report (Dale), pages 20-22.
[41] Section 42A Report, pages 20-22 (Heritage NZ).

iii. *Deletion of the word 'sensory' under the heading 'Perceptual' on pages 12 and 15 (also in the text and replace with 'Perceptual (pages 17 and 20); also in the text (twice) replace 'sensory' with 'Perceptual' (pages 22, 24, 27, 30,32, 33, 38, 41, 43,45,47,49,51); and also the word 'experiential' in the text (pages 53, 55, 57); and also the word 'experiential' and in the evaluation of very high 'sensory' values (page 57).*

54. The decision giving effect to those conclusions follows on a later discussion about nested landscapes

**Associative values**

55. Ngāi Tahu and Te Atiawa both sought that the associated values in 7.1.1(c) be amended and strengthened to identify relevant values of importance to Marlborough's tangata whenua iwi. Those requests were largely accepted by the Panel and the amendments to that part of the policy are set out below.

**Decision**

56. Policy 7.1.1 is amended as follows:

*Policy 7.1.1 – ~~When assessing~~ Identify and assess the values of Marlborough's landscapes and features, using the following ~~criteria~~ factors ~~will be used~~:*

*(a) biophysical values, including geological and ecological elements;*

*(b) ~~sensory~~ perceptual values, including aesthetics, natural beauty and ~~visual perception~~, transient matters; and*

*(c) associative values, including the values of Marlborough's tangata whenua iwi, and other cultural and ~~historic~~ heritage values, and shared and recognised values. ~~and landscapes that are widely known and valued by the immediate and wider community for their contribution to a sense of place.~~*

57. As a consequence of the above amendments, to ensure consistency, all instances of 'sensory' in Chapter 7 and Appendix 1 are replaced with 'perceptual'.

**Policy 7.1.2**

**Define the boundaries of significant landscapes using the following methods:**

**(a) land typing;**

**(b) contour line;**

**(c) contained landscape features;**

**(d) visual catchment; and/or**

**(e) land use.**

58. Several submissions support/retain the policy as notified. Others seek to: delete the policy;[42] amend the policy to delete reference to significant landscapes and only use the visual catchment approach;[43] amend the policy to read 'Define the boundaries of *high amenity value landscapes* using the following methods: … (e) land use *and zoning*;[44] amend the policy to read 'Define the boundaries of *different* landscapes *with different characteristics* using the following methods: …';[45] amend the policy to read 'Define the boundaries of *landscape units* using the following methods: …';[46] amend the policy to reference inclusion of cultural values and landscapes which have not been assessed or included in the assessment criteria of Volume 3 Appendix 1;[47] amend the policy to include reference to 'consultation with tangata whenua iwi'.[48]

**Section 42A Report**

59. The report writer describes that Policy 7.1.2 is intended to set out the methods to be used in defining the boundaries of ONFLs and high amenity landscapes to implement Objective 7.1. The methods listed are intended to align with those used in the mapping of landscapes in the Marlborough Landscape Study 2015. The report writer says that deletion of the policy or changes to the listed methods would therefore result in an inconsistency with the methodology used in the study and the basis on which the ONFLs and high amenity landscapes have been identified.

60. The report writer continues to observe that using property ownership or zoning as a method would also be inappropriate as neither typically has a landscape basis. The identification and assessment of the values, including cultural values, is instead addressed in Policy 7.1.1.

[42] Federated Farmers (425.99), Sanford (1140.19).
[43] MFA (426.67), AQNZ (401.66).
[44] PMNZ (433.23).
[45] Forest and Bird (715.146).
[46] FNHTB (716.74).
[47] Ngāti Kuia (501.27).
[48] Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu (1189.71).

**Consideration**

61. Nevertheless, as the report writer has already acknowledged, use of the generic term 'significant' landscapes could create confusion for plan users on the basis that it is unclear as to the scope of landscapes captured by the policy and is inconsistent with the terminology of other policies. This issue was addressed under several headings earlier.

62. Changes submitted by Forest and Bird and FNHTB are recommended to address the issue with the deletion of the word 'significant' in the first line of the policy. Further, they seek amendments to encompass '*outstanding natural features and outstanding landscapes'* and '*landscapes with high amenity value*' and inclusion of a new (f) '*consultation with Marlborough's tangata whenua iwi'*; as consultation with iwi should form part of defining boundaries.

63. In assessing Appendix 1, Minute 15 of the MEP Hearing Panel addressed to the report writer (Bentley) requests that the existing content of the appendix should be restructured according to 'nested landscapes' described in the Reply to Evidence (Bentley)[49] (see nested landscapes map attached as Appendix 1). The same amendment was recommended to be made both to Policy 7.1.2(d) and the explanation.

**Decision**

64. As recommended, the Panel concluded for the reasons given that Policy 7.1.2 is amended as follows:

*Policy 7.1.2 – Define the boundaries of ~~significant~~ outstanding natural features and outstanding natural landscapes, and landscapes of high amenity value*[50] *using the following methods:*

*(a) land typing;*

*(b) contour line;*

*(c) contained landscape features;*

*(d) ~~visual catchment,~~ nested landscapes ~~and/or~~*

*(e) land use; and/or*

*(f) consultation with Marlborough's tangata whenua iwi.*

[49] S42A Report (Bentley), Reply to Evidence, page 15.

[50] Forest and Bird (715.146), FNHTB (716.74).

## Policy 7.1.3

**Assessment of the values in Policy 7.1.1 will determine:**

**(a) whether a landscape is identified as an outstanding natural feature and landscape in terms of Section 6(b) of the Resource Management Act 1991;**

**(b) whether the landscape has high amenity value in terms of Section 7(c) of the Resource Management Act 1991; or**

**(c) where landscape values are not sensitive to change.**

65. Policy 7.1.3 sets out the basis for the identification of ONFLs and high amenity landscapes in the PMEP in response to the values under Policy 7.1.1 to implement Objective 7.1.

66. A number of submissions seek the retention of the policy as notified.[51] Others seek: deletion of 'high amenity landscapes' and deletion of clause (c);[52] incorporation of a reference to mapping and listing of the values of the ONFL which are separately addressed in Policy 7.1.1, these can be listed in Appendix 1 Volume 3[53] and specifically identified in an overlay; delete clause (c) with regard to landscape values not sensitive to change;[54] amend the policy to capture landscapes where only significant adverse effects on their values are required to be managed;[55] add a clause requiring the identification of landscapes consistent with Policy 15 NZCPS;[56] a requirement to identify landscapes of high cultural value in terms of s 6(e) and s 7(a) RMA.[57]

**Section 42A Report (Dale)**

67. The Section 42A Report (Dale) supports the replacement of 'assessment' in the first line of the policy with the words 'identify and assess'. It is acknowledged that for those who seek deletion of (c) as worded, it could be implied that all other landscapes in the PMEP are not sensitive to any form of change when in fact they still may well be, depending on the scale, character and intensity of any subdivision, use and development. Thus, recognising that other landscapes may be sensitive to change aligns with NZCPS Policy 15(b) which requires significant effects on other landscapes to be avoided, and adverse effects on other natural features and natural landscapes in the coastal environment to be avoided, remedied or mitigated.[58]

[51] John Kershaw (95.4), Jane Buckman (96.9, 284.3), Ian Mitchell (364.3), Forest and Bird (466.9), Judy and John Hellstrom (688.61), Omaka Valley Group (1005.4).
[52] Trustpower (1201.67), AQNZ (401.69), MFA (426.91), Sanford (1146.26).
[53] Federated Farmers (425.100).
[54] EDS (698.48).
[55] Friends NHTB (716.75).
[56] Forest and Bird (715.47).
[57] Te Ātiawa (1186.53), S42A Report (Dale), page 26.
[58] S42A Report (Dale), page 26.

68. It is also recommended to amend clause (c) to refer to ‘where landscape values are *less* sensitive to change’ in response to the submissions of AQNZ, MFA, Sanford, Trustpower, EDS and Forest and Bird.

69. With regard to cultural landscapes, this concept has already been introduced by Ngāi Tahu into the Introduction, while the change requested by Forest and Bird requesting a new clause setting out the identification of landscapes consistent with Policy 15 NZCPS would introduce a level of specificity in the policy. On these two matters no change is recommended.

70. Federated Farmers’ submission to remove the reference to high amenity values in (b) is also recommended to be rejected for its identification in the PMEP is in direct response to s 7(c) RMA. The identification of the Marlborough Sounds and the Wither Hills in the PMEP is on the basis that they require specific controls to ensure their high amenity values are maintained. No change is recommended in response to those submissions requesting deletion of references to landscapes of high amenity.

71. In his Reply to Evidence (Dale), the report writer accepts his earlier suggested wording does not achieve appropriate alignment between the Landscape Study assessments and how landscapes identified in that study have been included in the PMEP. Clause (c) is inconsistent with the Landscape Study as the sensitivity to change was only considered in the context of s 7 RMA landscapes. He accepts the wording should be changed as Trustpower’s wording suggests.[59]

**Decision**

72. Policy 7.1.3 is amended for the reasons recommended:

*Policy 7.1.3 – Identify and assess ~~Assessment of~~ the values in Policy 7.1.1 ~~will~~ to determine:*

*(a) whether a landscape is ~~identified as~~ an outstanding natural feature and landscape in terms of Section 6(b) of the Resource Management Act 1991;*

*(b) whether the landscape has a high amenity value in terms of Section 7(c) of the Resource Management Act 1991 and whether those values are sensitive to change~~; or~~*

*~~(c) where landscape values are not less sensitive to change~~.*

*Once an assessment of a landscape has been undertaken based on the values identified in Policy 7.1.1, a determination will be made as to whether the landscape values are significant enough for the landscape to be considered outstanding in the context of Section 6(b) of the*

[59] S42A Report (Dale), Reply to Evidence, page 17.

*RMA. If a landscape is considered to exhibit exceptional or very high biophysical, ~~sensory~~ perceptual and/or associative values, then it will be identified as an outstanding natural landscape. Outstanding natural features can also be included within this assessment.*

*There are also landscapes in Marlborough that, although their values are not as significant as those for an outstanding natural feature or landscape, can still make a significant contribution to the appreciation and quality of our environment. A range of ~~sensory~~ perceptual values can contribute to the amenity of these landscapes, including scenic beauty, coastal character, dramatic or attractive natural features within the landscape and the openness or naturalness of the landscape. Where these ~~sensory~~ perceptual values are collectively considered to be high, the landscape can be categorised as a landscape with high amenity value.*

*Those landscapes that are an outstanding natural feature or an outstanding natural landscape are mapped in the MEP. Landscapes identified as having high amenity values which are more sensitive to change are also mapped in the MEP. The two specific areas considered sensitive to change are the Marlborough Sounds High Amenity Landscape and the Wairau Dry Hills High Amenity Landscape. Mapping makes it clear to resource users where Marlborough's significant landscapes are located. Additionally, the values that make these landscapes significant are described in Appendix 1. These values should be considered when resource consent applications are made and decided upon, including the extent to which they may be affected by a particular use or development.*

*~~Controls will apply to both of these landscapes, as set out in subsequent policy.~~ Landscapes with high amenity values ~~not identified as being~~ less sensitive to change will not be included in the MEP ~~subject to specific management for landscape outcomes~~.*

73. A consequential change to the name of the 'Marlborough Sounds Coastal Landscape' and the Wairau Dry Hills Landscape' to 'Marlborough Sounds High Amenity Landscape' and Wairau Dry Hills High Amenity Landscape', respectively. Note that this decision is also a consequence of the decision on the Chapter 7 Introduction, specifically to replace 'visual amenity landscape' with 'landscape with high amenity value'.

## Policy 7.2.2

**Control activities that have the potential to degrade the amenity values that contribute to the Wairau Dry Hills Landscape by:**

**(a) setting permitted activity standards that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and**

**(b) requiring resource consent for commercial forestry activities.**

74. Several policies under the heading Landscape were deferred to be heard under the ‘Miscellaneous’ hearing topic to address their alignment with the recently released National Environmental Standards for Plantation Forestry (NESPF). Policy 7.2.2 was one of these.

75. The submissions either seek that the policy provide greater enabling of commercial forestry activities, or their prohibition in the Wairau Dry Hills Landscape. The greater enabling of commercial forestry sought by Federated Farmers reflects other aspects of their submissions which seek deletion of high amenity landscapes from the PMEP, and that primary production should be viewed as having a positive contribution to the values and attributes of the Wairau Dry Hills.

76. Other submissions on the policy variously request: amend the policy to read ‘~~Control~~ Enable activities that have the potential to degrade and are consistent with the amenity values that contribute to the Wairau Dry Hills Landscape by: (a) setting permitted activity standards that are consistent with the existing landscape values and uses ~~and that will require greater assessment where proposed activities and structures exceed those standards; and (b) requiring resource consent for commercial forestry activities~~.’[60]; amend the policy to read ‘Control activities that have the potential to degrade the amenity values that contribute to the Wairau Dry Hills Landscape by: (a) setting permitted activity standards that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and (b) ~~requiring resource consent for commercial forestry activities~~ prohibiting new resource consents for commercial forestry.’;[61]

77. Federated Farmers’ submission acknowledges that the NESPF provides that a district plan may make the planting of new commercial forestry in a visual amenity landscape such as the Wairau Dry Hills a permitted activity.

[60] Federated Farmers (425.105).
[61] Judy and John Hellstrom (688.177).

**Section 42A Report**

78. No change was recommended to the topic in the Section 42A Report (Dale), or in the reply to evidence presented at the hearing. Neither were any changes recommended as part of the Section 42A Report and Reply to Evidence on Topic 22 Forestry.

79. The report writer observes that commercial forestry is not allowed but shelter belts are, especially with a preference for indigenous species on ridges, valleys and hills.[62]

80. The Section 42A Report (Dale) also identifies that for the purposes of the NESPF, the Wairau Dry Hills Landscape is a 'visual amenity landscape'. As a result of the alignment process the new rules provide for harvesting and replanting of commercial forestry in the Wairau Dry Hills Landscape as a permitted activity under Rules 3.1.6 and 3.1.7, while the planting of new commercial (plantation) forestry in the Wairau Dry Hills Landscape is a controlled activity under Regulation 15 NESPF requiring a resource consent to be obtained.

81. The Section 42A Report (Dale) identifies that none of the circumstances in Regulation 6 NESPF that enable a more stringent activity status for the replanting of commercial forestry in visual amenity landscapes would apply. For that reason the Judy and John Hellstrom and the Hawkesbury Farm submissions, seeking to make forestry a prohibited activity in the Wairau Dry Hills Landscape, are not recommended in the Reply to Evidence (Dale) [63] to be included in the policy.

82. The Section 42A Report says distinctive character of the Wairau Dry Hills Landscape identified in the PMEP as open, relatively undeveloped grasslands, is its sensitivity to change. Planting of new commercial forestry would affect their distinctive golden colour in some lights, and open terrestrial values which are unencumbered by modifications through unnatural vegetation patterns.

83. Nevertheless, the Section 42A Report (Misc), in view of the conclusion above, identifies that control over the planting of new commercial forestry is appropriate and should remain a controlled activity under Regulation 15 NESPF to allow effects on visual amenity values to be considered through a resource consent.[64] It is recommended that clause (b) of the policy be amended to recognise that resource consent is not required for replanting commercial forestry in the Wairau Dry Hills Landscape so as to align with the NESPF.

[62] Hawkesbury Farms (767.1).
[63] Section 42A Report, Miscellaneous Topics, paragraph 39.
[64] Section 42A Report, Miscellaneous Topics, paragraph 41.

84. For those submitters who sought the removal of commercial forestry activities from the policy, we note that a distinction should be made in the policy and explanation between planting and replanting as set out in the Miscellaneous Report (page 11). The term 'commercial forestry' should be replaced with 'plantation forestry'.[65]

85. The recommendation is to amend Policy 7.2.2 as follows:

> *Control activities that have the potential to degrade the amenity values that contribute to the Wairau Dry Hills Landscape by:*
>
> *(a) setting permitted activity standards that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and*
>
> *(b) requiring resource consent for <u>new</u> commercial forestry ~~activities~~ planting, but not replanting. The Wairau Dry Hills Landscape is more sensitive to change than other landscapes with high amenity value as it forms the visual backdrop to Blenheim and the Wairau Plain, providing an attractive contrast to the valley floor. (The specific values that are present within this landscape are set out in Appendix 1 of the MEP.) While most landscapes identified as having high amenity value have a nonregulatory approach as the means of maintaining and enhancing landscape value, for the Wairau Dry Hills landscape a regulatory approach is considered more appropriate in order to fulfil statutory obligations under Section 7(c) of the RMA. Only one activity, <u>new</u> commercial forestry, needs to be assessed through the resource consent process, as it could have a significant adverse effect on the landscape values of this area. The use of standards for permitted activities is considered appropriate for other activities in order to manage effects on landscape values, as resource use and development is generally to be expected within this landscape.*[66]

**Consideration**

86. Controlled activity status for afforestation proposed in an amenity landscape does not give councils a real ability to control effects on those landscapes. This is because a controlled activity resource consent *must* be granted:

> **87A Classes of activities**
>
> …

[65] Section 42A Report, Miscellaneous, pages 10-11.
[66] Federated Farmers (425.105).

> **(2) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a controlled activity, a resource consent is required for the activity and—**
>
> **(a) the consent authority must grant a resource consent except if—**
>
> **(i) *section 106* applies; or**
>
> **(ii) *section 55(2)* of the Marine and Coastal Area (Takutai Moana) Act 2011 applies; and**
>
> **(b) the consent authority's power to impose conditions on the resource consent is restricted to the matters over which control is reserved (whether in its plan or proposed plan, a national environmental standard, or otherwise); and**
>
> **(c) the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.**

87. Ensuring this is a controlled activity leaves the Council with very little option but to control forestry with little or no control over the impact of adjacent forestry. Nor can the Council set conditions on management plans, although they can view them, which is a serious oversight in the context of the sustainable management of the Wither Hills.

88. The Wither Hills define the township of Blenheim in its setting. By labelling the hills a 'visual catchment' the alignment process removes the NZCPS Policy 15 Landscape values from the assessment of effects and is ultra vires s 7(c) RMA **The maintenance and enhancement of amenity values**. It gives no credence either to the definition of 'amenity values' as set out in s 2 RMA where amenity values have an extended definition including 'aesthetic values', 'memorability', 'pleasantness' – all of which are encompassed within NZCPS Policy 15(c)(iv).

89. Dr Steven provided an international definition of the aesthetic experience as '… a feeling of pleasure attributable to directly perceivable characteristics of spatially and/or temporally arrayed landscape patterns'.[67] This shifts the analysis away from a subjective sensory interpretation to one that is directly perceivable not 'sensed' – bringing it back again to the definition of landscape.

90. The Interpretation section of the NPSPF describes a visual amenity landscape means 'a landscape or landscape feature that (a) is identified in the district plan as having visual amenity values *however described*; (b) is identified in the policy statement or plan by its location, including by a map, a schedule, or a description of the area'.[68]

**Decision**

91. Policy 7.2.2 is amended as follows:

[67] FNHTB, Michael Steven Evidence, citing Gobster et al (2007) paragraphs 138-139, footnote 15.
[68] Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017. Part 1 Preliminary Processes 3 Interpretation 3, page 13.

*Control activities that have the potential to degrade the amenity values that contribute to the Wairau Dry Hills <u>High Amenity</u> Landscape by:*

*(a) setting permitted activity standards that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and*

*(b) requiring resource consent for <u>new</u> ~~commercial~~ plantation forestry ~~activities~~ <u>planting, but not replanting</u>.*

*The Wairau Dry Hills Landscape is more sensitive to change than other landscapes with high amenity value as it forms the visual backdrop to Blenheim and the Wairau Plain, providing an attractive contrast to the valley floor. (The specific values that are present within this landscape are set out in Appendix 1 of the MEP.) While most landscapes identified as having high amenity value have a non-regulatory approach as the means of maintaining and enhancing landscape value, for the Wairau Dry Hills landscape a regulatory approach is considered more appropriate in order to fulfil statutory obligations under Section 7(c) of the RMA. Only one activity, <u>new</u> ~~commercial~~ <u>plantation</u> forestry, needs to be assessed through the resource consent process, as it could have a significant adverse effect on the landscape values of this area. The use of standards for permitted activities is considered appropriate for other activities in order to manage effects on landscape values, as resource use and development is generally to be expected within this landscape.*

### Policy 7.2.3

**Control activities that have the potential to degrade the amenity values that contribute to those areas of the Marlborough Sounds Coastal Landscape not identified as being an outstanding natural feature and landscape by:**

**(a) using a non-regulatory approach as the means of maintaining and enhancing landscape values in areas of this landscape zoned as Coastal Living;**

**(b) setting standards/conditions that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and**

**(c) requiring resource consent for commercial forestry activities.**

92. Policy 7.2.3 addresses the control of activities within the Marlborough Sounds Coastal [High Amenity] Landscape by using a non-regulatory approach to maintain values in the Coastal Living Zone, setting permitted activity thresholds, and requiring resource consent for

commercial forestry activities, to implement Objective 7.2.No change was recommended to the policy in the original Section 42A Report, or in the reply to evidence presented at the hearing. No changes were also recommended as part of the Section 42A Report and reply to evidence on Topic 22 Forestry.

93. The submissions which were deferred for hearing in the Miscellaneous Topic requested:

- Amend the policy to read:

  *For areas of the Marlborough Sounds Coastal Landscape that are classified as an Outstanding Feature and Landscape, enable ~~Control~~ activities that ~~have the potential to degrade~~ are consistent with the ~~amenity~~ values and attributes that contribute to ~~those areas of~~ the Marlborough Sounds Coastal Landscape ~~not identified as being an outstanding natural feature and landscape~~ by:*

  *(a) using a non-regulatory approach as the means of maintaining and enhancing landscape values in areas of this landscape zoned as Coastal Living;*

  *(b) setting permitted standards/conditions that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; ~~and~~*

  *(c) requiring resource consent for commercial forestry activities.*[69]

- Delete the policy and replace with a new policy that establishes a compliance regime that provides a fast track resource consent approval for landowners, and operators, approved by the Council for their past satisfactory environmental performance, having regard also to the internal regime of each organisation for achieving environmental protection.[70]

- Amend the policy by deleting clause (c).[71]

- General comment – delete provisions in relation to plantation forest.[72]

- Amend clause (c) of the policy to read *'requiring controlled activity resource consent for commercial forestry activities and restricted discretionary resource consent for new commercial forestry activities'.*[73]

[69] Federated Farmers (425.109).
[70] D C Hemphill (648.33).
[71] John and Judy Hellstrom (688.178).
[72] MFIA (962.54).
[73] Nelson Forests Ltd (990.189).

- Amend clause (c) of the policy to read '*requiring resource consent for commercial forestry activities including re-establishment after harvesting*'.[74]

**Section 42A Report**

94. The submissions either seek the policy provide greater enabling of commercial forestry activities, or their restriction in the Marlborough Sounds Coastal Landscape. The enabling of commercial forestry sought by Federated Farmers reflects other aspects of their submissions which seek deletion of landscapes with high amenity from the PMEP, and that primary production should be viewed as having a positive contribution of the values and attributes of the landscape. Other submissions consider requiring resource consent for commercial forestry will prevent replanting of forests, affect reinvestment in forestry, and affect good environmental outcomes. The submission of John and Judy Hellstrom considers there should be no new consents for commercial forestry issued in the Marlborough Sounds.

95. The Marlborough Sounds Coastal Landscape is a '*visual amenity landscape'* for the purposes of the NESPF. As a result of the completion of the NESPF alignment process, the PMEP rules provide for replanting of commercial forestry in the Marlborough Sounds Coastal Landscape as a permitted activity under Rule 4.1.6. The planting of new commercial forestry and harvesting will be a restricted discretionary activity under Rules 4.5.3 and 4.5.4 of the PMEP, requiring resource consent. This rule approach is largely consistent with that sought by Nelson Forests Ltd.

96. In response to the submissions of Federated Farmers, D C Hemphill and the MFIA, the restricted activity status for planting of new commercial forestry and harvesting reflects the circumstances under Regulation 6 of the NESPF which enables more stringent rules for commercial forestry in order to specifically manage:

    - effects on wetlands under s 6(c) RMA;
    - sedimentation within the coastal environment under NZCPS Policy 22;
    - effects on the values of the Marlborough Sounds ONFL under NZCPS Policy 15(a);
    - effects on the values of the Marlborough Sounds Coastal Landscape under NZCPS Policy 15(b);
    - effects on drinking water supplies for more than 25 people where the water take is from a water body.

[74] Port Underwood Association (1042.4).

97. In regard to the Marlborough Sounds Coastal Environment, the greater stringency is enabled by the NZCPS Policy 15(b) requirement to '*avoid significant adverse effects* ***and avoid, remedy or mitigate*** *other adverse effects of activities on other natural features and landscapes in the coastal environment'* (our emphasis). This requires councils to manage the adverse effects of activities in the coastal environment, including forestry, on high amenity landscapes identified in accordance with s 7(c) RMA, and which otherwise fall outside the higher status of being an ONFL under s 6(b) RMA.

**Consideration**

98. The distinctive characteristics of the Marlborough Sounds High Amenity Landscape in the PMEP are its high aesthetic values and high levels of naturalness and perceived coherence. Planting of new areas of commercial forestry and harvesting has the potential to significantly adversely affect these values. Accordingly, it is considered that providing for planting of new commercial forestry and harvesting in this landscape, as a restricted discretionary activity, is appropriate to allow effects on landscape values to be considered through a resource consent consistent with NZCPS Policy 15(b) and s 7(c) RMA. The Panel considered the request of Federated Farmers. It agrees that the standards specified in (b) are permitted activity standards. However the request to recognise the ability to replant is problematic. As notified, Rule 4.1.6 does permit the replanting of plantation forestry. However, the Panel considered their status of replanting as part of considering the relief requested in Topic 22: Forestry. Its determination in that topic was to impose more stringent rules on replanting in close proximity to the coastal marine area, as follows:

- A controlled activity rule for replanting between 30 and 200 metres of the coastal marine area;
- A restricted discretionary activity rule for replanting between 0 and 30 metres of the coastal marine area.

99. These rules, more stringent than the NESPF, were imposed to give effect to Policy 22 of the NZCPS. For this reason, the wording requested by the report writer cannot be given effect to in respect of (c) and it should remain as notified.

100. Rules 4.5.3 and 4.5.4 as amended to align with the NESPF did not specify effects on the values of the Marlborough Sounds Coastal Landscape as a matter over which the Council will consider resource consent applications. Based on the above analysis, it is recommended the assessment matters for Rules 4.5.3 and 4.5.4 be amended to include reference to effects on

the values of the Marlborough Sounds High Amenity Landscape, as a matter to be considered in the assessment of resource consent applications. Such an amendment can be made without further formality under s 44A RMA to ensure alignment with the NESPF.

101. In response to the submission of Port Underwood Association, it is acknowledged that Regulation 6 of the NES-PF would enable a more stringent rule to also be applied to replanting existing commercial forestry. Applying a more stringent rule would, however, affect continuing investment for existing lawfully established plantation forestry with resultant effects on economic and social wellbeing. Furthermore, the Marlborough Sounds High Amenity

102. Landscape has been identified on the basis of the existing commercial forestry, and which therefore makes up part of its values. Accordingly, replanting of existing commercial forestry will not further degrade values in a way which would be inconsistent with NZCPS Policy 15(b) and s 7(c) RMA within the coastal environment. However the submitter's point can be accepted in part as replanting will not be permitted in close proximity to the coastal marine area. Please see earlier discussion with respect to the influence of the Panel's decision on Topic 22: Forestry in this regard.

**Decision**

103. Amend Policy 7.2.3 and its explanation as follows:

*Control activities that have the potential to degrade the amenity values that contribute to those areas of the Marlborough Sounds Coastal Landscape not identified as being an outstanding natural feature and landscape by:*

*(a) using a non-regulatory approach as the means of maintaining and enhancing landscape values in areas of this landscape zoned as Coastal Living;*

*(b) setting permitted activity standards/conditions that are consistent with the existing landscape values and that will require greater assessment where proposed activities and structures exceed those standards; and*

*(c) requiring resource consent for new plantation ~~commercial~~ forestry ~~activities~~ planting and harvesting.*

*Similar to the Wairau Dry Hills High Amenity Landscape, the Marlborough Sounds ~~Coastal~~ High Amenity Landscape is more sensitive to change than other landscapes with high amenity values. The Marlborough Sounds is an iconic and unique landscape with considerable scenic beauty. While some parts of the Sounds have more significant values than others, in its*

*entirety the Sounds has considerable landscape value, which is why the whole of the Sounds have been included within the Marlborough Sounds ~~Coastal~~ High Amenity Landscape. However, the areas subject to the management framework of this policy are those not identified as an outstanding natural feature and outstanding natural landscape.*

*Because the Marlborough Sounds is subject to development pressure for a range of subdivision, use and development, it is appropriate to control these activities through a range of means. For those areas zoned Coastal Living, there has already been a degree of modification to landscape values and in these areas a non-regulatory approach is considered appropriate to manage further landscape impacts. The remaining areas within the Marlborough Sounds ~~Coastal~~ High Amenity Landscape have a management approach that includes standards for permitted activities and conditions on consent for controlled activities, as it is expected that there will be some resource use within these areas. The one exception is a restricted discretionary activity resource consent requirement for commercial forestry to ensure that this activity can be assessed for its impact on the landscape values identified in Appendix 1.*

104. Amend assessment matter 4.5.3.3 as follows:

*The effects on the values of the Marlborough Sounds ~~Coastal~~ High Amenity Landscape, and Marlborough Sounds Outstanding Natural Feature and Landscape.*

105. Amend assessment matter 4.5.4.3 as follows:

*The effects on the values of the Marlborough Sounds ~~Coastal~~ High Amenity Landscape, and Marlborough Sounds Outstanding Natural Feature and Landscape.*

## Policy 7.2.4

**Where resource consent is required to undertake an activity within an outstanding natural feature and landscape or a landscape with high amenity value, regard will be had to the potential adverse effects of the proposal on the values that contribute to the landscape.**

106. Several submitters seek to retain the policy as notified; others seek: its deletion;[75] delete the policy or provide an amendment to delete and replace consistency of the proposal with the values and ensure farming and rural activities are recognised as positively contributing to the values and attributes of outstanding natural features and outstanding natural landscapes;[76] to make it clear that a cumulative effects policy must be applied when applying Policy 7.24;[77] an assessment of cumulative effects be undertaken when identifying areas where coastal marine

[75] AQNZ (401.75), MFA (426.79), EDS (698.52).
[76] Federated Farmers (425.111).
[77] Clova Bay Residents Association (152.13).

landscape values are under threat;[78] set out the requirements of NZCPS Policy 15(a) and (b) and achieve the protection required by s 6 RMA;[79] amend the policy to note that the assessment of effects on landscape values may include consultation.[80]

107. AQNZ and MFA initially sought to delete Policies 7.2.1, 7.2.4 and 7.2.5, and add an amended new policy. This new policy would provide further direction in determining the character, intensity and scale of adverse effects on landscape values by identifying:

> *Minor transitory effects may not be an adverse effect.*
>
> *Many areas contain ongoing use and development present at the time of identifying the area as high amenity or outstanding landscapes, and that such use may be dynamic, diverse, or seasonal.*
>
> *There may be more than minor cumulative adverse effects from minor or transitory adverse effects.*
>
> *Have regard to restoration and enhancement of landscapes.*
>
> *That it may be appropriate to offset residual adverse effects.*
>
> *That where adverse effects cannot be practicably avoided, adverse effects should be minimised.*
>
> *That a future adverse effect may be avoided where the effect is temporary and authorised for a finite term.*[81]

108. EDS sought removal of the ability to remediate adverse effects on outstanding natural features and outstanding natural landscapes outside of the coastal environment.[82]

**Section 42A Report**

109. In terms of the submission by AQNZ and MFA, the Section 42A Report (Dale) identifies that this approach would provide a greater level of specificity in the PMEP which is unnecessary, duplicate other policies, and is contrary to proper assessment practice.

110. In terms of the EDS submission, the report writer states there is no similar national direction to NZCPS Policy 15(a) which applies outside the coastal environment. Consequently the

[78] KCSRA (868.13).
[79] Forest and Bird (715.156).
[80] Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu (1189.72 and .73).
[81] Section 42A Report (Dale), page 44.
[82] EDS (698.53).

requirement in Policy 15(a) to avoid effects on outstanding landscapes and outstanding natural features does not apply.

111. Both submissions are recommended to be rejected.

112. Notwithstanding that report, in his Reply to Evidence, the Section 42A Report writer (Dale) accepted on the basis of legal submissions that case law has determined that minor or transitory adverse effects may be appropriate and may not need to be avoided in the context of NZCPS Policy 13. He also accepts that it is appropriate to include reference to restoration and enhancement of landscapes.

113. Consequently, it is recommended to make reference to minor and transitory effects as being appropriate, and restoration and enhancement in Policy 7.2.4 as follows:

*Policy 7.2.4 – Where resource consent is required to undertake an activity within an outstanding natural feature and landscape or a landscape with high amenity value,:*

*(a) regard will be had to the potential adverse effects of the proposal on the values that contribute to the landscape;*

*(b) recognise that minor or transitory adverse effects may not need to be avoided;*

*(c) regard will be had to any restoration and enhancement of the landscape proposed.*[83]

**Consideration**

114. We consider that the word 'remediate' adverse effects is farsighted in its implications. There are a number of areas in the coastal environment, both terrestrial and in the coastal marine environment, that will provide opportunities for remediation in the future – former marine farm sites, buildings, indigenous biodiversity, both on the seabed and on land.

115. The Panel agreed with Ngāi Tahu's request for there to be recognition in this policy of the need for consultation with Marlborough's tangata whenua iwi to assess adverse effects on landscapes that have cultural values.

**Decision**

116. As recommended, Policy 7.2.4 is amended as follows:

*Policy 7.2.4 – Where resource consent is required to undertake an activity within an outstanding natural feature and outstanding natural landscape, or a landscape with high amenity value,:*

[83] S42A Report (Dale), Reply to Evidence, pages 20 and 21.

*(a)* ~~*regard will be had*~~ *have regard to the potential adverse effects of the proposal on the values that contribute to the landscape;*

*(b) recognise that minor or transitory adverse effects may not need to be avoided;*

*(c) have regard to any restoration and enhancement of the landscape proposed.*

117. The explanatory statement to Policy 7.2.4 is amended as follows:

*… The level of assessment should reflect the scale of the proposed activity and the potential adverse effects on the values that contribute to the landscape.*

*Where Tangata Whenua iwi values contribute to an outstanding natural feature or landscape, consultation may be required with iwi.*

### Policy 7.2.7

**Protect the values of outstanding natural features and landscapes and the high amenity values of the Wairau Dry Hills and the Marlborough Sounds Coastal Landscapes by:**

**(a) In respect of structures:**

**(i) avoiding visual intrusion on skylines, particularly when viewed from public places;**

**(ii) avoiding new dwellings in close proximity to the foreshore;**

**(iii) using reflectivity levels and building materials that complement the colours in the surrounding landscape;**

**(iv) limiting the scale, height and placement of structures to minimise intrusion of built form into the landscape;**

**(v) recognising that existing structures may contribute to the landscape character of an area and additional structures may complement this contribution;**

**(vi) making use of existing vegetation as a background and utilising new vegetation as a screen to reduce the visual impact of built form on the surrounding landscape, providing that the vegetation used is also in keeping with the surrounding landscape character; and**

**(vii) encouraging utilities to be co-located wherever possible.**

**(b) In respect of land disturbance (including tracks and roads):**

**(i) avoiding extensive land disturbance activity that creates a long term change in the visual appearance of the landscape, particularly when viewed from public places;**

**(ii) encouraging tracks and roads to locate adjacent to slopes or at the edge of landforms or vegetation patterns and to follow natural contour lines in order to minimise the amount of land disturbance required;**

**(iii) minimising the extent of any cuts or side castings where land disturbance is to take place on a slope; and**

**(iv) encouraging the revegetation of cuts or side castings by seeding or planting.**

**(c) In respect of vegetation planting:**

**(i) avoiding the planting of new exotic forestry in areas of outstanding natural features and landscapes in the coastal environment of the Marlborough Sounds;**

**(ii) encouraging plantations of exotic trees to be planted in a form that complements the natural landform; and**

**(iii) recognising the potential for wilding pine spread.**

**Section 42A Report**

118. Through the extensive number of submissions and evidence, this policy went through a number of minor but important iterations which are found in the Section 42A Report[84] and the Reply to Evidence:[85]

- ‘Protection’ is not the legal test for s 7 RMA quality landscapes, aimed at addressing effects on high amenity values of the Marlborough Sounds Coastal Landscape.
- Transpower sought an amendment identifying that the functional and operational needs of regionally significant infrastructure should be recognised in a new (a)(viii) and (b)(vi) set out in the Reply to Evidence.[86]
- The words ‘close proximity’ in (a)(ii) introduces subjectivity which is unnecessary and is replaced with the word ‘adjacent’.
- NZTA sought changes to 7.2.7(b) that essentially sought an easing of the policy direction to allow for remediation and mitigation of the adverse effects of land disturbance on landscape values.

**Consideration**

119. The Panel acknowledges that the ‘protection’ focus in the coastal environment is potentially too onerous and represents a block in managing activities by maintenance and enhancement in response to the requirement of s 7(c) RMA. The concept of their protection should be replaced with ‘… and maintain and enhance landscapes with high amenity value by …’.[87] We also consider that the word ‘enhance’ should be included to reflect the wording in s 7(c) RMA. Otherwise we accept the amendments as recommended.

120. As a consequential amendment, amend the word ‘visual’ in Policy 7.2.7(b)(i) and substitute ‘nested’.

121. With respect to the submission of NZTA, the Panel drew particularly on the evidence of Mr Bentley, but also had the benefit of Mr Miller’s considerable experience and expertise, heard in other topics, as to the effects of land disturbance activity on steep slopes. In addition various general observations by Panel members over time of the effects of tracking on slopes in the Marlborough Sounds and in the hill country of South Marlborough confirmed that evidence. Those factors led the Panel to the conclusion that tracking on slopes has the

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[84] S42A Report (Dale), pages 49-54.
[85] S42A Report (Dale), Reply to Evidence, pages 25-26.
[86] Transpower, Ainslie McLeod, Evidence, paragraph 40.
[87] S42A Report (Dale), page 53.

potential for significant adverse effects on landscape values. Those effects can be created by the track itself or may also be induced through erosion if the tracking is not properly managed. Subject to other changes to 7.2.7(b) in this decision, the Panel considers that the policy direction to be appropriate. However, the Panel felt that that the policy would benefit from additional explanation to highlight the potential effect of tracking on landscape values and the importance of applying good management practice to that tracking.

122. A new sentence is inserted, to the end of the first paragraph as follows: 'Tracking on slopes, if not appropriately constructed and maintained, can induce erosion which has the potential for significant landscape effects.'

123. The evidence heard on this policy did cause the Panel to consider the appropriateness of the wording of Policy 7.2.7(b)(i). The Panel notes that the term 'extensive' is used in this provision. Tracking does not need to be extensive to cause erosion or to open tunnel gulley prone land to gouging. All that is required for a major slip process to commence is a cut through a short width or a deep cut over a short section of a water course. That erosion could result in significant landscape degradation that can exist for a long period of time.

124. The Panel agrees with both Transpower and the report writer with respect to the need to consider the direction in both (a) and (b) of the policy in the context of the functional and operational needs of regionally significant infrastructure. Instead of inserting the recommended text as part of the list of management responses in respect of structures and land disturbance, the Panel believes the intent of the submission is more effective if this matter stands alone.

**Decision**

125. Policy 7.2.7 is amended as follows:

*Policy 7.2.7 - Protect the values of outstanding natural features and <u>outstanding natural</u> landscapes and <u>maintain and enhance</u> the high amenity values of the Wairau Dry Hills and the Marlborough Sounds ~~Coastal~~ <u>High Amenity</u> Landscape~~s~~ by:*

*(a) In respect of structures:*

*(i) avoiding visual intrusion on skylines, particularly when viewed from public places***;**

*(ii) avoiding new dwellings ~~in close proximity~~ <u>adjacent</u> to the foreshore;*

*(iii) using reflectivity levels and building materials that complement the colours in the surrounding landscape;*

(iv) *limiting the scale, height and placement of structures to minimise intrusion of built form into the landscape;*

(v) *recognising that existing structures may contribute to the landscape character of an area and additional structures may complement this contribution;*

(vi) *making use of existing vegetation as a background and utilising new vegetation as a screen to reduce the visual impact of built form on the surrounding landscape, providing that the vegetation used is also in keeping with the surrounding landscape character; and*

(vii) *encouraging utilities to be co-located wherever possible;*

*<u>whilst recognising the functional and operational needs of regionally significant infrastructure</u>.*

(b) *In respect of land disturbance (including tracks and roads):*

(i) *avoiding ~~extensive~~ land disturbance activity that creates a long term change in the ~~visual~~ appearance of the landscape, particularly when viewed from public places;*

(ii) *encouraging tracks and roads to <u>be</u> locat<u>ed</u> adjacent to slopes or at the edge of landforms or vegetation patterns and to follow natural contour lines in order to minimise the amount of land disturbance required;*

(iii) *minimising the extent of any cuts or side castings where land disturbance is to take place on a slope; and*

(iv) *encouraging the revegetation of cuts or side castings by seeding or planting;*

*<u>whilst recognising the functional and operational needs of regionally significant infrastructure</u>***.**

(c) *In respect of vegetation planting:*

(i) *avoiding the planting of new exotic forestry in areas of outstanding natural features and <u>outstanding natural</u> landscapes in the coastal environment of the Marlborough Sounds <u>where they degrade landscape values</u>;*

(ii) *encouraging plantations of exotic trees to be planted in a form that complements the natural landform<u>.</u>~~; and~~*

~~*(iii) recognising the potential for wilding pine spread.*~~

*The ~~sensory~~ perceptual values of outstanding natural features and outstanding natural landscapes are vulnerable to change brought about by resource use. The introduction of new structures, tracks and roads into the landscape, and the planting of new vegetation, all have the ability to affect our ~~visual~~ perception and appreciation of the landscape. Tracking on slopes, if not appropriately constructed and maintained, can induce erosion which has the potential for significant landscape effects.*

*Although not an exhaustive list, this policy describes how the visual integrity of the landscape can be maintained in response to changes in resource use. The subdivision of land can act as a pre-curser to such changes, so it is also appropriate to have regard to this policy when considering subdivision consent applications. The matters in (a) to (c) guide how visual intrusion into significant landscapes can be avoided, remedied or mitigated. These mostly relate to undertaking land use activities in ways that limit the visual intrusion into the landscape. These actions will be implemented through a range of activity status as well as standards on permitted activity rules. Policy 7.2.1 provides guidance on how these controls will be applied to outstanding natural features and landscapes. For landscapes with high amenity value, guidance is provided through Policies 7.2.2 and 7.2.3.*

*This policy cannot apply to existing land use activities that have been lawfully established due to existing use rights under Section 10 of the RMA.*

## Wilding pine spread

126. Policy 7.2.7(c) and Method 7.M.3 (in part) seek to manage what in the Panel's view is a very real threat posed to Marlborough's significant landscapes posed by wilding pines. Amongst other submitters, Nelson Forests Ltd sought the deletion of the policy.

**Consideration**

127. Through the course of the hearing the Panel heard evidence on the community initiatives to control wilding pines in the Marlborough Sounds and in South Marlborough. Those community efforts would appear to be making a meaningful difference to improving the landscape and those efforts should therefore be applauded.

128. Policy 7.2.7(c) was ultimately implemented in the notified plan through rules that control what species of tree can be planted in commercial forestry, woodlot forestry, conservation planting and carbon sequestration forestry as a permitted activity.

129. As a result of the NESPF alignment process, the rules restricting the planting of particular species were amended so that they no longer applied to commercial forestry. In its

consideration on Topic 22: Forestry, the Panel agreed with the recommendation of the report writer to delete all of the remaining rules from the MEP that restrict the planting of specific wilding tree species. This was on the basis that the rules would duplicate the requirements for unwanted organisms under the Biosecurity Act 1993.

130. As a result of both the NESPF alignment process and the above decision, 7.2.7(c)(iii) is to be deleted. There is also a consequential change required to Method 7.M.3 to delete the last bullet point of 7.M.3.

**Decision**

131. Delete 7.2.7(c)(iii) and the last bullet point of Method 7.M.3.

## 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.**

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]

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.

**Section 42A Report**

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]

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[88] AQNZ (401.79), MFA (426.83).
[89] Clova Bay Residents Association (152.11), Forest and Bird (715.160), KCSRA (868.15).
[90] Federated Farmers (425.115).
[91] S42A Report (Dale), Reply to Evidence, page 27.

**Consideration**

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]

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.

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]

138. Under the *Man O' War* 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]

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.

**Decision**

140. Policy 7.2.8 is amended to read as follows:

[92] Forest and Bird, Deborah Martin Evidence, page 25.
[93] Federated Farmers, Darryl Sycamore Evidence, paragraphs 48-49.
[94] *Man O War Station Limited v Auckland Council* [2017] NZCA 24, CA 422/2015, Question of Law A4, page 2

*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 amenity value ~~will fall within areas in which primary production activities currently occur~~.*[95]

141. The explanatory statement to Policy 7.2.8 is amended to read:

*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~~ is 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~~ 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.*

*~~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.~~*

## Policy 7.2.9

**When considering resource consent applications for activities in close proximity to outstanding natural features and landscapes, regard may be had to the matters in Policy 7.2.7.**

The extent of outstanding natural features and landscapes are identified in the MEP. Establishing a boundary beyond which values no longer contribute to landscape significance is difficult. For this reason it may be appropriate to assess the impacts on landscape values for activities outside of, but in close proximity to, an identified outstanding natural feature or landscape. Application of this policy will be determined on a case-by-case basis, depending on the nature of the proposal and its proximity to the outstanding natural feature or landscape.

142. As is common with submissions on landscape issues the submissions on this policy range widely from support of retention of the policy as notified through to those seeking its deletion. Submissions seek amendments or deletion because of the following points - there is no statutory direction that provides for managing activities in close proximity to ONFL's; ONFL's have been appropriately identified, and there is no need for added protection beyond

[95] Section 42A Report, Reply to Evidence, page 87.

those identifications; the policy wrongly extends the same degree of protection provided beyond ONFL's; the policy creates uncertainty for resource users due to the broad discretion available to Council as to when to implement it; the policy would render resources incapable of reasonable use; no attempt has been made to quantify the costs of additional regulation flowing from the policy; clearer guidance is needed as to the appropriateness of activities adjacent to ONFL's.

**Section 42A Report**

143. The original report summarised the effect of the policy as being to create:

> *"… a buffer management approach whereby activities outside of ONFL's but near to them are managed to ensure the values that contribute to the ONFL are not degraded, in recognition that establishing the boundary beyond which the values no longer contribute to landscape significance is difficult."*

144. The report continued to point out that the policy left considerable uncertainty for Council and resource users as to identification of such adjacent areas and their extent. That left an undesirable degree of discretion as to how the policy was to be applied and hence a potential but immeasurable cost arising from its application. The original report, therefore, suggested its retention was finely balanced, but suggested awaiting the hearing before a final recommendation was made.

145. In the Reply to Evidence report the report writer acknowledged that regardless of whether this policy was in the PMEP, decision-makers would have to assess the effect of adjoining activities on ONFLs where there may be an adverse effect on the ONFL. That assessment would be done under policies 7.2.1 to 7.2.7.

146. However, the Reply to Evidence continued to recommend retention to "*provide clarity for plan users of the requirement for such an assessment to be made*." The report concluded in that regard:

> *However, to provide more certainty as to when the policy will apply, it is accepted that an additional qualifier should be added that the policy will be applied where the activities undermines the values of the ONFL.*

147. The recommendation made therefore was for the policy to be amended as follows:

> *When considering resource consent applications for activities in close proximity to outstanding natural features and landscapes <u>where these could undermine the</u>*

*outstanding values of such natural features and landscapes, regard may be had to the matters in Policy 7.2.7.*

**Consideration**

148. The Panel took the view that the policy in fact did not add any clarity to the assessment process required under policies 7.2.1 to 7.2.7, and instead just added confusion as to why it existed.

149. Its deletion will have no effect in the Panel's view on the clear statutory obligations on decision-makers under s.104 RMA to consider all of those policies 7.2.1 to 7.2.7, as well as the other statutory considerations under s.104.

**Decision**

150. Delete Policy 7.2.9 and its explanatory statement.

## Methods of Implementation

### Method 7.M.6 Incentives

151. MFIA consider incentives may be required to achieve a successful transition to land use that has less effect on landscape values.[96] The report writer recommends it is therefore appropriate to include an additional method on incentives[97], and the Panel agrees.

**Decision**

152. Method 7.M.6 is amended as follows:

*7.M.6 Incentives*

*Consider providing rates relief where landscape protection is formalised by way of covenant or similar methods of protection.*

*Consider providing funding to wilding pine control programmes and other community initiated control programmes for undesirable plants and animals.*

*Consider providing incentives to drive transition of commercial forests within outstanding natural features and outstanding natural landscapes, and landscapes with high amenity to* alternative forestry or land uses, as informed by the outcomes of research.

[96] MFIA (962.62).
[97] S42A Report (Dale), pages 68-69.

## Anticipated Environmental Results

### 7.AER.1

153. The single anticipated result reads: 'Marlborough's outstanding natural features and landscapes and landscapes with visual amenity value are protected from degradation.'

154. The MDC and the Panel consider community programmes to control wilding conifers are a valid indicator, and the existing indicator should apply to all of Marlborough, not just Marlborough Sounds.

**Decision**

155. The monitoring indicators under 7.AER.1 are amended as follows:

*Outstanding natural features and outstanding natural landscapes, and landscapes with high amenity value are included within the MEP. This will include the identification of values that ~~make~~ comprise each landscape ~~significant~~ and mapping of the extent of the ~~significant~~ landscapes.*

*The awareness of Marlborough's outstanding natural features and outstanding natural landscapes, and landscapes with high amenity value increases, as measured by public perception survey.*

*The biophysical, ~~sensory~~ perceptual and associative values that contribute to ~~the significance of~~ particular landscapes are maintained (or enhanced), as measured by reassessment of Marlborough's landscape.*

*Only appropriate development is allowed to occur in outstanding natural features and outstanding natural features and landscapes, as measured by reassessment of Marlborough's landscape.*

*The area of land vegetated by wilding pines in ~~the~~ Marlborough ~~Sounds~~ ~~decreases~~ does not increase.*

## New policy

### Cumulative effects

156. The Clova Bay Residents Association (CBRA) sought to add a new cumulative effects policy to meet the requirements of NZCPS Policy 7 similar to Policy 6.2.7 of the PMEP, addressing the management of cumulative effects on natural character. It requests the policy include reference to acceptable limits of cumulative effects through policy or guidelines to give effect to Policy 7.

157. KCSRA's submission[98] followed similar lines as CBRA, albeit with more specificity: an objective threshold for significant effects as in Policy 6.2.8 Natural character; areas at risk are identified already in the Boffa Miskell Marlborough Landscape Study 2015, and these should be identified in the plan items as scheduled.

158. AQNZ and MFA and MPI[99] seek that the policy promoted by the Section 42A report writer should take place *after* assessing the extensive definition of cumulative effects in s 3 RMA.

159. The report writer responds that cumulative adverse effects have been included in Chapter 7: they are covered by Policies 7.2.1-7.2.5. Nevertheless, he considers that in theory when considering the appropriateness of development at the time of consenting, such a policy would respond to s 6(b) and s 7(c) RMA, and NZCPS Policies 7 and 15 of the coastal environment.

**Section 42A Report**

160. The report writer cites the DOC guidance note on NZCPS Policy 7 that recognises that cumulative effects in the coastal environment are better addressed through a strategic planning approach including the identification of environmental limits and integrated management of the impact of different and numerous similar activities. The guidance notes that the management responses need to be practicable, and will vary according to the significance of the issue and resources available.[100] The report writer does not recommend providing a new policy on this subject at this time.

161. The report writer accepts that greater clarity is required within the PMEP as to how cumulative effects of existing aquaculture within outstanding natural features and outstanding landscapes, and the Marlborough Sounds Coastal Landscape are to be addressed. But this would be more appropriately achieved as part of the development of the aquaculture provisions of the PMEP. The report writer did not recommend pursuing this submission at this time. Cumulative effects from activities in the coastal marine environment may be managed through a spatial planning approach including, where appropriate, the identification of acceptable limits of development phased in over time.

162. The Panel considers that it is appropriate for the plan to provide guidance on the consideration of cumulative adverse effects on the ONFLs and landscapes with high amenity

[98] KCSRA, Andrew Caddie Evidence, paragraphs 5.1-5.14.
[99] AQNZ and MFA, Counsel Submissions, paragraph 92. MPI, Michael Nielson Evidence, paragraph 9.1
[100] S42A Report (Dale), page 65.

value. It is important to recognise that incremental change over time can cause landscape change.

**Decision**

163. New Policy 7.2.x be added as follows:

*Policy 7.2.X – In assessing the cumulative effects of activities on outstanding natural features and outstanding natural landscapes, and landscapes with high amenity values, consideration shall be given to:*

*(a) the effect of allowing more of the same or similar activity;*

*(b) the result of allowing more of a particular effect, whether from the same activity or from other activities causing the same or similar effect; and*

*(c) the combined effects from all activities in the locality.*

*Although individual activities may not adversely affect the values that contribute to landscapes, when combined with the effects of similar activities or other activities with similar effects, the activities may collectively have cumulative adverse effects on those values. This Policy describes how the cumulative effects of activities on landscapes will be considered.*

## Rules

### Standard 4.3.13.6

**There must be no excavation in excess of 500m3 per Computer Register located within the Marlborough Sounds Outstanding Natural Feature and Landscape within any 12 month period.**

### Standard 4.3.15.5

**There must be no filling in excess of 500m3 per Computer Register located within the Marlborough Sounds Outstanding Natural Feature and Landscape within any 12 month period.**

164. Pitapisces owns and farms two properties within Port Hardy being located on opposite sides of the bay.[101] Nile Head Station, 629 hectares in size, is located on the western side of Port Hardy, while Waiua Station is 259 hectares and is on the eastern side.[102] The planning witness for Pitapisces detailed the considerable upgrade that has occurred on Nile Head Station since it was first purchased in 2012, and how the company is investing significantly into the farming operation with the objective of making them productive units in the years to come.

[101] Pitapisces Enterprises Ltd (1245.3), Mark Lile Evidence, paragraphs 6-13.
[102] Figure 1: two properties owned by Pitapisces Ltd.

165. Pitapisces seeks to amend the rule to increase the 500m$^3$ threshold for earthworks and/or allow for the creation of new farm tracks to allow property owners to develop their farms.

**Section 42A Report**

166. The Section 42A Report (Dale) identifies that 'the 500 m$^3$ threshold for earthworks above this scale has the potential to affect landscape values, especially when those earthworks result in:

*exposed and cut surfaces which contrast with surrounding vegetation and the natural contour;*

*straight/sharp lines which contrast with a more rounded topography;*

*cuttings on steep slopes which are prone to erosion and lead to unnatural patterns that amplify excessing scarring;*

*an increased 1000 m$^3$ threshold for earthworks on properties greater than 1000 hectares would have the potential to result in adverse effects on landscape values;*

*unrestricted ability to allow for the creation of new farm breaks could also result in adverse effects.*[103]

**Consideration**

167. The Panel queried whether the limitations of 10 m$^2$ and 500 m$^3$ for excavations and culverting were too limiting for farm development on this island. Our considered response is that Pitapisces' proposals for development are the exception to the general widespread trend in Marlborough of decreasing pastoral farming activities in the Sounds. This is because of economic pressures and the consequent reduction in vegetation clearance as widespread natural cover has regenerated.

168. The potential impacts of potential sediment run-off from major vegetation clearance and excavation activities from farm tracks and culverts are considered sufficiently concerning to require stringent controls. General Rules 2.2.7 and 2.12.4 provide sufficiently for culvert installation and maintenance as permitted activities subject to reasonable standards. It is preferable for exceptions like the scale of this potential vegetation clearance and land disturbance activity in steep country to be dealt with by resource consent proposals involving farm development and management plans.

**Decision**

169. The submission is rejected for the reasons given in the consideration.

[103] Pitapisces (1245.3, .4), Mark Lile Evidence, paragraph 27.

## Volume 3 Appendix 1 and Volume 4 Landscape Overlays

### Landscape characteristics

170. All landscape expert witnesses presented a series of exceptional photographs illustrating:

- the serrated series of ridgelines of the many Sounds (many of them taken from the air)
- the drowned river valley system geomorphology
- the seas, waters and interrelated landscapes and islands
- the marine farms in their landscape/seascape settings
- headlands nesting like splayed fingers into seascapes
- the varying scale of the modifications, be they pastoral farmlands, plantations, roads and tracks, housing peppering the extensive landscapes
- the open waters of Cook Strait[104]

– all contributing to the iconic overall landscape of the Marlborough Sounds.

171. Also presented from MPI were spatial intelligence maps illustrating existing marine farm boundaries in outstanding areas of Marlborough; others with consented marine farm boundaries and overlaps with outstanding areas, and other sketches illustrating inshore areas of dredging and trawling throughout the Sounds.[105]

172. Evidence by expert landscape witnesses Dr Steven for FNHTB, and John Hudson and Sophie Gilchrist for MFA and AQNZ raised concerns during the hearing that the one landscape utilised for the purposes of the preparation of the Overlay Map series for ONF and ONL maps in Volume 4 PMEP could not in reality meet the description of a 'landscape' as the term is commonly used or understood. All the ONFLs on the overlay maps in the Outer Sounds area were treated as one landscape depicted on Map 1 Appendix 1, Volume 3, as 'Extent of the Outer Sounds'. Similar concerns related to the landscape depicted in Map 4 Appendix 1 as one entity described as the 'Marlborough Sounds Coastal Landscape'.[106]

173. In the notified plan at Volume 3, Appendix 1, Map 2 the Sounds have been divided into 18 landscapes. Mr Hudson asserts that one of the major problems with the PMEP is that 18

[104] James Bentley (PMEP Landscape Mapping Recommendations, 2017); John Hudson (Commentary (Evidence) and figures (some of them photographs); Sophie Gilchrist (Appendices – legends, figures, photographs, pages 1-47.
[105] MPI, Michael Nielson, Oral Evidence, 26 February 2018.
[106] Hearing Panel Minute 9, 1 March 2018, page 1.

mapped landscapes are so large and cover such diverse areas that their accompanying characterisation is too general to be useful.[107]

174. By way of example, he focused on the area referred to as Landscape 13 which is described under the title of 'Mt Stokes and surrounds'.[108] After focusing on one landscape map (Landscape 13), Mr Hudson made the point that it was impossible, in visual terms for particular landscape appreciation to be made from that map as to the various visual landscapes contained within it. Landscape 13 includes a very wide catchment over various bays which were in effect separated from each other by a range of landforms spread over many kilometres.

175. The Panel noted that Landscape 13 (Mt Stokes and surrounds) also encompasses parts of the area depicted and described as the 'Extent of the Outer Sounds' on Map 1 Appendix 1, and also points at what is described as the Inner Sounds in the Section 42A Report (Bentley) – being the balance of the Sounds areas outside the Outer Sounds.[109]

176. Dr Steven raised similar concerns of the landscape approach under the ONL and ONC maps in addition to other methodological criteria. Sophie Gilchrist identified practical problems both identifying the outstanding landscapes and natural features at particular locations, and linking these with the particular values intended to be protected on the ONFL maps.

177. Mr Hudson identified that one possible solution to the impasse would be to utilise the approach of the 'visual landscape' division provided in the Marlborough Sounds Landscape Study 2009 by BML and MDC with Appendix 1 Map 1 retained as suggested in the evidence as an example in order to relate to each section within the Appendix.[110]

**Consideration**

178. The Panel queried whether the overlay ONL maps should show a differentiation between the ONFs and ONL. It was decided that that does not assist in landscape terms but the text of Appendix 1 needs amendment to identify that issue.

179. In the Reply to Evidence and Response to Minute 9 of the MEP Hearing Panel, it was indicated that the values identified within Appendix 1 of Volume 3 PMEP could reasonably easily be

[107] AQNZ and MFA. Hudson, Evidence, paragraph 32.
[108] Appendix 1, Volume 3, pages 13-14.
[109] Appendix 1 Map 2 Volume 3, page 29: MFA, AQNZ, John Hudson Evidence, page 2
[110] Landscape 13 covers Port Gore, part of Guards Bay and part of Queen Charlotte Sound in the Outer Sounds and part of Kenepuru Sound and Beatrix Bay in the Inner Sounds as well as terrestrial areas.

reorganised to reflect nested landscapes if the Panel was of a mind to consider this revised mapping approach. [111]

180. At the conclusion of the first hearing on landscape matters, a series of Minutes and Memoranda in Reply were exchanged between the Panel and the Landscape report writer.[112] These addressed the issue of nested landscapes which had been put forward over a period of time at the end of the first hearing. These nested landscapes had their genesis in the catchment approach of the Section 42A Report (Bentley) the earlier 2009 landscape study mentioned by Mr Hudson.

181. In response to Minute 15 of the MEP Hearing Panel concerning landscape and natural character mapping overlays and values, the Panel received the content of the amended Appendix 1 on 4 July 2018, and adopted its recommendations subject to other changes made in the record. As part of the restructuring process the content of the appendix clearly differentiated between features and landscapes.[113]

182. The Panel has considered the memorandum provided by Mr Bentley in response to Minute 15, including the re-organised content of Appendix 1 attached to the memorandum. Having done so, the Panel believes that Mr Bentley has undertaken a comprehensive, appropriate and easily understandable re-organisation of the Appendix content. For these reasons, the Panel adopts the material attached to the memorandum and this is to replace the notified form of Appendix 1.

183. However, it is important to recognise that decisions made on other submissions to the Appendix influence the specific content of the appendix.

184. The Memorandum in response received on 4 July 2018 indicates there is a need to revisit Maps 1-4. Further, Appendix 1 Maps 2, 3, 4 are inconsistent with Policy 7.1.4.

185. The Panel queried whether the headings utilised for maps in Appendix 1 are accurate or fit for purpose, and concluded they required amendment. Minute 15 requested that the content of Appendix 1 be reorganised to a visual catchment approach. The Memorandum in reply from the report writer acknowledged there is a need to correct Maps 1-4.

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[111] Marlborough Environment Plan and Responses to Minutes 8 and 9 concerning Landscape and Natural Character Mapping, Overlays and Values, 14 March 2018. Memorandum Evidence. Map attached 'Nested Landscapes within Inner and Outer Sounds', 14 March 2018.

[112] **Minutes**: 8 Site Visit Requests – Levide Capital Ltd and Vallyn and Diana Wadsworth 1 March 2018; 9 Request for Further Information 1 March 2018; 15 Request for Alternative Mapping Nested Landscapes 16 April 2018; 36 Request for clarification of Alternate Mapping 2 October 2018; 47 Request for Key Values Column 12 December 2018. **Memoranda**: Response to Minutes 8 and 9, 14 March 2018; Response to Minute 15, 2 July 2018; Response to Minute 36 2 November 2018.

[113] Memorandum in Reply, 2 July 2018.

186. The headings for Maps 2 and 3 need to change if not intended to show 'landscapes' as the report writer identified was the case. The same issue applies to the Map 4 heading for both A Marlborough Sounds Coastal Landscape and B Wairau Dry Hills Landscape.

187. Each map is showing areas where there will be areas of high amenity and outstanding natural features and landscapes. Policy 7.1.4 specifically refers to the fact while the explanation reinforces the fact:

*For those landscapes identified as having high amenity value, only landscapes that are more sensitive to change have been identified. The two specific areas considered sensitive to change are the Marlborough Sounds Coastal Landscape and the Wairau Dry Hills Landscape.*

188. Each map heading needs to state instead something like 'Natural Features and Landscapes of High Amenity for Marlborough Sounds' or 'Wairau Dry Hills High Amenity Areas'. The description of the heading in some of the items 1-27 in Appendix 1 may also need reconsideration as at the moment item 1 for example states only 'Outer Sounds Landscape'. The heading for areas A and B at pages App 1-27 and App 1-28 of Appendix 1 is 'Areas with high amenity landscape values' with each of A and B being described as Landscapes but A, for example, ends by saying in the Overview box 'Within this Coastal Landscape there are ONLs and ONFs'.

**Decision**

189. The Panel adopts the content of the response to the Panel's Minute 15 which also results in the following map amendments in Appendix 1:

- Replace Appendix 1 Map 2 with the map of Nested Landscapes within Inner and Outer Sounds and ONFL attached to the response to Minute 15.
- Headings for identified landscapes within that nested landscape map reflect a visual catchment approach and appear at page 1 of the response to Minute 15.
- Each individual description of those landscapes indicates the location of high amenity and outstanding natural features and landscapes.
- The legend for Map 3 is amended to read 'Identified areas of southern Marlborough'.
- The same issue applies to Map 4 where the legend is amended to differentiate Appendix 1A Marlborough Sounds High Amenity Landscape and Appendix 1B Wairau Dry Hills High Amenity Landscape.

## Marine farms – the 'cookie cutter' approach

190. Numerous submitters concerned with the retention of marine farms within ONF, ONL and High Amenity Landscape seek amongst others: the level of mapping of ONF, ONL in the vicinity of mussel farms be removed, or request a relief that aquaculture does not affect underlying values;[114] a review of the mapped areas against the various policies in the PMEP and that the wording in the values be similar to those listed in Auckland, Northland and Bay of Plenty's regional plans – they query the fact that the Marlborough Sounds is an ONL in a national sense, and comment on the mapping extent of Marlborough's ONLs on the other;[115] the criticisms and recommendations of Dr Steven be fully recognised and the PMEP should be amended accordingly – also that the overlay be increased with the extension of the ONL seascape to be at least 750 metres from MHWS;[116] that the landscape overlays cannot be evaluated without the notified coastal marine farming provisions and marine farming zoning maps for coastal Marlborough – the whole of the PMEP is interrelated and one part cannot be considered without the other;[117] the removal of commercial forests from the High Amenity Value Landscape in Marlborough Sounds Landscape;[118] withdrawal of the layer of ONL from the PMEP.[119] Several submitters consider that where there is an existing salmon farm, include the express statement 'some bays contain existing salmon farms, but this does not compromise current natural values'.[120]

**Section 42A Report (Bentley)**

191. The report writer specifically addresses marine farm issues. He addresses the 'cookie cutter approach' to landscape issues, a factor addressed by Mr Hudson, and why some of the farms have been cut out of the ONF/ONL.

192. The 'cookie cutter approach' is recommended for rejection by the report writer given how he assessed landscapes in the Sounds. Rather, where areas or clusters of modification were concentrated in certain areas, it was deemed through the mapping evidence, that the marine farming production areas should be excluded. No specific modification was singled out or took a bias over the other, with each area assessed on its merits.

193. The report writer identifies many mussel farms were granted consent prior to the RMA; and therefore lacked the effects assessment process now considered under the legislation. To

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[114] Murray Waghorn (490.3, .4), Helen Johnson (513.8), John Wilson (839.7-.18), Lewis Wilson (903.17, .18).
[115] MFA (401.244), Aquaculture NZ (401.261).
[116] FNHTB (716.205).
[117] Kroon, Hanneke and Jansen, Joop (808.5).
[118] MFIA (962.52, .55).
[119] Sanford (1140.90-.100).
[120] Multiple submitters (218, 544, 750, 764, 842, 874, 890, 997, 1150, 1160).

isolate marine farms generally from other developed modifications such as jetties, moorings, dams in the seascapes and houses, forestry tracks, power lines in the terrestrial landscapes, does not, in the report writer writer's recommendation, create good resource management outcomes. It is how these modifications read as one, interact with each other or how they are collectively appreciated in the landscape that is important. Singling out one type of development is wrong. Meanwhile, large parts of the Sounds retain marine farming and are not part of ONF/ONL mapping.[121]

**Consideration**

194. The Panel questioned whether existing farms should be regarded as part of an outstanding seascape or landscape, or must they be regarded as modifying the quality of a seascape or landscape as outstanding to such a degree that they may no longer be so in particular locations.

195. The report writer in his response considers the effects on ONFLs are a question of scale, viewing range and landscape value. Ms Gilchrist added a number of other factors, including the scale of other modifications in the landscape.[122]

196. The Panel agrees it depends on the factors of the particular landscapes and scale of the built infrastructure it has to accommodate.

197. At Whangatoetoe Bay, Port Underwood for example it is the geologic form of the peninsula that provides the landscape characteristic unaffected by the existing landcover and adjacent marine farms, that is, it is a case of landscape landform rather than land/seascape cover.

198. The Court of Appeal decision *Man O' War* identified earlier points to the validity of retaining and encompassing some existing uses within an ONL instead of deleting them. This follows the *King Salmon* Supreme Court decision which makes it clear that what is being protected is the issue.[123]

199. An issue for the Panel was whether it was appropriate to leave the Landscape chapter relating to aquaculture to await the release of the aquaculture component.

200. We concluded that compliance with the RMA and NZCPS provisions (s 6(b) RMA and NZCPS Policy 15) on landscape issues requires they are addressed here. We defer answering the question of whether it is appropriate to include other provisions protecting renewal rights of existing scale and intensity for the new aquaculture chapter as well as marine farm overlaps

[121] S42A Report (Bentley), Reply to Evidence, pages 8, 15-16.
[122] S42A Report (Bentley), page 42. Aquaculture Industry, Sophie Gilchrist Evidence, paragraphs 5.15-5.16.
[123] *Man O War Station Limited v Auckland Council* [2017] NZCA [24].

with outstanding natural landscape. Renewals depend on spatial allocation and status of renewal activity.

201. The provisions of the proposed NES for Marine Aquaculture seek to clearly delineate exactly which marine farms require an assessment of the adverse effects on the values and factors that make an area outstanding when applying for a replacement consent. It does this by applying as a matter of discretion only to farms located within an identified ONF and ONL within which there are 70 existing farms currently located.[124]

202. A number of considerations arose in the evidence of the witness for MPI which the Panel found helpful to identify two here:

*Is there a need for a new policy addressing cumulative effects on landscapes? Could this be resolved by way of a spatial plan?*

*Obviate the need for consenting on a site by site basis.*[125]

203. The issue of cumulative effects and the possibility of spatial plan requires addressing by way of a plan change or the new aquaculture chapter if the parties see this as a way forward. We have addressed this above.

204. In terms of consenting on a site by site basis, several of the landscape architects, namely James Bentley and John Hudson, as does the Panel, see the nested catchments method as a solution by which to address this issue. The detail provided in the amendments to Landscape and the unscrambling of some of the concepts outlined in the Section 42A Report (Bentley) should assist. All of the landscape architects in their assessments and amendments were very clear in seeking to avoid consenting of future marine farms on a case by case basis if that could be avoided.

205. Ms Gilchrist included a number of factors that can be considered in relation to determining mussel farming in relation to amenity values. These are worth assessing in any application for marine farm consents.[126]

**Decision**

206. The Panel has decided no amendments to the Plan are required in respect of this issue. The mapping provided in the Section 42A Report (Bentley) reinforced the opinion the Panel arrived

[124] Ibid.
[125] MPI, Michael Nielson, Evidence, paragraphs 4.1-4.5.
[126] Proposed National Environmental Standard for Marine Aquaculture Discussion Document, June 2017, page 29.

at in assessing whether there had been no deliberate 'cookie cutting' to separate out marine farms from the seascape/landscape/natural feature interface.

## Landscape Overlays

207. The landscape overlays are confusing. The submissions seek to make overlays sharper and clearer and at a larger scale.[127] This prompted requests to the Section 42A Report writer, Mr Bentley, identified in Panel Minutes 8 and 9.

208. The Marlborough Sounds Coastal Landscape applies to urban zonings to which no landscape provisions apply.[128] The report writer recommends removal of the coastal overlay from the urban zonings.[129]

209. The legend to Landscape Overlay incorrectly includes the references 'Marlborough Sounds Coastal Landscape' and 'Wairau Dry Hills Landscape' for the s 7 RMA Amenity Landscapes.

**Decision**

210. The phrases 'Marlborough Sounds Coastal Landscape' and 'Wairau Dry Hills Landscape' in the legend to the Landscape overlay maps are amended to 'Marlborough Sounds High Amenity Landscape' and 'Wairau Dry Hills High Amenity Landscape', consistent with other previous decisions of the Panel.

211. The Marlborough Sounds High Amenity Landscape is removed from urban zonings.

## Landscape Area 6 : Maud Island, Mt Shewell, Fitzroy Bay and Eastern Tawhitinui Reach

### Sub area 4: Mt Shewell, Apuau Channel, Treble Tree and Yellow Cliffs, and Maud Island area[130]

212. Several submitters seek: the overlay is removed from the vicinity of marine farm 8181 and 8179 in Picnic Bay, or record that aquaculture will not affect relevant values;[131] the ONL include the coastal marine area within 300 metres of Maud Island, include the whole of Apuau Channel between Buckland Bay and Treble Tree Point, to connect Mount Shewell Reserve and Treble Tree Peninsula with Maud Island;[132] remove the ONL overlay from Reef Point/Yellow Cliffs or record that aquaculture will not affect the relevant values;[133] remove the northern extent of the ONL overlay from the ridgeline above Waiona Bay.[134]

[127] S42A Report (Bentley), pages 18-21.
[128] S42A Report (Bentley), pages 11-15.
[129] S42A Report (Bentley), page 15.
[130] Sub-areas as defined in the Section 42A Report (Bentley) page 27
[131] Christopher Peter Womersley (626.4, .5, .6).
[132] FNHTB (716.206-.201).
[133] Goulding Trustees Limited (750.6-.8).
[134] United Fisheries Holdings Limited (1204.4).

**Section 42A Report**

213. The report writer re-examined FNHTB's submissions around and including the Apuau Channel as an ONF/ONL and increasing the coastal water overlay around Maud Island.

214. One of the matters preventing Apuau Channel being considered an ONL/ONF originally was the level of trawling and dredging occurring in the area. But from a landscape perspective, the report writer considers there is a close relationship between the ONF/ONL landform of Maud Island and the ONL/ONF mainland (Waiona Bay area). The narrow, un-modified waterway of Apuau Channel assists in defining these areas. Each area retains high or very levels of natural character (with Maud Island being considered to hold outstanding natural character). Modification is minimal in this area. The report writer agrees with FNHTB that the high levels of naturalness experienced on the water's surface, coupled with the extremely high legibility and aesthetic values of the adjacent landforms and ridgelines, mean that Apuau Channel should be included as an intrinsic part of this ONL/ONF overlay.

215. An extension to the seascape around Maud Island is also reported to be appropriate, despite the dredging and trawling; the seascape around Maud Island is inextricably linked to the island's values, and recognition of these values of this indented landform would be appropriately acknowledged if the mapping were to extend out to 300 metres.[135]

**Consideration**

216. Mapping Recommendations Figure B: Landscape Mapping Changes 2: Maud Island and Apuau Channel prepared for MDC illustrates the extent of the unmapped area recommended to be included as an ONF/ONL. This demonstrates no marine farms within the suggested area touching on a headland. There are three marine farms in the next bay to the west and the proposal does not impinge on these.

217. The report writer's recommendation is to re-map the seascape of Apuau Channel as an ONL/ONF, and to increase the mapped extent of sea around Maud Island to 300 metres to better reflect the seascape qualities associated with this island. Refer to Figure B: Landscape Mapping Change 2: Maud Island and Apuau Channel. Additions are also required with respect to the values table that underpins the mapped extent.

218. The Panel finds that there is no need to reduce the extent of the ONL overlay as it does not affect the marine farms identified by the submitter.

[135] S42A Report (Bentley), page 29.

**Decision**

219. The Panel accepts Figure B of Landscape Mapping Changes of Mr Bentleys Landscape Mapping Recommendations Report, dated 20 November 2017, as an amendment to Map 4 of the landscape overlays in the PMEP.

## High amenity landscapes

220. Federated Farmers[136] challenged the use of high amenity landscapes and sought their deletion because it was asserted they would cause unnecessary restrictions on activities over and above what the RMA requires.

**Section 42A Report**

221. The report writer provided a commentary of what 'High Amenity Landscapes and Features (HALF)' actually described. Essentially, they recognise the need to manage particular parts of Marlborough that are highly valued with high levels of amenity throughout, but 'fall short of reaching the threshold of being outstanding … due to extensive modifications…'

222. Features and landscapes that do not meet the criteria for outstanding can nonetheless be required to be 'maintained and enhanced' either as amenity values in s 7(c) RMA or as part of the wider environment under s 7(f).

223. The report writer supports the retention of HALF and the geographical extent shown in the Mapping Overlays but without the cross-hatching which creates visual noise and should be simplified.[137]

**Consideration**

224. The Panel agrees, for the above reasons, with the report writer's recommendations.

**Decision**

225. The decision is to retain the high amenity landscapes within the PMEP with the mapping delineation on a separate series of maps to the ONFLs.

## Wither Hills (Wairau Dry Hills) landscapes

226. The Section 42A Report identifies that these landscapes have been identified for their contrasting form, colour and appearance (and lack of structure) to the Wairau Plains and Blenheim township, and they are predominantly identified and mapped through their visual catchments and land-based modifications. The report writer made the following observations:

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[136] Evidence of Darryl Sycamore
[137] S42A Report (Bentley) 4 High Amenity Landscape, page 13.

*The principal landscape values of the Southern Hills lie in their aesthetic values, where the hills act as an important visual backdrop to Blenheim and contrast with the varied land uses across the plains. They hold characteristic qualities that contribute to the visual appreciation of the area. The Wither Hills (including the wider Southern Hills) provide topographical relief to the flat Wairau plains and provide a high level of visual coherence due to their prominent and mostly unencumbered nature from buildings and noticeably 'clean' ridges and spurs.*

*The Wairau River marks the geological boundary between the harder geology to the north (the Richmond Ranges) and the softer geology to the south. Erosion by rivers and tectonic activity has moulded the Southern Hills to a low elevation. Due to this, the southern hills that front the Wairau Plain are highly legible. …*[138]

227. During the hearing in November 2018 two landowners who own property in this landscape contained within the high amenity landscape feature (HALF) mapped overlay gave evidence.[139] They queried whether the landscape was accurately mapped or whether their properties served a practical purpose in protecting views of the Wairau Dry Hills landscape.

**The Levide Capital Ltd property**

228. Part of the Levide property is identified as holding high landscape values that contribute towards the mapped area of the HALF. The property is located at the eastern extent of the Wither Hills, and includes part of the 15th, 16th and 17th valleys, which themselves are an important part of the Wither Hills. Adjacent to part of this is SH1 and the railway. SH1 extends southwards towards Weld Pass and further northwards towards the Wairau Plains and Blenheim. The railway line also comes close to the property, aligning with SH1 at the head of the 17th valley.

229. Due to the size of the property and the inclusion of three different valleys, variances in character had been noted, however the hills nonetheless were seen as providing topographic relief from the Wairau Plains and Wairau Lagoons and also assisting in providing an entrance to the Wairau Valley when travelling northwards (from Weld Pass). Rocky peaks, areas of pine forestry and intensive land uses all have an influence on the aesthetics of the hills.

230. The extent of the mapped area on the property broadly follows a contour approach and to some extent a visual catchment approach for some of the minor spurs. This contour approach

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[138] S42A Report (Bentley). Marlborough Environment Plan, Response to Minutes 8 and 9 covering Landscape and Natural Character Matters, Overlays and Values, 14 March 2018, page 4.

[139] Levide Capital Ltd (907.32), Vallyn and Diana Wadsworth (201.2).

was used as a mapping approach for much of the Southern Hills overlay, however, where human interventions have prevented this, land use has been a mapping indicator.

**Section 42A Report**

231. The report writer offered to visit the property, and after an exchange of Panel minutes and agreement with the landowners, he advised he was able to visit the property on 2 March 2018, confirming that whilst parts of the property are visible from the state highway (and railway), not all of it is. He recommended some refinement to the mapped area would better define those areas that are visible.

232. This exercise refined the mapping around 15th, 16th and 17th valleys. A series of maps to portray what parts of the Southern Hills overlay are to be removed was provided.

233. The report writer recommended the following detailed amendments. His text in full is identified here:

> *1. 15th Valley: To refine the mapping around the valley floor and lower slopes of the 15th Valley. This is due to the modifications currently present on the valley floor (including vineyards and industrial buildings close to SH1). The proposed mapping method is to follow a contour line and gradually 'step-it-up' as the contours increase in elevation as the valley extends westwards.*
>
> *2. To retain the mid and upper parts of the north-facing slopes southern slope as this area is visible from parts of SH1. I have carefully tried to exclude the smaller 'backside' ridges at the head of the valley where oblique views would not gain sight of these areas.*
>
> *3. 16th Valley: I have excluded the area of hillside closest to SH1 and the railway line that is currently covered with pine trees. I do not consider that this part of the valley positively contributes to the values that is being captured by the overlay.*
>
> *4. I have reviewed the remainder of the 16th Valley and consider that some small amendments could occur to the mapped area at the head of the valley, however consider that the remainder reflects the visibility well of this part of the valley.*
>
> *5. 17th Valley: I have removed two large parts of the overlay in this valley, principally due to the modifications of existing pine forestry and that parts cannot be seen from the highway. These areas include southern-facing hill containing the pine forestry close to*

*the state highway and the westward extent of the mapped area. A further smaller area has been removed within the middle of these two areas.*[140]

**Consideration**

234. Having itself visited the site the Panel agreed with the observations of the report writer recorded above.

**Decision**

235. Landscapes map 8 is amended to accord with Figure 1 attached to the report writer's response of 14 March 2018.

## Southern Hills property: Vallyn and Diana Wadsworth

236. The same response by the Section 42A Report writer (Bentley) sets out a similar description of the area as it did in response in the first few paragraphs to the submission of Levide Capital. A further paragraph indicates the difference between the two properties:

> *Through this exercise, part of the property was identified as holding high landscape values that contributed towards the mapped area of the HALF. [The] property is located at the southern part of the third most 'easterly' ridge that extends into the Wairau plains. This small broken ridgeline divides Brancott and Paynters Roads (and valleys). The extent of the mapped area on the property follows a contour line. This contour approach has been used as a mapping approach for much of the Southern Hills overlay, however, where cultural interventions have prevented this, land use has been a mapping indicator.*

237. On his site visit, also on 2 March 2018, the report writer agreed with Mr and Wadsworth that their property is not visible in the broader landscape and the mapped area cannot be seen from any local public road. The particular easterly ridge is lower than the other two ridges that extend into the Wairau Plains and is less defined.

238. In addition, human interventions have encroached sufficiently on the easterly ridge to a degree where the very values that have been identified for the broader Southern Hills are difficult to identify. The values on this ridge are not as strong as the two to the west. The writer recommended in his response dated 14 March 2018 a change in the contours represented.[141]

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[140] Response to Minutes 8 and 9 concerning Landscape and Natural Character Mapping, Overlays and Values, 14 March 2018, pages 4 and 5.

[141] MDC Marlborough Environment Plan: Response to Minutes 8 and 9 concerning Landscape and Natural Character Mapping, Overlays and Values, 14 March 2018, page 6.

**Decision**

239. Landscapes map 8 is amended to accord with Figure 2 attached to the report writer's response of 14 March 2018.

## Wither Hills as an outstanding natural landscape (ONL)

240. Royal Forest and Bird requests that the Wairau Dry Hills landscape should be an ONL.[142]

**Section 42A Report**

241. The Section 42A Report identifies that in the assessment of the Marlborough Landscape Study the Wairau Dry Hills are too modified to be included as an ONL. While the hills form an important visual backdrop to the Wairau Plains and Blenheim, and are noted for their topographical and land use adjacent to the plains, 'they are sufficiently modified that they fall short of the outstanding threshold'.[143] Nonetheless, they are assessed as holding important visual attributes which is why they are identified as a high amenity landscape but not an ONL/ONF.

242. The recommendation is to retain the Wither Hills as a high amenity landscape.

**Consideration**

243. The Panel confirmed the evidence of the report writer after a site visit which confirmed all the area's attributes as set out in the Section 42A Report.

**Decision**

244. The Wither Hills is retained as a high amenity landscape and the submission is rejected.

## Other issues related to the Wairau Dry Hills Landscape Overlay

245. Rule 3.3.10 relates to conservation planting, carbon sequestration and forestry planting (permanent).

246. Standard 3.3.10.1 identifies 'There be no planting within the Dry Hills landscape'.

247. Woodlot forestry up to 2 ha and farming for the purposes of horticulture is permitted in the Wairau Dry Hills Landscape which would lead to degradation of values but no scope exists within submissions to change these provisions.

248. Submitters seek to amend the rule to allow conservation plantings including exotic species in the Wairau Dry Hills Landscape.

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[142] Forest and Bird (715.426, .427).
[143] Section 42A Report, Reply to Evidence, page 24.

**Section 42A Report (Dale)**

249. The Section 42A Report identifies that indigenous vegetation makes up part of the inherent values of landscape and should be enabled for conservation planting and certain sequestration planting.[144]

250. The report writer also refers to Rule 8.3.9.3 restricts the planting of indigenous species as part of conservation planting in the Rural Living Zone. The restriction on conservation planting within the Wairau Dry Hills recognises the open grasslands of the hills are sensitive to change and that exotic species planting could affect their distinctive colour and open values unencumbered by modification through unnatural vegetation patterns.

251. Accordingly, the report writer considers it is appropriate to permit conservation planting with indigenous species within the Wairau Dry Hills Landscape, and changes to the relevant rules are recommended accordingly.

**Consideration**

252. We queried whether conservation planting should be allowed and concluded that it should be provided in view of the report writer's findings, but of indigenous plantings only. The Panel further queried if existing houses and their associated amenities and/or conservation planting might impact on the values the PMEP seeks to be protected. After considerable discussion, and accounting for the fact that some residential areas already exist which include household lawns, hedges and gardens, we concluded that plantings in curtilage of a dwelling should be excluded.

**Decision**

253. For the reasons given, Rules 3.3.10.4 and 8.3.9.3 are amended to read:

*~~There must be no planting~~ Only indigenous species may be planted within the Wairau Dry Hills Landscape, except for plantings within a curtilage around a dwelling.*

254. Rule 19.3.2.3 is amended to read:

*~~There must be no planting~~ Only indigenous species may be planted within the Wairau Dry Hills Landscape.*

255. Otherwise the submissions are rejected.

[144] S42A Report (Dale), page 76; Reply to Evidence, page 3. Vallyn and Dianne Wadsworth.

# Proposed Marlborough Environment Plan

# Topic 5: Natural Character

**Hearing dates:** 26 – 28 February and 1 March 2018

**S42A Report Writer:** James Bentley and Maurice Dale

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| BML | Boffa Miskell Limited |
| CMA | Coastal Marine Area |
| CTA | Coastal Terrestrial Area |
| HALF | High Amenity Landscape and Feature |
| HNC | High Natural Character |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| MHWS | Mean High Water Spring mark |
| MPI | Ministry for Primary Industries |
| MSRMP | Marlborough Sounds Resource Management Plan |
| NPSET | National Policy Statement on Electricity Transmission |
| NPSFM | National Policy Statement for Freshwater Management 2014 |
| NPSREG | National Policy Statement for Renewable Electricity Generation |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| ONC | Outstanding Natural Character |
| ONF | Outstanding Natural Feature |
| ONL | Outstanding Natural Landscape |
| ONFL | Outstanding Natural Feature and Landscape |
| RMA | Resource Management Act 1991 |
| VHNC | Very High Natural Character |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| EBCS | East Bay Conservation Society |
| EDS | Environmental Defence Society Incorporated |
| DOC | Department of Conservation |
| KCSRA | Kenepuru and Central Sounds Residents' Association |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| Fish and Game | Nelson Marlborough Fish and Game |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| MFA | Marine Farming Association Incorporated |
| MFIA | Marlborough Forest Industry Association Incorporated |
| NZTA | New Zealand Transport Agency |
| Pernod | Pernod Ricard Winemakers New Zealand Limited |
| Port Clifford | Port Clifford Limited |
| PMNZ | Port Marlborough New Zealand Limited |
| QCSRA | Queen Charlotte Sound Residents Association |
| NZTA | New Zealand Transport Agency |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

**Introduction**

1. The introduction to the chapter identifies that natural character includes natural elements, patterns, processes and experiential attributes of an environment. It then lists 'key components' of the natural character of the coastal environment. Freshwater bodies and their margins are included which 'collectively combine to create the natural character of the overall environment'.[1]

2. Submissions include those who seek to amend the introduction to delete the description of the components that contribute to natural character;[2] amend the description of the components that make up natural character to include the components listed in NZCPS Policy 13(2);[3] and amend the introduction to provide a clear outline and explanation of what is addressed in the chapter with reference to s 6(a) RMA, NZCPS Policy 13 Preservation of natural character and Policy 14 Restoration of natural character.[4]

**Section 42A Report**

3. It is acknowledged in the report that the list of attributes in the PMEP does not fully align with those of the coastal environment set out in Policy 13(2) of the NZCPS. They are also inconsistent with the attributes considered in the natural character assessment reports for Marlborough's coastal environment and rivers, which capture the attributes in NZCPS Policy 13(2). The report recommends that the definition and listed attributes are amended to achieve appropriate alignment consistent with NZCPS Policy 13(2) (changes detailed below). While the attributes of natural character are also listed in Policy 6.1.1 PMEP, it is recommended they are also identified in the introduction to provide clarity for plan users at the start of the chapter.

4. The report writer recommended that the introduction to Chapter 6 be amended as follows:

> *Natural character is the term used to describe the degree of naturalness in an area, and includes the natural elements, patterns, processes and experiential ~~qualities~~ attributes of an environment. The natural character of the coastal environment, and freshwater bodies and their margins, is comprised of a number of ~~key components~~ attributes which include:*
>
> - ~~*coastal or freshwater landforms and landscapes (including seascape);*~~

---

[1] Section 42A Report (Dale), page 12.
[2] EDS (698.37).
[3] FNHTB (716.55).
[4] Forest & Bird (715.120).

- ~~*coastal or freshwater physical processes (including the movement of water and sediments);*~~
- ~~*biodiversity (including individual indigenous species, their habitats and communities they form);*~~
- ~~*biological processes and patterns;*~~
- ~~*water flows and levels, and water quality; and*~~
- ~~*the ways in which people experience the natural elements, patterns and processes.*~~
- *Abiotic systems - physical processes, geomorphology, topography, landform, and water quantity/quality;*
- *Biotic systems - species, communities, habitats, and ecological processes;*
- *Experiential attributes - the ways in which people, including tangata whenua, experience the elements, patterns and processes.*

*Collectively, these combine to create the overall natural character of the environment. The degree of natural character present in an area is commonly described on a continuum. Some environments have very high natural character due to the lack of human induced modification and may even be in a natural state. In other areas, there may be little natural character remaining due to extensive human modification.*

*This chapter provides the basis from which to determine the degree of natural character present, the classification of areas of natural character, and management of natural character to recognise and provide for section 6(a) of the Resource Management Act 1991, and give effect to policies 13 and 14 of the New Zealand Coastal Policy Statement 2010 (NZCPS), and National Policy Statement for Freshwater Management 2017 (NPSFM). The chapter includes objectives, policies, and methods to guide activities within both coastal and river environments. The natural character characteristics that have been identified are included in Appendix 2 (coastal), Appendix 5 (freshwater) and specific areas of high, very high, and outstanding natural character are identified on the planning maps in Volume 4. The difference between areas of high natural character and very high coastal natural character is one of degree on the spectrum of assessment of natural character rather than one of legal effect.*

*Provisions included elsewhere in the Marlborough Environment Plan (MEP) ~~target~~ address the individual components of natural character and provide direction on how adverse effects on particular ~~values~~ characteristics can be managed. These include:*

- *Chapter 5 - Allocation of Public Resources*
- *Chapter 7 - Landscape*
- *Chapter 8 - Indigenous Biodiversity*

- *Chapter 9 - Public Access and Open Space*
- *Chapter 13 - Use of the Coastal Environment*
- *Chapter 15 - Resource Quality (Water, Air, Soil)*

*This chapter does not address the natural character of wetlands. The natural character of wetlands has been established through an integrated process of assessing wetland values. Provisions to preserve the natural character of wetlands are included in Chapter 8 – Indigenous Biodiversity.*

~~*However, there is a need for this management to be integrated in order to preserve natural character in coastal and freshwater environments. This ensures that the management of the individual components of natural character is co-ordinated to achieve a common end in the context of Section 6(a) of the Resource Management Act 1991 (RMA), of the New Zealand Coastal Policy Statement 2010 (NZCPS) and of the National Policy Statement for Freshwater Management 2014 (NPSFM).*~~

**Consideration**

5. Neither the RMA nor the NZCPS Policy 13 provides policy makers with a definition of 'natural character'.

6. The Section 42A Report (Bentley) defines the term:

> *Natural Character is the term used to describe the natural elements of all coastal environments. The degree or level of natural character within an environment depends on:*
>
> *1. the extent to which the natural elements, patterns and processes occur; and*
>
> *2. the nature and extent of modification to the ecosystems and landscape/seascape.*
>
> *The degree of natural character is highest where there is least modification.*
>
> *The effect of different types of modification upon natural character varies with context and may be perceived differently by different parts of the community.*[5]

7. The definition adopted for natural character is the definition that was agreed to at a DOC-run workshop in 2011, which involved a wide range of resource management practitioners, local authorities and government bodies. The definition endorsed at that meeting is a slight variation of the original definition outlined by the Ministry for the Environment in 2002.[6]

[5] Section 42A Report, page 7.
[6] Section 42A Report, page 8. Department of Conservation, cited in NZCPS 2010 Guidance Note: Preservation of natural character, page 11.

8. Dr Steven considered that a simpler definition is valid:

   *Natural character is the expression of natural elements, natural patterns and natural processes in the landscape or coastal environment, rated according to the degree of modification through human agency.*[7]

9. The characteristics of natural character are, however, found in NZCPS Policy 13(2) which predates many of the studies identifying what constitutes natural character. The policy provides:

   **(2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:**

   **(a) natural elements, processes and patterns;**

   **(b) biophysical, ecological, geological and geomorphological aspects;**

   **(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;**

   **(d) the natural movement of water and sediment;**

   **(e) the natural darkness of the night sky;**

   **(f) places or areas that are wild or scenic;**

   **(g) a range of natural character from pristine to modified; and**

   **(h) experiential attributes, including the sounds and smell of the sea; and their context or setting.**

10. The word ‘may’ in the introduction to NZCPS Policy 13(2) indicates that any assessment of the listed characteristics and experiential attributes is discretionary and invites an identification of those most relevant – or not. Nor does the recognition or observation of the aspects of natural character include ‘natural features’, ‘natural landscapes’ or ‘amenity values’. NZCPS Policy 13(2) deliberately says so.

11. The report writer (Dale) includes the words ‘attributes, ‘naturalness’ and ‘experiential qualities’ in his amendments to the text of the Introduction from the submissions requesting some of these changes.[8]

12. The Supreme Court in the *King Salmon* case emphasised that greater rigour is needed in the assessment of natural character of the coastal environment supported by a precise and critical use of language.[9] These findings have relevance in this case.

[7] FNHTB, Michael Steven Evidence, paragraph 73.

[8] Section 42A Report, Report on submissions and further submissions Topic 5: Natural Character – Issues, Objectives, Policies, and Methods, page 13.

[9] *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited (2014) NZSC 38.*

## Experiential attributes

13. Dr Steven in his evidence on natural character was concerned with the use of the subclause in NZCPS Policy 13(2)(h) 'the experiential attributes of the smells and sound of the sea and their context or settings' in the Natural Character chapter. He considers the only valid examples for the assessment of natural character are those that derive from the first part of the definition he cites above, that is, 'the expression of natural elements, patterns and processes … in the coastal environment rated according to the degree of modification through human agency'.[10]

14. In terms of the phrase 'the experiential attributes …' the report writer considers the range of factors to be considered under this category of natural character has been interpreted too loosely and uncritically to the point where assessments of natural character are almost indistinguishable from assessment of landscape.[11] The report writer considers that sounds and smell have no tangible physical presence as such, although they are still able to be perceived or experienced. But in his opinion they exist only as collateral characteristics of more tangible natural phenomena (in some of the other provisions in NZCPS Policy 13(2)) 'and are not the objective analysis of elements of natural character'.[12]

15. Addressing the wording of the phrase 'experiential attributes' in NZCPS Policy 13(2)(h), the Panel considers the wording applied in the subclause appears opaque (and may require further explanation in the future) but is relevant to natural character to be regarded in its own right wherever it applies. It relates to the marine ecological components of natural character.

16. The expert evidence on this issue comes from Andrew Baxter on behalf of the Minister of Conservation. Mr Baxter has been in DOC's Biodiversity Group and has over 35 years' experience in coastal/marine science and management.[13]

17. Mr Baxter identifies the phrase 'experiential attributes' was not included in the nine biogeographic areas of natural character outlined in Davidson et al (2011)[14] but was assessed for the surface of the water and the land/sea interface elsewhere in Boffa Miskell et al (2014):

    *71. While the coastal marine area extends out to the edge of the territorial sea (the 12 mile limit), information on seabed ecology is generally greatest close to shore and decreases appreciably with distance offshore. The strong connection between*

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[10] FNHTB, Michael Steven Evidence, paragraph 80.
[11] FNHTB, Michael Steven Evidence, paragraph 82.
[12] FNHTB, Michael Steven Evidence, paragraph 84.
[13] Minister of Conservation, Andrew Baxter Evidence (Marine Ecological Components of Natural Character), paragraphs 70-80.
[14] Davidson RJ; Duffy CAJ; Gaze P; Baxter A; du Fresne S; Courtney S; Hamphill P. *Ecologically Significant Marine Sites in Marlborough, New Zealand* (September 2011). Coordinated by Davidson Environmental Ltd, Marlborough District Council and Department of Conservation. Published by Marlborough District Council.

*the land and the sea is also a pivotal feature in terms of defining the natural character of the coast. The … study therefore focused on the marine environment closer to shore, specifically:*

- *All enclosed waters of the Marlborough Sounds*
- *The outer Marlborough Sounds bounded by the main headlands and offshore islands and stacks;*
- *Out to 2 km offshore from the outer coast (including from offshore islands and stacks around the outer Sounds).*

*72. The criteria are not independent of each other and many are closely linked. For example, horizontal and vertical biotic patterns are closely interlinked and are influenced by sedimentation and human activities such as trawling, dredging and aquaculture. Notwithstanding these linkages, it was helpful to consider them separately to ensure the multi-dimensional nature of natural character was fully considered and assessed. However, it also meant that the assessment of an area's overall rating could not be an additive numerical approach, but rather required a broad qualitative judgement across all the criteria*.[15]

18. Special marine community assemblages and transition zones between natural character areas such as representative habitats and communities are also to be considered as they add to the overall physical picture of the natural character community.[16]

19. Sedimentation levels in fact may be a natural feature, for example, adjacent to naturally erodible shorelines.

20. We have noted that it is optional as to whether or not NZCPS Policy 13(2)(h) (or another sub-provision) is included in the application of the definition of natural character, due to the 'may' being taken into account through the level of 'modification', a word that exists in Policy 13(2). Andrew Baxter's example of the recovery from modification is of the altered shallow subtidal and intertidal marine communities following from the introduction of speed controls and removal of the fast ferries, together with the maximum wake criteria introduced in 2000. The Cook Strait ferries no longer adversely affect the subtidal and intertidal marine areas of the

[15] Minister of Conservation, Andrew Baxter Evidence (Marine Ecological Components of Natural Character), paragraphs 71-72.
[16] Minister of Conservation, Andrew Baxter Evidence (Marine Ecological Components of Natural Character), paragraphs 16, 74, 80. See also Natural Character of the Marlborough Coast. Defining and Mapping the Marlborough Coastal Environment. Appendix 6, Technical Marine Methodology. MDC and others (2014).

shipping routes along the Marlborough Sounds. Ferry effects now appear to be mostly limited to the intertidal zone in exposed bolder sites.

21. Further evidence of experiential attributes is provided by the report writer (Bentley) in addressing the technical mapping and text of the natural character characteristics of the coastal environment. These were clearly set out in the response to Minute 55.

22. The word ‘attribute’ has been referred to as ‘belonging to’ or ‘a characteristic quality’, and in this way is part of experiential natural character.[17] Thus the word ‘attributes’ too has limited application. It is not a word to qualify all other aspects of natural character as occurs in some of the references suggested in submissions or reports on this topic. A consequential change is required to address abiotic and biotic as ‘characteristics’ and not inclusively as ‘attributes’.

**Decision**

23. We accept from both Mr Baxter and Mr Bentley’s technical mapping exercise (to come) that experiential attributes are the third factor in the overall consideration of natural characteristics.

## Naturalness

24. The Environment Court in a number of cases addresses ‘naturalness’ which is not defined, at least in the evidence before us. Most of the cases in which it features address landscape issues.[18]

25. In Mr Baxter’s evidence, however, he expressed the opinion that in the context of natural character, biotic patterns which are close to a natural state (that is, ‘higher naturalness: less influenced by human pressures’) would have a higher natural character.[19]

26. The Panel concluded from the case law at least that ‘naturalness’ is part of a spectrum requiring perceptual evaluation of landscape, whereas ecologists interpret natural character naturalness in terms of indigenous attributes. As one authority puts it, ‘naturalness’ is

> *A measure of the degree of human modification of a landscape/seascape or ecosystem expressed in terms of:*
>
> *i) ecological naturalness (indigenous nature);*
>
> *ii) landscape naturalness (perceptions of nature).*[20]

[17] New Zealand Pocket Oxford Dictionary, 4th Edition, Oxford Press, page 65.
[18] *High Country Rosehip Orchards Limited v Mackenzie District Council* [2011] NZ EnvC 387.
[19] Minister of Conservation, Andrew Baxter Evidence (Marine Ecological Components of Natural Character), paragraph 17.
[20] Marlborough Coastal Study (2014), page 4.

27. In the Panel's opinion this approach provides for the term 'naturalness' to be used both in relation to the Natural Character and Landscape chapters. In the introduction to this chapter it is the term used to describe the degree of naturalness in an area which co-relates to all three systems of natural character recommended in the report writer's original three amended bullet points.

**Decision**

28. Accordingly, we retain the word 'naturalness' in the introduction to this chapter.

## Values

29. The phrase 'natural character values' also appears in the report writer's (Dale) amended Introduction to Chapter 6 in the third paragraph. In the context of NZCPS Policy 13(2) Preservation of natural character, the word 'values' does not apply to natural character at all. This is in spite of the fact that Appendix 2 of Volume 3 of the PMEP leads with a heading 'Appendix 2: Values contributing to high, very high and outstanding coastal natural character'.

30. Dr Steven describes 'values' as follows:

> *Values are not inherent in the biophysical environment … Values have their origin in shared community or societal beliefs. Value refers to worth, merit or importance of something. Values cannot be observed directly but only through their expression …'*[21]

31. The Panel accepts this observation.

32. In NZCPS Policy 13(2) the word 'values' is associated with 'amenity values', but only to the extent it excludes it as well as a reference to natural features and landscapes, requiring recognition that 'natural character' is not the same as either of those three references.

33. The reference to the term 'values' is relevant to NZCPS Policy 15 and is clearly distinct from consideration of the preservation of natural character. Nor are they part of the characteristics that identify natural character. That reference provides for those natural features and natural landscapes and amenity values of an area that contribute to people's appreciation. The term 'values' arises in an evaluative not descriptive sense, which is how natural character is identified.

[21] FNHTB, Michael Steven Evidence, paragraph 44.

**Consideration**

34. The Panel addressed as a consequential amendment to the word 'values' the word 'characteristics' as the most appropriate replacement as the identification of natural character is a descriptive exercise.

35. The word 'characteristic' replaces the word 'values' throughout the remainder of this document.

**Decision**

36. Amend the Introduction to read:

*'Natural character' is the term used to describe the degree of naturalness in an area, and includes the natural elements, patterns, processes and experiential attributes of an environment. The natural character of the coastal environment, and freshwater bodies and their margins, is comprised of a number of ~~key components~~ attributes which include:*

- ~~*coastal or freshwater landforms and landscapes (including seascape);*~~
- ~~*coastal or freshwater physical processes (including the movement of water and sediments);*~~
- ~~*biodiversity (including individual indigenous species, their habitats and communities they form);*~~
- ~~*biological processes and patterns;*~~
- ~~*water flows and levels, and water quality; and*~~
- ~~*the ways in which people experience the natural elements, patterns and processes.*~~
- *Abiotic systems - physical processes, geomorphology, topography, landform and water quantity/quality;*
- *Biotic systems – species, communities, habitats and ecological processes; and*
- *Experiential attributes – The way in which people, including tangata whenua, experience natural elements, patterns and processes.*

*Collectively, these combine to create the overall natural character of the environment. The degree of natural character present in an area is commonly described on a continuum. Some environments have very high natural character due to the lack of human induced modification and may even be in a natural state. In other areas, there may be little natural character remaining due to extensive human modification.*

*This chapter provides the basis from which to determine the degree of natural character present;*

- *the classification of areas of natural character;*

- *the management of natural character to recognise and provide for section 6(a) of the Resource Management Act 1991;*
- *to give effect to Policies 13 and 14 of the New Zealand Coastal Policy Statement 2010 (NZCPS);*
- *to the National Policy Statement for Freshwater Management 2017 (NPSFM).*

*The chapter includes objectives, policies, and methods to guide activities within both coastal and river environments.*

*The natural character characteristics that have been identified are included in Appendix 2 (coastal), Appendix 5 (freshwater). Specific areas of high, very high, and outstanding natural character are identified on the planning maps in Volume 4. The difference between areas of high natural character and very high coastal natural character is one of degree on the spectrum of assessment of natural character rather than one of legal effect.*

*Provisions included elsewhere in the Marlborough Environment Plan (MEP) ~~target~~ address the individual components of natural character and provide direction on how adverse effects on particular ~~values~~ characteristics can be managed. These include:*

- *Chapter 5 - Allocation of Public Resources*
- ~~*Chapter 7 - Landscape*~~
- *Chapter 8 - Indigenous Biodiversity*
- *Chapter 9 - Public Access and Open Space*
- *Chapter 13 - Use of the Coastal Environment*
- *Chapter 15 - Resource Quality (Water, Air, Soil).*

*This chapter does not address the natural character of wetlands. The natural character of wetlands has been established through an integrated process of assessing wetland values. Provisions to preserve the natural character of wetlands are included in Chapter 8 – Indigenous Biodiversity.*

~~*However, there is a need for this management to be integrated in order to preserve natural character in coastal and freshwater environments. This ensures that the management of the individual components of natural character is co-ordinated to achieve a common end in the context of Section 6(a) of the Resource Management Act 1991 (RMA), of the New Zealand*~~

~~*Coastal Policy Statement 2010 (NZCPS) and of the National Policy Statement for Freshwater Management 2014 (NPSFM).*~~

## Issue 6A

**Resource use and changes in resource use can result in the degradation of the natural character of the coastal environment, and of lakes, rivers and their margins.**

37. One submitter supports the retention of Issue 6A.[22] Another seeks to amend the issue to better align with the wording of s 6(a) RMA by recognising that 'inappropriate subdivision use and development' causes degradation instead of 'Resource use and changes in resource use' in the opening words.[23] Other submitters seek to replace the word 'degradation' with 'modification' and reflect this change throughout the chapter;[24] another seeks to amend the description to clarify that NZCPS Policies 13 and 14 provide further direction and guidance and restoration of natural character within the coastal environment;[25] yet another seeks amendment to recognise the natural character of wetlands.[26]

**Section 42A Report**

38. The submissions seeking replacement of the term 'degradation' with 'modification' are supported in the Section 42A Report on the basis that resource use does not automatically constitute 'degradation' which implies a value judgement or negative attitude to change. 'Modification' instead is identified as a word inherent throughout Chapter 6 which recognises that natural character may range from pristine to modified.

**Consideration**

39. In relation to the request for greater alignment with s 6(a) RMA, resource management issues in regional and district plans are not required to restate the RMA's provisions. They are intended to identify a local problem to be resolved in order to promote the purpose and principles of the RMA, although reference to s 6(a) is considered appropriate to provide greater alignment. The inclusion of submitter reference to 'inappropriate use and development', which concerns degradation, is unnecessary. The issue as written provides an appropriate description on what may impact on natural character degradation with no change.

---

[22] East Bay Conservation Society (100.15).
[23] FNHTB (716.56).
[24] AQNZ (401.44), MFA (42644), Ted and Shirley Culley (447.2), Sanford Ltd (1140.10).
[25] Forest & Bird (715.121).
[26] Fish and Game (509.105).

40. NZCPS Policies 13 and 14 nevertheless provide further guidance on the preservation of natural character as sought by Forest & Bird. It is appropriate to recognise the national policy context (NZCPS) more explicitly in Issue 6A's description.[27]

**Decision**

41. For the reasons provided, we accept the recommendations of the Section 42A Report. Issue 6A and its accompanying explanation are amended as follows:

*Issue 6A – Resource use and changes in resource use can result in the ~~degradation~~ modification of the natural character of the coastal environment, and of lakes, rivers and their margins.*

*Section 6(a) of the RMA requires the Council to ~~preserve~~ recognise and provide for the preservation of the natural character of the coastal environment, wetlands, and lakes, rivers and their margins and to protect this natural character from inappropriate subdivision, use and development. ~~The NZCPS sets a similar objective for the coastal environment.~~ Policies 13 and 14 of the NZCPS and the NPSFM provide more specific direction on the preservation and restoration of natural character in the coastal environment, and lakes and rivers respectively.[28]*

*The entire coastal environment and all freshwater bodies possess some or all of the ~~components~~ characteristics of natural character (natural elements, patterns, processes and experiential attributes, and therefore all hold some degree of natural character. The extent of human-induced modification has a significant influence on the level of natural character that exists in the coastal environment and adjacent to freshwater bodies. Some environments will have high natural character due to the lack of human-induced modification and may even be in a natural state. In other areas, there will be little remaining natural character due to extensive human-induced modification of the environment. …*

## Objective 6.1

**Establishing the degree of natural character in the coastal environment and in lakes and rivers and their margins.**

42. A number of submissions seek to retain the objective as notified.[29] Others seek an assessment of natural character and the evaluation of the degree;[30] identification of areas and values of natural character which require preservation in the coastal environment and in wetlands,

[27] Section 42A Report, pages 14-15.
[28] For the purposes of interpreting the NZCPS 2010 Policy 13(2): 'elements, patterns and processes' means: biophysical, ecological, geological and geomorphological aspects; natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks; and the natural movement of water and sediment'.
[29] Federated Farmers (425.80), DOC (479.51), QCSRA (504.18), KiwiRail (873.13), Trustpower (1201.63), Judy and John Hellstrom (688.37).
[30] EDS (698.38).

lakes, rivers and their margins;[31] identification of areas of high natural character in the coastal environment;[32] amendment of the objective to refer to the 7 range scale for rating natural character;[33] application of the objective to only selected rivers, or rivers, lakes and coastal environment at risk;[34] amendment of the objective to define the extent of acceptable modification;[35] identification of the biological features that contribute to natural character and the community's acceptance of a level of modification;[36] and provision of a definition of 'degree of natural character'.[37]

**Section 42A Report**

43. The report writer identifies that 'The DOC guidance note on Policy 7 of the NZCPS recognises that cumulative effects in the coastal environment are better addressed through a strategic planning approach, including the identification of environmental limits and integrated management of the impact of different and/or numerous similar activities. It also, however, recognises that addressing cumulative adverse effects can be challenging, as they can arise from direct and indirect influences. Management responses need to consider all sources, and an approach that tackles only a fraction of the problem will be ineffective and lack credibility. The guidance notes that the management responses need to be practicable and will vary according to the significance of the issue and resources available.'[38]

44. The submissions seek greater prescription of the way in which natural character is identified and measured in the PMEP, and do not meet the purpose of the objective, that is, do not establish 'degrees' of natural character. But a resource management objective is intended to be a statement of what is to be achieved through the resolution of a particular issue. How it is achieved is the role of supporting policies. It is therefore inappropriate to further describe the process for establishing the degree of natural character, or for the identification of identified areas which would introduce a degree of specificity as to how the objective is to be achieved.

**Consideration**

45. As to the request for amendment of Objective 6.1 to include reference to the seven-point scale, the Panel supports the view of the report writer in that it is inappropriate to reference

[31] Forest & Bird (715.22).
[32] Nelson Forests Ltd (90.175).
[33] FNHTB (716.57).
[34] MFIA (962.40), Nelson Forests Ltd (990.1175).
[35] MFA (426.45), AQNZ (401.45).
[36] Sanford Ltd (1140.11).
[37] Marguerete Osborne (243.2).
[38] Section 42A Report, page 17.

this scale. It is a methodology to ***rate*** various degrees of natural character and should not form part of an objective.[39]

46. A number of submissions also effectively seek inclusion in 'policy' of the degree of modification or change to natural character providing an acceptable threshold of the limits to change. The Section 42A Report explores this concept at some length in a number of paragraphs concluding that while there is merit in this approach, it would require significant research to provide an answer.[40]

47. No changes to Objective 6.1 are recommended.

48. The process for establishing the degree of natural character and the identification of specific areas is considered later in this decision when addressing natural character.

**Decision**

49. Objective 6.1 is retained as notified for the reasons set out by the Section 42A Report.

### Policy 6.1.1

**Recognise that the following natural elements, patterns, processes and experiential qualities contribute to natural character:**

**(a) areas of water bodies in their natural state or close to their natural state;**

**(b) coastal or freshwater landforms and landscapes (including seascape);**

**(c) coastal or freshwater physical processes (including the natural movement of water and sediments);**

**(d) biodiversity (including individual indigenous species, their habitats and communities they form);**

**(e) biological processes and patterns;**

**(f) water flows and levels and water quality; and**

**(g) the experience of the above elements, patterns and processes, including unmodified, scenic and wilderness qualities.**

50. Four submissions support the policy as notified.[41] Seven others all seek various changes to the list of characteristics that contribute or may contribute to natural character.[42] They include those that seek greater alignment with the list of characteristics in Policy 13(2) NZCPS; limiting the scope of the attributes to only the natural, physical and biological and how they are

[39] The request by FNHTB for the seven-point scale methodology to be inserted was repeated in respect of some of the following policies to Objective 6.1. The Panel's view is consistent that methodologies for evaluations are not appropriate to be included in objectives or policies.
[40] See Section 42A Report, final paragraph, page 17.
[41] DOC (479.52), DC Hemphill (648.13), Forest & Bird (715.123), Trustpower Ltd (1201.64).
[42] Nelson Forests Ltd (990.176).

perceived; or expanding the list to include additional characteristics, including cultural and spiritual values.[43]

**Section 42A Report**

51. As set out in the introduction to the chapter, the list of characteristics in the PMEP does not fully align with those of the coastal environment as set out in Policy 13(2) NZCPS. Also they are inconsistent with those characteristics considered in the natural character assessment reports for Marlborough's coastal environment and rivers. It is recommended that the listed characteristics and attributes are amended to achieve an appropriate alignment with the NZCPS and assessment reports. This will ensure they are also consistent with the recommended amendments to the Introduction (above).

**Consideration**

52. The Panel agrees that the list of characteristics does not accurately reflect NZCPS Policy 13(2) and that it is useful to reword (a)-(b) to focus on abiotic and biotic qualities as suggested in the evidence of Andrew Baxter for the Minister of Conservation.[44]

53. Initially, cultural and spiritual values were considered by the report writer as not an attribute of natural character, but instead as an associative value of landscape character. They are captured in the assessment of Marlborough's values and identification of outstanding and significant landscapes in Chapter 7. We consider that this is an evaluation relevant to NZCPS Policy 15(c)(viii).

54. The evidence of Ian Shapcott for Te Ātiawa[45] and Tanya Stevens of Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu[46] (Ngāi Tahu) at the hearing, however, prompted the report writer to reconsider that cultural qualities may be an experiential [perceptual] quality [attribute] of natural character, that is, there are different ways in which tangata whenua perceive the natural environment. As a result, the report writer recommended clause (c) of the policy to read:

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[43] Federated Farmers (425.81), AQNZ (401.46), MFA (426.46), NZ Fish and Game (509.107), EDS (716.58), FNHTB (698.39), Sanford Ltd (1140.13), Te Ātiawa o Te Waka-a-Māui (1186.51).
A further submission by Ngāti Koata Elkington whanau in support of Te Ātiawa but expanding the scope of its original submission with a range of additional amendments, was received. Under the RMA, submissions cannot achieve this and therefore have been unable to be recommended.
[44] Minister of Conservation, Andrew Baxter Evidence, pages 7-16.
[45] Section 42A Report, Reply to Evidence, pages 1-2.
[46] Te Ātiawa (1186.51), Statement of Evidence 2.2.1, paragraph 18, Ngāi Tahu (501.22). Tanya Stevens, Statement of Evidence, paragraph 28.

*(c) Experiential attributes – the ways in which people, including Marlborough's tangata whenua iwi, perceive*[47] *the natural environment.*

55. The Panel does not accept the report writer's recommendation. We consider the tangata whenua iwi's submissions, for example, relate to the landscape cultural and spiritual values of NZCPS Policy 15(viii).

**Decision**

56. Policy 6.1.1 is amended as follows:

*Policy 6.1.1 – Recognise that the following natural elements, patterns, processes and experiential attributes ~~qualities~~ contribute to natural character:*

*(a) Abiotic systems – physical processes, geomorphology, topography, landform and water quantity/quality;*

*(b) Biotic systems – species, communities, habitats and ecological processes; and*

*(c) Experiential attributes - – The way in which people experience natural elements, patterns and processes.*

*(a) ~~areas or water bodies in their natural state or close to their natural state;~~*

*~~(b) coastal or freshwater landforms and landscapes (including seascape);~~*

*~~(c) coastal or freshwater physical processes (including the natural movement of water and sediments);~~*

*~~(d) biodiversity (including individual indigenous species, their habitats and communities they form);~~*

*~~(e) biological processes and patterns;~~*

*~~(f) water flows and levels and water quality; and~~*

*~~(g) the experience of the above elements, patterns and processes, including unmodified, scenic and wilderness qualities.~~*

*This policy describes those matters that ~~considered to~~ contribute to the natural character of coastal and river environments. This provides MEP users with a clear understanding of the meaning of natural character.*

[47] The word 'perception' is defined as 'an act or facility of perceiving'. The New Zealand Oxford Pocket Dictionary, *The Future of New Zealand English,* Fourth Edition, Oxford, page 835.

## Policy 6.1.2

**The extent of the coastal environment is identified in the Marlborough Environment Plan to establish the areas of land and coastal marine area to which management may need to be applied in order to protect the natural character of the coastal environment from inappropriate subdivision, use and development.**

57. Two submissions support the policy as notified.[48] Others seek: the policy to recognise mapping of the coastal environment in consultation with landowners, the community and tangata whenua and move the policy to the coastal environment chapter;[49] move the policy to the coastal environment chapter and amend the description to clearly explain how the identification of the coastal environment is necessary for implementing the NZCPS not just s 6(a) RMA;[50] add reference in the policy (in the last sentence of the explanation) to it being more difficult to define the extent of the south coast of the coastal environment to that adopted in adjoining regions, and consistency is required.[51]

**Section 42A Report**

58. Policy 6.1.2 directly relates to the implementation of Objective 6.1 – establishing the degree of natural character in the coastal environment. Forest & Bird's request to amend the description to clearly explain the identification of the extent of the coastal environment for implementing the NZCPS is appropriate.[52] The Section 42A Report recommends that the policy include a reference to this document. [53]

59. Other submissions are not recommended. Consultation with Federated Farmers is provided for in the RMA First Schedule process and is a required first step in the plan review process; this provides appropriate input into decision-making on the final form of the PMEP provisions. Inclusion of the reference to the management of commercial forestry within Policy 6.1.2 would not align with its purpose. The exclusion of commercial forestry from the identified extent of the coastal environment would also not be appropriate. The extent of the coastal environment over land reflects those areas of Marlborough that either have interface with or are influenced by coastal processes.

60. Inter-regional consistency in the identification of the extent of the coastal environment is dependent on how it is measured by each council. The Section 42A Report identifies that regional consistency is unlikely to achieve the goal sought by FNHTB. Instead, the report writer

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[48] EBCS (100.16), DOC (479.53).
[49] Federated Farmers (425.82).
[50] Forest & Bird (715.124).
[51] FNHTB (716.59).
[52] Forest & Bird (715.124)
[53] Section 42A Report, pages 18-21.

identifies the practice used to identify the coastal environment in the PMEP aligns with that used in the adjoining Canterbury Region and Tasman District (all undertaken by Boffa Miskell).[54]

**Consideration**

61. The submission of Forest & Bird to include reference to the NZCPS as recommended in the Section 42A Report is accepted. It recognises that identification of the extent of the coastal environment is necessary to give it effect for implementing the NZCPS.

**Decision**

62. The wording of the final paragraph of Policy 6.1.2 is amended as follows:

*… The landward extent of Marlborough's coastal environment is mapped in the MEP. Establishing the extent of the coastal environment defines the areas in which activities may need to be managed in a particular way to preserve the natural character of this environment in accordance with Section 6(a) of the RMA, <u>and relevant policies of the NZCPS</u>. This will provide resource users and the community with certainty as to the spatial area to which the natural character and other provisions of the NZCPS apply.*

## Policy 6.1.3

**Determine the degree of natural character in both the coastal marine and coastal terrestrial components of the coastal environment by assessing:**

**(a) the degree of human-induced modification on abiotic systems and landforms, marine and terrestrial biotic systems and experiential qualities; and**

**(b) natural character at a range of scales.**

63. Two submissions seek the retention of the policy as notified.[55] Others mainly relate to the (a) and (b) provisions of the policy either seeking to delete the words in (a) 'assessing the degree of human induced modification on abiotic systems and landforms, marine and coastal terrestrial biotic systems and experiential qualities; and (b) categorising natural character at a range of scales';[56] a request to add in 'the factors in Policy 6.1.1' and (b) categorising natural character at a range of scales together with evaluate the degree of natural character;[57] amend the policy (or add a new one) to include guidance on the values that contribute to natural character and establishing areas with high and very high natural character;[58] modify (a) by

[54] Section 42A Report, page 21.
[55] DOC (479.54), NZ Forest Products Holdings Ltd (996.12).
[56] AQNZ (401.48), MFA (426.48).
[57] EDS (698.40).
[58] Forest & Bird (715.125).

replacing 'abiotic and biotic systems' etc with 'natural elements, patterns and natural processes' and (b) 'referring to the 7-point scale range of natural character'.[59]

**Section 42A Report**

64. Policy 6.1.3 addresses how the degree of natural character is to be determined to assist in implementing Objective 6.1. The policy creates some confusion among the submitters for using different terminology from that used in Policy 6.1.1. FNHTB seek inclusion of reference to the 7 point rating for assessing natural character which we have already referred to elsewhere. MFA and AQNZ reference assessing natural character at a range of scales that reflects the mapping in the plan detailed at Figure 6.2 Natural Character Assessment Scale at 5 scales in the PMEP.[60] This analysis was undertaken at a range of scales from broad at the Marlborough Sounds or South Marlborough level to a more detailed bay-like level. As a result, natural character can be perceived at different levels and different scales, depending on the level of information available.

65. The confusion as to what characteristics form the basis for the assessment of natural character is found in the Natural Character of the Marlborough Coast (2014) Defining and Mapping the Marlborough Coastal Environment report[61] which considered the degree of human modification on 'abiotic and marine biotic systems' and experiential qualities as currently recognised in Policy 6.1.3. The Section 42A Report recommends that to address this problem, Policy 6.1.3 be amended to cross refer to the characteristics in Policy 6.1.1 as proposed in the EDS submission. Basically, as written (a) and (b) in Policy 6.1.3 of the PMEP are said to be inconsistent with the matters in Policy 6.1.1.

**Consideration**

66. The reference to the 'range of scales' referred to by FNHTB seeks inclusion of the 7 point rating system which is asserted to determine the degree of natural character (very low to very high).[62] The PMEP at Figure 6.2 instead involves a Natural Character Assessment Scale of 5 levels utilising a geographic land systems approach which uses different scales of reference – Levels 1-5. These focus from the broad regional scale to a detailed local one. The intent of the reference in part (b) of the policy (natural character at a range of scales) is to recognise the Natural Character Assessment Scale in Figure 6.2. The natural character mapping used in the PMEP has occurred at Level 3 of this scale for Coastal Terrestrial Areas and Coastal Marine Areas.

[59] FNHTB Counsel Submissions, paragraphs 9-10. Michael Steven Evidence, paragraph 75.4.
[60] PMEP, Chapter 6 Natural Character, page 6-4.
[61] Identified in Section 42A Report, pages 20-21.
[62] Section 42A Report, pages 16-18.

67. There is recognition nevertheless that identification of the extent of the coastal environment is necessary to give effect to the NZCPS. For what appears to have happened is that since the NZCPS was released, various other references have emerged from the scientists, landscape architects and others which have been adopted as description of natural character abiotic systems and terrestrial biotic systems, and as experiential attributes. This has created confusion on experiential attributes in Policy 13(2)(h) NZCPS for some of the users of the NZCPS.

68. In addition to this confusion, the Panel observed through the hearing that experiential attributes can be confused with abiotic and biotic systems. Biotic and abiotic systems are physical components of natural character, but so are experiential attributes which relate to marine ecology. To avoid confusion, the Panel believes that these two matters should be separated in the statement of the policy. This is easily achieved by removing experiential attributes from 6.1.3(a) and including it as a separate 6.1.3(b) (making the existing (b) (c)).

69. The Section 42A Report recommendation to remedy that situation is accepted. The reference to specific areas of natural character identified in the planning maps of Volume 4 as 'high' or 'very high' natural character, as we pointed out at the beginning of this chapter of the report, relates to the 7 point rating system identified by landscape architects and is one of degree on the spectrum rather than one of legal effect.

**Decision**

70. The policy and explanation is amended as follows:

*Policy 6.1.3 – Determine the degree of natural character in both the coastal marine and coastal terrestrial ~~components~~ <u>areas</u> of the coastal environment by assessing:*

*(a) the degree of human-induced modification on abiotic <u>and biotic</u> systems ~~and landforms, marine and terrestrial biotic systems~~ ~~and experiential~~ ~~qualities~~<u>, including those listed in Policy 6.1.1</u>;*

*(b) <u>the way in which people experience the natural elements, patterns and processes;</u> and*

*(c) natural character at a range of scales.*

*The natural character of the coastal environment can vary significantly from place to place. An evaluation of the degree of natural character in Marlborough's coastal environment has been undertaken. This comprised an assessment of the extent of human-induced modification in the coastal marine area and on land within the coastal environment. To assist this process, Marlborough's coastal environment was divided into nine distinct coastal marine areas and 17*

*distinct coastal terrestrial areas based on land typology. For each area, abiotic systems and ~~landforms~~ biotic systems and experiential attributes were assessed. Freshwater values within the coastal environment were identified in the coastal terrestrial areas.*

*The analysis of natural character was undertaken at a range of scales from broad (i.e. at the Marlborough Sounds or South Marlborough level) through to a more detailed scale, which in some cases was bay-level assessment. As a result, natural character can be perceived at different levels and different scales, depending on the level of information that is available. The scales at which the assessments have been undertaken can be seen in Figure 6.2.*

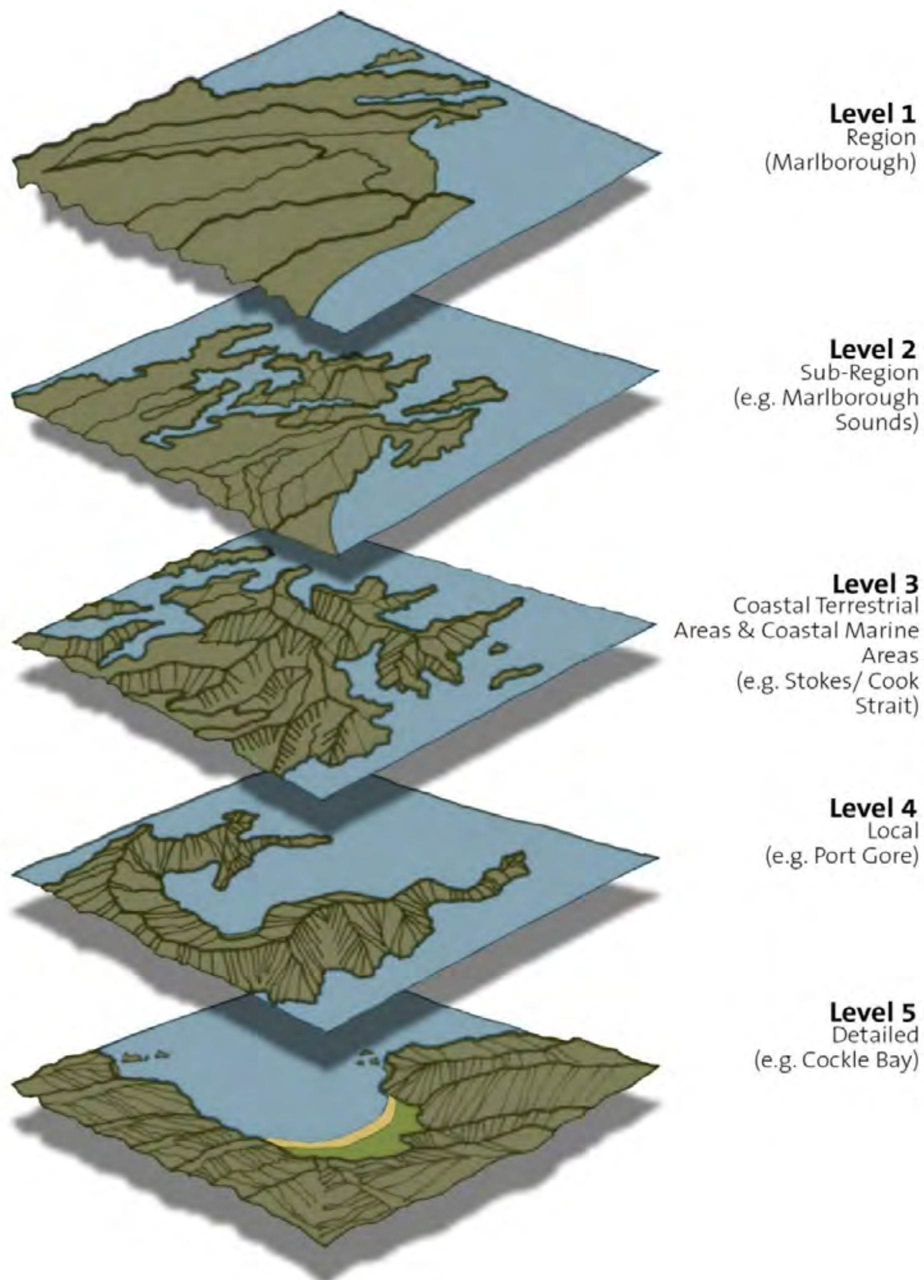


***Figure 6.2: Natural Character Assessment Scale***

*Appendix 2 identifies the ~~values~~ characteristics that contribute to high and very high coastal natural character in each of the discrete natural character areas (reaching Levels 4 to 5 on the assessment scale). The difference between areas of high natural character and very high coastal natural character is one of degree on the spectrum of assessment rather than one of legal effect. The ~~values~~ characteristics for areas with outstanding coastal natural character are also included within Appendix 2.*

## Policy 6.1.4

**Identify those areas of the coastal environment that have high, very high or outstanding natural character.**

71. Five submitters seek that the policy be retained as notified.[63] Others seek that Policy 6.1.4 be deleted on the basis that it duplicates Policy 6.1.3; or make it clear that areas below the threshold of having high natural character are still subject to management objectives and policies of Chapter 6;[64] the policy be amended to identify and map those areas of the coastal environment that have high, very high or outstanding natural character;[65] the policy be amended to make it clear that areas classified below high are only excluded from the PMEP maps on practicality grounds and that policies on natural character in the PMEP also apply to those areas;[66] the policy be amended to read 'Identify those areas classified that are 'valued by the community as high and outstanding natural character';[67] the second paragraph of the explanation to refer to a 7 range rating of natural character.[68]

**Section 42A Report**

72. The report writer considers that rather than deleting Policy 6.1.4 because it duplicates Policy 6.1.3, the policy builds on the evolution of the degree of natural character under Policy 6.1.3 by emphasising identification of those areas which exhibit high, very high or outstanding natural character. Deletion of the policy would make the PMEP inconsistent with Policy 13(1)(c) NZCPS. The Section 42A Report recommends against deleting the policy.

73. As to Clova Bay's request, NZCPS Policy 13(1)(c) does not require mapping of areas which fall below the threshold of having *at least* high natural character. It is also clear that other Chapter 6 objectives and policies apply more broadly beyond those areas identified as having outstanding, very high or high natural character. In particular, Policy 6.2.2 requires significant

[63] Michael and Kristen Gerard (424.14), DOC (479.55), DC Hemphill (648.14), Flaxbourne Settlers Association (712.101), AQNZ (401.49), MFA (426.49).
[64] EDS (698.41).
[65] Clova Bay Residents Association (152.1).
[66] Ibid
[67] Sanford Ltd (1140.15).
[68] FNHTB (716.61).

adverse effects of subdivision use and development on coastal natural character to be avoided so as to give effect to Policy 13(1)(b) NZCPS. Thus the policy makes it clear that other natural character policies apply to these areas which have less than high natural character, and amendment is unnecessary.

74. Sanford's request that the identification of areas of outstanding and high natural character only include those valued by the community would not be consistent with s 6(a) RMA or Policy 13 NZCPS. Further, it is relevant to note that the assessment of the degree of natural character has taken into account existing uses and modifications present.[69]

75. The minor wording change sought that identified areas be 'mapped' in the PMEP is recommended to be included.

**Consideration**

76. The Section 42A Report recommends the wording change sought by EDS to map the relevant areas of natural character discussed in the policy.[70] The Panel accepts this change for the reasons given.

77. The Section 42A Report's response to Sanford is important because it foreshadows how the relevant final mapping and text will be addressed later in Chapter 7. The minor wording change sought to identify areas are 'mapped' is recommended to be accepted.

**Decision**

78. Policy 6.1.4 is amended to read as follows:

*Policy 6.1.4 – Identify <u>and map</u> those areas of the coastal environment that have high, very high or outstanding natural character.*

### Policy 6.1.5

**Determine the degree of natural character in and adjacent to lakes and rivers by assessing the degree of human-induced modification to the following:**

**(a) channel shape and bed morphology;**

**(b) flow regime and water levels;**

**(c) water quality;**

**(d) presence of indigenous flora and fauna in the river channel;**

**(e) absence of exotic flora and fauna;**

**(f) absence of structures and other human modification in the river channel/lake;**

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[69] Section 42A Report, pages 24-25.
[70] Section 42A Report, pages 24-25.

**(g) vegetation cover in the riparian margin;**

**(h) absence of structures and other human modification in the riparian margin; and**

**(i) the experience of the above elements, patterns and processes including unmodified, scenic and wilderness qualities.**

79. Several submitters seek to retain the policy as notified.[71] Two seek to have the policy deleted.[72] Others seek to amend the policy to read *'Evaluate the degrees of natural character n and adjacent to lakes and rivers by assessing the degree of human-induced modification to the factors in Policy 6.1.1*;[73] the policy to include the level of mauri assessed through a cultural health assessment;[74] the policy to include 'streams that would normally flow all year if not adversely affected by high take during the peak summer period';[75] the policy to improve readability of NZCPS Policy 13(2) (b), (f) and (h);[76] the policy to ensure that natural character is determined firstly by identification of the elements, patterns and processes that contribute to natural character in lakes and rivers and then establish to what degree these have been modified by human activity;[77] the policy to provide certainty as to the extent of 'modification' (replace 'adjacent') and focus on a list of rivers rather than all watercourses;[78] the explanation to clarify if the list of matters in the policy are guidance on the values identified in Appendix 5 of the PMEP, and whether the policy provides guidance on determining areas of outstanding natural character or add a new policy to achieve this.[79]

**Section 42A Report**

80. Policy 6.1.5 sets out how the natural character of lakes, rivers and their margins will be determined in implementing Objective 6.1. As in the case for Policy 6.1.3, it is apparent from the submissions that the use of different terminology to describe the characteristics which are assessed to determine the degree of natural character in Policies 6.1.1 and 6.1.5 has created confusion as to what attributes form the basis for assessment. The report writer recommends that to resolve the confusion, Policy 6.1.5 be amended to cross-refer to the characteristics in Policy 6.1.1 as identified by EDS.

81. For the submitters seeking clarity around what is meant by 'adjacent to lakes and rivers', it is acknowledged the word 'adjacent' creates uncertainty in terms of the policy's application. The

[71] DOC (479.56), KiwiRail (873.14), NZ Forest Product Holdings Ltd (996.12).
[72] Coatbridge Ltd (356.7), Federated Farmers (425.83).
[73] EDS (698.42).
[74] Te Rūnanga o Ngāti Kuia (501.22), Statement of Evidence, paragraphs 4-14.
[75] QCSRA (504.19).
[76] Trustpower (1201.57)
[77] MFIA (962.43). Fish and Game (509.108).
[78] Nelson Forests Ltd (990.178).
[79] Forest & Bird (715.28).

report writer recommends the wording be changed to refer to the 'margins of rivers' to align with standard RMA terminology and the wording of Objective 6.1.

82. Several forest industries' submissions to restrict the scope of the policy to a list of selected rivers are not consistent with s 6(a) RMA; it would predetermine what rivers should be assessed without first understanding what natural character attributes exist.

83. In answer to Forest & Bird's submission to amend the explanation to clarify whether the list of matters in the policy are guidance on the values as identified in Appendix 5, or whether the policy provides guidance on determining areas of outstanding natural character, the report identifies that Appendix 5 includes a broader range of values (rivers) which includes reference to the degree of assessed natural character. It is acknowledged by the report writer that Policy 6.1.5 could be clearer and changes to its description are recommended below.

**Consideration**

84. The Panel accepts the word 'adjacent' in the policy introduces uncertainty in terms of its application. It is appropriate to better align it within the recognised terms of the RMA and replace the word with 'within the margins of'. Further, we accept the policy is unclear because it confuses attributes of natural character with the process of determining the degree of natural character. We also accept modification to the policy and the explanation as recommended in the Section 42A Report.[80]

**Decision**

85. Policy 6.1.5 is amended as follows:

*Policy 6.1.5 – Determine the degree of natural character in and ~~adjacent to~~ within the margins of lakes and rivers by assessing the degree of human-induced modification on abiotic and biotic systems, and experiential attributes including those listed in Policy 6.1.1 ~~to the following~~:*

*~~(a) channel shape and bed morphology;~~*

*~~(b) flow regime and water levels;~~*

*~~(c) water quality;~~*

*~~(d) presence of indigenous flora and fauna in the river channel;~~*

*~~(e) absence of exotic flora and fauna;~~*

*~~(f) absence of structures and other human modification in the river channel/lake;~~*

*~~(g) vegetation cover in the riparian margin;~~*

[80] Section 42A Report, pages 25-27.

~~*(h) absence of structures and other human modification in the riparian margin; and*~~

~~*(i) the experience of the above elements, patterns and processes including unmodified, scenic and wilderness qualities attributes.*~~

*The natural character of rivers can vary significantly from place to place. An evaluation of the degree of natural character in Marlborough's rivers has been undertaken, involving the assessment of a range of natural* ~~*The matters identified in (a) to (i) are those*~~ *elements, patterns, processes and experiential* ~~*qualities*~~ *attributes that contribute to the natural character of Marlborough's lakes and rivers and their margins. The extent to which these have been modified by human activities will determine the degree of natural character.* ~~*Where the matters in (a) to (i) have not been modified or have been only been slightly modified, then the natural character will be assessed as being very high. As the degree of human-induced modification of the river and its margins increases, the degree of natural character will reduce from high, through moderate, low and finally, very low (where the river environment has been heavily modified).*~~ *The degree of natural character is identified as part of the range of values identified for Marlborough's rivers in Appendix 5.*

**Policy 6.1.6**

**Identify those rivers or parts of rivers that have high or very high natural character.**

86. Two submissions support the policy as notified[81] while two seek its deletion.[82] Others seek amending the policy to include mapping of those rivers or their parts with high or very high natural character;[83] including a requirement that weeds on the conservation estate/reserves need to be controlled;[84] the policy to explain that it applies outside the coastal environment as Policies 13 and 14 NZCPS would capture any rivers and wetlands within that environment; amend a complementary policy to provide guidance on the values used to determine the maps identified in Appendix 5;[85] the explanation to the policy to refer to a 7 range rating of natural character.[86]

**Section 42A Report**

87. Inclusion of reference to the control of weeds on the conservation estate does not align with the purpose of the policy which is to focus on the identification of areas of high or very high natural character to assist in implementing Objective 6.1. Management of exotic weeds is

[81] DOC (489.57), Forest & Bird (496.1).
[82] Coatbridge Ltd (356.6), Federated Farmers (425.84).
[83] EDS (698.4).
[84] Murray Chapman (348.2).
[85] Forest & Bird (715.129).
[86] FNHTB (716.162).

more effectively addressed through regulatory mechanisms, including the Regional Pest Management Plan prepared under the Biosecurity Act 1993.

88. Although there is no specific requirement for the Council to identify rivers that have high or very high natural character, Council has undertaken an assessment to determine the natural character characteristics of a number of Marlborough's rivers, both inside and outside the coastal environment, in order to recognise and provide for Section 6(a) of the RMA. This provision allows a more targeted regime in recognition of their relatively higher degree of naturalness. In so doing, it avoids the implementation of a generic management regime across all rivers.

89. For the same reason it is not recommended to identify lakes and rivers with values less than high. Otherwise a more generic approach risks imposing too high a regulatory regime on the lesser lakes and rivers. It is not recommended that the approach sought by Coatbridge and Federated Farmers is approved.

90. Further information on a range of characteristics for Marlborough's rivers, including natural character, is set out in Appendix 5.

91. The minor wording change sought by EDS to include 'and map' is recommended to be included and is accepted by the Panel.

**Decision**

92. Policy 6.1.6 is amended as follows:

*Policy 6.1.6 – Identify* <u>*and map*</u> *those rivers or parts of rivers that have high or very high natural character.*

## Objective 6.2

**Preserve the natural character of the coastal environment, and lakes and rivers and their margins, and protect them from inappropriate subdivision, use and development.**

**This objective meets the expectations of s 6(a) of the RMA, which establishes that preservation of natural character is a matter of national importance.**

93. Three submissions seek to retain the objective as notified.[87] Others seek to delete and replace the objective to incorporate several identified place-based objectives for identified areas; [88] to amend the objective to read 'Preserve the characteristics and qualities that contribute to the natural character of the environment …'; [89] amend the objective to reference preserving the

[87] DOC (479.58), DC Hemphill (648.15), Forest & Bird (715.130).
[88] FNHTB (716.63)
[89] Trustpower (1201.59)

values of the natural character rather than avoiding changes to that character, recognising ongoing use and developments lawfully established; [90] amend the objective to recognise that some essential activities need to be located in the coastal environment;[91] provide for an explanation to include reference to activities consistent with underlying zoning and existing land uses will be considered appropriate;[92] delete the explanation to the objective;[93] apply the objective to a set of rivers (not all rivers);[94] the objective should also refer to the 'enhancement' of natural character.[95]

**Section 42A Report**

94. The report acknowledges that many existing, lawfully established activities are located in the coastal environment, that margins have been modified, and that there is a functional need for these activities to be located there.

95. Objective 6.2 is intended to set out the aim of the Plan as a result of managing subdivision, use and development within the identified natural character overlays and more generally outside those areas in addressing Issue 6A. It mirrors some of the wording in s 6(a) RMA. In this regard, it does not further articulate how the RMA is to be applied to managing matters at the local level.

96. It is recognised that the preservation of natural character should be linked to the natural character attributes and systems existing rather than require the absolute preservation of natural character in a more generic sense. The objective should be qualified to require the 'preservation' of attributes and systems that contribute to the natural character of an area, as indicated in the submissions of Trustpower and Sanford Ltd.[96]

97. KCSRA tabled evidence at the hearing which suggested that the objective be amended to 'preserve and enhance the natural character'. But the report writer points out that enhancement of natural character is not recognised within s 6(a) RMA which merely requires preservation and is not recognised either in NZCPS Objective 2. It is otherwise provided for in Policy 6.2.6. The addition of 'and enhance' into the objective is not recommended at this point.

[90] Sanford Ltd (1140.16).
[91] Port Clifford Ltd (1041.10).
[92] Federated Farmers (525.85).
[93] PMNZ (433.15).
[94] Nelson Forests Ltd (990.179), MFIA (962.44).
[95] KCSRA Andrew Caddie Evidence, section B2.
[96] Section 42A Report, pages 29-31.

**Consideration**

98. The Panel supports the reasoning in the Section 42A Report: 'Resource management objectives in Regional and District plans are intended to be a statement of what is intended to be achieved through the resolution of a particular issue.' They are not intended to state how the objective should be achieved, which is the role of the supporting policies. The report writer points out it is 'inappropriate' to include recognition of existing modification in the objective which would introduce specificity as to how it is to be achieved.

99. As identified earlier, the word 'values' in NZCPS Policy 13(2) is qualified by the word 'amenity'. 'Amenity values' is disjunctive from natural features and landscapes and is defined in s 2 RMA Interpretation as meaning:

> **those natural or physical qualities or characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes**

100. The word 'values' does not qualify natural character and features, and this is made clear in NZCPS Policy 13(2) so it is not useful terminology to apply to issues arising from Objective 6.2.

101. Given the restoration policies that follow the objective, the Panel considers that reference to 'promoting' the restoration of natural character, is an apposite amendment to the objective to give effect to NZCPS Policy 14 Restoration of natural character as proposed by KCSRA.

**Decision**

102. Objective 6.2 is amended as follows

*Objective 6.2 – Preserve <u>and promote the restoration of</u> the natural character of the coastal environment, and lakes and rivers and their margins, and protect them from inappropriate subdivision, use and development.*

*This objective meets the expectations of Section 6(a) of the RMA, which establishes that preservation of natural character is a matter of national importance. <u>Policy 14 of the NZCPS requires the Council to promote the restoration of the natural character of the coastal environment. The Council also considers it appropriate to promote the restoration of the natural character of lakes and rivers and their margins</u>.*

## Policy 6.2.1

**Avoid the adverse effects of subdivision, use or development on areas of the coastal environment with outstanding natural character values and on lakes and rivers and their margins with high and very high natural character values.**

103. Five submissions support the policy as notified.[97] There are numerous other submissions which seek a wide range of changes. It is appropriate here to provide the summary provided by the Section 42A Report which captures their intent.

104. The range of submitters includes those that seek qualification that the avoidance of adverse effects required by the policy only extends to those characteristics and qualities which contribute to areas of outstanding natural character or be limited to 'inappropriate' subdivision, use and development. Others seek to include more explicit exemptions for regionally significant infrastructure, or essential activities; or further enablement of activities consistent with underlying zoning and existing land uses; or enable effects to be remedied or mitigated rather than avoided. Several submissions seek that the reference to lakes, rivers and their margins within high or very high natural character areas either be removed or qualified, including by requiring only 'significant' effects be avoided.[98] Other submissions seek more specifics as to the activities being managed.[99]

**Section 42A Report and consideration**

105. The Section 42A Report identifies a number of important issues with which the Panel agrees:[100]

- Requiring avoiding 'all effects' on lakes, rivers and their margins that have 'high or very high natural character' is too high a threshold and may place too high a regulatory requirement for these environments given there is no national policy direction which requires adverse effects to be avoided on lakes and rivers with high or very high qualities.

- It is recommended instead to require that 'significant' adverse effects on lakes and rivers with high natural values be avoided, rather than 'all effects'.[101] This policy puts the natural character of rivers on a par with areas of high and very high natural character in the coastal environment under the first part of NZCPS Policy 13(1)(b).

[97] DOC (479.59), Forest & Bird (496.2), Forest & Bird (715.131), QCSRA (504.20), Judy and John Hellstrom (688.39).
[98] Section 42A Report, pages 31-32.
[99] Trustpower (1201.60) seeks reference to NPSET Policy 8 and the National Grid.
[100] Section 42A Report, pages 31-34.
[101] Pernod (1039.75).

- The Section 42A Report also recommends deleting the reference to lakes, rivers and their margins in Policy 6.2.1 and their inclusion with Policy 6.2.2 which currently addresses areas of high and very high natural character in the coastal environment.[102]
- It is not necessary to include reference to avoiding adverse effects of inappropriate subdivision, use and development as this forms part of the overall Objective 6.2. It is important to note that activities consistent with underlying zonings and existing land activities are already located within the identified natural character areas.
- Other PMEP policies provide direction as to the extent to which activities are appropriate within the coastal environment and within lakes, rivers and their margins in the overall sense of supporting the sustainable management purpose of the RMA.[103]
- Transpower's reference to including National Grid and NPSET issues is recommended to be addressed in Policy 6.2.4 as being the most appropriate location for this issue.

**Decision**

106. Policy 6.2.1 is amended as follows:

*Policy 6.2.1 – Avoid the adverse effects of subdivision, use or development on ~~areas of the coastal environment with outstanding natural character values and on lakes and rivers and their margins with high and very high natural character values~~ the characteristics that contribute to areas of the coastal environment with outstanding natural character.*

*Where the natural character of the coastal environment is outstanding, Section 6(a) of the RMA indicates that this level of preservation should be retained, particularly when coupled with the similar direction in Policy 13 of the NZCPS. This means that any adverse effects on natural character ~~values~~ characteristics should be avoided. That is not to say that no subdivision, use or development can occur within the coastal environment - activities may not adversely affect the natural character of the surrounding environment, or may include features or benefits that maintain the existing levels of natural character.*

*~~For freshwater bodies there is also a requirement in Section 6(a) to preserve the natural character of wetlands, lakes and rivers and their margins and to protect this natural character from inappropriate subdivision, use and development. Having regard to Policy 6.1.5, the Council has assessed the values of rivers and lakes and their level of significance in order to give effect to Section 6(a). In undertaking this assessment, the Council has determined that~~*

[102] Section 42A Report generally.
[103] Section 42A Report, page 33.

~~where the freshwater values are high or very high, then adverse effects on these values should be avoided.~~

### Policy 6.2.2

**Avoid significant adverse effects of subdivision, use or development on coastal natural character, having regard to the significance criteria in Appendix 4.**

107. Several submitters support the policy as notified.[104] One submission seeks to include its deletion[105] on the basis that it replicates Policy 6.2.1; another seeks that it be amended to apply only to freshwater bodies rather than the coastal environment or areas of high or very high natural character.[106] Another seeks to amend the policy to read 'Where natural character is assessed as being very high or high, avoid adverse effects of subdivision, use and development that would result in a lower level of natural character; another seeks to avoid, remedy or mitigate significant adverse effects of subdivision, use or development on natural character'.[107]

108. Other submissions seek to include more explicit exemptions for regionally significant infrastructure;[108] to avoid significant adverse effects on subdivision, use and development except where the activity is necessary to enable construction, maintenance, operations and upgrade of regionally significant infrastructure.[109] Another submission seeks to make it clear that the avoidance of significant effects includes avoidance of significant cumulative effects;[110] amend the policy to avoid significant adverse effects of inappropriate subdivisions.[111]

**Section 42A Report**

109. Policy 6.2.2 is intended to provide the basis for the management of subdivision, use and development in areas of the coastal environment other than those addressed by Policy 6.1.1. In such areas significant effects are to be avoided having regard to a list of criteria in Appendix 4 Criteria for Determining Significant Adverse Effects. Policy 6.2.3,which is discussed next, builds on Policy 6.2.2 in setting a threshold as to what is deemed to be a significant adverse effect for the purposes of Policy 6.2.2.[112]

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[104] DOC (479.60), Forest & Bird (496.3), Judy and John Hellstrom (688.40), Forest & Bird (715.132).
[105] Federated Farmers (428.88).
[106] AQNZ (401.52) MFA (426.52).
[107] FNHTB (716.65).
[108] Port Clifford Ltd (1041.12).
[109] NZTA (1002.23).
[110] KCSRA (868.4).
[111] PMNZ (433.17), Transpower (1198.14).
[112] Section 42A Report, pages 35-36. This report also responds again to submissions requesting enabling of electricity transmission and renewable electricity transmission (NPSET and NPSREG – refer infrastructure and cumulative effects). The answers to these lie with other policies (post).

110. The report writer in setting out these facts identifies there is confusion as to the scope of Policy 6.2.2, and its relationship with Policy 6.1.1. Policy 6.1.2 is intended to give effect to the requirement in NZCPS Policy 13(1)(b) (first part) to 'avoid significant adverse effects outside those areas with outstanding natural character. The current wording makes that unclear. It is also acknowledged that the requirement to otherwise avoid, remedy or mitigate other adverse effects' (the second part of NZCPS Policy 13(1)(b))[113] is not reflected in this policy. Changes are recommended to address both these aspects. At page 36 in the S42A Report, there is a related recommended change to Policy 6.2.2.

111. Inclusion of explicit reference to cumulative effects as requested by KCSRA is unnecessary as the term 'adverse effects' encapsulates any adverse cumulative effects. No change on this point is recommended.[114]

**Consideration**

112. The Section 42A Report writer has disentangled the confusion identified under this policy. There are two parts to Policy 13(1)(b) NZCPS. There is the requirement to avoid significant adverse effects on natural character in the first part of the policy; the second part of the policy requires avoidance, remedy or mitigation of 'other adverse effects' in all 'other' areas of the coastal environment.

113. This policy clarifies the hierarchy for Policy 6.2.1 in terms of managing adverse effects.

**Decision**

114. The policy is amended as follows:

*Policy 6.2.2 – Avoid the significant adverse effects of subdivision, use or development, and otherwise avoid, remedy or mitigate adverse effects on the characteristics that contribute to ~~coastal~~ natural character, having regard to the significance criteria in Appendix 4, within:*

*(a) all areas of the coastal environment outside of areas of outstanding natural character; and*

*(b) lakes and rivers, and their margins of high and very high natural character.*

*The degree of adverse effects on coastal natural character is an important consideration under Policy 13(1)(b) of the NZCPS. Where the extent of change in the coastal environment from*

[113] The Section 42A Report (Dale) outlines the three directions relating to effects in NZCPS Policy 13 in the third paragraph, page 11.
[114] Section 42A Report, page 36.

*subdivision, use or development causes significant adverse effects on natural character, the NZCPS states those effects should be avoided.*

*For freshwater bodies there is also a requirement in Section 6(a) to preserve the natural character of wetlands, lakes and rivers and their margins and to protect this natural character from inappropriate subdivision, use and development. Having regard to Policy 6.1.5, the Council has assessed the attributes of rivers and lakes and their level of significance in order to give effect to Section 6(a). In undertaking this assessment, the Council has determined that where the freshwater attributes are high or very high, then significant adverse effects on these attributes should also be avoided.*

*There is therefore a threshold in these areas beyond which remediation and/or mitigation of ~~those~~ adverse effects is not an appropriate management option. That threshold will be determined on a case-by-case basis through the resource consent or plan change process. The significance of the adverse effect will depend on the nature of the proposal, the natural character context within which the activity is proposed to occur and the degree of change to the attributes that contribute to natural character in that context. Where adverse effects are not assessed as significant, then adverse effects should otherwise be avoided, remedied, or mitigated.*

*In addition to using information in the appendices on the degree of natural character at particular locations, consideration should also be given to other chapters of the MEP, which help to inform how adverse effects should ~~can~~ be avoided. For example, the policies in Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity and Chapter 13 - Use of the Coastal Environment, target the individual components of natural character and therefore provide a framework on how to avoid significant adverse effects on natural character characteristics.*

### Policy 6.2.3

**Where natural character is classified as high or very high, avoid any reduction in the degree of natural character of the coastal environment or freshwater bodies.**

115. The intent of the policy is to establish a threshold for the extent of further changes made in areas of the coastal environment, lakes, rivers and their margins with high or very high natural character. Any activity that would reduce the natural character to a classification below that existing is considered to be a 'significant' adverse effect which is required to be avoided.[115]

[115] Section 42A Report, page 38.

116. Eight submitters support the retention of the policy as notified. Five submitters seek it be deleted on the basis that it does not assist in meeting the requirements with s 6(a) RMA, aligning with the NZCPS, or overlapping with the requirements in Policy 6.2.1.[116]

117. Other submissions ranged from: requesting the insertion of the word 'significant' before that of 'reduction'[117] and inserting the words 'remedy' or 'mitigate' any adverse effects;[118] inserting the words 'where practicable' and the 'characteristics and qualities that contribute to …' ending with the sentence 'Where adverse effects cannot be avoided, ensure that the adverse effects are remedied or mitigated';[119] reviewing the riparian natural character overlay to ensure provision is made for the appropriate use of natural and physical resources;[120] removing all references to freshwater bodies;[121] inserting the words 'except where the activity is necessary to enable the maintenance, construction, operation and upgrade of regionally significant infrastructure';[122] applying the policy more widely including all areas irrespective of the classification of natural character;[123] amending the policy to define what is meant by 'classified' and applying the policy to all areas of natural character.[124]

**Section 42A Report**

118. The report acknowledges there is some overlap of Policy 6.2.3 with Policies 6.2.1 and 6.2.2. The report writer considers the intent of the policy is that it provides a threshold by which any activity that causes a reduction in the 'classification' of an area of high or very high natural character is considered to be a significant adverse effect both under Policy 6.2.1 and Policy 6.2.2. He suggests that Policy 6.2.3 be amended to read *Where natural character is classified as high or very high, avoid any reduction in the ~~degree~~ classification of natural character ~~of the coastal environment or freshwater bodies~~ to a lower classification*.[125]

119. But the words 'avoid any reduction in the *degree* of natural character' promises a higher threshold where any reduction is a significant adverse effect. This would be inconsistent with s 6(a) RMA or the first part of NZCPS Policy 13(1)(b).

**Consideration**

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[116] AQNZ (401.55), MFA (426.54), Federated Farmers (425.88), Ngāti Kuia (501.23), DC Hemphill (648.16).
[117] Pernod (1039.76), Totaranui Ltd (223.15).
[118] PMNZ (433.18), Port Clifford Ltd (1041.18), NZ Forest Product Holdings Ltd (996.12), Totaranui Ltd (223.15).
[119] Trustpower Limited (1201.61).
[120] Marlborough Forest Industry Association (962.46).
[121] Nelson Forests Ltd (990.81).
[122] NZTA (1002.24).
[123] Clova Bay Residents Association (152.19).
[124] KCSRA (868.4).
[125] Section 42A Report, page 39.

120. The Panel was concerned, however, about the implications for Policy 6.2.3 at the inclusion of the recommended amended wording requiring any reduction in 'classification' of natural character from very high to high or high to moderate.

121. Evidence presented for the Minister of Conservation considered that this amended wording would change the reference from any reduction in the 'degree' of natural character to any reduction in the 'classification' of natural character.

122. Mr Ensor for the Minister points out that 'this amendment essentially defines a significant effect on natural effect or natural character (in terms of Policy 6.2.2) as an effect that causes the natural character classification of an area to be reduced (for example, from very high to high). There is no basis for such an approach in either s 6(a) RMA or Policy 13 NZCPS, and the plan's approach is contrary to them both'.

123. Further, Mr Baxter for the Minister in his evidence explains that, while a 7 point classification scale has been applied to rank natural character along a continuum from very low to very high, each classification contains a band or degrees within it. Accordingly, the degree natural character could reduce within the band as a result of subdivision, use or development, without changing the overall classification. Any reduction should be assessed so that adverse effects can be avoided where appropriate.[126]

124. Questions of the scale at which natural character has been mapped also needs consideration. Mr Baxter stated: 'Because marine natural character was of necessity mapped at a broad scale, under the recommended changes to Policy 6.2.3 there is potential for localised areas of high or very high natural character to be compromised without triggering a change in the broader overall classification for the larger area. If localised areas of high or very high natural character would be adversely affected, these effects should be considered in a resource consent process.'[127]

125. The report writer, recognising from the evidence the unforeseen impact of the suggested amendment to Policy 6.2.3, recommends that it should be deleted. His reasons are listed as follows:

> *Accept that the effect of the change is that any activity having a significant adverse effect on values which does not reduce the classification of the site below the current*

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[126] Minister of Conservation, Timothy Ensor, Evidence-in-Chief, paragraph 71. Counsel's submissions, paragraphs 33-37.
[127] Andrew Baxter, Statement of Evidence, paragraphs 98-102.

*high classification would not be prevented. Therefore the policy would not achieve requirements of section 6(a) or give effect to Policy 13 of the NZCPS.*

*However, reverting to the proposed MEP wording would mean that any reduction of the degree of natural character is to be avoided which would elevate areas of high and very high natural character on the same level as those areas within outstanding natural character. That would be overly onerous and would also not give effect to Policy 13 of the NZCPS.*

*Furthermore, Policy 6.2.1, 6.2.2 and 6.2.4 (as recommended to be amended) adequately specify how adverse effects are to be managed based on the classification of natural character areas in the MEP, and accordingly the policy is redundant in terms of ensuring the adverse effects on natural character from subdivision, use, and development are managed.*

*Given the above, Policy 6.2.3 could be deleted.*[128]

126. The Panel sought a response from the report writer as to whether the deletion of this policy would have any wider implication for the PMEP and whether it would leave a policy gap in what is clearly a tight sequence of the natural character protective policies.[129]

127. We were assured in response that a sequential amendment to Policy 6.2.4 will ensure that adverse effects on the elements, processes and experiential qualities that contribute to natural character are had regard to when assessments against policies 6.2.1 and 6.2.2 are made.[130]

128. We accept the recommendation of the report writer, based on the evidence of the Minister of Conservation witnesses.

**Decision**

129. Policy 6.2.3 is deleted.

[128] Section 42A Report, Reply to Evidence, pages 9-10.
[129] Memorandum in response to questions from the Panel, Maurice Dale
[130] Minister of Conservation, D van Mierlo Counsel acting, paragraphs 33-37.

## Policy 6.2.4

**Where resource consent is required to undertake an activity within coastal or freshwater environments with high, very high or outstanding natural character, regard will be had to the potential adverse effects of the proposal on the elements, patterns, processes and experiential qualities that contribute to natural character.**

130. This policy addresses activities in those areas that have already been modified by past and present resource use to implement Objective 6.2. The policy gives consideration to the attributes of natural character through resource consents.

131. Many submitters support the policy as notified;[131] others oppose the policy or consider it should be deleted;[132] others seek to omit freshwater bodies;[133] seek to apply the policy to all areas (lakes, rivers and their margins) of natural character to give effect to s 6(a) RMA;[134] seek to enable non-regulatory methods primarily, and only use regulatory methods where the adverse effects will be significant and long term;[135] amend the policy to include reference that modified landscapes include any past and present farming activities;[136] amend the policy to list requirements for resource consent applications in areas of high, very high or outstanding natural character;[137] amend the policy to refer to Policies 6.2.1 and 6.2.2;[138] and to apply to all areas of natural character;[139] insert a policy to include reference to the necessity of the activity to locate in the coastal and freshwater environment.[140]

**Section 42A Report**

132. The report identifies that the policy is process related, requiring that adverse effects or attributes that contribute to natural character are to be considered when resource consent for a new activity is applied for.[141] It is accepted that s 6(a) (the preservation principle) requires assessment of resource consent activities be made whenever the degree of natural character is high, very high or outstanding.

133. The policy is consistent with the overall natural character management approach in policies 6.1.1 and 6.1.2. Limiting the policy to areas of very high or outstanding natural character in the coastal environment, providing certain exemptions for certain activities, or broadening its

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131 Kevin Loe (454.5), DOC (479.62), Flaxbourne Association (712.68), NZTA (1002.25), Z Energy (1244.19).
132 AQNZ (401.54), MFA (426.55), Forest & Bird (469.5).
133 Federated Farmers (425.88).
134 Fish and Game (509.113)
135 Nelson Forests Ltd (990.82).
136 Forest & Bird (715.134).
137 EDS (698.44), DC Hemphill (648.16), KCSRA (868.7).
138 Forest & Bird (715.134)
139 KCSRA (868.7).
140 Port Clifford Ltd (1041.14).
141 Section 42A Report, page 40.

application to all areas of natural character would not align with the management approach in the identified policies and would not be consistent with s 6(a) RMA or the national policy directive of the NZCPS and NPSFM.[142] Also, requiring a list of information requirements for applications for resource consents should sit outside the PMEP as guidance.

134. No change to the policy is recommended in the original report.

**Consideration**

135. Various submitters provided evidence on this policy at the hearing. As a result, various changes have been accepted as identified in the report writer's Reply to Evidence.[143]

136. In response to NZTA's concerns,[144] it is accepted on the basis of the submitter's legal submissions that case law has determined that minor or transitory adverse effects may be appropriate in the coastal environment and need not be avoided in the context of Policy 13(2)(a) NZCPS. It is considered appropriate therefore that the policy is expanded to encompass these effects.[145]

137. In addition, arising out of Ainslie McLeod's evidence for Transpower in respect of Policy 6.2.2, the report recognises that NPSET creates mandatory requirements in respect of the company's infrastructure. Policy 8 NPSET requires that planning and development of the transmission system should 'seek to avoid' adverse effects (as opposed to an absolute requirement to avoid those effects). Explicit response to the National Grid needs therefore to be incorporated into this policy.[146]

138. It is appropriate also to reference the functional and operational needs of regionally significant infrastructure in recognition of its importance to the social and economic wellbeing of Marlborough.[147] As identified in the *King Salmon* case:[148]

> *Objective 6 (NZCPS) states that the protection of the values of the coastal environment does not preclude use and development in appropriate places and farms, and within appropriate places.*

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[142] National Policy Statement Freshwater.
[143] Section 42A Report, Reply to Evidence, page 7.
[144] NZTA, Karen Baverstock, Statement of Evidence, paragraph 9.
[145] AQNZ and MFA, Legal Submissions, paragraph 154.
[146] Trustpower Ainslie McLeod Statement of Evidence, paragraph 15.
[147] *Royal Forest & Bird Protection Society of NZ Incorporated v Bay of Plenty Regional Council* [2017] NZEnvC 045, [40]-[47].
[148] *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited (2014) NZSC 38.*

139. The word 'appropriate' is acknowledged and that its meaning is varied by context and scale. Infrastructure is a discretionary activity in the PMEP and any adverse effect may be subject to mitigation or remedy.

140. The Panel accepts on the basis of a number of the submissions and the evidence that the recommendations of the report writer set out in the Reply to Evidence that Policy 6.2.4 should be amended.

**Decision**

141. Policy 6.2.4 is amended as follows:

*Policy 6.2.4 – Where resource consent is required to undertake an activity within coastal or freshwater environments with high, very high or outstanding natural character:*

*(a) ~~regard will be had~~ have regard to the potential adverse effects of the proposal on the elements, patterns, processes and experiential attributes ~~qualities~~ that contribute to natural character;*

*(b) in the case of the development of the National Grid, seek to avoid adverse effects on the characteristics that contribute to natural character;*

*(c) recognise that minor or transitory adverse effects may not need to be avoided;*

*(d) recognise the functional and operational requirements of regionally significant infrastructure. …*

## Policy 6.2.5

**Recognise that development in parts of the coastal environment and in those rivers and lakes and their margins that have already been modified by past and present resource use activities is less likely to result in adverse effects on natural character.**

142. Policy 6.2.5 recognises standard natural character assessment practice - that areas which are modified generally have greater potential to absorb additional change than those less modified.[149]

143. Twelve submissions support the policy as notified. Eleven submitters seek the policy's deletion. One submitter seeks to ensure that the plan provides for loading of log barges in the coastal area as a permitted activity;[150] another seeks an amendment to include a reference that modified landscapes include many farming land use activities;[151] a further submission seeks recognition of those areas that are zoned for particular activities such as the Port, Port

[149] Section 42A Report, page 41-42.
[150] Ernslaw One Ltd (505.6).
[151] Federated Farmers (425.90).

Landing and Marina Zones are less likely to result in adverse effects on natural character;[152] and another to amend the policy to enable the ongoing use of primary production activities;[153] a further submission seeks to give effect to s 6(a) RMA to ensure that the natural character of lakes, rivers and their margins be preserved and protected from inappropriate use and development.[154]

**Section 42A Report**

144. Inclusion of specific port, marine or primary production land uses would introduce unnecessary specificity in the policy. This is not warranted. The relief sought by Ernslaw One Ltd seeking loading of marine barges in the coastal marine area will be addressed in Chapter 11 Coastal Environments. No changes are recommended.

145. To those submitters concerned with promoting new development in already modified areas, restoration of degraded natural character would not be advanced in such places, Policy 6.2.5 does not stand alone and must be considered in the light of other policies under Objective 6.2. The policy is not an unfettered directive either as to the scale of acceptable effects (Policies 6.2.1-6.2.2). The policy requires that standard natural character assessment practice applies - that modified areas generally have greater potential to absorb further development.

146. Policy 6.2.6 too requires consideration of the potential to enhance natural character in considering appropriateness (or otherwise) of subdivision, use and development. Meanwhile, Policy 6.2.7 addresses cumulative effects.

147. The overall approach of the policy is consistent with Policy 13 NZCPS and s 6(a) RMA.

148. It is recommended that Policy 6.2.5 be retained.

**Consideration**

149. Policy 6.2.5 requires to be considered in resource consent applications. The wording of the policy shifts focus away from quality natural character areas to other parts of the coastal environment. This brings into play the requirement provided in the second part of Policy 13(1)(b) NZCPS which provides the ability to ’avoid, remedy or mitigate’ other adverse effects (that is, other than significant effects) on natural character in ‘all other areas of the coastal environment’.

**Decision**

150. Policy 6.2.5 is retained as notified.

[152] PMNZ (433.20).
[153] NZ Forest Product Holdings Ltd (996.12).
[154] Fish and Game (509.114).

## Policy 6.2.6

**In assessing the appropriateness of subdivision, use or development in coastal or freshwater environments, regard shall be given to the potential to enhance natural character in the area subject to the proposal.**

151. Several submissions sought to retain the policy as notified.[155] Others seek its deletion.[156] Other submissions seek: to make it clear that opportunities to restore or enhance natural character include checking applications for resource consent renewals where 'significant' cumulative adverse effects exist;[157] to amend the policy where 'appropriate' regard be given to enhance natural character of the area;[158] to amend the policy to include 'restoration' of natural character;[159] to amend the explanation to the policy to remove 'landscapes';[160] to amend the policy to recognise the existing uses in the area;[161] and to amend the policy to recognise commercial forestry has the potential to enhance natural character.[162]

**Section 42A Report**

152. The policy provides the potential to enhance or restore natural character as a result of subdivision, use and development. It enables demarcation of the beneficial effects of proposals and whether a proposal will preserve overall natural character to achieve Objective 6.2.

153. The scope of Policy 6.2.6 is intended to include 'restoration' in the policy as a subset of 'enhancement' to give effect to NZCPS Policy 14, and therefore it is not necessary to include specific reference to the term 'restoration'.

154. The policy does, however, not accurately define the attributes that comprise natural character. It is reasonable to amend its description in response to the submission of FNHTB (that is, with the deletion of the word 'landscape'), and other consequential changes are recommended.

155. Limiting application of the policy to 'where practicable' as to outstanding natural features or landscapes 'or recognise existing activities' is not consistent with s 6(a) RMA or NZCPS Policies 13 and 14.

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[155] AQNZ (401.57), MFA (426.57), DOC (479.64), Port Clifford (1041.16).
[156] Marlborough Chamber of Commerce (961.11), MFIA (962.48).
[157] Clova Bay Residents Association (152.17), Judy and John Hellstrom (688.49), Forest & Bird (715.13), KCSRA (868.9).
[158] Federated Farmers (425.91).
[159] Fish and Game (509.115).
[160] FNHTB (716.68).
[161] Sanford Ltd (1140.17).
[162] NZ Forestry Products Holdings Ltd (996.12)

156. The inclusion of references to particular activities such as commercial forestry that enhance natural character introduces a level of specificity that does not accurately define the attributes that comprise natural character.[163]

**Consideration**

157. We suggest that 'enhancement' is not a subset of restoration in terms of NZCPS Policy 14. Restoration (or rehabilitation in the policy) is the overarching, encompassing provision which covers off a raft of issues including 'enhancement' – NZCPS Policy 14(c)(i)-(x). At Policy 14(c)(iii) the provision provides for creating an 'enhancing' habitat for indigenous species, so it is limiting in that sense. In this it is a subset of the word 'restoration'. We are therefore persuaded that Forest & Bird's submission and that of KCSRA is the correct approach; opportunities for restoration arise on resource use applications and reflects the amendment made to Objective 6.2.

**Decision**

158. Policy 6.2.6 is amended to read as follows:

*Policy 6.2.6 – In assessing the appropriateness of subdivision, use or development in coastal or freshwater environments, regard shall be given to the potential to restore ~~enhance~~ natural character in the area subject to the proposal.*

*It may be possible to improve the natural character of coastal environments and freshwater bodies through appropriate subdivision, use and development of natural resources. Any improvement to the ~~landscape, natural processes, biodiversity, water flows or quality~~ natural elements, patterns, processes and those experiential attributes incorporated into the proposal will be considered in this regard. ~~Enhancement~~ Restoration of natural character is particularly desirable where the coastal environment and freshwater bodies have been substantially modified by past resource use activities. Restoration ~~Enhancement~~ in this context is to be used in its broadest term and can include ~~restoration~~ enhancement and rehabilitation. However, for the purposes of this policy it does not include addressing the effects of a proposal. Any actions proposed by an applicant or imposed by the consent authority (through consent conditions) begin the process of remedying past resource use impacts on natural character. The policy also implements Policy 14 of the NZCPS.*

[163] Section 42A Report, pages 43-44.

### Policy 6.2.7

**In assessing the cumulative effects of activities on the natural character of the coastal environment, or in or near lakes or rivers, consideration shall be given to:**

**(a) the effect of allowing more of the same or similar activity;**

**(b) the result of allowing more of a particular effect, whether from the same activity or from other activities causing the same or similar effect; and**

**(c) the combined effects from all activities in the coastal or freshwater environment in the locality.**

159. Several submissions support the policy as notified.[164] Two submissions oppose.[165] One submitter seeks an amendment to read 'Recognition should be given to the extent of cumulative effects from existing modifications in the environment'.[166] Other submitters seek the description to the policy to refer to cumulative 'adverse' effects.[167] An amendment to include reference to acceptable limits of cumulative effects based on thresholds identified in policy or guidelines developed by stakeholders makes it clear it applies to reconsenting existing activities and makes it clear the policy is relevant when considering other policies in the PMEP.[168]

**Section 42A Report and consideration**

160. Although individual activities may not adversely affect the natural character of the coastal environment or freshwater bodies, when combined with the effects of similar activities or other activities with similar effects, the activities may collectively have cumulative adverse effects on natural character.

161. This policy describes how the cumulative effects of activities on the natural character of the coastal environment or freshwater bodies will be considered. For the coastal environment specifically, any consideration of cumulative effects should take into account 'scale' and may need to include consideration of the intactness of the coastal terrestrial and coastal marine natural character areas.

162. Policies 6.2.1-6.2.2 primarily establish the way in which the adverse effects of subdivision, use and development are to be managed. Policy 6.2.7 provides that in assessing cumulative adverse effects under the umbrella of these policies, consideration may be given to the effect

[164] Michael and Kristen Gerard (424.16), DOC (479.65), Fish and Game (509.116), Judy and John Hellstrom (688.46), Port Clifford Ltd (1041.17).
[165] MFIA (962.49), Nelson Forests Ltd (980.184).
[166] AQNZ (401.58), MFA (426.58).
[167] EDS (698.45).
[168] Clova Bay Residents Association (152.16), KCSRA (868.10).

of allowing more of a same or similar activity, more of a particular effect, and the combined effects of all activities.

163. Deletion of the policy requested by the forestry industry would not be consistent with s 6(a) RMA or NZCPS Policy 13. The reworded policy suggested, in the report writer's opinion, does not provide a greater degree of clarity for plan users as to how cumulative effects should be considered.

164. With respect to Clova Bay and KCSRA submissions, the report writer acknowledges that inclusion in the Plan of acceptable limits of cumulative effects through policy or guidelines could provide an acceptable threshold of modification and provide greater certainty for applications in responding to ss 6(b), 7(c) RMA and NZCPS Policy 7 Strategic Planning. There is therefore merit in such an approach but a significant amount of work would be required, given the breadth of research and consultation that would be required to achieve a robust and workable management approach system. It is not recommended to include such policy or guidance in the PMEP at this time.

165. KCSRA suggest that cumulative effects be amended to enable declining consent renewals to be an enhancement to meet NZCPS Policy 14. But we consider that s 3 RMA by definition of 'effects' enables cumulative effects to be avoided. We are therefore not persuaded by this argument.

**Decision**

166. Policy 6.2.7 remains as notified.

**Policy 6.2.8**

**Require land use activities to be set back from rivers, lakes and the coastal marine area in order to preserve natural character.**

167. Several submissions seek to retain the policy as notified.[169] A number seek its deletion.[170] Others again require land use activities that do not have a functional or operational need to be set back or clearly state what land use activities need to be set back;[171] only 'new' activities be set back;[172] exemption be made for national significant infrastructure that needs to

[169] DOC (479.66), Te Rūnanga o Ngāti Kuia (501.25), Fish and Game (509.117), Judy and John Hellstrom (688.47).
[170] Federated Farmers (425.92), Tempello Partnership (429.9), DC Hemphill (648.24), MFIA (962.50), Nelson Forests (990.185), Sally and Tim Wadworth (1221.7).
[171] PMNZ (433.21), Port Clifford Ltd (1041.18), Michael and Kristen Gerard (424.17).
[172] KiwiRail Holdings Ltd (873.16).

traverse lakes, rivers or the coastal marine area;[173] setbacks occur only in areas with high, very high or significant natural character.[174]

**Section 42A Report**

168. Policy 6.2.8 supports the implementation of Objective 6.2 in recognition that the closer the activity, the greater potential for modification of the values that contribute to natural character. The policy provides the supporting basis for the setback rules in Volume 2 including those requiring setback of buildings and structures from the Riparian Natural Character Management Area.

169. The policy affirms the requirement in s 6(a) RMA to preserve natural character and is supporting NZCPS Policy 6(1)(i) requiring setbacks where 'practicable and reasonable', and Policy 13 Preservation of natural character. The concern of the Council is not to impose an unreasonable regulatory burden on land use including regionally significant infrastructure located within or over the beds and margins of rivers, lakes and coastal marine areas.

170. To this end, the report writer recommends a new addition to the policy which clarifies that those activities have a 'functional' need to be located in the areas identified. An amended policy is provided as follows with the addition of the words following natural character: '… other than the extent that land use activities have a functional need to be located in those areas ….'[175]

171. A witness for the Minister of Conservation, however, considers that reference to 'functional needs' be deleted and substituted with the following: 'Require land use activities to be set back from rivers, lakes and the coastal marine area where this is required to preserve natural character.'[176]

172. The report writer accepts that the term 'functional' is open to interpretation and that many activities could claim to have a functional need to locate in these areas, including those that may degrade natural character. He also accepts the policy should recognise the appropriateness of an activity in terms of effects of natural character as opposed to referring to functional need or necessity, with the exception of regionally significant infrastructure in recognition of its importance to the social and economic wellbeing of Marlborough.

[173] Transpower (1198.15), Trustpower (1201.62).
[174] Fonterra (1251.28).
[175] Section 42A Report, pages 47-48.
[176] Minister of Conservation, Tim Ensor Evidence, paragraph 6.2.

173. The report writer considers in his reply to the evidence of some of those submitters[177] inclusion of reference to 'operational' need is also appropriate in order to recognise the characteristics or constraints of an activity including regionally significant infrastructure. He recommends the policy be further amended to read:[178]

'Require land use activities to be set back from rivers, lakes and the coastal marine area where this is required … recognising the functional and operational requirements of regionally significant infrastructure.'

174. The Panel agrees with that approach.

**Decision**

175. Policy 6.2.8 is amended as follows:

*Policy 6.2.8 – Require land use activities to be set back from rivers, lakes and the coastal marine area ~~in order~~ where practicable and reasonable to preserve natural character while recognising the functional and operational requirements of regionally significant infrastructure.*

## Policy 6.2.9

**Encourage and support private landowners, community groups and others in their efforts to restore the natural character of the coastal environment, wetlands, lakes and rivers.**

176. A number of submissions support the policy as notified,[179] one opposes.[180] Other submissions seek minor amendments to include business groups,[181] enhancement in addition to restoration of natural character,[182] and reference to supporting NZCPS Policy 14.[183]

**Section 42A Report**

177. The report recommends as appropriate the minor amendments be included in the policy as sought below.[184]

**Consideration**

---

[177] Federated Farmers Darryl Sycamore, paragraphs 22-25; PMNZ Louise Taylor Evidence, paragraph 41; Transpower Ainslie McLeod, paragraph 21; Trustpower Nicola Foran Evidence, paragraph 5.28.
[178] Section 42A Report, Reply to Evidence, pages 11-12.
[179] Michael and Kristen Gerard (424.18), Federated Farmers (425.93), John Hickman (455.26) George Mehlopt (456.26), DOC (479.67), Judy and John Hellstrom (688.491), Forest & Bird (715.39).
[180] Marlborough Chamber of Commerce (961.12).
[181] AQNZ (401.59), MFA (426.59).
[182] Fish and Game (509.118).
[183] FNHTB (716.69).
[184] Section 42A Report, page 49.

178. We consider too that specific reference should be made too to Marlborough's tangata whenua iwi. We do not agree that the inclusion of the word 'enhanced' in this policy is appropriate as it is a subset of restoration in the NZCPS.

**Decision**

179. Policy 6.2.9 and its explanation are amended as follows:

*Policy 6.2.9 – Encourage and support Marlborough's tangata whenua iwi, private landowners, community groups, businesses and others in their efforts to restore the natural character of the coastal environment, wetlands, lakes and rivers.*

*Not all of the responses to preserving natural character need to be achieved through regulatory methods, particularly when restoring natural character in parts of the coastal environment and in wetlands, lakes and rivers already significantly modified by historic human activity. This policy acknowledges the significant efforts of Marlborough's tangata whenua iwi, private landowners, community groups, businesses and others to restore natural character in modified coastal and aquatic environments. The Council will seek to support existing restoration initiatives and will encourage new restoration initiatives to be established, in order to give effect to Policy 14 of the NZCPS. Given that natural character consists of a range of abiotic, biotic and experiential attributes, methods elsewhere in the MEP targeting an improvement in the quality of the environment will also contribute to the restoration of natural character.*

## Methods of implementation

### Method 6.M.1

**Regional and district rules**

180. The methods of implementation set out the means by which the objectives and policies are implemented. They include activities to be regulated to encompass subdivision; erection and placement of structures, especially location, scale, density and appearance; land disturbance; indigenous vegetation; removal and the planting of certain species of exotic trees.

**Consideration**

181. No changes are recommended by the report writer, and submissions seeking otherwise are rejected by the Panel. A consequential change to Method 6.M.1 arose from the policy amendment to Policy 6.2.8 as a Method was required to give effect to that policy change.

182. Decisions on other topics also influence this method, that in part seeks to manage what in the Panel's view, is the very real threat to Marlborough's coastal natural character posed by wilding pines.

183. Through the course of the hearing the Panel heard evidence on the community initiatives to control wilding pines in the Marlborough Sounds. Those community efforts would appear to be making a meaningful difference to improving the landscape and coastal natural character and those efforts should therefore be applauded.

184. As a result of the NESPF alignment process, the rules restricting the planting of particular species that the method establishes were amended so that they no longer applied to commercial forestry. In its consideration on Topic 22: Forestry, the Panel agreed with the recommendation of the report writer to delete all of the remaining rules from the MEP that restrict the planting of specific wilding tree species. This was on the basis that the rules would duplicate the requirements for unwanted organisms under the Biosecurity Act 1993.

185. As a result of both the NESPF alignment process and the above decision, the last bullet point of 6.M.1 is deleted.

**Decision**

186. Method 6.M.1 is amended by the addition of the following paragraph

*As necessary, apply district or regional rules to activities that have the potential to threaten identified attributes that contribute to natural character, particularly areas with high, very high and outstanding natural character. The status of activities will depend on the severity of the threat and range from permitted activity standards through to prohibited activities. Activities to be regulated include:*

- *subdivision;*
- *erection and placement of structures, especially location, scale, density and appearance;*
- *land disturbance;*
- *indigenous vegetation removal.~~; and~~*
- ~~*The planting of certain species of exotic tree.*~~

*A permitted activity standard will be used to establish an appropriate setback for structures and activities from rivers and the coastal marine area in order to preserve natural character.*

## Anticipated environmental results (AER)

187. The anticipated environmental results in Chapter 6 set out the outcome expected through the implementation of objectives, policies and rules relating to natural character in the PMEP and the way effectiveness in achieving that outcome will be monitored.

### [New] 6.AER.2

188. Following the decision to include restoration in Objective 6.2, the Panel decided that a new AER is warranted.

**Decision**

189. A new AER is inserted as follows:

| Anticipated environmental result | Monitoring effectiveness |
| --- | --- |
| 6.AER.2<br><br>The natural character of Marlborough's coastal environment and of lakes, rivers and their margins is restored where it has already been degraded. | The number of successful restoration projects undertaken by Marlborough's tangata whenua iwi, private landowners, community groups, businesses and others to restore natural character.<br><br>The abiotic systems, biotic systems and experiential attributes that contribute to the natural character of the coastal environment are enhanced in areas where restoration projects and efforts have occurred, as measured by reassessment of Marlborough's natural character. |

# Proposed Marlborough Environment Plan

# Topic 5: Natural Character – Technical Mapping

**Hearing dates:** 26 – 28 February and 1 March 2018

**S42A Report Writer:** James Bentley and Maurice Dale

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| BML | Boffa Miskell Limited |
| CMA | Coastal Marine Area |
| CTA | Coastal Terrestrial Area |
| HNC | High Natural Character |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| MHWS | Mean High Water Spring mark |
| MPI | Ministry for Primary Industries |
| MSRMP | Marlborough Sounds Resource Management Plan |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| ONC | Outstanding Natural Character |
| ONF | Outstanding Natural Feature |
| ONL | Outstanding Natural Landscape |
| ONFL | Outstanding Natural Feature and Landscape |
| RMA | Resource Management Act 1991 |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| EDS | Environmental Defence Society Incorporated |
| DOC | Department of Conservation |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| Fish and Game | Nelson Marlborough Fish and Game |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| MFA | Marine Farming Association Incorporated |
| PMNZ | Port Marlborough New Zealand Limited |

# Technical Mapping, Values and Overlays

## Introduction

1. Technical mapping, values and overlays relating to the mapping of natural character are dealt with as a suite of considerations based on technical mapping undertaken as part of the MEP development and in response to submissions and further submission relating to this topic. During the course of hearings a number of minutes were issued to the 42A Report Writer seeking additional information on key areas of this decision. The minutes will be referenced in the relevant sections of this decision. The decision should be read in conjunction with the identified minutes and the responses to those minutes.

## Appendix 2

2. A number of submitters sought clarification regarding the use of "high", "very high" and "outstanding" as many felt that the use of these terms was not applied consistently. The panel issued a number of minutes[1] seeking clarification from the report writer in response to this issue. These responses are outlined below.

3. In Minute 49, the Panel sought clarity on the methodology and use of descriptors in Appendix 2 to improve accuracy and for ease of reference. In response to this minute, the report writer considered the mapping solution for identifying areas of high, very high and outstanding natural character, and provided recommended amendments to Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)[2]

4. The Panel remained concerned and considered that clarity was still required in the Key Values column.

5. In Minute 55 the Panel sought that the remaining areas of the coastal environment be prepared in the same way as the Bulwer Coastal Terrestrial Area example outlined in the report writer's response to Minute 49.

6. In response to minute 55, Mr Bentley undertook a review of each coastal marine area (CMA) and coastal terrestrial area (CTA) and provided a higher level of clarity regarding the rating and geographical extents. He also provided updated tables and maps referencing any potential sub-area that may also retain Outstanding Natural Character (ONC) and provided a reference to the relevant table/maps where it would be contained within PMEP Appendix 2 of Volume 3.

[1] Minutes 36, 47, 49 and 55
[2] Response to Minute 49, 8 March 2019

7. For consistency, Mr Bentley also included the tables and maps relating to ONC areas. These ONC areas are numbered ONC1, ONC2 etc (and are in the same order as they appear in Appendix 2 Volume 3 of the PMEP) as opposed to 1, 2, 3 etc, for clarity purposes. They also contain slight amendments by the Panel.

8. Through the process of updating the tables and maps, Mr Bentley further asked Peter Johnson of MDC to provide a legal status update to a number of mussel farms outlined in the tables.

9. Further, Mr Bentley added the words '*and noted modifications'* to the last column of the Schedule 2 tables. The last column now reads: *'Additional comments and noted modifications'* on the basis that this better reflects the type of comments listed in that column, where modifications were principally outlined.

10. The pages of the memorandum are arranged how he imagined it would be within the PMEP, that is, with each table followed by a plan.

11. Furthermore, there was some confusion over the mapped extent of the sub-area referred to as 'Land West of Waitata Reach' within the Bulwer CTA. Further confusion could arise with other areas, especially when the tables that underpin the mapped extent are separate from the maps.

12. The report writer recommended that clearer mapping would be required concerning the Natural Character overlays, particularly in relation to the Marlborough Sounds. He considered that clearer maps illustrating the extent of the area (ideally with some topographical references) would help to orientate the plan user. The report writer added that attaching maps to the tables in Appendix 2 would assist. This would allow them both to be read together.

13. Mr Bentley also identified that the first set of tables in Appendix 2 related to Coastal Marine Areas (CMA), with each CMA there are typically sub-areas where parts of the CMA retain either high or very high levels of natural character. The mapped extent and numbers of sub-areas within each CMA vary, with some CMAs retaining many sub-areas, and some only having one. Each sub-area relates to the mapped extent of high or very high natural character within the maps of Volume 4 of the PMEP.

14. Following the list of CMA tables is a list of tables that relate to the land, or Coastal Terrestrial Areas (CTA). As with the CMAs, each CTA typically includes a number of 'sub-areas'. Again, each sub-area relates to the mapped extent of high or very high natural character in the maps of Volume 4 of the PMEP.

15. In response to submissions, some recommendations were made in the Section 42A Report to amend both the extent and classification of mapped natural character areas, as well as amendments to the 'values' in the table that underpin the mapped areas. These requests are addressed later in this decision.

16. The report writer provided an example of how this repackaging could appear in Volume 3, using the Bulwer CTA as an example. This consisted of the relevant table and then a map of the CTA depicting areas of high or very high natural character.[3] The recommendations from the Section 42A Report were also incorporated. Importantly in the context of the Panel's concerns, each geographical area identified on the table with high or very high natural character was labelled on the map.

17. The report writer also addressed the possibility of an improved methodology for mapping and table descriptions for reasons of both accuracy and ease of reference in Appendix 2 of the PMEP.

18. The methodology recognised that, when mapped and appraised at a certain scale, the range and combination of what the Panel has determined are characteristics that contribute to an area's natural character, vary. Accordingly, some of the tables did not easily identify every area mapped on the accompanying plans.

19. To alleviate this concern, and to ensure that the user of the PMEP clearly understands the relationship between the tables and the maps, the report writer proposed (in his response to Minute 49) to use the maps as a geographical index to the values identified in the tables. To ensure that there was the utmost clarity, he recommended removing the high and very high colourations from the maps proposed to be added to Appendix 2 and to identify each geographical area relevant to the table row by separate colour. This methodology is clearly set out in the response to minutes 49 and 55. Removing the distinct colouration between high and very high would not change the identified status, as the high and very high values (now determined as characteristics by the Panel) that contribute to the area being identified in the first place will still be outlined in the table.

20. The report writer identified that only areas of high and very high natural character have been mapped. These mapped areas have been 'grouped' based on geographic areas of commonality. Within those geographic areas, some 'areas' retain a mix of both High and very high areas of natural character, while others are solely rated as either high or very high. These

[3] Helpfully, the report writer also provided enlargement maps for ease of considering the detail.

mixed areas are identified only in the accompanying table, under a 'rating column' for each specific natural character area within a specified CTA or CMA.

21. The report writer's recommendation was to amend the natural character values and descriptions table for the Bulwer CTA. The Rating column was deleted. These amendments relate only to the tables, and the maps would remain the same as previously presented.[4]

22. In his final summing up of his proposed changes (recorded in the response to Minute 55), the report writer undertook a review of each CMA and CTA table to provide a higher level of clarity around the rating and geographical extents. Maps were also provided.

23. Also provided within the tables was reference to any potential sub-area that may also retain Outstanding Natural Character (ONC). References to the relevant table/maps where it would be contained within PMEP Appendix 2 of Volume 3 was also provided. For consistency, he also included the tables and maps relating to ONC areas. These ONC areas were numbered ONC1, ONC2, ONC3 etc as opposed to 1, 2, 3 etc, for clarity purposes and to make these areas distinct from areas of high or very high natural character.

24. Further, the words 'and noted modifications' have been added to the last column of the tables so it now reads 'Additional comments and noted modifications' which better reflects the type of comments that are listed in that column.

**Consideration**

25. As is clear from the exchange of minutes and responses to minutes the Panel's motivation was to ensure that there was a clear linkage between Appendix 2 and the Natural Character overlay maps. In other words, the Panel sought to ensure that the PMEP user could easily establish the mapped extent of the natural character characteristics identified in Appendix 2. The Panel therefore believes that the approach recommended in the responses to Minutes 36 and 49 are appropriate and will provide clarity.

26. The report writer emphasised that NZCPS Policy 13(2)(b) seeks only that areas of high and outstanding natural character are identified, while the methodology uses a seven-point scale, between very low and very high, with moderate in the middle. Only areas of high and very high have been identified and mapped in Appendix 2. Areas of outstanding natural character are mapped separately in the overlays in Volume 4.

27. Leaving in the 'rating' column only raised potential confusion rather than providing clarity. The Panel suggested two possible solutions:

[4] Response to Minute 47 dated 21 January 2019.

- Deleting the Rating column – the reason being that as presently recommended that column itself possibly gives rise to potential lack of clarity as to which areas are rated as being of very high as distinct from high natural character.
- Replacing the Rating column with an amendment to the 'Key Values' column by adding, after the sub-header, the following statement:

  *Key ~~Values~~ Characteristics*

  *(High natural character characteristics will exist in all areas, but some areas will also contain characteristics of very high natural character as described in this column.)*

28. The report writer agrees that the Panel's preferred option, the second one[5], is a sensible way forward. All mapped natural character areas are 'at least high', (which aligns with policy direction in Policy 13 of the NZCPS) therefore the written identification of characteristics outlining exactly what comprises the areas of Very High natural character and where they are located need to be more clearly identified within the Key Values column.

29. As a result of the Panel and the report writer's iterative process, the Panel finds that the report writer:
    - provided tables referencing areas of Outstanding Natural Character (ONC);
    - identified confusion in maps between high, very high and ONC;
    - identified sub-areas in coastal marine areas and coastal terrestrial areas;
    - identified confusion when separating tables from maps;
    - improved the methodology for describing maps and tables;
    - identified by separate colour each geographical area relevant to the table rows, and tightened up boundaries;
    - tidied up mapping line work;
    - deleted Ratings;
    - noted that only high and very high natural character areas have been mapped; ONC are separate.

30. The Panel believes that the approach recommended in the report writer's responses to Minutes 36, 49 and 55 are appropriate and provide clarity.

[5] Panel Minute 49, paragraph 9.

31. In the decision that follows, the response to Minute 55 is adopted in relation to the blue amendments which relate to technical descriptive aspects of the appendix tables. These additions are a consequence of the exchange between the Panel and the report writer and the additions complete the table content in the context of the matters in the various minutes. The response also contains in a black underline and strikethrough recommendations that were made in the Section 42A Report process. These are dealt with later in this decision by either acceptance of the reasoning and recommendation of the report or by separate decision of the Panel.

**Decision**

32. The response to Minute 55 is adopted for the purpose of the Panel's decision on the format and layout of Appendix 2. In practical effect, this means that all of the notified Appendix 2 will be replaced with that set out in the response. The following amendments are made to Appendix 2 as a consequence:

- The tables in Appendix 2 are restructured according to the response to Minute 55.
- The maps and corresponding colour coding in the tables in the response to Minute 55 are also to be included in Appendix 2.
- The tables to Appendix 2 are amended by the addition of a new column titled 'map reference' which will include the map references contained in the response to Minute 55. This map reference corresponds to the number for each sub-area shown on the map now to be included with the schedule. The column titled 'Rating' is to be deleted.
- The tables to Appendix 2 are to be amended by adopting the blue text as contained in the response to Minute 55.

## Texts, Tables, Maps

**Use of the term 'Values"**

33. A definition of 'natural character' was provided in the Section 42A Report (Bentley) relating to the specific report on Natural Character, Technical Mapping, Values and Overlay, which was agreed at a DOC workshop in 2011, as follows:

*Natural Character is the term used to describe the natural elements of all coastal environments. The degree or level of natural character within an environment depends on:*

> *1. the extent to which the natural elements, patterns and processes[6] occur; and*
>
> *2. the nature and extent of modification to the ecosystems and landscape/seascape.*
>
> *The degree of natural character is highest where there is least modification.*
>
> *The effect of different types of modification upon natural character varies with context and may be perceived differently by different parts of the community.*[7]

34. Dr Steven raised concerns regarding the concept of natural character in his evidence, stating:

> *A fundamental flaw of the Marlborough Coastal Natural Character study of 2014 is the absence of a clear, unambiguous definition of natural character - an awareness of what it is, and what it is not. In my opinion, the following simple definition is valid, and has sufficient utility for the purposes of section 6(a) RMA and NZCPS Policy 13:*
>
> > 'Natural character is the expression of natural elements, natural patterns and natural processes in the landscape or coastal environment, rated according to the degree of modification through human agency.'[8]

35. Dr Steven goes on to state that neither the definition provided by the report writer, or those identified in the NZCPS and RMA[9] include reference to 'values'. The use of the term in the context of describing location-specific natural character characteristics within the Appendix is misleading.

**Consideration**

36. The Panel agrees with Dr Steven that inclusion of the word 'value' in an analysis of the natural character of the coastal environment blurs the clear distinction between a landscape and natural character assessment.[10] Policy 13(2) of the NZCPS emphasises the importance of this distinction. The Panel have determined therefore to delete the word 'value' and substitute the word 'characteristic'. The word 'characteristic' best reflects the intrinsic nature of biotic and abiotic elements, patterns and processes.[11]

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[6] For the purposes of interpreting the NZCPS 2010 Policy 13.2, 'elements, patterns and processes' means: biophysical, ecological, geological and geomorphological aspects; natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks; and the natural movement of water and sediment.

[7] NZCPS 2010 Guidance Note Policy 13: Preservation of natural character, DOC, page 11.

[8] FNHTB, Michael Steven Evidence, paragraph 73.

[9] Section 6 RMA, matters of national importance; and NZCPS Policy 13.2

[10] FNHTB, Michael Steven Evidence, paragraphs 27-44.

[11] FNHTB, Michael Steven Evidence, page 21, paragraph 75.1.

**Decision**

37. The word 'value/s' is deleted and replaced by the word 'characteristic/s' within Chapter 6, with a consequential amendment to Appendix 2.

## Technical mapping, values and overlays

## Coastal Natural Character Study into Coastal Natural Character Overlays 1-5[12]

**General submissions**

38. Several submitters query the seaward extent of the natural character overlay, stating there is no justification for this to extend so far into Cook Strait and seeking that it be reduced to only include snorkelling or recreational diving depths;[13] others state the maps are confusing and seek that natural character be extended as far as the relevant geographical area;[14] another requests the deletion of the coastal natural character overlays from the planning maps, or to amend the table setting out changes to boundaries which are relatively minor and ensuring the existing marine farms are not encumbered;[15] another submitter points out that several hard copies of notified character maps were omitted including Melville Cove, Beatrix Bay and Maud Island;[16] that the maps be updated and affected parties be given adequate time to make a submission.[17]

**Section 42A Report**

39. The report writer emphasises that recognising the marine component is a pivotal feature in defining the natural character of the coastal environment (underwater features and activities are known). But in terms of the seaward extent of mapping, information on seabed ecology is greatest close to shore and decreases appreciably with distance offshore.

40. Consequently, the Marlborough Coastal study focused on all enclosed waters of the Marlborough Sounds - the Outer Marlborough Sounds bounded by the main headlands and offshore islands and stacks, and out to 2 kilometres offshore from the coast including offshore islands and stacks around the Outer Sounds.

41. Deletion of mapping was not considered as an option as the report writer considers it gives more certainty to the users.[18] Additionally, NZCPS Policy 13(1)(c) directs local authorities to 'assess the natural high (MDC blue tone), very high (MDC pink tone) and outstanding (MDC

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[12] Section 42A Report, General Mapping, pages 23-24.
[13] Aquaculture NZ (401), MFA (426). This approach is supported by the commentary in *Natural Character of the Marlborough Coast* (MDC, 2014).
[14] Friends NHTB (716).
[15] Sanford Ltd (1140).
[16] Slade, King and King, Port Gore Marine Farm Partnership (1152.1-1152.7).
[17] Topic 5: Natural Character – Technical Mapping, Values and Overlays.
[18] Section 42A Report, page 23.

pink cross hatch) character of the coastal environment of the region or district by mapping or otherwise identifying at least high natural character.

42. The report writer considers that in the hard copies of the PMEP Volume 4 Maps (Coastal Natural Character Maps 1-5) some colours in some areas are blurred and hard to read the distinction between land and sea (land - light grey, sea - white). The colours used and the scale used also make distinctions difficult. Further, the maps (overlays) do not join together and the gaps are the basis of concerns.

43. In his general mapping discussion the report writer does not agree with one submitter who requests that natural character mapping is not amended due to the specific Policy 13(1)(c) in the NZCPS. That is one of the three options given to Council for identification.

44. The report writer recommends:

- Coastal Natural Character Overlay Maps 1-5 maps within Volume 4 PMEP be amended to better articulate the maps (more refined maps and colouration) and addressing the mapping gaps.

- Reproduce the maps at a larger scale with more distinct colour differentiation between high, very high and outstanding natural character.[19]

**Consideration**

45. Given that each sub-area will now be mapped separately (see earlier decision) in Appendix 2, the Panel consider that some of the recommendations of the report writer in the original Section 42A report and Right of Reply are no longer relevant.

46. The Panel noted that the report writer is now recommending that areas of outstanding natural character be separately identified to the remaining content of Appendix 2. The Panel agrees with this approach as a means of providing greater clarity to plan users. The amended approach also recognises that a different methodology was applied to identify areas of outstanding natural character.

47. The Panel also noted a clerical error with a missing band of coastal natural character between Coastal Natural Character 1 and 2 (on the top); and 3 and 4 (underneath).

**Decision**

48. The missing coverage in Volume 4 Overlays Coastal Natural Character 1 and 2, 3 and 4 identified above, is rectified.

[19] Section 42A Report, pages 23-29.

49. Areas of ONC are mapped separately in the overlays to areas of High and Very High natural character.

## Requests with respect to specific CMA or CTA

50. The remainder of this decision addresses requests for changes to Appendix 2 of Volume 3 and/or the Natural Character overlays in Volume 4. The Panel has generally relied upon the Section 42A Report and the Right of Reply to determine these requests. The Section 42A report also had an appended map book illustrating the effect of recommendations from a mapping perspective. For the avoidance of doubt, references to figures from this point on are references to the figures contained in the map book.

51. As set out earlier in this decision, Schedule 2 is to be restructured. Changes to the content of the tables in Appendix 2 as a result of decisions on specific submissions utilise the restructured format of Appendix 2. However, where applicable, reference is also provided to the tables set out in the notified Plan in order to allow for the tracking of the effect of decisions between the two versions of Appendix 2.

## Appendix 2: Coastal Marine Area C: Waihinau and Waitata Bays (which includes Hamilton Cove) and northern Waitata Reach Area[20]

52. A number of submitters requested removal of the natural character overlay from close to their property or marine farm (with the exception of one submission which relates more directly to landscape).[21]

### Section 42A Report

53. This part of Pelorus Sound contains large areas of modification to both terrestrial and marine environments. Much of this modification is associated with land use activities such as grazing, commercial forestry, and structures predominantly buildings, power lines and tracks. Within the marine environment Waitata and Waihinau Bays contain aquaculture (mussel and salmon farming), moorings, jetties and slipways.

54. Any limited areas that remain are high/very high areas of natural character relating to advanced regeneration of previously cleared land. These areas around White Horse Rocks, along the southern and eastern shores of Hamilton Cove, and all of Kaitira Headland have

[20] Section 42A Report, pages 37-40.

[21] Aquaculture New Zealand (401.257), Marine Farming Association (426.248), Aroma Aquaculture Ltd (546.8 and 13), Judy and John Hellstrom (688.38), Goulding Trustees Limited (750.4-5), Marine Farm Management Ltd (958.12, 13 and 27), Marlborough Aquaculture Ltd (959.2), The New Zealand King Salmon Company Limited (997.4, 5 and 7), Rob Curtis (1056/1, 2 and 4), Richard F Paine (1060.9-11). Sanford Ltd (1140.108, 110), Shellfish Marine Farms Ltd (1150.3-5), St George Ltd (1160.3-4).

been mapped as such. Areas of very high natural character are limited to the Yellow Cliffs which extend southwards past Treble Tree.

55. The report writer confirms there is no mapping close to marine farms 8098-8099 in Waitata Bay principally due to the modifications. The updated MPI maps (Figures 1 and 2)[22] indicate reasonably significant amounts of dredging having occurred within Waitata Bay and Central Waitata Reach.[23] Reef Point/Yellow Cliff and the regenerating bush above Hamilton Cove are considered appropriately mapped as high natural character. This high rating should continue toward Turner Bay. MFA requested a review of the whole area so while Goulding Trustees Limited[24] and Sanford Limited[25] request removal of areas of "high natural character" mapping, the report writer considers this small area of land as being within the scope of the review and to be appropriately mapped as high natural character.

56. At White Horse Rock/Burnt Point the terrestrial headland is relatively advanced regenerating bush and supports no structures or modifications, other than wilding pines. The salmon farm located immediately offshore prevents the foreshore from also being considered high.

57. The marine component north of West Entry Point is mapped as high natural character, but the small peninsula is not, due to its pine tree domination. The mapped high natural character area at this point reflects the generally high level of naturalness of the marine environment, despite the presence of the occasional marine farm.

58. On reconsideration of this whole area, the report writer is confident the existing mapping represents the natural character identified at the scales discussed, apart from a small amendment within the terrestrial component of Hamilton Cove currently not mapped as high natural character. He recommends an extension to an area of high natural character to include the northern point of the bay up to the ridge that divides Hamilton Cove from Turner Bay. His recommendation is to amend the natural character mapping within Hamilton Cove as depicted on Figure E: Natural Character Mapping Change 5: Hamilton Cove.

**Consideration**

59. The Panel agrees with the report writer's assessments and recommendations. Figure E: Hamilton Cove clearly depicts the modified/non-modified areas of Hamilton Cove. The recommendations of the report writer in that area are accepted.

[22] Section 42A Report, Natural Character Mapping Recommendations
[23] Section 42A Report, page 38.
[24] (750.3-5).
[25] (1140.108, 110).

60. The report writer also recommends an amendment to the Coastal Area 3: Bulwer table to be undertaken to expressly recognise the mapped area on what is currently listed as 'Land to the west of Waitata Reach' as follows: White Horse Rock, Hamilton Cove and Yellow Cliffs.

61. Due to the amendments made as a result of the report writer's response to the Panel's Minute 55, this table has been split (into 3A, 3E and 3F) as a result, and new wording has been inserted as part of the methodology changes.

**Decision**

62. The table is split into the following 3 tables (3A, 3E, 3F):

Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)26

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 3A | ~~Land to west of Waitata Reach~~ Eastern facing slopes extending from Reef Point ~~Treble Tree~~ to Bucklands Bay | ~~Whilst some land has been cleared for pasture, there are limited structures on the land, especially around northern Port Ligar and land west of Waitata Reach.~~<br><br>Advancing regenerating headlands and embayments holding very high biotic and abiotic values extending from ridge to foreshore throughout much of this area with noticeable lack of modification.<br><br>~~Of the remaining~~ Much of the indigenous forest holding very high natural character ~~values~~ characteristics ~~within the Area, much~~ appears on more elevated slopes, such as on ~~(~~Mt. Shewell, Mt. Drew, ~~Bobs Peak, Okuri Peak)~~, however a ~~but with~~ substantial tract~~s~~ appears at lower coastal altitudes at~~, especially east and south aspects (~~Apuau Channel.~~, Fitzroy Bay).~~<br><br>Very High perceived naturalness ~~values~~ characteristics.<br><br>Advancing regeneration of vegetation on lower slopes east of Picnic Bay and east of Woodlands. | ~~Many bays contain houses, jetties and wharves~~<br><br>Modifications within this area include: Occasional area of wilding pines present, Tui Nature Lodge structures and small amount of tracking. No foreshore structures apart two from mussel farms at Treble Tree and two mooring buoys (one at Woodlands Bay and one at Bucklands Bay) |

Note:
'3A' is taken from Section 42A Report (page 42): Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)

[26] PMEP Volume 3 Appendix 2, page 11.

Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)27

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 3E | ~~Land to west of Waitata Reach~~ White Horse Rock, Hamilton Cove, Yellow Cliffs | Whilst some land has been cleared for pasture, there are limited structures on the land, especially around ~~northern Port Ligar and~~ land west of Waitata Reach, including White Horse Rock, Yellow Cliffs and Hamilton Cove.<br><br>Advancing regenerating headlands and embayments extending from ridge to foreshore around Hamilton Cove and White Horse Rock.<br><br>Very high abiotic and biotic natural character characteristics at Yellow Cliffs due to lack of modification.<br><br>~~Of the remaining indigenous forests within the Area, much appears on more elevated slopes (Mt. Shewell, Mt. Drew, Bobs Peak, Okuri Peak), but with substantial tracts at lower coastal altitudes, especially east and south aspects (Apuau Channel, Fitzroy Bay).~~<br><br>~~Very~~ High perceived naturalness ~~values~~ characteristics experienced throughout. | ~~Many bays contain houses, jetties and wharves~~<br><br>Modifications within Waihinau Bay and Waitata Bay limit extent of mapping to those identified. Modifications within these mapped areas are restricted to several jetties, a small number of private residences, powerlines and tracks. Where aquaculture is present, this has limited the extent of mapping to the terrestrial area only. |

Note:

'3E' is taken from Section 42A Report (page 39): Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)

Appendix 2 - Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)28

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 3F | ~~Land to west of Waitata Reach~~ Fitzroy Bay Area, French Pass, Okuri Bay, and land at the head of Squally Cove | Whilst some land has been cleared for pasture, there are limited structures ~~on~~ within the mapped area. ~~land, especially around northern Port Ligar and land west of Waitata Reach.~~<br><br>Advancing regenerating headlands, slopes and embayments extending from ridge to foreshore and holding very high levels of natural character, noticeably from Bobs Peak and Okuri Peak with substantial tracts at lower coastal altitudes around northern Hallam Cove, Garne Bay, Savill Bay, northern Elaine Bay and southern Okuri Bay.<br><br>Smaller 'pockets' of coastal vegetation retaining high levels of natural character are also present around the French Pass | ~~Many bays contain houses, jetties and wharves~~<br><br>Modifications within these mapped areas are restricted to one jetty in Savill Bay, several private residences in Canoe Bay, Garne Bay, small tracks extending from the French Pass Rd into Canoe Bay, Savill Bay and Garne Bay. Agriculture and forestry have restricted mapping |

[27] Report writer, Response to Panel's Minute 55, page 20.
[28] Report writer, Response to Panel's Minute 55, page 20.

| | | | |
|---|---|---|---|
| | | settlement, parts of the western slopes of Wairangi Bay and the eastern slopes of Whakakitenga Bay.<br><br>~~Of the remaining indigenous forests within the Area, much appears on more elevated slopes (Mt. Shewell, Mt. Drew, Bobs Peak, Okuri Peak), but with substantial tracts at lower coastal altitudes, especially east and south aspects (Apuau Channel, Fitzroy Bay).~~<br><br>Very High perceived naturalness ~~values~~ characteristics around the slopes extending from ridge to shore at northern Hallam Cove, Garne Bay, Savill Bay, northern Elaine Bay and southern Okuri Bay | to parts of Hallam Cove and Savill Bay. Aquaculture has limited the extent of mapping in Hallam Cove, Canoe Bay and around Camel Point to Elaine Bay |

Note:

'3F' is taken from Section 42A Report (page 47-48): Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table).

**Coastal Natural Character Overlay**

63. Amend the natural character mapping within Hamilton Cove to add an additional area of high natural character as depicted on Figure E: Hamilton Cove of the Mapping Recommendations document.

## Appendix 2: Coastal Marine Area C: Pelorus Sound

## Outstanding Natural Character 7: Maud Island tables[29]

## Coastal Terrestrial Area 3: Bulwer

64. A separate table is sought for Treble Tree and Maud Island Area as well as all the others in Table 1: Smaller landscapes nested within the broader Outer and Inner Sounds Landscapes.[30]

**Treble Tree and Maud Island Area**

65. Several submitters[31] seek a review of the areas identified and mapped as having high natural character in this part of the Marlborough Sounds. These submitters request an extension of the overlay, whilst two others request its removal, especially if relating to marine farms.[32]

66. One of these submitters seeks an amendment over Maud Island so that it does not extend over coastal waters (that is, boundary as MHWS); deletion of the coastal parts of the High Natural Character around Wilson Bay/Spencer Point; deletion of the high natural character zone at or near Mt Shewell.

[29] Section 42A Report, pages 40-43.
[30] Report writer, Response to Panel's Minute 55, page 2.
[31] Tui Nature Reserve (179.2), DOC (479.269), FNHTB (716.203, 716.204).
[32] Treble Tree (1199.4), United Fisheries Holdings Ltd (1204.3).

**Section 42A Report**

67. The report writer identifies that parts of this area retain very notable areas of naturalness such as Maud Island. The tract of land extending from Reef Point in the north to Bucklands Bay in the south is a significantly advanced area of regenerating indigenous bush, lacking any form of structures other than small areas of wilding pines, a lodge structure on the ridge, and a small amount of tracking. A consented mussel farm exists at Treble Tree and two mooring buoys, one at Woodlands Bay and one at Bucklands Bay. There has been an abundance of dredging in the area too, and this is reflected in Image 7 [*sic* 6] and Figures 1 and 2.[33]

68. There is very limited structural modification apparent in Apuau Channel. FNHTB request that the outstanding natural character area of the Outer Sounds and Tasman Bay be expanded; in this coastal marine area FNHTB suggests this area to include all of Maud Island and Mt Shewell be integrated with the area of outstanding natural character. A further request is that the boundary of the outstanding natural character include a distance of not less than 500 metres from MHWS as being within the outstanding natural character area. The report writer therefore agrees with FNHTB that an extension of the outstanding natural character is appropriate.

69. The report writer agrees with FNHTB that an extension of the outstanding natural character is appropriate. He also considers whether all or parts of the adjacent mainland may be outstanding. There is mature indigenous forestry extending from the upper slopes of the ridge between Mt Shewell and Mt Drew. This contributes to the naturalness of Waiona Bay. Part of this extends down to the coast. Based on these aspects, there is scope to extend part of the ONC from the head of Waiona Bay to the ridgeline.

70. The report writer does not consider that the consent for the one marine farm at Treble Tree would significantly affect the mapping at the scale at which the marine environment has been mapped.

71. The report writer then considers whether all or parts of the adjacent mainland may be outstanding. There is mature indigenous forestry extending from the upper slopes of the ridge between Mt Shewell and Mt Drew. This contributes to the naturalness of Waiona Bay. Part of this extends down to the coast. Based on these aspects, there is scope to extend part of the ONC from the head of Waiona Bay to the ridgeline.

[33] Figure 6 see Note 3 Natural Character Mapping Recommendations Figure 1: Scallop Dredging Catch Intensity; Figure 2: Trawl Fishing Events.

72. Having come to these conclusions, it is recommended that amendments to the identified areas expressly recognise the newly mapped area that are more specific than what is currently listed as 'Land to the west of Waitata Reach'.[34]

73. In an addendum to the Section 42A Report, the report writer became aware that two additional submissions had been overlooked. They both related to natural character mapping around the waters of Maud Island, Wilson Bay/Spencer Point and close to Mt Shewell.[35]

74. Sanford request the following:

- amend the classification of high natural character over Maud Island so that it does not extend to the extent illustrated in the natural character overlays;
- delete the coastal parts of the very high natural character around Wilson Bay/Spencer Point;
- delete the high natural character zone at and near Mt Shewell.

75. All three requests mentioned above appear within Pelorus Sound Coastal Marine Area C, and each within different sub-areas of the Sounds as mapped on the Technical Mapping, Values, Overlays Report (excerpt of plan included) as follows:

- Sub Area 5: Coastal Marine Area C: Treble Tree and Maud Island Area
- Sub Area 9: Coastal Marine Area C: Northern Tawhitinui Reach (Picnic Bay Area)
- Sub Area 11: Coastal Marine Area C: Nydia Bay to Fairy Bay to Tawero Point.

76. In respect of the waters around Maud Island and limited modification with Apuau Island, the report writer reiterated what was in his initial assessment, concluding that these waters around Maud Island should remain as high natural character and that the natural character overlay be extended as set out in his original assessment.

77. In terms of Coastal Marine Area C: Northern Tawhitinui Reach (Picnic Bay Area), the report writer refers to his original report[36] where he recommended that the area of high natural character east of Picnic Bay not be mapped as high natural character based on the extent of the area's modification, but that the upper part of Mt Shewell be considered very high. This is reflected on Figure G: Natural Character Mapping Change 7: Northern Tawhitinui Reach.

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[34] Section 42A Report, pages 40-41.
[35] Sanford Ltd (1140.112-113).
[36] Section 42A Report, page 45.

78. With respect to Coastal Marine Area C5: Nydia Bay to Fairy Bay to Tawero Point and Wilson Bay, the report writer had focused on the areas of very high natural character mapped at Level 4 scale and whilst there are small areas of modification, these have not directly affected the broad mapping of this coastal stretch to the degree that these areas should be excluded.

**Consideration and decision**

79. The Panel has considered the submissions seeking reduction of the high natural character areas and the report writer's recommendations to amend the natural character mapping of Apuau Channel and part of the terrestrial environment. The Panel accepts the report writer's recommendations. Refer to Figure F: Natural Character Mapping Change 6; Treble Tree and Maud Island Area.[37]

80. Amend the area of high natural character east of Picnic Bay to not be mapped as having high natural character based on its level of modification and that the upper part of Mt Shewell should be considered very high: refer Figure F: Treble Tree and Maud Island Area.

81. Amendments to the Coastal Marine Area C: Pelorus Sound, Coastal Terrestrial Area 3: Bulwer and ONC 7: Maud Island tables be undertaken, to expressly recognise the newly mapped area which is more specific than what is currently listed as 'Land to the west of Waitata Reach'.

Coastal Marine Area C: Pelorus Sound (Level 4/5 Table)[38]

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| C2 | Maud Island to Yellow Cliffs, including Apuau Channel | **Near-shore areas and much of Apuau Channel, including Waiona Bay, retain high natural values.**<br>Sheltered indented coastline with multiple aspects.<br>Apuau Channel, with its deep channel habitats and moderate currents, separates Maud Island from the mainland.<br>– Tom Shand Scientific Reserve (Maud Island) and Deep Bay Scenic Reserve on the opposite mainland. ~~separated by Apuau Channel~~.<br>An Outstanding Natural Character overlay | Commercial scallop dredging in Tawhitinui Reach and Waitata Reach, but mostly absent between Maud Island and the mainland.<br>Three marine farms near Treble Tree ~~approved~~ refused for the culture of sponges and seaweeds with |

[37] See note 15 Figure F: Treble Tree and Maud Island Area: Mapping Recommendations.
[38] James Bentley, Response to Minute 55, page 8.

| | | | |
|---|---|---|---|
| | | applies to this sub-area. Refer to Table ONC7 and accompanying Maps for further information. | limited effect on seabed values |

Note:
'C2' is taken from Section 42A Report (page 41): Coastal Marine Area C: Pelorus Sound (Level 4/5 Table) and from information provided by Marlborough District Council contained within Appendix 1.

## Overlays

## Appendix 2

## Coastal Marine Area C: Northern Tennyson Inlet (including Camel Point, Canoe Bay, Fitzroy Bay, Savill Bay, Garne Bay, Hallam Cove)[39]

82. Fifteen submitters request removal of the natural character overlay from close to their farms or their land on current zoning, or if the mapping is correct, a record that aquaculture will not affect the relevant values.[40] One submitter requests that the very high natural character overlay is removed from the Port Landing Zone at Elaine Bay due to the existing modifications present.[41]

**Section 42A Report**

83. The report identifies that the northern part of Tennyson Inlet and eastern Tawhitinui Reach generally hold high levels of natural character. Where there are generally limited areas of modification, these have been excluded from any mapping.

84. While the northern part of Tennyson Inlet does not hold the same characteristics as the remaining parts of Tennyson Inlet, the report writer considers there are areas justifiably notable for their very high levels of natural character. These areas include parts of northern Elaine Bay and much of the vegetated slopes above Fitzroy Bay and Hallam Cove.

85. Within the marine environment there are numerous marine farms which, to varying degrees, have affected how the marine environment is mapped. A small area mapped high extends from Long Reef Point northwards through the central channel of Hallam Cove to a point just south of Cissy Bay. This area includes much of Fitzroy Bay, all of Savill Bay, Garne Bay and part of Hallam Cove.

86. The only evidence of development in this area are two areas of marine farms located in southern Fitzroy Bay and Garne Bay apart from a single jetty and two mooring buoys in Savill Bay. On land there are few built structures in Garne Bay and Savill Bay, an area of pine trees in Garne Bay and a small grazed area in Savill Bay, but these appear subservient to the broader mapping.

[39] Section 42A Report, pages 46-48.
[40] Section 42A Report, page 46. List of marine farming and fishing interests.
[41] PMNZ (433.212).

87. Regarding the Port Landing Zone at Elaine Bay, the very high natural character mapping there should be realigned to follow the outer edge of the zone, principally due to the localised existing modifications in the bay.[42] The report writer consequently recommends:

- Removal of the very high natural character overlay in the small area of Savill Bay as shown on Figure H: Savill Bay, Northern Tennyson Inlet and Elaine Bay of the Mapping Recommendations document.
- Removal of the very high natural character overlay from the small strip of coastal marine area south of Camel Point as shown on Figure H: Savill Bay, Northern Tennyson Inlet and Elaine Bay of the Mapping Recommendations document.
- Removal of the very high natural character overlay from Port Landing Zone at Elaine Bay as shown on Figure H of the Mapping Recommendations document.

88. South of Camel Point is an area of outstanding natural character which includes the bulk of Tennyson Inlet and extends over the ridge to Nydia Bay. The alignment of this northern-most mapping extends through marine farm 8203 in error. A minor mapping change is required to be made to exclude this farm from the outstanding and very high natural character mapped area here.[43]

89. Based on the recommendation of the report writer, there are three small overlay mapping changes required to meet the submissions – one around the more modified area of Savill Bay (where the area of pasture is to be removed from the very high mapping), one south of Camel Point, and one to the area around Elaine Bay.[44] These are reflected on Figure H: Natural Character Mapping Change 8: Savill Bay, Northern Tennyson Inlet and Elaine Bay.[45]

**Decision**

90. Amend the natural character mapping for Savill Bay, Northern Tennyson Inlet and Elaine Bay in accordance with Figure H of the Mapping Recommendations document, including:

- Removal of the very high natural character overlay in the small area of Savill Bay as shown on Figure H: Savill Bay, Northern Tennyson Inlet and Elaine Bay of the Mapping Recommendations document.

[42] Section 42A Report, pages 46-47.
[43] Potential zone change Topic 11.
[44] Coastal Natural Character Overlay 1/3.
[45] Section 42A Report, pages 46-47.

- Removal of the very high natural character overlay from the small strip of coastal marine area south of Camel Point as shown on Figure H: Savill Bay, Northern Tennyson Inlet and Elaine Bay of the Mapping Recommendations.
- Removal of the very high natural character overlay from Port Landing Zone at Elaine Bay as shown on Figure H: Savill Bay, Northern Tennyson Inlet and Elaine Bay of the Mapping Recommendations.

## Coastal Marine Area C: Nydia Bay to Fairy Bay to Tawero Point[46]

91. Multiple submitters request removal of the natural character overlay from close to their marine farms or their land. A constant theme in the alternative is a request that the PMEP recognises that the overlay does not affect relevant values even with aquaculture present.

92. One submitter whose submission was initially overlooked requests deletion of the coastal parts of very high natural character around Wilson Bay/Spencer Point.[47] Other submitters also requested similarly with Submitters 842 and 1160 also seeking similar relief in terms of considering the very high natural character of the seascape south of Tawero Point and Wilson Bay.[48]

**Section 42A Report**

93. The Section 42A Report identifies this stretch of coastal land and waters in the Inner Sounds as containing some of the most intact and significant stands of original forest in the Marlborough Sounds. It also has some of the longest unmodified parts of the coastal environment within the Inner Sounds. Most of the area, along with tracts of Tennyson Inlet, has been identified as outstanding natural character. This exceptional tract of inland indigenous forest, displaying a sequence of vegetation types from mountain top to shore, is rare nationally.

94. The more modified parts of inner Nydia Bay or North West Bay have been excluded from the outstanding overlay but still hold very high levels of natural character in the marine environment and areas of high natural character within the terrestrial part of North West Bay.

95. The mapping of high natural character in Kaiuma Bay reflects part of the large estuarine area, the extensive saltmarsh beds, diverse avifauna and lack of modifications in the waterbody. The marine farm in Kaiuma Bay has been identified in Appendix 2 but does not detract from the broader Level 4 mapping of the marine environment.

[46] Section 42A Report, pages 48-50.
[47] Sanford Ltd (1140.113).
[48] Section 42A Report, Addendum, 19 February 2018.

96. In his addendum, the report writer identifies the focus of his initial discussion on the very high levels of natural character within the coastal marine area mapped at Level 4/3.[49]

**Consideration**

97. Within the broad level mapping of the marine environment there are small areas of modification that have not directly affected the broad mapping of this stretch of water that should be excluded. This involves the isolated marine farms in Fairy Bay, Wilson Bay, Kaiuma Bay, jetties and other foreshore development. The report writer's recommendation is that no change occurs to the natural character mapping around the coastal parts of the very high natural character of Wilson Bay/Spencer Point.

98. The existing modifications have been taken into account in terms of the mapping, leading to greater clarity, and they Panel has decided they should be included within the tables in Appendix 2, for the Level 4/5 table for Coastal Marine Area C: Pelorus Sound (sub-area Nydia Bay-Tawero Point), the Level 4/5 table for Coastal Terrestrial Area 6: Nydia and the Level 4/5 table for Coastal Terrestrial Area 3: Bulwer.

99. The Panel has decided these modifications are to be inserted into the existing tables.[50]

**Decision**

100. Appendix 2 is amended as follows:

Appendix 2 - Coastal Marine Area C: Pelorus Sound (Level 4/5 Table)[51]

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| C5 | Nydia Bay – Tawero Point | Largely unmodified section of coast extending over many kilometres from the head of Nydia Bay along the western side of Pelorus Sound to Tawero Point holding very high levels of natural character.<br>- Several small bays.<br>- Mostly sheltered but exposed to a wide range of tidal flow conditions including high flow communities.<br>- Large sections of this coast are backed by scenic reserves.<br>An Outstanding Natural Character overlay applies to this sub-area. Refer to Table | Two small areas of mussel farms (Fairy Bay and west of Tawero Point).<br>A number of moorings, jetties, boatsheds and private residences located within Fairy Bay and North West Bay. |

[49] Section 42A Report, Addendum, page 4.
[50] Section 42A Report, page 49.
[51] PMEP Volume 3 Appendix 2, page 3.

| | | | |
|---|---|---|---|
| | | ONC8 and accompanying Maps for further information. | |

Coastal Terrestrial Area 6: Nydia (Level 4/5 Table)[52]

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 6A | Tennyson Inlet and northern slopes of Nydia Bay area (to Opouri Saddle), including Tarakaipa Island, Tawhitinui Island and surrounding small islands and rocks; | Original forests on lower altitude hillslopes and toeslopes, and coastal forests are largely intact in Tennyson Inlet, and Nydia Bay to Fairy Bay all holding very high abiotic and biotic values.<br><br>Small areas of alluvial forests and beach communities are still intact in Tennyson Inlet and Nydia Bay and contribute significantly to the biodiversity and very high levels of natural character ~~of~~ to the area.<br><br>Tennyson Inlet and Nydia Bay supports some of the largest tracts of lowland and coastal forests in Marlborough. These are largely intact altitudinal sequences of primary forest, extending from ridgetops to seafloor and are therefore nationally important.<br><br>There are nationally threatened plants on the Tennyson Inlet islands.<br><br>Tennyson Inlet and parts of Nydia Bay retain ~~extremely~~ very high experiential ~~values~~ attributes, due mainly to its unmodified indigenous vegetation cover that extends from the shore line to the ridges and peaks that contain the inlet.<br><br>Some areas of high natural character are located within the very high levels of natural character. Those areas of high natural character are due to concentrations modifications associated with roads, tracks, buildings, powerlines, plantation forestry and grazed land. These are restricted to the western and northern slopes of Tuna Bay and Penzance Bay and the mid and upper slopes of North West Bay.<br><br>An Outstanding Natural Character overlay applies to this sub-area. Refer to Table ONC8 and accompanying Maps for further information. | ~~Some modification around Tuna Bay, Penzance Bay and North West Bay restricts those areas to High Natural Character.~~<br><br>Modification to Fairy Bay is limited and restricted to several jetties and a small number of houses. Modifications to North West Bay include: numerous jetties, boatsheds, private residences, powerlines and tracks.<br><br>Greater levels of modification at Tuna Bay, Harvey Bay and Duncan Bay are not included within the mapping. |

[52] PMEP Volume 3 Appendix 2, page 12.

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 6B | Southern and eastern parts<br><br>Opouri Saddle southwards to Kaiuma Point and Hikapu Reach; and the land associated with eastern Pelorus Sound (extending from Marys Bay to the slopes above Double Bay) | Continuation of the upland coastal forests from northern Nydia Bay from Opouri Saddle to Kaiuma Bay holding very high abiotic and biotic values.<br><br>Extensive upland forest holding very high levels of natural character from the shores of northern Yncyca Bay to the upper slopes of the ridges and peaks extending south., although<br><br>Ssome regenerating of indigenous vegetation to lower slopes around Kaiuma Bay and Hikapu Reach.<br><br>High experiential values attributes. | More modified parts of the lower slopes and foreshore excluded from mapping. Those areas included within the high natural character areas include Kaiuma Bay Road, power lines, tracks, occasional buildings and occasional foreshore structures (i.e. jetties). |

Note:

'6A' is taken from Section 42A Report (page 49/50): Coastal Terrestrial Area 6: Nydia (Level 4/5 Table)

Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)[53]

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 3D | North West Bay | Indigenous forested peninsula at Stafford Point with advanced regenerating vegetation on the upper steep and mid slopes of Miro Bay holds very high natural character values.<br><br>High perceived naturalness values characteristics attributes due to lack of structures and regenerating vegetation evident around mid and upper slopes of Miro Bay, within northern North West Bay. | Modification to the immediate north<br><br>Modification to lower slopes of to Miro Bay and Wilson Bay include: numerous jetties, boatsheds, private residences, powerlines and tracks. |

Note:
'3D' is taken from Section 42A Report (page 50): Coastal Terrestrial Area 3: Bulwer (Level 4/5 Table)

[53] Report Writer, Response to Panel's Minute 55, page 19.

## Coastal Marine Area E: Tory Channel[54]

101. All the submitters to this area request changes that the modification of natural character mapping occur from the vicinity of marine farm 8405; that more accurate mapping of Tory Channel occurs;[55] that salmon and marine farms do not adversely affect values; that the overlay be removed altogether; that both the terrestrial and marine component of the coastal environment be mapped together.[56]

### Section 42A Report

102. The report writer considers the marine environment has been identified and mapped as retaining high levels of natural character despite modifications from aquaculture and adjacent land use activities. In the coastal study into the Natural Character of the Marlborough Coast ('Marlborough coastal study'),[57] Coastal Marine Area E: Tory Channel is described as retaining relatively unique characteristics not found anywhere else in the Marlborough Sounds. It confirms significant marine ecology sites have been identified 'distinguished by the high current communities'. This is reflected in a review report entitled *Expert panel review of selected marine sites surveyed in 2016-17*.[58]

103. Modifications which include all mussel farms and two existing salmon farms are excluded from the high natural character mapping; a small mapping change next to the Clay Point salmon farm is recommended where the high overlay retains a small overlay within the extent of the farm. The inclusion of an isolated farm in Hitaua Bay does not affect the underlying mapping. While it does have an adverse effect on natural character at the broader level at which the Channel is mapped (Level 4), this does not justify the overlay's removal.

104. In terms of Onapua Bay, due to the extent of modification to this bay due to commercial forestry including sedimentation, runoff and biodiversity linkages, this is requested to be declassified from high to no rating. It is recommended nevertheless to retain part of the high natural character area as it relates to the adjacent scenic reserve in the northeast of the bay.

105. As a result, three small mapping changes are recommended to the marine environment: the first is to recognise the adverse effects of the recently consented Ngamahau salmon farm (remove high natural character); the second realigns the high natural character to the Clay

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[54] Section 42A Report, pages 57-58.
[55] Tory Channel Aquaculture Ltd (1197).
[56] Salvador Delgado Oro Laprida (218.6-7), Apex Marine Farm Ltd (544.6-7), Lloyd Sampson David (890.6), New Zealand King Salmon Ltd (997.8-9), Richard F Paine (1197.1).
[57] *Natural Character of the Marlborough Coast: Defining and Mapping the Marlborough Coastal Environment,* MDC, June 2014. Section D, pages 84-85.
[58] Davidson Environmental (R Davidson et al) October 2017.

Point salmon farm (Tokakaroro Point to Te Uira-Karapa Point); the third reflects the impact that commercial forestry has had on the water quality of Onapua Bay by removing high natural character mapping. This is depicted on Figure L: Natural Character Mapping Change 12: Tory Channel[59] with a recommended amendment to the Level 4/5 Table accordingly.

**Consideration**

106. The Panel noted that the report writer acknowledges that the approach taken in the Marlborough coastal study has been to separate the terrestrial environment from the marine environment.[60] It was apparent that this puts a focus on modifications to the marine environment, particularly from aquaculture.

107. The Panel also took into account that the recent Court of Appeal case *Man o War Station Limited* implies that where development is legally established adverse effects do not unduly impinge on natural character.[61]

**Decision**

108. Coastal Marine Area E: Tory Channel is amended as follows:

Coastal Marine Area E: Tory Channel (Level 4/5 Table)[62]

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| E2[63] | Tory Channel ~~(excluding centrally located marine farming areas)~~ | Narrow deep channel dominated by strong tidal flows, sheltered wave climate and proximity to Cook Strait.<br>- Shallow side bays.<br>- Numerous ecologically significant marine sites distinguished by high current communities.<br>- Unique natural character area as a whole.<br>- Backed by regenerating scrub/forest and scenic reserve in some places.<br>- High experiential attributes in some places due to a relative lack of modification within the context of Tory Channel. | The main marine farming areas in Tory Channel and much of Onapua Bay backed by plantation forestry are excluded.<br><br>Ferry wash continues to have an effect but is limited to exposed intertidal shores.<br><br>Undaria is widespread in shallow waters but |

[59] Section 42A Report, page 58.
[60] *Natural Character of the Marlborough Coast: Defining and Mapping the Marlborough Coastal Environment*, MDC, June 2014.
[61] *Man O War Station Limited v Auckland Council* [2017] NZCA at [24].
[62] PMEP Volume 3 Appendix 2, page 5.
[63] Report writer, Response to Panel's Minute 55, page 10.

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| | | - Adjoins Coastal Marine Area G. | is not considered to affect wider trophic/community structure and function significantly.<br>Strong currents minimise sedimentation impacts along the main channel. |

Note:

'E2' is taken from Section 42A Report (page 58/59): Coastal Marine Area E: Tory Channel (Level 4/5 Table)

**Coastal Natural Character Overlay**

- Remove High Natural Character overlay around Ngamahau and Clay Point salmon farms as shown on Figure L: Port Underwood of the Mapping Recommendations document.
- Remove High Natural Character overlay from coastal marine in Onapua Bay as shown on Figure L: Tory Channel of the Mapping Recommendations document.

## Coastal Marine Area F: Port Underwood[64]

## Coastal Marine Area F: General

109. Currently Appendix 2 page 5 identifies that there are no specific areas within Coastal Marine Area F with high, very high or outstanding coastal natural character values.

110. Two submitters support the current absence of mapping in Port Underwood.[65] The other submissions for this area generally request greater refinement to and provision of the identification and mapping to the marine environment.[66]

111. Submitters Kenneth R and Sara M Roush, and the Port Underwood Association request a mapping change: that the boundary between Coastal Marine Areas G and F at the entrance to Port Underwood should be a straight line between inside Robertson Point and Ocean Point

[64] Section 42A Report, pages 59-60.
[65] Lloyd Sampson David (890.6), New Zealand Forest Product Holdings Ltd (995.48).
[66] DOC (479.269), KR and Sara M Roush (845.20, .21, .23), Port Underwood Association (1042.19, .20, .23).

(the southern headland of Ocean Bay). The submitters consider the boundary suggested is a demarcation of the biogeographic difference between the open waters of Cook Strait and the enclosed waters of Port Underwood. This correction will change the natural character rating to very high in the marine area between the unnamed coast and Ocean Point.

112. Currently the maps indicate this boundary be from Robertson Point at the southeastern extent of Port Underwood to an unnamed point just north of Rangitane Bay. Also, the submission of Mr and Mrs Roush requests a small area of Pipi Bay be included as being of high marine natural character.

113. These submitters also seek that Coastal Marine Area F receive closer inspection and mapping at Levels 4/5. Particular attention may be given the inside area around Robertson Point, the area around Horahora Kakahu, the Knobbies, and the western coast of Port Underwood from Oyster Bay southward (detailed natural attributes given).

**Section 42A Report[67]**

114. Originally, the division between the marine environments of Coastal Marine Area F and the broader Coastal Marine Area G extended from Robertson Point at the southeastern extent of Port Underwood across the water to a point just north of Rangitane Bay. This delineation identified a mapping error by Boffa Miskell which was involved in the original delineation of the coastal areas. The correct delineation should have been between Robertson Point and Ocean Point (the southern headland of Ocean Bay), as identified by submitters. This change to these two biogeographic areas is accepted by the report writer (referencing the difference between the open waters of Cook Strait and the enclosed waters of Port Underwood). This correction changes the natural character rating to very high in the marine area between the unnamed point north of Rangitane Bay on the coast and Ocean Point, which satisfies the concerns of the relevant submitters, and will fall within Coastal Marine Area G.

115. Both the submitters also seek mapping of Port Underwood at a refined scale. The report writer concluded on reconsideration that a small section of coast extending from Ocean Bay through to Willawa Point in the north could be recommended as an area of high marine natural character.[68] This is reflective of the lack of structures along this coastline and due to the regenerating nature of much of the terrestrial environment in this part of Port Underwood. The overlay of this area is suggested to extend into the water by 200 metres.

[67] Section 42A Report, pages 59-60.
[68] Section 42A Report, pages 59-60.

116. The balance of the Port Underwood's marine environment, however, receives high amounts of trawling and coupled with the frequency of aquaculture and other related modifications, has resulted in the remainder of the water being considered to be less than high natural character.

**Consideration**

117. Mr Andrew Baxter for the Minister of Conservation provided evidence accepting that the biogeographic change be included, but the boundary be located outside Pipi Bay as assessments done on the biogeographic basis use that boundary. This aligns with the biogeographic zoning in Davidson et al (2011)[69] that the marine natural character assessments were founded on. This view is supported by the report writer.[70]

118. Mr Baxter mentions in regard to the marine area at Pipi Bay, broad areas assessed as high or very high natural character value may contain areas of moderate or low natural character value at a finer scale.

119. A good example of this situation is the Port Underwood Association's suggestion to map a small area off Pipi Bay and around nearby Horahora Kakahu Island as 'high' natural character. While this area could be mapped as high at a finer mapping scale, to do so in the Marlborough Environment Plan could imply a scale of mapping elsewhere that does not exist.[71]

120. On the western side of Port Underwood the Section 42A Report's recommendation to take the line to the southern point of Ocean Bay accepted on the basis of the Minister's evidence.[72] The area is one of the least modified areas in Port Underwood.

**Decision**

121. Adjust the boundary for very high natural character so that the northern boundary is a line between Robertson Point and the southern part of Ocean Point: see Figure M: Port Underwood Mapping Recommendations document.

122. The demarcation between this Coastal Marine Area and Coastal Marine Area G is amended to accurately record the correct biogeographic region, as outlined.

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[69] Minister of Conservation, Andrew Baxter, Summary of Evidence, pages 4-5, paragraph 20 citing Davidson R, Duffy C, Gaze P, Baxter A; DuFresne S, Courtney S, Hamill P (2011) *Ecologically significant marine sites in Marlborough New Zealand*. Published by Marlborough District Council.

[70] Section 42A Report, Reply to Evidence, page 9.

[71] Minister of Conservation, Andrew Baxter Evidence, paragraph 15, bullet point 4, pages 3-4.

[72] Section 42A Report, page 59.

123. Add a new area of high natural character on the west side of Port Underwood, from the foreshore extending out to 200 metres, from Ocean Bay to Willawa Point in the north, reflected on Figure M: Natural Character Mapping Change 13: Port Underwood.

124. Amend the boundary between Coastal Marine Area F and Coastal Marine Area G (and therefore extend Very High Natural Character to additional area (Coastal Marine Area G)) as shown on Figure M: Port Underwood of the Mapping Recommendations document.

125. The associated table is amended as follows:

Coastal Marine Area F: Port Underwood (Level 4/5 Table)[73]

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| F1 | Ocean Bay to Willawa Point | **Largely undeveloped semi-exposed rocky coast.**<br><br>Influenced by southerly swells and periods of relatively high sedimentation, especially when the Wairau River floods.<br><br>Reef communities, including a range of macroalgae, fringe the shoreline.<br><br>This area is one of the least modified areas of Port Underwood. Aquaculture is absent.<br><br>The adjacent terrestrial environment retains a mosaic of land use activities, ranging from forestry and pasture to areas of regenerating scrub and bush. Much of the coastal fringe seawards of the Port Underwood Road is regenerating scrub.<br><br>This section of coast is continuous with a similar but more exposed rocky coast from Ocean Bay to Rarangi.<br><br>High experiential ~~values~~ attributes due to a relative lack of modification within the context of Port Underwood.<br><br>Adjoins Coastal Marine Area G. | Trawling offshore through parts of Port Underwood.<br><br>Despite episodic high levels of sedimentation, moderate-strong wave action will mitigate adverse effects close to shore through resuspension and dispersal of sediments. |

Note:

'F1' is taken from Section 42A Report (page 60): Coastal Marine Area F: Port Underwood (Level 4/5 Table)

[73] PMEP, Volume 3, Appendix 2, page 5.

126. An adjustment to the boundary of Coastal Natural Character Overlay Area 4 has already been carried out earlier under Appendix 2 Natural Character Characteristics. The overlay mapping boundary is adjusted for 'very high' natural character so that the northern boundary is a line between Robinson Point and Ocean Point. The relevant adjustments may be seen on Figure M: Port Underwood of the Mapping Recommendations document.

### Appendix 2: Coastal Marine Area H: Cloudy and Clifford Bays[74]

127. One submitter supports the high remote values mentioned for Cloudy and Clifford Bays and opposes commercial trawling and dredging within 500 metres of the foreshore.[75] The other submitters request the removal of the natural character overlay (Map 5) or within the saltworks zoning, or record that aquaculture will not affect these values;[76] or removal of the reference 'high remote values' from the property of MJH and RL Davidson Trust (243 Renners Road).[77]

#### Section 42A Report

128. No natural overlay is proposed for 243 Renners Road. The report writer was not aware of an overlay proposed for this area. One is applied to the 2 kilometre width of very high [Level 4] mapping that extends along the entire coastline from Whites Bay to Cape Campbell in the south. There is some modification otherwise, given the amount of trawling that has occurred in Cloudy Bay.

129. The saltworks at Lake Grassmere do not affect the very high coastal Level 4 mapping. There is some modification where the saltworks edge separates the lake from the marine environment, but this does not affect the values in this area which are in the coastal marine area. No change here is recommended.

130. Reference is made to a large salmon farm approved south of the Awatere River mouth which will alter seabed values of the site once operational. This is excluded from high natural character mapping because it will alter the naturalness along this coastline.

131. The report writer's recommendation is to remove 'high' from the 'remote values' from the property at 243 Renners Road.[78]

[74] Section 42A Report, pages 62-63.
[75] Chris Kirk (291.1).
[76] , Dominion Salt Limited (355.20), Clifford Bay Marine Farms Ltd (691.1, 691.2).
[77] MH and RL Davidson Family Trust (932.2).
[78] Section 42A Report, pages 62-63.

**Consideration**

132. Reference is made to marine farm 8001 in Clifford Bay to delete the word 'high' from key values within the associated table (see below). As a result of the report writer's assessment of Coastal Marine Area H, this area is divided into H1 (Cloudy and Clifford Bays) and H2 (Wairau Lagoons).[79]

**Decision**

133. The table Coastal Marine Area H is amended as follows:

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| H1 | Cloudy and Clifford Bays ~~and~~ (~~in~~excluding Wairau Lagoons and Lake Grassmere). | **Largely unmodified and mostly exposed east coast South Island coastal environment extending over tens of kilometres from Rarangi to Cape Campbell. Very High levels of natural character.**<br><br>Extensive sand/gravel shores.<br><br>Cape Campbell reef systems and patchy offshore Macrocystis beds.<br><br>Adjoins Coastal Marine Areas G and I.<br><br>~~High~~ Remote ~~values~~ attributes.<br><br>Outstanding Natural Character overlays apply to this sub-area. Refer to Table ONC14 and ONC15 and accompanying Maps for further information. | Certain offshore areas are commercially trawled; those grounds closer to shore are expected to be reasonably resilient to the effects of trawling.<br><br>Effects of the Blenheim sewage discharge on the outer coast are considered minor.<br><br>A large marine farm ~~approved~~ granted south of the Awatere River mouth~~, which will alter seabed values at the site once it becomes operational,~~ is excluded. |
| H2 | Wairau Lagoons | Large tidal lagoons and extensive salt marsh beds.<br><br>- Diverse avifauna.<br><br>- An ecologically significant marine site.<br><br>- Despite modifications, this large estuarine complex retains many of its natural qualities.<br><br>- High remote ~~values~~ attributes. | The estuary has been modified through historic stop-banking and alterations to river flows.<br>The Blenheim sewage outfall discharges into the mouth of the Wairau River on the outgoing tide. |

[79] Report writer, response to Panel's Minute 55, page 15.

| | | | |
|---|---|---|---|
| | | An Outstanding Natural Character overlay applies to this sub-area. Refer to Table ONC14 and accompanying Maps for further information. | |

Note:

'H1' is taken from Section 42A Report (page 63): Coastal Marine Area H: Cloudy and Clifford Bays (Level 4/5 Table) and from information provided by Marlborough District Council about the Wairau Lagoons contained within Appendix 1.

**Coastal Natural Character Overlay**

134. Remove 'High' from 'remote high values' in Coastal Marine Area H Cloudy and Clifford Bays as shown on Figure O: Cape Campbell of the Mapping Recommendations document.

135. Remove High Natural Character overlay from coastal marine in Onapua Bay as shown on Figure L: Tory Channel of the Mapping Recommendations document.

## Coastal Terrestrial Area 11: Wairau[80]

136. There was one submitter to this provision[81] requesting the mapping on the Rarangi beach ridges and swamp complex be upgraded as part of formally recognising and protecting these endangered areas.

137. Within the proposed zoning maps areas of Significant Wetland have been determined, and specifically, these are associated with the Rarangi beach ridges. These wetlands are long, elongated strips that form part of a broader beach ridge and swamp complex.[82]

138. While much of the beach ridges and swamp complex have been modified and drained, fragments of areas to the north have already been identified as reasonably intact.

139. The report writer recommends that these additional areas identified as significant wetlands within the coastal environment are mapped as areas holding high natural character.[83] The report writer also recommends updating the accompanying table of values.

**Decision**

140. Figure N: Natural Character Mapping Change 14: Rarangi is added into areas of high natural character to the unmapped area. The associated amended table of values is as follows:

[80] Section 42A Report, pages 63-64.
[81] Rarangi District Residents Association (1089.32).
[82] Refer Marlborough Environment Plan Technical Mapping Overlay. Natural Character Recommendations. Figure 12: Rarangi Mapping Change 14.
[83] Section 42A Report, pages 63-64.

Coastal Terrestrial Area 11: Wairau (Level 4/5 Table)

| Map Reference | Sub Area | Key Characteristics | Additional Comments and noted modifications |
|---|---|---|---|
| 11A | Wairau Lagoons and boulder bank | The river mouth lagoon–estuary, bird's foot delta, and fringing wetlands and islands are some of the country's best examples and provide extensive wildlife habitat.<br>The whole wetland ecosystem is of national importance for wading birds (including migratory species), waterfowl and other wetland birds and is equally outstanding for freshwater and estuarine fauna.<br>Boulder Bank/Wairau Bar is a nationally important landform.<br>Open and expansive nature of the lagoons retains high levels of perceived naturalness.<br>An Outstanding Natural Character overlay applies to this sub-area. Refer to Table ONC14 and accompanying Maps for further information. | The estuary has been modified through historical stop-banking and alterations to river flows.<br>The Blenheim sewage outfall discharges into the mouth of the Wairau River on the outgoing tide. |
| 11B | Rarangi-Wairau Bar beach ridge system | Nationally important landform: a sequence of beach ridges and swales created by tectonic uplift events.<br>Remnant native vegetation: forest, treeland, dry shrubland and wetland.<br>Recognised as a significant wetland in the Marlborough District. | Areas of housing and land use modifications have eroded the legibility of some of these ridge systems. |

Note:

'11B' is taken from Section 42A Report (page 64): Coastal Terrestrial Area 11: Wairau (Level 4/5 Table)

**Coastal Natural Character Overlay**

141. It is appropriate to apply a High Natural Character overlay to beach ridges and wetlands at Rarangi as shown on Figure N: Rarangi Mapping Recommendations document.

## Coastal Marine Area B: D'Urville Island-North Cook Strait[84]

### South of Port Gore

142. Many submissions fully support the natural character overlay in and around Port Gore or sought to extend it. One submitter considers Melville Cove should be 'very high'.[85] A few submitters request the natural character mapping be removed from these parts of this area. Most submitters want to ensure that the current activities they undertake in the area will not be affected by the overlay.[86]

### Coastal Marine Area B: Port Gore Area

143. Port Gore Group requests that parts of the southern side of Port Gore to the sea, the ridge and its eastern side between Puzzle Peak and Cape Lambert (back to Hunia), the eastern side of the Alligator headland, all the waters of Waitui Bay and Port Gore except Melville Cove, all of East Bay and northern Arapaoa Island be mapped as Outstanding Natural Character.[87]

### Section 42A Report

144. Within the Section 42A Report some of these details outlined in the submissions were accepted as a recommendation, such as an increase in the ONF/ONL mapping in East Bay.[88]

145. At the hearing, Mr Marchant, Port Gore Group further queried the natural character mapping in Inner Port Gore and out to Alligator Head and provided a map to illustrate the regeneration of vegetation specifically on the land stretching from Hunia to Alligator Head.[89]

146. Within the Marlborough coastal study, most of the terrestrial environment is either identified and mapped as high or very high natural character, with only parts of the more modified pastoral grazing areas being considered as 'less than high' and therefore not mapped. Those parts that retain less than a high terrestrial rating include the southern part of Cape Lambert (at Pig Bay), the Hunia Peninsula and parts of the lower slopes of Melville Cove. Within the marine environment, outer Port Gore is identified and mapped as very high natural character with the remainder of Port Gore (excluding Melville Cove) being mapped as High. Melville Cove is not mapped as High due to the concentration of aquaculture in this bay.

147. In terms of outstanding natural character, this includes the majority of the Cape Jackson Peninsula, the upper heavily vegetated areas of Mt. Furneaux to Puzzle Peak and the northern most part of Cape Lambert. Much of the outer waters are considered to be outstanding.

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[84] Section 42A Report, pages 27-29.
[85] Kristen Gerald (177.2-3), Port Gore Group (468.3-5), Karen Marchant (493.5), Friends NHTB (716.203-4)
[86] Aroma Aquaculture Ltd (546.9-13), David Quintin Hogg (668.1-2), Slade, King and King and Port Gore Marine Farm Partnership (1152.2-7).
[87] Port Gore Group (468.3-5).
[88] Section 42A Report, pages 27-29.
[89] Cliff Marchant (468.4), Evidence Statement.

148. Limits to the extension of the outstanding natural character area in the marine environment have been determined by the amount of trawling and dredging that has and continues to occur in these waters. This was an important source of information at the time the natural character areas in the marine environment were mapped. Since this area was mapped, MPI have updated their information regarding dredging, trawling and commercial fishing in the area, and these are contained within Figures 1-3. Within Port Gore (that is, between Cape Lambert and Cape Jackson) there are no discernible changes observed concerning these marine-based activities since the area was mapped in 2014.

149. As a result of the Port Gore Group's intervention, the report writer considered there could be some refinement of the natural character mapping of terrestrial Inner Port Gore identifying some areas of high, very high and outstanding natural character. The marine component had been mapped at a broader scale and historical mapping had prevented this from rating higher than high (notwithstanding the fact that with a finer scale of mapping, there are likely to be very high levels of natural character).[90] Beyond these two embayments the broader stretch of coastal waters extends and connects areas of outstanding natural character.

150. The report writer indicated that he specifically reviewed the area around Pig Bay where two farms at the time of the PMEP was notified, and were subject to an appeal to the Environment Court (ENV 2016-CHC-40/41) brought by MFA for renewal of consents for a further term of 20 years. This suggested further amendment would therefore be determined by the outcome of that appeal.

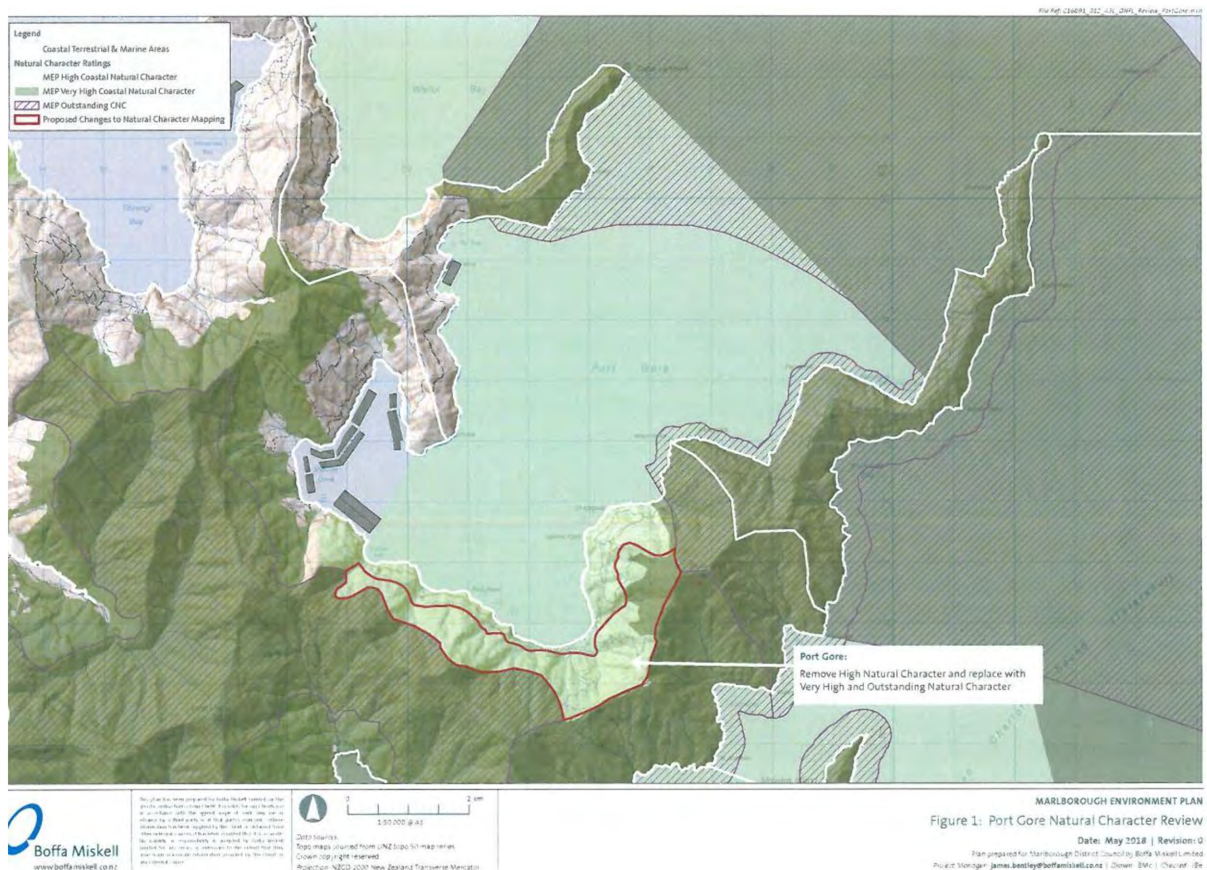
151. A review was requested by James Bentley by the Panel, by way of minute,[91] the result being as follows:

- Within the notified MEP much of the terrestrial lower slopes at the central and western ends of Inner Port Gore, as well as virtually all of the upper slopes and ridge, were illustrated as holding high levels of natural character.
- Much of the very high areas of natural character are holding outstanding natural character characteristics.
- The mid and lower slopes have now actively regenerated into native bush.
- The lower slopes still retain some form of modification in the form of an access track, power line and some small houses.

[90] PMEP Natural Character Mapping Recommendations. Section 42A Report, Reply to Evidence, pages 6-7.
[91] Memorandum 19 Hearing Panel to report writer.

152. Regeneration of native bush to part of the mid and lower slopes appears seamless and difficult to differentiate. The result has been that the extent of very high and outstanding natural character be extended to include much of the mid and part of the lower slopes. The remaining areas where modification is apparent remains as high.

153. Mr Bentley produced a map Figure 1: Port Gore Natural Character Review illustrating where the high natural character mapping be replaced with that of very high and outstanding natural character.




154. The report writer indicated on Figure B: Pig Bay Mapping Recommendations document that should the Environment Court find against MFA, he would recommend the proposed extension of outstanding natural character as the amendment would be determined by the appeal.

155. Greater level of scrutiny of natural character was accorded Pig Bay/Te Anamāhanga Bay by the Environment Court. At the beginning of 2018 the Court found the overall rankings of Pig Bay and Port Gore as a whole had high natural character (HNC) rather than ONC. The Court also assessed the proposal in the context of a much wider scale from the Outer Sounds extending out to the wild waters of Cook Strait in order to place the local Pig Bay landscape within its

Outer Sounds landscape context which is characterised as part of an Outer Sounds ONL.[92] After a detailed examination of the relevant natural character legislation, the character and amenity values – the Court found consenting the mussel farms for a further 20 years would have a significant adverse effect on the natural character to the waters of Pig Bay and Port Gore to which the appellant's witness had given only limited consideration. The Court's finding in terms of s 6(a) RMA, the related NZCPS and Sounds plan and relevant provisions of the PMEP, is that the Outer Sounds as mapped in the PMEP (of which both Cape Lambert and its embayment, Pig Bay, are a part) is an ONL. Cape Lambert including Pig Bay is an ONF. These ONF and ONL encompass both land and waters including the headlands to Pig Bay. The proposals would degrade several key identified values of the ONF/ONL at Pig Bay.[93]

156. On this basis the report writer recommends that Figure B: Pig Bay illustrates the extent of the change to natural character mapping that should occur.

**Consideration**

157. Given the greater level of scrutiny available from the Environment Court decision relating to the area of Pig Bay, together with the recommendation above, the Panel is satisfied the extent of natural character should be extended in the area as set out in Figure B: Pig Bay with a subsequent amendment to Overlay Coastal Natural Character 4.

**Decision**

158. Extend the Outstanding Character overlay to Pig Bay as set out in Figure B: Pig Bay in the Mapping Recommendations document.

## Coastal Marine Area B: Remaining D'Urville Island and North Cook Strait Area[94]

159. These submitters request changes to the mapping of the marine and terrestrial natural character areas in the Outer Sounds including northern parts of D'Urville Island. Much of this area retains high, very high and outstanding levels of natural character.

160. In more detail submitters seek:

161. There is insufficient justification for the seaward extent of the outstanding/very high/high natural character ratings extending so far offshore into Cook Strait – there should be a reduction in the overlay.[95] The western inner part of Waitui Bay should have its classification downgraded to reflect the existing levels of activity occurring in that part of the bay, in

[92] See *Clearwater Mussels Limited v Marlborough District Council* Decision No [2018] NZEnvC 88 for an Environment Court analysis of Port Gore's landscapes.
[93] Ibid at [232].
[94] Section 42A Report, pages 30-31.
[95] Aquaculture NZ (401.253-4).

particular farming confined to that area and to enable some limited aquaculture to occur on the western part of the bay.[96] The outstanding natural character of the Outer Sounds and eastern Tasman Bay be expanded in the CMA to include all of Trio Island, Chetwode Islands and Titi Island be integrated in the outstanding natural character of North D'Urville and Port Gore, and to adjust the boundary of this natural character to include a distance of not less than 500 metres from MHWM as being within the Outstanding Natural Character area. A review of Coastal Terrestrial Area 2 (Cook Strait) recognising existing levels of activity and modification particularly north of Te Akaroa where there is existing forestry and aquaculture, and Pelorus Heads and Bulwer (particularly the area on the southern side of its entrance (between two salmon farms).[97] Removal of the very high natural character as it extends seawards from Kaitira Point (East Entry Point).[98]

**Section 42A Report**

162. The report identifies that:

- The marine environment of Waitui Bay is mapped as high. Most the land is farmed, apart from the eastern part of the bay which is under DOC management, and is too steep to farm. This part of the bay, along with part of the coastal waters, is mapped as very high as well as retaining outstanding levels of natural character. There are no structures in Waitui Bay, on the water or the land. The only modification on the land results from farming. Nevertheless, when referencing Figures 1-3,[99] some trawling and fishing have occurred within the central bay. Nevertheless, the report writer maintains that the mapping is correct in Waitui Bay.
- In terms of expanding the existing mapping of outstanding natural character from Port Gore to D'Urville Island, currently the water is classified as high natural character with areas of outstanding natural character at both ends. But MPI information from the website indicates that trawling occurs off Cape Lambert and that a change is required so that the extent of outstanding and high natural character overlays north of Cape Lambert should reflect this. This will result in these waters being only high and not outstanding.
- The content of Coastal Terrestrial Area 2 (Cook Strait) is at the Level 3 assessment scale. At the Level 4 and 5 scale, further details are outlined. Modifications have been

[96] Waitui Holdings Ltd (486.2-3).
[97] Marlborough Aquaculture Ltd (959.2-3).
[98] Sanford Ltd (1140.108, 110).
[99] Figure 1: Scallop Dredging Catch Intensity; Figure 2: Trawl Fishing Events; Figure 3: Set Net Fishing Events, Natural Character Mapping Recommendations.

identified and areas retaining commercial forestry (such as Te Akaroa) have not been included in the land mapping. Within the marine environment, the mapping occurred at the Level 4 scale, where smaller modifications (such as isolated areas of aquaculture (at Blow Hole Point for example) do not sufficiently degrade the marine environment when assessed at that scale. Based on this, the report writer maintains the mapping as currently proposed.[100]

163. The report writer's recommendations are that changes are made to the outstanding and very high marine mapping considering the information now relating to dredging and trawling. He identifies these are contained on Figure C: Cook Strait.

164. Regarding the remaining requests, the report writer confirms that no further changes should occur to the natural character overlay in this area.

**Consideration**

165. The Panel considered the content of this recommendation from the report writer justifies the amendment as set out above. This is clearly identified in Figure C: Natural Character Mapping Change 3: Cook Strait. Otherwise the Panel concurs with the retention of the mapped area in the PMEP.

**Decision**

166. Replace Very High Natural Character overlay with High Natural Character overlay as shown on Figure C: Cook Strait of the Mapping Recommendations document.

### Coastal Terrestrial Area 16: Cape Campbell[101]

167. The submitter here requests that the natural character mapping on the property be removed around a future house site at Mussel Point which it has identified for 30 years.[102]

**Section 42A Report**

168. After ground truthing the site, the report identifies that the small area in question currently supports a small structure and is predominantly in grass.[103] This can be seen in the Mapping Recommendations document Figure O: Cape Campbell, marked up in a red square.

169. The report writer accepts that this site does not rate as highly as the remainder of the coastal environment where substantial parts of grassland are being reclaimed by coastal species. He recommends removing the natural character overlay on this small section based on its below-high rating for naturalness.

[100] Section 42A Report, page 31.
[101] Section 42A Report, page 64.
[102] Cape Campbell Farm Ltd (358.1).
[103] Section 42A Report, page 64.

**Consideration**

170. After hearing evidence from the property owner the Panel accepts the identified small area of land from Coastal Terrestrial Area 16 should be removed from the recommended overlay map Figure O: Cape Campbell as identified.

**Decision**

- Remove the 'house site' area from natural character coverage as per landscape overlay as shown on Figure O: Cape Campbell of the Mapping Recommendations document.
- Accept the report writer's table 16. Coastal Terrestrial Area 16: Campbell.[104]

## Coastal Marine Area C: Crail Bay-Clova Bay

171. All of the multiple submitters request removal of the natural character overlay from close to their farms or land in this area. In particular, Mr Dallas Hemphill requested that the natural character overlay on the land in the vicinity of his property is ground-truthed. He considers the land facing Crail Bay (an area currently mapped as 'high') is heavily modified and not reflective of the commentary concerning the terrestrial commentary contained within adjacent Coastal Terrestrial Area 6: Nydia. In the course of his presentation, Mr Hemphill presented a Crail Bay ridges map suggesting the areas where refinement could be made.[105]

**Section 42A Report**

172. Mr Bentley recommended to the Panel that he review this area and remove the high natural character rating from areas of the pine plantations by way of a desktop exercise. This was formally requested by the Panel in Minute 19.

173. In spite of much of the terrestrial eastern-facing slopes of Crail Bay being illustrated as high levels of indigenous regeneration with much of the land now returned, modifications are still apparent in the form of commercial forestry, areas of scrub, tracks and buildings.

174. As a result of this exercise, Mr Bentley agreed that small parts of the property containing pine plantations do not reach the 'high' natural character threshold.[106] This was accepted in respect of the northern Crail Bay ridge area separating Crail Bay from the main Pelorus Sound on the Hemphill property.[107]

**Consideration**

175. As a result of the submitter's evidence and the report writer's reassessment of the small parts of the area in the vicinity of the submitter's pine plantation in Crail Bay, the 'high' natural

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[104] Report Writer, Response to Panel's Minute 55, page 37.
[105] DC Hemphill (648.17-21) submission.
[106] Section 42A Report, Reply to Evidence, page 7.
[107] Memorandum 19, Hearing Panel to Mr Bentley, pages 1-2.

character rating is removed as identified on Mr Bentley's memorandum Figure 2: Crail Bay Natural Character Review.

**Decision**

176. Remove the terrestrial natural character rating on the submitter's property in Crail Bay.

## Coastal Marine Area A: Symonds Hill[108]

177. Two submitters request that the terrestrial natural character overlay around Symonds Hill be removed as it is heavily modified.[109]

**Section 42A Report**

178. The Section 42A Report identifies that Symonds Hill has been re-evaluated and it does not agree that the land is heavily modified.[110] The hill is regenerating indigenous bush with occasional wilding pines. These are areas of plantation forestry which affect natural character and some of this forestry area is included in the high natural character overlay.

179. There is aquaculture to the immediate north but most of the coastal interface with this hill is free from modification. There are no tracks, houses or other structures on the hill and this amplifies the perceived naturalness. The report writer considers that the bulk of Symonds Hill is appropriately mapped, demonstrating high levels of natural character.

180. The report writer asked the MDC for assistance in identifying the properties of the submitters. The Council understands that the properties (possibly only one) relate to 2579 Croisilles-French Pass Road. This is located within an area dominated by pine forestry and grass, and the writer agreed on this basis that this property should be reclassified based on the level of modification apparent in that particular location. He recommended a change to the mapping of the high natural character overlay as it relates to 2579 Croisilles-French Pass Road and its immediate surroundings due to modifications in the area that do not contribute high levels of natural character.

**Consideration**

181. The Panel assessed Figure A: Okiwi Bay in which Symonds Hill is located, and after reading the Section 42A Report findings, accepts that the high natural character overlay from the land identified should be lifted as recommended. The area is traversed by the road, transmission lines, pine forestry and grass. Refer to Figure A: Natural Character Mapping Change 1: Okiwi Bay.

[108] Section 42A Report, pages 26-27.
[109] M and R Hippolite (488.1), Karaka Projects Ltd (502.9).
[110] Section 42A Report, pages 26-27.

**Decision**

182. Remove the High Natural Character overlay from land at Symonds Hill as shown on Figure A of the Mapping Recommendations document.

### Coastal Marine Area C: Richmond and Ketu Bay areas[111]

183. All four submitters request removal of the high natural character overlay from Richmond Bay close to their properties or marine farms, or recognition in the Plan that the existing marine farms are not causing adverse effects on natural character.[112]

**Section 42A Report**

184. The report identifies that the terrestrial environment of both Richmond and Ketu Bays are recovering from once being wholly grazed. Much of the land is covered in regenerating indigenous vegetation, is generally uniform throughout with the greatest modification apparent around the house and farm structures of Pohuenui at the head of Richmond Bay. Here patches of grazed land are still apparent as is an area of pine forest. There are, however, a few structures including only one jetty, and no structures at all in Ketu Bay. Numerous farm tracks cover the area.

185. Within the marine environment there are is a small number of mussel farms and one salmon farm. Trawling is noticeably apparent. None of the waters of the bays rate as high or above.[113]

186. Upon reviewing the high natural character overlay on the terrestrial environment, the mosaic of land use and the associated modification at the head of Richmond Bay, the report writer considered that the mapped areas of high natural character required reconsideration. His recommendation on review is that the area should be reclassified as less than high, and no mapped natural character overlay is appropriate. He notes marine farming in these bays has not affected the terrestrial environment.

**Consideration**

187. The submissions are accepted for the reasons contained in the submissions and set out in the Section 42A Report.

**Decision**

188. Remove the high natural character overlay from Richmond Bay as shown on Figure D: Richmond Bay: Natural Character Mapping Change 4.

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[111] Section 42A Report, pages 36-37.
[112] AJ King and SA King Family Trusts (514.13), Bryan Skeggs (574.14), Sandra Ann King (1098.1-5), Sanford Ltd (1140.110).
[113] See Figure 1 Scallop Dredging Catch Intensity (?) and Figure 2 Trawl Fishing Events: Mapping Recommendations document; MPI Maps of Commercial Inshore Fishing Activity.

## Coastal Marine Area C: Northern Tawhitinui Reach (Picnic Bay Area)[114]

189. All submitters request removal of the natural character overlay close to their marine farms/properties.

**Section 42A Report**

190. The report writer identifies that this part of northern Tawhitinui Reach retains a mosaic of different land uses as well as having aquaculture along much of its shore. Limited natural character mapping of high and above is apparent. The mapped area of high natural character is associated with the end of Picnic Bay which includes the property of one of the submitters. This tract of land, however, is similar in character to the land further west retaining a mosaic of land uses and lower than high levels of natural character. The remaining properties to the west are not included within an overlay.

191. The relatively high levels of naturalness along the foreshore of the Reach is interrupted by jetties, houses and tracks. The report writer concludes that this area has been incorrectly mapped and requires removal from the high natural character overlay.

192. The report writer also recommends that the upper part of Mt Shewell be mapped reclassified as very high, from high natural character, to reflect the mature indigenous vegetation present.

**Consideration**

193. The original area map of Northern Tawhitinui Reach as High is clearly heavily modified and a mistake. We accept the removal of the high natural character overlay in the vicinity east of Picnic Bay as shown in the Figure G Mapping Recommendations; otherwise, replace the high natural character overlay for Mt Shewell with very high natural character: see also Figure G: Northern Tawhitinui Reach where the dark green shading is identified as outstanding. This is reflected on Figure G: Natural Character Mapping Change 7: Northern Tawhitinui Reach.

**Decision**

194. Remove High Natural Character overlay in the vicinity of Picnic Bay as shown on Figure G of the Mapping Recommendations document.

195. Replace High Natural Character overlay on slopes of Mt Shewell with Very High Natural Character overlay as shown on Figure G: Northern Tawhitinui Reach of Mapping Recommendations document.

[114] Section 42A Report, page 45.

## Coastal Marine Area C: Forsyth Bay[115]

196. Twenty-two submitters request the removal or review of the natural character overlay from close to their marine farms or their land. Several submitters support the current mapping in Forsyth Bay but oppose mapping of Forsyth Island.

**Section 42A Report**

197. Forsyth Bay is one of the more recognised bays where aquaculture is present in Pelorus Sound and natural character overlay (at Level 4 mapping scale) reflects this. On the other hand, in terms of the terrestrial environment, much of Forsyth Bay, which includes Orchard Bay and Pigeon Bay off Forsyth Island, is regenerating. Farmed land has been retired and is actively covered with indigenous regrowth. Forsyth Island is a good example, along with parts of the Kaitira Headland and land around Allen Strait. These areas have been identified as retaining high levels of terrestrial natural character.[116]

198. The report writer confirms on his review that, based on the modifications within the bay, the mapping reflects the current situation. Existing modifications (such as aquaculture) have influenced the extent of the mapping (noticeably in the marine environment) and reflects the current situation.

199. The one amendment encompasses Duffers Reef. Based on information received from MPI relating to scallop dredging in the area, the report writer recommends a small change to a small part of the high marine-based natural character extending from Kaitira headland to the west of the bay towards Duffers Reef to reflect these areas currently dredged.[117]

**Consideration**

200. For the reasons given and after assessing the current mapping on Figure 1: Forsyth Bay Mapping Recommendation, most of the mapping within Forsyth Bay should remain as recommended, apart from the area identified relating to scallop dredging,[118] and where it encroaches on three marine farms to the south: refer Figure 1: Forsyth Bay.

**Decision**

201. Remove High Natural Character overlay in Forsyth Bay as shown on Figure I of the Mapping Recommendations document.

[115] Section 42A Report (Bentley), pages 51-52.
[116] PMEP Volume 4 Maps Coastal Natural Character Area 1-2.
[117] Sanford.
[118] Marine Farming Industry.

## Coastal Marine Area D: Queen Charlotte Sound[119]

202. Many submitters request removal of the natural character overlay from close to or through their farms or land, while others request an extension of the existing overlay to cover the land on northern Arapaoa Island and seek it to be mapped as outstanding natural character.[120]

**Section 42A Report**

203. While much of the terrestrial component of East Bay and the southern bays was initially cleared for farming purposes, much of this land has been retired and is regenerating with indigenous vegetation. Areas of more substantial indigenous bush cover extends from some of the higher ridges and peaks in the bay towards the foreshore including from the ridge associated with Narawhia to the east of Otanerau Bay.

204. All of the terrestrial environment is considered by the report writer to be of high or very high natural character with some (named) exceptions.

205. With the marine environment no mapping of high natural character has occurred at present, and numerous mussel farms and one salmon farm occupy much of the eastern shore of East Bay and Otanerau Bay with commercial forestry. There is currently an overlap of the very high natural character overlay with existing marine farms in Onauku Bay, and this requires removal. The Department of Conservation agrees with this recommendation.

206. It is recommended that the overlay in this area be removed from these northernmost farms (8404, 8510, 8403 and 8402).

207. An offset of 200 metres is considered appropriate to its northern extent then gently realigned along the western (seaward) extent to feather in with existing mapping. The report writer is otherwise satisfied with the remaining mapping in this bay.

**Consideration**

208. The Panel took the opportunity to undertake a site visit to East Bay. Having visited the Bay, including viewing the marine farms, the Panel is in agreement with the report writer. The 200 metre setback from the northern limit of the farms appeared reasonable in the circumstances.

209. For the reasons given, the very high natural character overlay in Onauku Bay shown on Figure J: East Bay of the Mapping Recommendations document be removed with an offset of 200 metres to the Northern Extent. This is reflected on Figure J: East Bay. Coastal Natural Character Overlay 4 reflects the change.

[119] Section 42A Report, pages 55-56.
[120] Port Gore Group (468.5), Karen Marchant (493.4-5).

**Decision**

210. Remove small area of Very High Natural Character overlay from East Bay as shown on Figure J: East Bay of the Mapping Recommendations document.

## Coastal Marine Area D: Remaining Queen Charlotte Sound Area[121]

211. One submitter requests the removal of the high natural character overlay from Ruakaka Bay,[122] another the very high natural character overlay within the Marina Zone Waikawa Bay due to Plan Change 21 which provides for expansion of the Waikawa Marine Zone with modifications already present.[123] PMNZ's submission seeks that an area on the eastern side of the marina land structures in Waikawa Bay be included within the Marina Zone in the PMEP.[124]

212. Another submitter requests that the outstanding natural character area of the entrance to Queen Charlotte Sound be expanded together with the boundary of outstanding natural character extended to a distance of not less than 500 metres from MHWS.[125]

**Section 42A Report**

213. The report writer identifies that while the entrance to Queen Charlotte Sound outstanding natural character overlay includes areas of exceptional naturalness encompassing many islands and the Long Island Marine Reserve, the small area of marine mapping around Motuara Island is dictated by the extensive dredging. As a result this small area does not reach the 'outstanding' threshold. A similar case but of reduced dredging intensity is found west of Long Island.

214. After reconsideration, the report writer considers that the existing mapping at the Level 4 scale accurately reflects the naturalness of this area and does not warrant expansion. The natural character mapping in Ruakaka Bay also reflects the general level of naturalness evident on the terrestrial environment with a reasonably advanced level of indigenous vegetation. The modification around the coastal interface has been excluded from mapping. Within the marine environment a salmon farm is present in one of the bays, and extensive dredging is apparent (see Figure 1). The southerly area of very high marine mapping reflects the foreshore and lack of landward modification.

[121] Section 42A Report, pages 56-57.
[122] Salvador Delgado Oro Laprida (218.17).
[123] PMNZ (433.19, 211).
[124] PMNZ Memorandum in response to Minute 20 of the Panel dated 26 April 2018.
[125] FNHTB (716.203).

**Consideration**

215. The Panel sought further detail from PMNZ as to the extent of the Waikawa Bay Marina Zone. The Panel requested that PMNZ provide it with a GIS detailed map enabling the exact location to be identified in the Council's GIS mapping for the plan if the submission is accepted.

216. The extent of very high mapping was reconsidered with the report writer concurring that the extent of the mapping extends too far into Waikawa Bay as a result of acknowledging that further development of the marina is enabled through Plan Change 21.

217. Attached to counsel's submission for PMNZ in response to the Panel's Minute 20 annexed as Appendix 9 is a map showing the Marina Zone extending 20 metres horizontally beyond the MHWS interface between the sea surface and the existing breakwater. For completeness, the drawing also shows the landside area that PMNZ seeks to be rezoned. The .dwg file format[126] provides the necessary data for the Council's technical staff to introduce into the Council's master GIS system.

218. It is recommended that one small mapping change occur to the marine environment around Waikawa Bay and the foreshore activity in the area. This is reflected in Figure K: Waikawa Bay of the Mapping Recommendations document.

219. This evidence for PMNZ and recommendation, together with a visit to the Waikawa area from the Panel, affirms the recommendation of the report writer as set out in Figure K: Natural Character Mapping Change 11: Waikawa Bay Coastal Natural Character Overlay 4.

**Decision**

220. Remove small area of Very High Natural Character overlay from Waikawa Bay as shown on Figure K: Waikawa Bay of the Mapping Recommendations document.

## Coastal Chapter Natural Character: MPI Multiple Maps

### Overlap with Natural Character Maps

221. MPI in its evidence provided a series of very detailed and helpful maps indicating the location of marine farms throughout the Marlborough Sounds.[127] The accompanying evidence of its

[126] DWG (from drawing) is a proprietary binary file format used for storing two- and three- dimensional design data and metadata. It is the native format for several CAD packages including DraftSight, AutoCAD, BricsCAD, IntelliCAD (and its variants), Caddie and Open Design Alliance compliant applications.

[127] MPI, Michael Jeffrey Nielsen, Statement of Evidence, 2 February 2018, paragraph 5.4. *Consented Marine Farm Boundaries and Overlays with Outstanding Areas, Spatial Intelligence* and *Existing Marine Farms Within Outstanding Area Buffer Zones* dated 2 February 2018.

witness Michael Nielsen focuses on the landscape chapter but the detailed boundary concerns identified there are the same for natural character maps/overlays.

**Consideration**

222. The Panel considered whether these maps needed addressing for overlays or whether they could be left to the aquaculture chapter. The maps were acknowledged as helpful in that they highlight a number of overlaps with natural character. At the time of hearing there were 70 existing marine farms fully or partially with ONFL and ONC in Marlborough.[128]

223. In accordance with First Schedule RMA clause 16 amendment, where outstanding natural character (ONC) overlaps existing marine farms by less than 10% of consented space the Panel is of the view that the ONC can be amended by reducing ONL/ONC mapping form the marine farms as they are minor clerical mapping adjustments. The balance of the changes greater than that area might involve spatial allocation issues that must await the aquaculture chapter. In Table 1 of Mr Nielsen's evidence it does not appear that there are any locations where areas of outstanding natural character overlap with existing marine farms by less than 10% of consented space.[129]

**Decision**

224. Where ONC overlaps existing marine farms by less than 10% of consented space the ONLC mapping is to be removed under cl 16, First Schedule RMA.

## Riparian Natural Character Management Area Overlay: Branch River[130]

225. One submitter requests that the overlay of Riparian Natural Character Areas and all associated policies and provisions be deleted from the plan.[131] Another requests that the Brown River (a tributary of the Rai River) be included as a mapped part of waterbodies.[132] Another submitter seeks removal of maps and references regarding the Riparian Natural Character Areas specifically those on the North Bank due to their modified nature. The submitter also queries the method taken – questioning the data and method by which natural character was measured.[133]

226. In its submission, and also considered within the Section 42A Report, Trustpower opposes the boundary between 'moderate' natural character values and 'very high' natural character values on the Branch River upstream to the south of the weir. The company seeks to amend

[128] Nielsen, Evidence Table 1, page 6.
[129] Information based on MPI GIS analysis sourced by MDC using ONFL and ONC analysis as notified (without amendments recommended by Section 42A Reports).
[130] Section 42A Report, pages 64-66.
[131] Federated Farmers (425.786).
[132] RFAB (496.101).
[133] Raeburn Property Partnership (1084.9).

the natural character classification for the Branch River to extend the area of 'moderate' value upstream so that the overlay for the Branch River would start at the confluence of the Branch and Leatham Rivers because of the effects of its operations at the weir further downstream.[134]

**Section 42A Report**

227. In response to some of the submitters' concerns, the report writer identifies the methodology is outlined in Section B of the report *Natural Character of Selected Rivers and their managers'*.[135] Only selected rivers were chosen as part of the study and it is not the intention to carry out any further studies. Thus the Brown River would not be included at this time.

228. Areas of modification associated with a particular stretch of river were recorded in 2009. Of those rivers selected are the North Bank of the Wairau River (Goulter, Top Valley, Waikakaho and Tuamarina), all reflecting their state of naturalness at the time. 'Context' is an important component of the consideration of the overall rating.

229. The report writer was comfortable at the scale and level of the Branch River at that time because the mapping reflects its level of naturalness.[136] His recommendation was that discussions be held with MDC around updating the study.[137]

**Consideration**

230. The Panel asked Trustpower for detail as to the 'consented activities' undertaken by Trustpower upstream of the weir. We were advised that the resource consent authorises activities usually upstream 100 metres from the weir but Trustpower would accept removal of the natural character assessment 150 metres from the weir.[138] It is the Panel's decision that because of the effects of Trustpower's activities, the start of the Riparian Natural Character Management Area for the Branch River is to commence 150 metres to the north of the weir structure.

**Decision**

231. The mapping is amended accordingly for the natural character to commence 150 metres south of the weir at the Branch River.

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[134] Trustpower (1201), Nicola Foran Statement of Evidence.
[135] Section 42A Report, page 65. Boffa Miskell et al, published 2014 study undertaken by a named group of experts and peer reviewed by Peter Hamill (MDC freshwater ecologist) and Dr Michael Steven (landscape architect).
[136] Section 42A Report, pages 65-66.
[137] Reply to Evidence, page 13.
[138] Minute 12 Hearing Panel to Trustpower (9 April 2018).

# Proposed Marlborough Environment Plan

# Topic 6: Indigenous Biodiversity

**Hearing dates:** 12 – 15 February 2018

**S42A Report Writer:** Andrew Maclennan, Peter Hamill and Steve Urlich

**Conflicts of Interest:** None

**Interim decision:** None

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

## List of Abbreviations

| | |
|---|---|
| CMA | Coastal Marine Area |
| MDC | Marlborough District Council |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| RPS | Regional Policy Statement |
| SNA | Significant Natural Area |
| TEO | Threatened Environments Overlay |

## Submitter abbreviations

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| CBRA | Clova Bay Residents Association Inc |
| DOC | Department of Conservation |
| EDS | Environmental Defence Society Incorporated |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| KCSRA | Kenepuru and Central Sounds Residents' Association |
| MFA | Marine Farming Association Incorporated |
| MFIA | Marlborough Forest Industry Association Incorporated |
| NZTA | New Zealand Transport Agency |
| PMNZ | |

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**Issues arising:**

- Statutory requirements
- Protection of Marlborough's indigenous biodiversity
- Identification and management of sites, areas and habitats with significant indigenous value
- Importance of clear criteria by which to identify the environments
- Biogeographic areas and modifications to criteria
- A Panel of Experts
- Significant Natural Areas (SNA)
- Ecologically Significant Marine Sites (ESMS)
- Overlay maps
- Threatened Environments Overlay (TEO)
- Cultural harvesting
- Rules

**Status of objectives and policies**

1. Forest & Bird drew attention to the fact there is no coding of Chapter 8 provisions.[1]

**Consideration**

2. The Section 42A report writer and the Panel determined that in order to understand the hierarchy and spatial extent of objectives and policies, each of these requires a code. We understand this was a drafting oversight during plan production: these codes are inserted as follows:[2]

| | *Objectives* | *Policies* | *Methods* |
|---|---|---|---|
| *Regional Policy Statement Provisions*<br>*[RPS]* | *8.1*<br>*8.2* | *8.1.1*<br>*8.1.2*<br>*8.1.3*<br>*8.2.1*<br>*8.2.2*<br>*8.2.3*<br>*8.2.4*<br>*8.2.5*<br>*8.2.6*<br>*8.2.7*<br>*8.2.8* | *8.M.3*<br>*8.M.4*<br>*8.M.5* |
| *Regional Plan Provisions*<br>*[R]* | *8.1*<br>*8.2* | *8.2.3*<br>*8.2.4*<br>*8.2.5*<br>*8.2.7*<br>*8.2.9*<br>*8.2.10*<br>*8.2.11* | *8.M.1*<br>*8.M.6*<br>*8.M.7*<br>*8.M.8*<br>*8.M.9*<br>*8.M.10*<br>*8.M.11* |

[1] Forest & Bird (715.172-.176, .185-.188).

[2] Section 42A Report, pages 2-3: pages 12-13.

| | | | |
|---|---|---|---|
| | | *8.2.12*<br>*8.2.13*<br>*8.3.1*<br>*8.3.2*<br>*8.3.3*<br>*8.3.4*<br>*8.3.5*<br>*8.3.6*<br>*8.3.8* | *8.M.12* |
| *Regional Coastal Plan Provisions*<br>*[C]* | *8.1*<br>*8.2* | *8.2.3*<br>*8.2.7*<br>*8.2.9*<br>*8.2.10*<br>*8.2.12*<br>*8.3.1*<br>*8.3.5*<br>*8.3.7*<br>*8.3.8* | *8.M.1*<br>*8.M.6*<br>*8.M.7*<br>*8.M.8*<br>*8.M.9*<br>*8.M.11* |
| *District Plan Provisions*<br>*[D]* | *8.1*<br>*8.2* | *8.2.6*<br>*8.2.9*<br>*8.3.1*<br>*8.3.2*<br>*8.3.3*<br>*8.3.5*<br>*8.3.8* | *8.M.2*<br>*8.M.10*<br>*8.M.11*<br>*8.M.12* |

## Introduction, Issue 8A and Objective 8.1

**Marlborough's remaining indigenous biodiversity in terrestrial, freshwater and coastal environments is protected**

3. Some submitters generally support Objective 8.1. Others request: that the objective refers to 'areas of significant indigenous biodiversity' as opposed to 'all remaining indigenous biodiversity' as this amendment better reflects the intent of s 6(c) RMA;[3] that the significant areas in the plan may be affected by legitimate adjacent activities such as Significant Natural Areas (SNA), wetlands within plantation forestry;[4] that the objective be amended to make it clear that appropriate (not absolute) protection of significant biodiversity is to be achieved as some activities may not be able to avoid adversely affecting significant indigenous biodiversity;[5] that the objective and Policy 8.1 be amended to include reference to 'wetland and marine environments;[6] others seek a range of amendments;[7] another seeks that the explanation is amended to remove reference to maintaining or improving areas and the condition of indigenous biodiversity 'where opportunities arise' as those words weaken the objective and make its meaning unclear.[8]

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4. After reviewing the various provisions of the RMA that relate to indigenous biodiversity,[9] the report writer identifies:

- the specific direction given in the wording of indigenous biodiversity and habitats in s 6(c) RMA is that it should be 'significant' and of national importance;
- the intent of Objective 8.1, however, seeks a much broader range of protection for indigenous biodiversity within Marlborough's specific region;
- the serious loss of indigenous biodiversity in this area requires that remaining indigenous biodiversity is protected in its broadest sense along with fencing, pest control, regulation and improved land practices;

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[3] AQNZ (401.88), Port Marlborough (433.35), MFA (426.92), Trustpower (1201.77), Federated Farmers (425.121).

[4] MFIA (426.92).

[5] NZ Forest Products (995.14).

[6] EDS (698.61, .62).

[7] Forest & Bird (715.171).

[8] FNHTB (716.92).

[9] Section 42A Report, pages 13-15; RMA s 32(1)(a) (Appropriateness of the objective), s 5 (2)(b), s 6(c), s 30(1)(ga); NZCPS Objectives 1, 6, 7, Policy 11(a) and (b) (lengthy analysis).

- it is not the Council's intention to protect indigenous biodiversity in an absolutist sense, otherwise it would not provide for clearances;
- the values, integrity and resilience of indigenous biodiversity require high level management in such a manner that these qualities are protected, not diminished, and the objective in relation to significant areas foreshadows that these will require more stringent protection methods;
- enabling people and communities to provide for their social, economic and cultural wellbeing and their health and safety is an essential part of the overall objective.[10]

5. The report writer concludes that the objective should not be watered down by including exclusions for various activities; that reference to freshwater and coastal environments are already included in the objective. He also agrees that the explanation to the objective should better reference the terms of the RMA and provide an explanation of the link between indigenous biodiversity provisions and those of natural character. Further, the (limiting) phrase 'where opportunities arise' should be deleted.

6. The report writer recommended that the objective should be amended to include 'biodiversity values[11] … are protected'.[12] He also amended the text of the explanation to account for the concerns of FNHTB and Forest & Bird by deleting the phrase 'where opportunities arise' with its negative connotations.

**Consideration**

7. We concluded at the outset that the phrase 'intrinsic values' should be introduced into the Introduction to Chapter 8 Indigenous Biodiversity.[13] Section 7(d) RMA 'Intrinsic Values' is a matter to which all those exercising functions under this legislation are required to have regard. The relevant sentence relating to an amendment reads: 'However, biodiversity values are also important components of amenity, kaitiakitanga, the quality of the environment and also the intrinsic values of ecosystems'. The Introduction to the chapter should be placing all of these issues in their context.

8. The Panel is therefore concerned also to provide added emphasis to the importance of Objective 8.1. The inclusion of the word 'values' has gone some way to emphasising this, but the definition of 'intrinsic values' in s 2 RMA identifies its wider implications:

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[10] NZCPS Policy 6.

[11] Trustpower (1201.77).

[12] Consequential amendment.

[13] Volume One, Chapter 8 Introduction, page 8-1, third paragraph.

> **… those aspects of ecosystems and their constituent parts which have value in their own right, including –**
>
> **(a) their biological and genetic diversity; and**
>
> **(b) the essential characteristics that determine an ecosystem's integrity, form, functioning and resilience.**

**Issue 8A – A reduction and the extent and condition of indigenous biodiversity in the Marlborough region.**

9. The Section 42A Report addresses Issue 8A but suggests no change.

10. We note that the second subheading in Issue 8A is 'Marine environments' not 'Coastal environments' – a matter which the Panel noted for it was part of FNHTB's submission to Objective 8.1. The implications of a 'marine' environment as opposed to 'coastal' is addressed later in the evidence of Peter Hamill, Section 42A report writer.[14] Objective 8.1 should therefore substitute 'marine' for 'coastal' environment.

11. The Panel also considers that it is important to include specific reference to NZCPS Policy 11 early in the explanation to Objective 8.1 for it is the NZCPS particular reference to 'indigenous' biological biodiversity as a specific reference which is preceded by the various relevant NZCPS objectives mentioned by the report writer. The Panel also agrees with the report writer's analysis in paragraph 4 above as to the in intent Of Objective 8.1.

**Decision**

12. The following amendment is made to the third paragraph of the Introduction to Chapter 8 Indigenous Biodiversity:

*… However, biodiversity values are also important components of amenity, kaitiakitanga, quality of the environment and the intrinsic values of ecosystems ~~values~~, matters to which regard shall be had in terms of Section 7 of the RMA. …*

13. Objective 8.1 is amended as follows:

*[RPS, R, C, D]*

*Objective 8.1 – The intrinsic values of Marlborough's remaining indigenous biodiversity in terrestrial, freshwater and ~~coastal~~ marine environments ~~is~~ are protected.*

*As there has been considerable loss of indigenous biodiversity in Marlborough, it is important that remaining areas are protected and that their condition is maintained and improved where opportunities arise. This will ensure that the intrinsic values of the District's ecosystems, some*

[14] Section 42A Report, Recommendation (Hamill), page 10. This is seen by Mr Hamill as a drafting error.

*of which are unique to Marlborough, are safeguarded. Intrinsic values in this context are defined in Section 2 of the RMA as "…those aspects of ecosystems and their constituent parts which have value in their own right, including-*

*(a) their biological and genetic diversity; and*

*(b) the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience."*

*Protection ~~in this context~~ should be considered in a broad sense and may include legal protection as well as fencing, active pest control, regulation and improved land management practices.*

*The inclusion of this objective ~~helps to achieve~~ gives effect to the National Policy Statement for Freshwater Management 2014 (NPSFM), where for both water quantity and quality reasons the protection of the significant values of wetlands is required. This objective also ~~helps to achieve~~ gives effect to Policy 11 of the New Zealand Coastal Policy Statement 2010 (NZCPS) where there is specific direction to protect biological diversity in the coastal environment.*

*This objective also ~~helps~~ sets out the intent to protect indigenous biodiversity as an important component of Marlborough's natural heritage and gives recognition to central government's 'statement of national priorities' for protecting rare and threatened indigenous biodiversity on private land (June 2007). These priorities are:*

*National Priority 1:*

*To protect indigenous vegetation associated with land environments that have 20 percent or less remaining in indigenous cover.*

*National Priority 2:*

*To protect indigenous vegetation associated with sand dunes and wetlands; ecosystem types that have become uncommon due to human activity.*

*National Priority 3:*

*To protect indigenous vegetation associated with 'originally rare' terrestrial ecosystem types not already covered by priorities 1 and 2.*

*National Priority 4:*

*To protect habitats of threatened and declining indigenous species.*

~~*Matters of national importance in Section 6(a) and 6(c) of the RMA require the Council to recognise and provide for the preservation of the natural character of the coastal environment, wetlands, lakes, rivers and their margins, and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. These matters help to protect biodiversity as important components of Marlborough's natural heritage.*~~

*There is a relationship between this objective and Objective 6.2 in Chapter 6 in terms of the preservation of natural character under Section 6(a) of the RMA and Policies 13 and 14 of the NZCPS within the coastal environment. This is because indigenous biodiversity is also a component of natural character. For this reason, policies in this chapter that provide for the protection of indigenous biodiversity in the coastal environment, wetlands, rivers, lakes and their margins gives effect to both Section 6(a) and (c) of the RMA and achieves the direction set out in Policies 13 and 14 of the NZCPS.*

### Policy 8.1.1 and Appendix 3 Identification of sites, areas and habitats with significant indigenous value[15]

14. The Introduction to Appendix 3 states as follows:

15. The following provides explanations or guidelines for the application of ecological significance criteria in the assessment of sites.

16. Rankings within each criterion are: H = High; M = Medium; L = Low. They collectively contribute to an overall ranking, indicating the degree of significance. For a site to be considered significant, one of the first four criteria (representativeness, rarity, diversity and pattern or distinctiveness) must rank M or H.

17. The DOC submission sought that the numbering used in the criteria was removed as it causes confusion[16]. Both Mr Hamill and Dr Urlich were in agreement. The Panel also agrees.

**Decision**

18. The numbering in the criteria in Appendix 3 is to be removed.

### Policy 8.1.1

**When assessing whether wetlands, marine or terrestrial ecosystems, habitats and areas have significant indigenous biodiversity value, the following criteria will be used: …**

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.

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[15] Section 42A Report (Maclennan), 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.'

[16] DOC (479.71 and .270)

**Distinction between identification and management criteria**

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.

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

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[17] Forest & Bird, Deborah Martin, Evidence, paragraphs 30-32.

[18] Royal Forest and Bird Protection Society of New Zealand Incorporated v New Plymouth District Council [2015] NZEnvC 219.

[19] Section 42A Report (Hamill), Reply to Evidence, page 7; Policy 8.1.1, Volume 4 Appendix 3: Ecological Significance Criteria, page 8.

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.

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[20] EDS (698.62).

[21] NZTA (1002.34).

[22] Federated Farmers (425.123).

[23] Davidson R J; Duffy C A J; Gaze P; Baxter, A; du Fresne S; Courtney S; Hamill P 2011. *Ecologically significant marine sites in Marlborough, New Zealand*. Co-ordinated by Davidson Environmental Limited for Marlborough District Council and Department of Conservation. Published by Marlborough District Council.

[24] Section 42A Report (Hamill and Urlich), page 10.

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 <u>terrestrial</u>, wetlands, <u>freshwater or</u> 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<u>, freshwater</u> and ~~coastal~~ <u>marine</u> environments …*

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

*<u>Identification criteria</u>*

*(a) representativeness;*

*(b) rarity;*

*(c) diversity and pattern;*

*(d) distinctiveness;*

*Management criteria*

*(e) size and shape;*

*(f) connectivity/ecological context;*

*(g) sustainability; and*

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[25] Section 42A Report (Hamill), paragraph 57; Recommendation, page 9.

*(h) adjacent catchment modifications.*

**Ecologically significant marine sites**

**Policy 8.1.2 – Sites in the coastal marine area and natural wetlands assessed as having significant indigenous biodiversity value will be specifically identified in the Marlborough Environment Plan.**

**Policy 8.3.1 – Manage the effects of subdivision, use or development in the coastal environment by:**

**(a) avoiding adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(a) of the New Zealand Coastal Policy Statement 2010;**

**(b) avoiding adverse effects where the areas, habitats or ecosystems are mapped as significant wetlands or ecologically significant marine sites in the Marlborough Environment Plan; or**

**(c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(b) of the New Zealand Coastal Policy Statement 2010 or are not identified as significant in terms of Policy 8.1.1 of the Marlborough Environment Plan.**

**8.M.4 Identification of areas with significant biodiversity value**

**Identification of the values of various waterbodies within Marlborough is included in Appendix 5.**

**The natural and human use values include ecological, habitat, recreational and natural character values. The Council has also identified in the resource management plan significant wetlands and ecologically significant marine sites.**

34. The consequence of the decision to adopt buffers to protect ESMS's is that some policy recognition both of their purpose and method of identification needs to be provided in the Plan.

35. The issue of identification can be readily provided for by way of an additional paragraph to the explanation for Policy 8.1.2 which is the policy providing for sites of significant indigenous biodiversity to be specifically identified. The additional paragraph will emphasise that for category A and B ecologically significant marine sites a buffer will be identified as a precautionary approach around those sites. In addition Method 8.M.4 can be amended to include the identification of those buffer areas in a new appendix.

36. As to the purpose of the buffers, the appropriate policy provision will be in Policy 8.3.1 which addresses the management of the effects of use or development in the coastal environment. That new subclause to Policy 8.3.1 will make it plain that it is necessary to manage the effects of activities within the buffer so as to ensure adverse effects are avoided on the adjacent ecologically significant marine site.

**Decision**

37. Insert a new appendix in Volume 3 as Appendix 27 to define buffer areas around ESMSs Category A and Category B sites that are vulnerable to seabed disturbance as follows:

| Category A - Ecologically Significant Marine Sites | | |
|---|---|---|
| **Site ID** | **Site name** | **Buffer distance** |
| 1.5 | Coppermine Bay | 100 |
| 2.13 | Catherine Cove Rhodoliths | 50 |
| 2.24 | Allen Strait | 100 |
| 2.6 | Rangitoto Roadstead | 200 |
| 3.7 | Picnic Bay | 100 |
| 4.11 | Bob's Bay | 50 |
| 4.16 | Perano Shoal | 100 |
| 4.25 | Onauku Bay (Northern Coastline) | 100 |
| 4.9 | Wedge Point (subtidal rocky shores) | 100 |
| 6.1 | The Knobbys | 100 |
| 6.2 | Whataroa Bay | 100 |

| Category B - Ecologically Significant Marine Sites | | |
|---|---|---|
| **Site ID** | **Site name** | **Buffer distance** |
| 1.2 | Motuanauru Island Boulder Bank | 200 |
| 1.7 | Inner Greville Harbour/Wharariki | N/A |
| 1.8 | Greville Harbour/Wharariki Channel | 100 |
| 2.1 | North West D'Urville Island Coast | 100 |
| 2.10 | Trio Bank | 200 |
| 2.12 | Penguin Island Coastline | 100 |
| 2.15 | Clay Point | 100 |
| 2.16 | Te Aumiti/French Pass | 100 |
| 2.18 | Paparoa Point | 100 |
| 2.20 | Chetwode Islands | 100 |
| 2.22 | Goat Point | 100 |
| 2.23 | Culdaff Point | 100 |
| 2.27 | Titi Island | 100 |
| 2.28 | McManaway Rocks | 100 |

| Category B - Ecologically Significant Marine Sites | | |
|---|---|---|
| **Site ID** | **Site name** | **Buffer distance** |
| 2.29 | Witt Rocks Offshore Reef | 100 |
| 2.31 | Te Anamāhanga/ Port Gore | 200 |
| 2.33 | Te Anamāhanga/ Port Gore | 100 |
| 2.34 | Gannet Point | 100 |
| 2.5 | Rangitoto Islands | 100 |
| 2.9 | Jag Rocks | 100 |
| 3.1 | Harris Bay | 100 |
| 3.11 | Tapapa, Kauauroa & Tawera Current Communities | 100 |
| 3.12 | Piripaua Reef | 100 |
| 3.14 | Clova Bay | 100[26] |
| 3.15 | Grant Reef | 100 |
| 3.16 | Crail Bay | 100 |
| 3.18 | Little Nikau | 100 |
| 3.2 | Oke Rock | 100 |
| 3.6 | Tawhitinui Reach | 100 |
| 3.8 | Fitzroy Bay / Hallam Cove | 100 |
| 4.13 | Lochmara Bay | 100 |
| 4.14 | Pihaka Point | 100 |
| 4.15 | Kumutoto Bay | 100 |
| 4.18 | Patten Passage | 100 |
| 4.2 | The Grove | 100 |
| 4.21 | Te Aroha Bay | 100 |
| 4.22 | Puriri Bay | 100 |
| 4.23 | Matiere Point | 100 |
| 4.24 | Onauku Bay | 100 |
| 4.3 | Bottle and Umungata Bays | 100 |
| 4.4 | Houhou Point | 100 |
| 4.6 | Ngakuta Point | 100 |
| 4.7 | Iwirua Point | 100 |
| 4.8 | Wedge Point (subtidal soft shores) | 100 |

[26] See commentary on Clova Bay site later in decision

| **Category B - Ecologically Significant Marine Sites** | | |
|---|---|---|
| **Site ID** | **Site name** | **Buffer distance** |
| 5.1 | Diffenbach Point | 100 |
| 5.2 | Tikimaeroero Point | 50 |
| 5.3 | Takatea Point, Hitaua Bay entrance | 100 |
| 5.4 | Tory Channel/<u>Kura Te Au</u> subsites: Site 5.4A Raumoko, site 5.4B Wiriwaka Point, Site 5.4C Tokokaroro Point, Site 5.4D Te- Uira-Karapa Point | 50 |
| 5.6 | Tio Point | 50 |
| 5.7 | Deep Bay | 100 |
| 5.8 | Tory Channel/<u>Kura Te Au</u> | 100 |
| 5.9 | Tory Channel/<u>Kura Te Au</u> Entrance | 100 |
| 6.3 | Cutters Bay | 100 |
| 7.1 | Cape Jackson | 100 |
| 7.4 | Motuara subtidal | 100 |
| 7.10 | Cook Rock Reef | 100 |
| 7.11 | Brothers Island Reef | 100 |
| 7.13 | Awash Rock | 100 |
| 7.2 | Cape Jackson Bryozoan Community | 100 |
| 7.8 | White Rocks Current Community | 100 |
| 9.1 | Cape Campbell / Ward Reef | 100 |

38. Amend the overlay maps to include the buffers as shown in the appendix.

39. Amend the explanation to Policy 8.1.2 by adding a new third paragraph as follows:

<u>*A buffer is also identified around all Category A and B Ecologically Significant Marine Sites. A buffer recognises that habitats on the sea bed are vulnerable to disturbance from activities conducted in the coastal marine area. Those activities cannot necessarily be undertaken in a precise manner to avoid the adverse effects of seabed disturbance, particularly given the physical separation between the sea surface and seabed. In these circumstances, a buffer represents a precautionary approach to the protection of the Ecologically Significant Marine Sites.*</u>

40. Amend Policy 8.3.1 by adding a new subclause (d) as follows:

*(d) creating a buffer to manage activities in proximity to an Ecologically Significant Marine Site in order to avoid adverse effects on the Ecologically Significant Marine Site.*

41. Amend Method 8.M.4 by adding the following:

*8.M.4 Identification of areas with significant biodiversity value*

*Identification of the values of various waterbodies within Marlborough is included in Appendix 5. The natural and human use values include ecological, habitat, recreational and natural character values.*

*The Council has also identified in the resource management plan significant wetlands and ecologically significant marine sites. In the case of ecologically significant marine sites, buffer areas are also identified for all Category A and B sites. The extent of the buffer area is determined by the vulnerability of the site to sea bed disturbance and is 50, 100 or 200 metres. The extent of the buffer area is identified in Appendix X.*

**Appendix 3**

**Explanation of the scale of spatial classification for each environmental type**

42. EDS requests an explanation of the scale of spatial classification used for each environmental type, and requests it to be consistently referred to in each criterion. It seeks that the appendix be amended to 'freshwater and marine environments' in the heading, and it should be reworded to 'Ecological Significance Criteria to terrestrial …' EDS also identifies that no classification scale has been identified for the freshwater environment. This point is supported by Federated Farmers.

43. The changes requested by EDS are that the following is added to the introduction paragraph to Appendix 3:[27]

*The scale at which significance is to be determined depends on the type of environment.*

*a. Terrestrial environment: the scale of assessment is at the ecological district level. [MDC: Insert an explanation of ecological district].*

*b. Marine environment: the scale of assessment is at the coastal biographic region level. This a region that is defined and classified according to visible ecological patterns and the physical characteristics or a geographic or hydrographic area. New Zealand's coastal biographic regions have been identified and mapped by the Ministry for the Environment. Marlborough falls within the South Cook Strait Region.*

[27] EDS (698.109).

*c. Freshwater environment: [MDC: Insert assessment classification scale].*[28]

44. Mr Hamill agrees that the 'ecological districts' should be defined. He suggests the following wording: 'An Ecological District is defined as a local part of New Zealand where the topographical, geological, climatic, soils and biological features produce a characteristic landscape and range of biological communities (identified in Map 1 attached).' He recommends that this definition of what is added to the ecological significance criteria for wetland, marine, terrestrial and freshwater environments, and a map be included in the mapping book.

*(b) Marine environment: the scale of assessment is at the coastal biogeographical level.*

45. This is a region that is defined and classified according to visible ecological patterns and the physical characteristics of a geographic area or by hydrographic area. New Zealand's coastal biogeographic regions have been identified and mapped by the Ministry for the Environment. Marlborough falls within the South Cook Strait region. The report writers recommend that map of biogeographic areas should be included.[29]

46. Dr Urlich observes that the definition sought by EDS and provided for the coastal biogeographic region is not consistent with the definition that has been used in the assessment of significance in the identification of significant marine sites in the PMEP. The 2011 Ecologically Significant Marine Sites document (identified by the Ecologically Significant Marine Sites Expert Panel in 2011) divides the Marlborough coastal marine area into nine marine biogeographic areas (identified in Map 2 attached). The South Cook Strait biogeographic region includes Tasman Bay, Golden Bay and Kahurangi Point. Dr Urlich recommends that the EDS relief sought is declined.[30]

*(c) Freshwater environment*

47. EDS suggest that a classification scale for freshwater environments be used from the New Zealand Rivers Classification Scale (REC) for rivers and lakes. But it does not provide a suggested definition so this is put to one side.

**Consideration**

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[28] Section 42A Report (Urlich and Hamill), Criteria for identifying ecological significance of biodiversity and mapping of ecologically significant marine sites, page 20.

[29] Section 42A Report (Hamill and Urlich), page 21.

[30] Section 42A Report (Hamill and Urlich), page 21.

48. The phrase 'ecological district' is repetitively used through the criteria in Appendix 3 and submissions sought a definition of that phrase. The Panel agrees one is necessary and adopts Mr Hamills wording.

49. The Panel notes that the map included in the Section 42A Report as Map 1 is notated 'Example of map of ecological districts that would be included in the PMEP Maps'. This map illustrates all the Ecological Districts and Conservation/pastoral lease land, and includes the Marlborough District boundary and includes some of the relevant marine sites. On the adjacent page, Map 2 'Biogeographic areas identified by the Ecologically Significant Marine Sites Expert Panel in 2011' illustrates Tasman Bay, Golden Bay and Kahurangi Point as set out by Dr Urlich. Thus Map 1 ranges more widely than Map 2 as it includes detailed terrestrial environments as well as the marine environments.[31]

50. The Section 42A Report identifies that the criteria applied are at a sub-regional or bio-geographic scale. This is because the Marlborough coastal marine area has distinctive differences in hydrodynamics and wave exposure which in turn influence the biology. Tory Channel as an example is comprised of cooler, well mixed and more nutrient rich waters than Queen Charlotte Sound, and these areas differ in turn from the waters around D'Urville Island. These differences inform the nine geographic areas.

**Decision**

51. The introduction to Appendix 3 is to be amended by inserting the following:

    *The following provide~~s~~ explanations or guidelines for the application of ecological significance criteria in the assessment of sites. The scale at which significance is to be determined depends on the type of environment. …*

52. Insert a definition in Glossary to Appendix 3 of Ecological District as follows:

    *Ecological District: An Ecological District is defined as a local part of New Zealand where the topographical, geological, climatic, soils and biological features produce a characteristic landscape and range of biological communities (see map).*

53. A map of the 'ecological districts' is included in Appendix 3.

### Biogeographic areas and modifications to criteria

54. In addressing ecological significance criteria in Marlborough, the witness for the Minister of Conservation acknowledges that the first criteria descriptions first applied in Davidson et al (2011) were subsequently refined in Davidson et al (2015-2016), with minor changes in the

[31] Section 42A Report (Hamill and Urlich), pages 20-22.

latter, which provided clarity, context and improvements around how the Expert Panel made its assessments, for example, … specifying 'biogeographic area' for comparative assessments.[32]

55. The Minister of Conservation seeks to include 'biogeographic area' into the distinctiveness H criterion to cover marine environments to clarify that biogenic habitats are included. As a consequential change, Mr Hamill agrees that 'biogeographic area' is also included to the rarity criterion. Mr Hamill recommends as a consequential change that 'biogeographic area' also be added to the size and shape criteria to provide further consistency.

56. In terms of further clarification, Mr Hamill agrees the addition of the word 'cohesive' to the 9H definition would provide consistency with the definitions of M and L, and provide more clarity. Currently it is missing. He therefore supports, in part, this change to Appendix 3. Dr Urlich notes that the Expert Panel has not seen cohesive as relevant to the coastal environment but the Hearing Panel supports Mr Hamill's amendment from 'coastal' environment to 'marine'. On our analysis, no submitter to Policy 8.1.1 sought that the word 'marine' be removed and substituted with 'coastal environment'.

57. Dr Urlich does not support this approach as the Expert Panel has been using different wording in its size criterion. He says the Expert Panel compares size relative to other similar habitats and does not use the 'cohesive' term.[33] Habitat types differ in the area at which they may become significant, for example, rhodolith beds at 10 ha would be large but a 10 ha horse mussel bed would be small. EDS submit that it is not clear why a 'compact' shape should determine significance. A significant area may be large because it extends in a thin ribbon over an extensive area, such as a gully system. In the absence of a robust scientific reason, EDS request that this should be deleted.[34]

58. Mr Hamill concludes that sites may be significant but are not compact in shape and it is recommended that the word 'compact' (which is not a relevant criterion) should be deleted and the wording for the shape and size criterion be changed accordingly with the addition of the word 'cohesive' which is originally identified as being relevant: Appendix 3. Mr Hamill notes that the Size and Shape criterion is not one of the four determining 'significance'.

**Consideration**

[32] Minister of Conservation, Andrew Baxter Evidence, paragraph 89.

[33] MDC, Section 42A Report (Hamill and Urlich), Errata and additions, paragraphs 75.3-75.4.

[34] EDS (698.109).

59. The term 'Biogeographic Area' is included in the definition of the distinctiveness 8H criterion to cover marine covenants. A consequential change is to add 'Biogeographic Area' into both the rarity, and size and shape criteria.

**Decision**

60. Definition for 'Ecological District' and 'Biogeographic Area' are inserted after the 'Adjacent catchment medication in respect of significant sites within the coastal marine area' section in Appendix 3 as follows:

*Ecological District: An Ecological District is defined as a local part of New Zealand where the topographical, geological, climatic, soils and biological features produce a characteristic landscape and range of biological communities (Identified in Map 1)*

*Biogeographic Area: A geographical area of similar ecology and habitats where the community structure and grouping of species is distinct (see map).*

61. A map of the ecological districts and biogeographic areas are included in Appendix 3 as Map 1 and Map 2.

62. The criteria for 8H under Distinctiveness is amended as follows:

*H: The site contains any ecological feature that is unique nationally, in the region or in the ecological district or biogeographic area; or it contains several such features that are outstanding regionally or in the ecological district or biogeographic area*

63. The criteria for Rarity is amended as follows:

*Rarity*

*4. Indigenous vegetation or habitat of indigenous fauna that has been reduced to less than 20% of its former extent in Marlborough, ~~or relevant land environment~~, ecological district, biogeographic area or freshwater environment.*

*5. Indigenous vegetation or habitat of indigenous fauna that supports an indigenous species that is threatened, at risk, or uncommon, nationally or within the relevant ecological district or biogeographic area for sites within the coastal marine area.*

*6. The site contains indigenous vegetation or an indigenous species that is endemic to Marlborough or that are at distributional limits within Marlborough.*

64. The criteria for Size and Shape is amended as follows:

*Size and Shape*

*9. The site is significant if it is moderate to large in size and is physically ~~compact or~~ cohesive.*

***H:** The site is large in size for the region or ecological district or biogeographic area and is cohesive ~~compact in shape~~.*

***M:** The site is moderate in size for the region or ecological district or biogeographic area and is cohesive ~~compact in shape~~; or the site is relatively large but not very ~~compact or~~ cohesive .*

***L:** The site is small in size for the region or ecological district or biogeographic area. or the site is moderate in size but not at all ~~compact or~~ cohesive .*

**A Panel of Experts?**

65. AQNZ and MFA request that significant sites to be incorporated into the ESMS should be assessed by a panel of experts/ecologists.[35] This is recommended as appropriate in its context, given that the High Court confines the Council to maintain indigenous biodiversity in the CMA only 'to the extent strictly necessary'. Mr Hamill and Dr Ulrich are in agreement with the relief requested in that the identification of significant sites is a specialised skill undertaken by experts. They provide a note to the explanation of Appendix 3 to achieve this result.[36]

66. In his Reply to Evidence, Dr Ulrich refers to several submissions on which he accepts scientific information in total or in part but where he recommends that the Hearings Panel refer the matters referred to the Significant Sites Expert Panel for further information by a given date. Some of these matters were able to be resolved by the evidence produced at the hearing (such as the migratory route of whales) but others require further expert evaluation outside the limitations of this plan process.[37]

**Decision**

67. The following is added to the explanation of the evidence in Appendix 3:

*The ecological criteria are to be applied by suitably qualified and experienced ecologists in this field of expertise.*

**Significant Natural Areas (SNAs)**

**A non-regulatory approach to the protection of indigenous biodiversity**

68. A number of proposed policies included within the PMEP seek to encourage the continued voluntary protection of indigenous terrestrial biodiversity. These policies are implemented

[35] AQNZ (401.090), MFA (426.094).

[36] Section 42A Report (Hamill and Ulrich) page 14. (The RPS for Northland endorses this approach).

[37] Section 42A Report, Reply to Evidence, Policy 8.1.1. Appendix 3 and Volume 4: Ecological significant marine site criteria and mapping.

through a range of non-regulatory methods such as undertaking voluntary ecological assessments on private property; supporting the QEII Trust; and community restoration projects.[38]

69.

**Objective 8.2**

**An increase in area/extent of Marlborough's indigenous biodiversity and restoration or improvement in the condition of areas that have been degraded.**

**Policy 8.2.2**

**Use a voluntary partnership approach with landowners as the primary means for achieving the protection of areas of significant indigenous biodiversity on private land, except for areas that are wetlands.**

70. The policy supporting Objective 8.2 is in turn supported by Method of Implementation 8.M.3 which relates to implementing Marlborough's 'Significant National Areas' (SNA) programme which seeks to increase the knowledge regarding Marlborough's indigenous biodiversity. (A 'Significant National Area' is an area of vegetation or habitat of indigenous vegetation that meets the threshold of 'significance' through the application of the assessment criteria in Volume 3, Appendix 3 Ecological Significance Criteria for terrestrial, wetland and coastal environments.)

71. A number of submissions support the voluntary partnership approach set out within Policy 8.2.2 and Method of Implementation 8.M.3, and acknowledge that the Council has put significant resources into the programme over the last 16 years. That is said to be highly regarded within the community and they seek that the policy, and the voluntary partnership approach be retained as notified.[39] Other submitters assert that if SNA areas are included in the PMEP, this would be a serious breach of the previous agreements made between the landowners and MDC, which would jeopardise the goodwill and co-operation existing under the present programme.[40]

72. One submitter seeks an amendment to Policy 8.2.2 which clarifies that protection of significant biodiversity is a matter of national importance and an environmental bottom line that must be recognised and provided for;[41] other submitters consider (inter alia) that what is proposed does not identify rules that are necessary to protect biodiversity and the significant

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[38] Section 42A Report, pages 17-20.

[39] E Beech (42.5 and .27); C Bowron (88.1); I Mitchell (364.23); M and K Gerard (424.33 and .34); Federated Farmers (425.128); QCSRA (504.33); J and J Hellstrom (688.78); E Beech (693.6 and .28); KCSRA (868.29); MEC (1193.132); Forest & Bird (715.199); FNHTB (716.120).

[40] Forest & Bird, Deborah Martin Evidence, paragraph 20.

[41] EDS (698.65).

habitats of indigenous fauna as recognised by s 6(c) RMA and the policy should be deleted;[42] others suggest the policy be amended to include, encourage and promote the protection, restoration and re-establishment of areas of indigenous biodiversity, and then Policies 8.2.10, 8.2.11 and 8.2.12 can be deleted.[43]

73. Forest & Bird considers voluntary protection of significant biodiversity sites is not sufficient to keep them from being eroded or wiped out. It is concerned that the non-regulatory approach is seen as a way to get around the requirements of the RMA. It disagrees that prioritisation of voluntary over regulatory methods for remaining biodiversity on private land is necessary and seeks amendments to include policy direction and methods ensuring the significant indigenous areas can be identified in schedules or maps. It seeks rules to protect indigenous cover of low stature vegetation, grass, herblands and shrublands that it asserts are inadequately provided for in the Threatened Environments Overlay (TEO) sites. Its witness Deborah Martin seeks an additional method to be incorporated into the PMEP to identify the SNA areas through aerial maps and then ground truthed.[44]

74. The witness for the Minister of Conservation provided a clear, positive but also concerning analysis of Marlborough's SNA programme and what it provides but it is one that also raised concern. His concern is that the remaining natural areas (of indigenous biodiversity) in depleted parts of Marlborough are typically small, fragmented, degraded or in mosaics with introduced semi-natural and exotic vegetation. Most are at risk of decline without management.[45] Mr Moore's evidence encompasses a whole spectrum of issues facing Marlborough.

75. The other relevant issues supported by Mr Moore encompass the 'excellent' volunteer landowners' programme (88 protection projects between landowners and the Council, and 38 QEII Trust covenants) but he suggests that programme needs to go hand in hand with a robust regulatory backstop to effectively protect SNAs from active clearance.

**Section 42A Report**

76. The Section 42A Report identifies the Council has a duty to future generations to protect important indigenous biodiversity, particularly in the very extensive South Marlborough area. Several submitters suggested that various provisions be adapted from other plans in the country. But these provisions are not founded on the prioritisation of voluntary over

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[42] Fish and Game (509.125).

[43] AQNZ (401.94) and MFA (426.98).

[44] Forest & Bird (715.177).

[45] Minister of Conservation, Simon Moore Evidence, paragraph 3.1.2.

regulatory methods which landowners in Marlborough have supported for the last 16 years. Depending on the funding package that is set up, the landowner can contribute between 20% and 50% of the costs.[46]

77. The type of remnant vegetation in South Marlborough in the Awatere high country, and its protection, necessarily requires a great deal of cooperation from landowners. That area is especially problematic as much of the vegetation is scattered scrub that looks all the same in the aerial photography. Generally, landowner trust and cooperation are key to ensuring that identification and protection of significant indigenous vegetation is achieved.

78. Seven hundred and eight sites have been identified as potential SNAs, and a smaller group has active protection, with a combined area of 45,016 ha at present, and six further ecological districts are still to be surveyed (these are all high country ecological districts). Of these sites, only 88 protection projects have been instigated through the programme, including a mix of fencing, re-vegetation, weed control and wetland restoration, requiring a major effort by Council and landowners to increase protection management. The present system, though, has 75% landowner interest in the ecological districts surveyed so far, and Council has recently committed resources to address the other ecological districts and to strengthen and enhance the protection available through the SNA programme.[47]

79. The Panel sought answers to two questions:

- Is a voluntary system coupled with some clearance standards sufficient to protect Marlborough's indigenous biodiversity?
- If not, then is a transition time warranted to introduce a mix of regulatory/voluntary controls?

**Consideration**

80. The Panel concluded from the evidence that the remaining indigenous biodiversity is at such low levels in South Marlborough that, while absolute protection is unrealistic, what is important is strong PMEP emphasis on protection at all levels of remaining biodiversity. This is coupled with an additional emphasis on the importance of restoration initiatives through such mechanisms as the SNA programme. Those imperatives are based on s 30(1)(ga) RMA and Policies 11(b) and 14 NZCPS.

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[46] Section 42A Report, page 18 citing Summary Report on the Results of the Significant Natural Areas Project 2015 – 2016. Marlborough District Council.

[47] Section 42A Report, page 18, Errata paragraph 1. Minister of Conservation, Simon Moore Evidence, paragraph 8.3.2.

81. The Panel accepts the evidence of submitters who advance the proposition that the voluntary system, with increased commitment from both Council and landowners, is able to provide proper protection for SNAs both in ecological districts already, and about to be, surveyed.

82. A transition period placing emphasis on increased landowner commitment and filling 'gaps' in landowner commitment at change of ownership is thus the preferred method of protection with strong support from 'back-up' vegetation clearance rules. Council as part of that 'transition' to a tighter regulatory level of protection has made its commitment to greater resource the SNA programme. Importantly, it now has a specific Policy 9.1.4 in the PMEP which states formally in a statutory document that landowner control of access to all their lands remains unaffected by the SNA system. That policy acknowledges that *public access to land held in private ownership can only be granted by the landowner.*

83. One of Forest & Bird's submissions was for Council to provide for the use of aerial photography and remote sensing technology to identify sites, followed by ground truthing. This would assist in a more advanced system of identification of SNAs, although it would not be able to identify some of the rarer small stature communities such as rock outcrops, scree slopes etc.[48] The reports identified by Ms Martin identified several vast areas of the district, especially in South Marlborough, have not yet been surveyed and are not included in the TEO.

84. Mr Hamill considers that 'to ensure coverage, the identification of sites would need to be precautionary'. He agrees the identification of relatively large areas would then need to be refined during site verification. But from his experience with the identification of wetlands, landowners respond much more favourably to the reduction of the area of land identified rather than increasing an area using aerial imagery.

85. Mr Hamill also identified that to achieve complete full coverage of Marlborough's indigenous biodiversity sites, through aerial identification and then ground truthing, would have resourcing and timing implications in order to make the plan operational.[49]

86. The Panel, however, considers that high resolution aerial photography and the new Council dedicated resources, coupled with landowner assistance, should enable survey of the remaining six ecological districts to proceed with a reasonable level of confidence in the protection of remaining significant indigenous biodiversity.

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[48] Forest & Bird, Deborah Martin Evidence, page 4.

[49] Section 42A Report (Hamill), Reply to Evidence, page 5.

87. The challenge, though, has to be an equal adoption of the SNA system of protection on a tighter, more widespread basis by landowners. The decision is to set a framework which provides for the next ten year plan period to enable that greater commitment by landowners to a voluntary system of protection coupled with confidential mapping, and a reliable system of transfer of the commitment at change of ownership. If that can be achieved then recourse to regulatory compulsory public mapping may not be required. The next plan review can assess progress.

88. The Panel agrees the outcome sought is identification and protection of SNAs by combination of landowner and Council engagement through the SNA programme. To meet concerns in the Environment Court *New Plymouth* decision[50] the PMEP could be tightened by adopting an approach that the PMEP is able to fulfil a 10 year transition process to regulation if the AER assessment at the end of the PMEP 10 year term shows the voluntary system to be inadequate.

89. The amendments we propose relate to Policy 8.2.2, 8.M.3 Marlborough's Significant Areas programme, and 8.AER.2. Therefore, the amendments proposed by the Panel to Policy 8.2.2 and to 8.M.3 and 8.AER.2 are:

- Where Policy 8.2.2 often refers to 'the voluntary partnership approach with landowners' insert 'enabling a 10 year transition to both expand the SNA programme to other areas and to assess its effectiveness for achieving protection of significant biodiversity …'.
- In 8.M.3 add a fourth paragraph talking of the 10 year transition process:
- 'The Plan adopts a voluntary partnership approach with landowners enabling a 10 year transition to both expand the SNA programme to other areas and to assess its effectiveness for achieving protection of significant indigenous biodiversity.'
- And in 8.AER.2 under 'Monitoring of effectiveness' reword the first paragraph to read:

*'Monitoring of sites identified through the Significant Natural Areas programme shows ~~an improvement in the values of those sites~~ <u>there is increased protection of the indigenous</u>*

[50] *Royal Forest & Bird Protection Society of New Zealand Incorporated v New Plymouth District Council* [2015] NZEnvC 219 ([98]). Forest & Bird sought declarations that the district plan failed to recognise and provide for areas of SNAs in accordance with its statutory obligations. The Council was found in contravention of its duty by failing to include in Appendix 21.2 of the district plan SNAs which were identified by applying the criteria contained in Appendix 21.1.

*biodiversity values.' Other changes were recommended to 8.AER.2 which the Panel agrees with. They are amendments that achieve more specific anticipated environmental results.*

- And retain Policy 8.2.8 and Method 8.M.5 as to monitoring.

90. We note MDC seeks that 8.AER.5 is amended as it considers the existing wording of 8.AER.2 does not capture the intent of the indicator which is 'monitoring', and this needs to be considered now.

91. Originally the Section 42A Report recommended that Policy 8.2.8 (monitoring of ecosystems, habitats and areas with significant biodiversity showing loss or deterioration) should be deleted because it provides no guidance as to how the monitoring of significant biodiversity would be undertaken nor the time frames in which this might occur.[51] Both Federated Farmers and AQNZ and MFA sought the policy should be deleted as it states the obvious while the Council has a statutory duty to review the PMEP. They considered the policy does not add value.[52]

92. But both MDC and DOC have committed to an ongoing monitoring programme to update and improve information on the sites and to monitor site conditions. The MDC and DOC had contracted an expert panel to coordinate an inventory of ecologically significant marine sites which resulted in the 2011 'Ecologically Significant Marine Sites in Marlborough' publication.

93. The first survey was undertaken in 2014/2015 and the results eventually incorporated into the notified PMEP overlay. Subsequently, the 2015/2016 survey report 'Significant Marine Site Survey and Monitoring Programme: Summary report 2015-2016' was published but not completed prior to the notification of the PMEP. Any changes to the relevant sites have been included in MDC's submissions and the Section 42A Report prepared by Peter Hamill and Dr Stephen Urlich.

94. MDC seeks the following amendment to 8.AER.5 as it considers that terrestrial, river and wetlands areas should be separated from ESMS as they are distinctly different environments and therefore monitoring and resources will be distinct.[53] The Council therefore seeks the following indicator Monitoring effectiveness is added to 8.AER.5:

*… The number of private properties over which ecological assessments to determine if there are ecosystems, habitats or areas present with significant indigenous biodiversity value,*

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[51] Section 42A Report, page 27.

[52] Federated Farmers (425.134), AQNZ (401.100) and MFA (426.107).

[53] MDC (91.203).

*continues to increase.* ~~*s (albeit at a low level)*~~ ~~*as the active SNA survey has been completed. Any increase in properties surveyed is most likely to arise through resource consent processes.*~~

95. As recommended, a 10 year transition to expand the SNA programme provides the reason to retain Policy 8.2.8 and Method 8.M.5 Monitoring in order to monitor the effectiveness of Policy 8.2.2.

**Decision**

96. Policy 8.2.8 Monitoring is retained as notified.

97. Amend Policy 8.2.2 as follows:

*Use a voluntary partnership approach with landowners, enabling a 10 year transition to both expand the SNA programme to other areas and to assess its effectiveness for achieving protection of significant indigenous biodiversity, as the primary means for achieving the protection of areas of significant indigenous biodiversity on private land, except for areas that are wetlands.*

98. Amend the explanatory statement to Policy 8.2.2 as follows:

*… The programme is funded by the Council*~~*, central government's biodiversity fund*~~ *and landowners.*

99. Insert a new paragraph at the end of the explanatory statement to Policy 8.2.2 as follows:

*However, not all landowners have chosen to participate in the SNA programme and other areas are yet to be surveyed as part of the programme. This policy provides for a 10 year transition to expand the SNA programme to areas yet to be surveyed, but also provides the opportunity for the Council and the community to assess the effectiveness of the voluntary partnership in achieving Objective 8.1. In this regard, Policy 8.2.8 and Method 8.M.5 will be particularly relevant.*

100. Amend Method 8.M.1 Regional rules as follows:

*…* ~~*Fishing activities using techniques or methods that disturb the seabed*~~ *Dredging, bottom trawling, deposition, reclamation and anchoring within the areas identified as* ~~*an*~~ *a vulnerable ecologically significant marine site will be prohibited. Resource consent is required for most uses or activities within the coastal marine area and an assessment of the effects of the activity on indigenous biodiversity will be undertaken, including whether there are any significant biodiversity values.*

101. Amend Method 8.M.2 District rules as follows:

*Resource consent will be required for land disturbance or vegetation clearance activities where certain species or habitats with indigenous biodiversity value are to be modified. This includes clearance of indigenous vegetation in areas that have 20% or less of remaining indigenous cover, as identified in the Threatened Environments Overlay Maps.*

102. Amend Method 8.M.3 Marlborough's Significant Natural Areas Programme by adding a fourth paragraph, as follows:

*The Plan adopts a voluntary partnership approach with landowners enabling a 10 year transition to both expand the SNA programme to other areas and to assess its effectiveness for achieving protection of significant indigenous biodiversity.*

103. Amend Method 8.M.4 Identification of areas with significant biodiversity value as follows:

*Identification of the values of various waterbodies within Marlborough is included in Appendix 5. The natural and human use values include ecological, habitat, recreational and natural character values.*

*The Council has ~~also~~ identified ~~in the resource management plan~~ significant wetlands and ecologically significant marine sites on maps in Volume 4..*

*Whale migratory routes and dolphin distribution in Marlborough's coastal marine area are depicted on maps in Volume 4.*

104. The following bullet point is deleted from Method 8.M.6:

- ~~*from funding made available by central government for the protection of areas of significant indigenous vegetation and habitats of indigenous fauna;*~~

105. Amend Method 8.M.11 Partnership/Liaison as follows:

*The Council works closely with the Queen Elizabeth II National Trust, an independent organisation that assists landowners to formally protect their land through a covenant on the property title. The Council also works closely with the Department of Conservation in providing information for landowners, resource users, community groups and Marlborough's tangata whenua iwi and the public in general and in on-the-ground work to assist in enhancing biodiversity in Marlborough.*

…

*This will extend to supporting community initiatives and advocating to government departments to set up protected marine areas and working with industry groups to promote sustainable use of marine resources.*

*Marlborough's tangata whenua iwi have a particularly strong interest as kaitiaki in the protection, maintenance and enhancement of indigenous biodiversity. The Council will seek to partner with iwi in its efforts to protect the remaining indigenous biodiversity in Marlborough's terrestrial, freshwater and coastal environments.*

106. As a consequence of the above change, also add reference to Marlborough's tangata whenua iwi to Policy 8.2.12 and Method 8.M.6.

107. mend the 'Monitoring effectiveness' column in 8.AER.2 as follows:

*Monitoring of sites identified through the Significant Natural Areas programme shows ~~an improvement in the values of those sites~~ there is increased protection of the indigenous biodiversity values.*

*Baseline monitoring programmes established ~~in 2010~~ for a representative sample of terrestrial, river and wetland sites ~~and in 2014/15 for ecologically significant marine site~~ show~~s~~ no loss of ~~those~~ indigenous biodiversity values over the life of the MEP.*

*Measured against baseline monitoring programmes established for ecologically significant marine sites in 2015/16, there is no loss of indigenous biodiversity values over the life of the MEP.*

*There is no increase in the extent or distribution of known aquatic pest species identified as declared pests in the Regional Pest Management Plan for Marlborough.*

108. The following indicator is deleted from 8.AER.4:

*~~A voluntary partnership approach with landowners continues to be the primary means of protecting terrestrial areas of significant indigenous biodiversity.~~*

109. Amend the 'Monitoring effectiveness' column in 8.AER.5 as follows:

*… The number of private properties over which ecological assessments to determine if there are ecosystems, habitats or areas present with significant indigenous biodiversity value, continues to increase~~s (albeit at a low level)~~ ~~as~~ ~~the active SNA survey has been completed~~. ~~Any increase in properties surveyed is most likely to arise through resource consent processes.~~ …*

**Community involvement in the protection and enhancement of indigenous Biodiversity**

110. In the context of submissions supporting Policy 8.2.1 and the methods that implement it, some submitters requested that, in addition to landowners, the role of others in the community in protecting and enhancing indigenous biodiversity should be recognised. For example, AQNZ and MFA seek to recognise the role of resource users (presumably because

their members do not utilise land). Ngati Toa sought to recognise the role of Marlborough's tangata whenua iwi (especially in the context of Method 8.M.11).

**Consideration**

111. The policy specifically identifies the support and liaison of landowners as a means of protecting and enhancing indigenous biodiversity. This method is essential as many significant natural areas occur on private land. A partnership built through support and liaison will be a vital element to successfully protecting and enhancing these privately owned areas.

112. Notwithstanding the importance of working with landowners, the Panel believes that the submitters above make a valid point about the involvement of others in the community. Marlborough's tangata whenua iwi perform a kaitiaki role and will also act as guardians for taonga species. That role should be recognised in the policy and the relevant methods. AQNZ's and MFA's submissions reminded the Panel that the coastal marine area is public domain and there are no landowners. However, there are resource users active in the coastal marine area that can perform an equivalent role to landowners in this context. In summary, the Panel believes that the submissions made by AQNZ, MFA and Ngati Toa should be accepted.

113. During the hearing on Topic 6 the Panel heard from many submitters detailing the past, present and future involvement of the community in restoration efforts. In accepting the relief requested by the above submitters, the Panel believes that the role of community groups should also be recognised in the same provisions. Not to do so would flagrantly ignore the considerable efforts currently being made by the community to arrest the decline of indigenous biodiversity.

114. In the context of considering submissions to Policy 8.2.2 (see above), the Panel had cause to consider the voluntary partnership approach in the context of the complete package of regulatory and non-regulatory methods to be applied to achieve Objective 8.1 and 8.2. Helpfully, these methods are set out in full in Policy 8.2.1. However, the statement of the suite of methods in the policy itself did make the policy rather clumsy in the Panel's opinion. As notified, the methods of implementing the policy are included in the statement of the policy, when they would normally be included in the Methods of Implementation section. There is a relatively simple resolution and that is to list the methods in the policy within the explanatory text for the policy. The Panel considers that this change can be made via Clause 16 of the RMA as it does not change the intent or effect of the policy. The methods are still described (albeit in the explanation) and then specifically identified in the Methods of Implementation section. The outcome is a simplified statement of the policy.

**Decision**

115. In conjunction with a subsequent decision to amend Policy 8.2.1, amend the explanation to Policy 8.2.1, as follows:

*Policy 8.2.1 – A variety of means will be used to assist in the protection, maintenance and enhancement of areas and habitats with indigenous biodiversity value~~,~~. ~~including partnerships, support and liaison with landowners, regulation, pest management, legal protection, education and the provision of information and guidelines.~~*

*A variety of methods are necessary to achieve the protection and enhancement of areas and habitats with indigenous biodiversity value. These methods include partnerships; support for and liaison with landowners, resource users, community groups and Marlborough's tangata whenua iwi; pest management; legal protection; education; and the provision of information and guidelines.*

*Sometimes, simply fencing an area is the most effective means of protection and in this case, it is the Council's role to support landowners (including financially)…*

*Amend Policy 8.2.12 to read:*

*Encourage and support private landowners, Marlborough's tangata whenua iwi, community and industry groups, central government agencies and others in their efforts to protect, restore or re-establish areas of indigenous biodiversity.*

*Amend the last bullet point of Method 8.M.6 to read:*

*Through supporting initiatives developed by community, resource users, Marlborough's tangata whenua iwi and industry groups to promote protection and restoration of indigenous biodiversity.*

*Amend the first paragraph of Method 8.M.11 to read:*

*The Council works closely with the Queen Elizabeth II National Trust, an independent organisation that assists landowners to formally protect their land through a covenant on the property title. The Council also works closely with the Department of Conservation in providing information for landowners, Marlborough's tangata whenua iwi and the public in general and in on-the-ground work to assist in enhancing biodiversity in Marlborough.*

*Insert a new paragraph into Method 8.M.11, as follows:*

*Marlborough's tangata whenua iwi have a particularly strong interest as kaitiaki in the protection, maintenance and enhancement of indigenous biodiversity. The Council will seek to partner with iwi in its efforts to protect the remaining indigenous biodiversity in Marlborough's terrestrial, freshwater and coastal environments.*

**Policy 8.2.9**

**Maintain, enhance or restore ecosystems, habitats and areas of indigenous biodiversity even where these are not identified as significant in terms of the criteria in Policy 8.1.1, but are important for:**

**(a) the continued functioning of ecological processes;**

**(b) providing connections within or corridors between habitats of indigenous flora and fauna;**

**(c) cultural purposes;**

**(d) providing buffers or filters between land uses and wetlands, lakes or rivers and the coastal marine area;**

**(e) botanical, wildlife, fishery and amenity values;**

**(f) biological and genetic diversity; and**

**(g) water quality, levels and flows.**

116. The Section 42A Report originally recommended that this policy be deleted. Mr Caddie, however, considers that without Policy 8.2.9 the deletion is contrary to Policy 14(a), (b), (c), NZCPS Restoration of natural character.[54]

117. The report writer considers after hearing evidence that the direction within Policy 14 NZCPS is much less than the direction within Policy 8.2.9[55]. But he also identifies that the policy provides direction within Policy 8.3.8 that the intent of Policy 8.2.9 is amended to better reflect the language in Policy 14 NZCPS.

118. Ms Stevens for Ngāi Tahu seeks to add an addition to the explanation as a new paragraph to follow after the description after the s 7 RMA matters that foreshadows her further submission for a new policy that relates to cultural harvests. The Panel considers that the additional wording to the explanation recommended by the report writer in the Reply to Evidence gives further recognition to (c) of the policy and therefore should be included.

**Decision**

119. Amend Policy 8.2.9 as follows:

*Policy 8.2.9 - <u>Promote the maintenance, enhancement, or restoration of</u> ~~Maintain, enhance or restore~~ ecosystems, habitats and areas of indigenous biodiversity even where these are not identified as significant in terms of the criteria in Policy 8.1.1, but are important for: …*

120. And that the following is added to the end of the explanation to Policy 8.2.9:

*<u>The importance of areas of indigenous biodiversity for cultural purposes could include a range of associations and uses of indigenous biodiversity, including taonga species, māhinga kai,</u>*

[54] KCSRA and CBRA, A Caddie Evidence, paragraph 26.

[55] Section 42A Report, Reply to Evidence, pages 8-9.

*underlying cultural values of a place, presence of resources used for rongoā, weaving, food sources, or ceremonial uses.*

**New Policy 8.X.X**

**Customary harvest**

121. Following the policy direction in Policy 8.2.9(c) cultural purposes, submissions and evidence were put forward by the representatives of Ngāi Tahu seeking to provide for harvesting of cultural materials with a new policy and explanation.[56]

122. Counsel submits that customary harvesting is a sustainable practice managed by tikanga. It is an important component of iwi exercising kaitiakitanga as recognised by Part 2 RMA (particularly s 6(e)) providing for the relationship between Ngāi Tahu and the environment, while s 7 RMA requires all those exercising powers and functions under the Act to give particular regard to kaitiakitanga.[57]

123. The witness explains that in the context of kaitiakitanga, this means maintaining and enhancing the integrity of life-sustaining resources that all communities depend upon to survive. It is linked to māhinga kai – the customary gathering of food and natural materials and places where these resources are gathered. Māhinga kai and customary harvesting is expressly linked to Ngāi Tahu's culture as well as those of other iwi.

**Consideration**

124. The witness suggested a new Policy 8.X.X be identified which would protect and enhance indigenous biodiversity, and also enable customary harvesting including within areas identified with outstanding landscape value, Threatened Environment – Indigenous Vegetation Sites, Ecologically Significant Marine Sites or sites, areas and habitats with significant indigenous biodiversity value.

125. The evidence provided identified that in the context of biodiversity, customary harvesting is essential in enabling Ngāi Tahu to exercise kaitiakitanga and to provide for their relationship with their culture, lands, water and other taonga. Cultural harvest may be for different reasons, including but not limited to, medicinal uses, ceremonial, uses, weaving or for consumption. Ms Stevens emphasised that where particular resources are only available on private land, access agreements or case by case permissions from the landowner are essential before entry onto the property is allowed.

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[56] Ngāi Tahu, Tanya Stevens Evidence, paragraph 17, 30-33; Legal Submissions, paragraph 17.

[57] Section 6(e) RMA: 'The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.'

126. Ngāi Tahu included a suggested policy and explanation, methods and a rule. The rule suggested for chapters 3, 4, 19 and 22 and read as follows:

> *Customary harvest of indigenous biodiversity with the activity-specific standard of Customary harvest and in accordance with tikanga.*[58]

127. The Section 42A report writer indicated that the issue of customary harvesting had been raised in Chapter 3. The option of including an additional permitted activity rule relating to customary harvesting was discussed by that report writer and found wanting in a number of areas.[59]

128. The report writer for this report identifies that monitoring of permitted condition standards becomes very difficult with the activity-specific standards in respect of activities that are non-specific and/or measurable. It was suggested that a limit be placed on the area of vegetation that could be cleared as part of cultural harvest. He considers 'Without a limit it would be very easy for someone to clear a large area of vegetation and then argue it was being done in accordance with tikanga'. This, he notes, would be very difficult to prove otherwise.

129. Cultural harvest of plants for weaving or medicinal purposes, however, does not necessarily include the removal of the entire plant, and while limiting the area to a small area, for example $20m^2$, would not impact of this collection, it would allow the removal of individual trees (such as for the creation of pouwhenua).[60]

130. The Section 42A report writer recommends that the issue could be resolved by adding it to the plan as a policy enabling customary harvest instead of a rule. In relation to the suggested wording, this could be simplified from the original submission to encompass tikanga.

131. By agreement, Ms Stevens' original wording for Policy 8.X.X was simplified and recommended by both the Council and report writer to include the reference to 'tikanga' in an amended Policy 8.3.X.[61]

**Decision**

132. A new policy is inserted as follows:

*Policy 8.3.X - Enable customary harvesting in accordance with tikanga.*[62]

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[58] Ngāi Tahu, Tanya Stevens, Evidence, para 32

[59] Section 42A Report (Maclennan), Reply to Evidence, pages 55-57.

[60] Section 42A Report (Mr Hamill), Reply to Evidence, page 3.

[61] Section 42A Report, Reply to Evidence, page 56. 'Tikanga' means 'Māori practices and values' s 2 RMA. See also Memorandum of Counsel for Ngāi Tahu, 7 March 2018.

[62] Ngāi Tahu, Joshua Leckie, Legal Submissions, paragraph 19; Tanya Stevens, Evidence, paragraph 22.

*Customary harvesting is essential in enabling Marlborough's tangata whenua iwi to exercise kaitiakitanga and to provide for their relationship with their culture, lands, water and other taonga. Cultural harvest may be for different reasons, including but not limited to medicinal uses, ceremonial uses, weaving or for consumption. Where particular resources are only available on private land, access agreements or case by case permissions from the landowner are essential before entry onto the property is allowed.*

**Protection of Ecologically Significant Marine Sites (ESMS) from disturbance**

**A regulatory approach**

133. ESMSs involve a more regulatory control where Policy 8.1.1 and Appendix 3 of the PMEP set out criteria to be used to assess whether marine and terrestrial ecosystems, habitats and areas have significant indigenous value. These areas (and wetlands) have been mapped as overlays within the PMEP and there are specific policies and rules intended to manage the protection of these areas.[63]

**Seabed disturbance in ecologically significant marine sites**

134. The PMEP identifies 129 ESMS within the coastal marine area (CMA). Within these sites, Policy 8.3.7 applies: Within an identified ecologically significant marine site fishing activities using techniques that disturb the seabed must be avoided.

135. This is echoed in prohibited activity Rule 16.7.5 - Fishing activity that uses a technique that disturbs the seabed within any Ecologically Significant Marine Sites, except Croiselles Harbour Entrance – No. 1.2 and Tennyson Inlet – No. 3.9.

136. The policy together with the rule seek to give effect to the requirements of Section 6(c) of the RMA and Policy 11 of the NZCPS.

**The anticipated environmental result**

137. 8.AER.1 seeks: 'An increase in the number and extent of ecosystems, habitats and areas with indigenous biodiversity value that are formally protected or covenanted (where practicable).'

138. There are a number of submitters who support Policy 8.3.7, Rule 16.7.5, and 8.AER.1 seeking that they be retained as notified. Others seek: a large-scale 'Marine Protected Area' be incorporated into the PMEP;[64] deletion of controls within Policy 8.3.7 and Rule 16.7.5 because

[63] Section 42A Report, page 8.

[64] Sea Shepherd New Zealand (1146.49), the Pinder Family Trust (578.49), Guardians of the Sounds (752.49).

they fall outside the Council's jurisdiction under the RMA and that the more specific fisheries legislation has precedence.[65]

**Policy 8.3.7**

**Within an identified ecologically significant marine site fishing activities using techniques that disturb the seabed must be avoided.**

**Rule 16.7.5**

**Fishing activity that uses a technique that disturbs the seabed within any Ecologically Significant Marine Sites, except Croiselles Harbour Entrance – No 1.2 and Tennyson Inlet – No 3.9.**

139. The evidence produced by MDC, Forest & Bird, Minister of Conservation and many others sharply defined the paucity of indigenous biodiversity in Marlborough's aquatic environment. As a result, every effort is being made by the Council and experts to sustain and grow what species remain in the marine environment, and that need ongoing protection from further disturbance.

140. The technical reporting assessed by an Expert Panel has identified selected sites that contain significant biodiversity values that warrant protection from seabed disturbance.

141. The question arises in the marine environment whether the Council has the jurisdiction to protect ESMSs from intrusion, given that fisheries under the Fisheries Act 1996 have so many fisheries-only-related functions in the marine environment.

142. That the Council does have jurisdiction is established in *Attorney-General v The Trustees of the Motiti Rohe Moana Trust*[66] in the context of the powers and duties afforded the regional council under the RMA juxtaposed with those powers exercised in relation to fisheries resources or the effects of fishing on the biological sustainability of fisheries and the aquatic environment as a resource for fishing needs which are controlled under the Fisheries Act. The High Court held that:

- a regional council must not exercise the functions at s 30(1)(d)(i), (ii) or (vii) RMA to manage the utilisation of fishing resources or the effects of fishing on the biological sustainability of the aquatic environment as a resource for fishing needs;
- a regional council may perform its function at s 30(1)(ga) RMA 'to maintain indigenous biodiversity within the CMA but only to the extent strictly necessary to perform that function'.[67]

[65] Fishing Industry (710.16), Legacy Fishing Limited (906.1), Burkhart Fisheries Limited and Lanfar Holdings Limited (610.1), PauaMAC 7 (1038.1).

[66] [2017] NZHC 1429 per Whata J at [131], [134].

[67] Section 42A Report, pages 63-64.

143. Recently the Court of Appeal in the Motiti case addressed the respective roles and powers of the fishing industry and regional councils, and decided the Fisheries Act 1999 and the Resource Management Act 1991 overlap in terms of their various functions and in pursuit of different objectives. Since the decision was issued the Fishing Industry submitters' counsel has lodged further submissions seeking to persuade the Panel that the decision supports its arguments.

144. The Panel addresses the Court of Appeal's decision here for the clarity it brings to an understanding of the distinctions that exist.

**The RMA indigenous biodiversity/Fisheries Act legislation**

145. The Court of Appeal in Motiti identified, as did Whata J in the High Court, that the fisheries legislation creates an elaborate and comprehensive scheme for the sustainable utilisation of fisheries resources for regulating commercial, customary and recreational fishing through regulations (such as setting a total allowable catch for each quota management stock). The Court held the industry's activities have two dimensions – monitoring the potential of fisheries resources to meet the needs of future generations, and avoiding, remedying or mitigating adverse effects on the aquatic environment.

146. The Court then set out the Minister of Fisheries' further obligations to achieve sustainability utilisation. In this narrative, the Court identified that the fishing industry carries out the objectives set out in the legislation, and although it recognises that biological diversity should be maintained in its own legislation, it allows that principle to be weighed against other considerations, notably that of setting total allowable catches at levels that could produce maximum sustainable yield.

**Questions of law**

147. The first three questions of law answered by the Court of Appeal are relevant to MDC's relationship with the fishing industry under the Fisheries Act 1996. The fourth question of law relating to the declaration is not relevant here.

148. Question One: Does s 30(2) of the RMA only prevent a regional council from controlling activity in the coastal marine area if the purpose of those controls is either to manage the utilisation of fisheries resources or to maintain the sustainability of the aquatic environment as a fishing resource?

149. The Court ultimately concluded the two statutes (the RMA and the Fisheries Act) pursue different objectives which overlap. Section 30(1)(ga) RMA is concerned with protecting indigenous biodiversity. The Fisheries Act is concerned with sustainable utilisation of fisheries

resources, but only to the extent appropriate to secure future stocks does it require decision makers to protect the aquatic environment. Plainly these legislative objectives overlap. Equally plainly, the RMA objective of protecting indigenous biodiversity is much broader than that of sustaining yields of quota management species in the following ways:

- (a) It is broader in scope in that the Fisheries Act protects fish, aquatic life and seaweed, while s 30(1)(ga) protects all forms of indigenous organisms and their ecosystems.
- (b) It protects indigenous biodiversity not just as a resource but for its intrinsic value and for its 'ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values'.
- (c) Its remedial or protective purpose is not limited to the effects of fishing. (Ms Gepp for Royal Forest & Bird noted that the Fisheries Act does not deal with the effects of fishing on areas of outstanding natural character.)
- (d) It permits a regional council to set what may be a different baseline for permissible effects on indigenous biodiversity in any given area.

150. In answer to Question One, the answer given by the Court is a qualified 'yes'. The effect of s 30(2) RMA is that a regional council may control fishing and fisheries resources in the exercise of its s 30 functions, including the listed s 30(1)(d) functions, provided it does not do so to manage those resources for Fisheries Act purposes.

151. Question Two: Can a regional council exercise all of its functions under the RMA concerning the protection of Māori values and interests in the coastal marine area provided that they are not inconsistent with the special provision made for Māori interests under the Fisheries Act?

152. The control of fisheries under the Fisheries Act extends to provision for taiapure - local and customary fishing, and a regional council may be required to bear that in mind when determining in a particular setting whether s 30(2) precludes the exercise of its functions under subs 30(1)(d)(i), (ii) or (viii). It is otherwise not necessary to answer the question further in Motiti.

153. Question Three: To what extent, if any, does s 30(2) of the RMA prevent a regional council from performing its function to maintain indigenous biodiversity under s 30(1)(ga)? In answering this question, is it correct to say that it is only appropriate for a regional council to exercise this function if it is strictly necessary to achieve that purpose?

154. The Court held the RMA does not specify that the function of maintaining indigenous biodiversity in s 30(1)(ga) is subject to s 30(2). The Court held it is not the case that a regional council may exercise this function only when strictly necessary when dealing with fisheries resources controlled under the Fisheries Act. But any controls imposed under subs 30(1)(d)(i), (ii) or (vii) are subject to s 30(2). Section 30(1)(ga) policies can be subject to s 30(2); but only where specified s 30(1)(d) functions are also invoked.

**Conclusion**

155. The Court of Appeal decision clarifies the role of regional councils in the sustainable management of Indigenous Biodiversity. The Panel believes the approach taken in the PMEP which is for the purpose of protecting Indigenous Biodiversity is consistent with the Court of Appeals decision.

156. On the factual evidence heard by the Panel as to the risks to Indigenous Biodiversity from seabed disturbance, sedimentation effects, and water quality effects, the Panel is satisfied that there is a demonstrated need to protect Indigenous Biodiversity in the Sounds which is under threat from those aspects. The Panel received evidence of the very comprehensive process the Council and its technical advisory panel have put in place to identify the location of indigenous marine habitat/species which are under threat, if not protected from fishing and other forms of physical disturbance. That has resulted in the PMEP identification of precisely defined ESMS sites with accompanying rules to protect them, i.e. the purpose of all those interrelated provisions is solely to protect indigenous biodiversity within those sites.

157. There was no evidence received of the fishing sector, whether in the form of governmental agencies or private entities, carrying out any such detailed assessment of risk threats to indigenous biodiversity at that detailed scale level. The Panel considers that level of detailed protection is necessary because of the concerning level of reduction in indigenous biodiversity that has occurred as a result of the effects of a combination of diverse threats in the past. No evidence of the identification of the location of those threatened habitats or the species they contain by the fishing sector was provided sufficient to satisfy the Panel that that sector was protecting indigenous biodiversity at the detailed scale which was warranted, and which is provided by the PMEP provisions.

158. The PMEP provisions have the sole purpose of protecting indigenous biodiversity from identified threat sources, and in the Panel’s view those provisions are appropriate.

**Policy 8.3.7**

159. Section 30(1)(ga) RMA gives the MDC the authority to protect its marine indigenous biodiversity. Policy 8.3.7 is thus the springboard for Rule 16.7.5 to prohibit all nominated threat activities known to adversely affect identified ESMS species.

160. A first question to be resolved was whether prohibited activity status should apply in Rule 16.7.5, or discretionary or non-complying status. Our conclusion is that there is such a paucity of marine indigenous biodiversity sites that the most effective status is that it should remain prohibited. The rule should prohibit all nominated threat activities that are known without question to adversely affect ESMS species in a significant manner.

161. The Section 42A report writer considers that the policy and the rule package aim to sustainably mange the marine indigenous biodiversity sites remaining and are not an attempt to restrict fishing activities other than for that purpose. We are satisfied that there is considerable evidence provided by the experts before the hearing and by Professor Thrush in what is essentially a peer review of the numerous technical reports on ESMSs from the Expert Panel to address the indigenous biodiversity species identified. And that there is considerable Council justification to address PMEP provisions that are intended to manage effects on these particular sites.

**Vulnerability**

162. In terms of the vulnerability of the ESMS to seabed disturbance activities, this is outlined by the report writer citing a 2014-2015 Reassessment of Significant Marine Sites.[68] Of the 129 sites originally identified, 81 were considered potentially vulnerable to bed disturbance activities. The other 42 ESMSs related to bird nesting, dolphin and whale habitats, to be addressed differently from the application of Rule 16.7.5. Other sites to be removed from the protection Category List C are No 1.2 Croiselles Harbour Entrance and No 3.9 Tennyson Inlet. The one site listed in Category D (Long Island Marine Reserve) is already protected under the Marine Reserves Act 1971. And in terms of Category E, these sites do not contain values that are significant in terms of Policy 8.1.1 and Appendix 3.

163. Of the 71 remaining sites, the report writer advises these amendments create a much more targeted approach while ensuring that the PMEP does not include unnecessary regulation. Given its prohibited status, the more targeted approach has a very high management threshold.[69] The provisions in the PMEP should be retained.

[68] Section 42A Report, pages 71-72. Reassessment of selected significant marine sites (2014-2015) and evaluation of protection requirements for significant sites with benthic values.
[69] Section 42A Report, page 72.

**Bottom trawling and dredging**

164. Professor Thrush gave extensive evidence on the effects of bottom trawling and dredging, leaving little doubt as to their adverse effects on seafloor biodiversity.[70] He also provided examples of Category A and B sites. He identified that Category A site status should be extended to a much wider range of species as being sensitive to anchoring than are currently listed in the Expert Panel reports. In his experience as a marine scientist, horse mussels, hydroids, sponges and bryozoans, foliose red algae are also highly sensitive to disturbance; he recommends that they receive Category A protection. He also made a strong argument that Category B sites be elevated to Category A, and that the much wider range of species he suggests be moved into Category A as knowledge progresses over time.[71]

165. After hearing EDS's oral submissions and evidence from Professor Thrush on ESMSs, the Panel requested further information on definitions from Professor Thrush on two points – the first on bottom trawling, and the second on dredging, which are identified threats to the marine species. This request is in the context of whether Policy 8.3.4 be amended to define better how to protect ESMSs and whether it be effects or activities based. The Panel's conclusion was that it should be activities based and resulted from the witness's answers to the definitions of bottom trawling and dredging.

166. 'Bottom trawling', as proposed by the report writer, means 'the action or practice of fishing by dragging a net or associated device on the seabed'.[72]

167. In response to the questions regarding the adequacy of this definition, Professor Thrush recommended the following amendments in order to capture the entire trawling structure:

> *Bottom trawling means the action or practice of fishing by dragging a net or associated device on the seabed including associated mechanical or other supporting operational devices over or just above the seabed.*

168. Specifically, Professor Thrust outlined that trawl nets are held open by mechanical arms commonly called 'doors' and that often it is the 'doors' not the net which comes into contact with the sea floor.

169. Professor Thrush recommended that the current definition of 'dredging' in the PMEP be amended to capture dredging for fishing purposes as follows:

[70] EDS and Forest & Bird, Professor Simon Thrush, Evidence, paragraphs 6.1-6.9.

[71] EDS and Forest & Bird, Professor Simon Thrush, Response to Minute from the Panel.

[72] Section 42A Report (Maclennan), page 76.

*Dredging means the use of mechanical devices that as defined by their very purpose come into contact (or 10m above it) with the seafloor and are moved across the seabed including (but not limited to) for:*

- *~~any activity involving the dredging of the seabed to provide~~ providing an adequate water depth for any purpose; ~~and includes~~*
- *~~any dredging activity necessary to~~ maintaining water depth levels; and*
- *fishing.*

170. The Section 42A report writer's definition of dredging in the context of the PMEP Rule 16.7.5, however, is as reflected in the existing definition: 'Dredging in the context of Rule 16.7.5 means: *Any activity of involving the towing of a device on the seabed primarily for the collection of shellfish.* This is the Panel's preferred option too as it avoids the more generic one provided by Professor Thrush that includes fishing and consequently avoids any confusion as to the purpose of the definition in the context of the rule.

171. We also concluded from the evidence of Professor Thrush that activities other than dredging and trawling (the most significant of adverse activities due to their impact on the seabed) could result in disturbance to the seabed with the same or similar adverse effect to ESMSs as that caused by fishing techniques. These activities relate to anchoring, reclamation, and deposition of dredged materials.

172. The Panel questioned whether Rule 16.7.5 should differentiate between suggested Categories A and B and/or Category C, which are suggested levels of protection as to the activities covered.

173. The practical conclusion reached was to have one rule prohibiting dredging, bottom trawling, mining and depositing of dredged materials for all ESMSs in Categories A and B sites. And as a separate rule, identify anchoring as a prohibited activity in respect of a schedule of ESMSs which are Category A sites only.

174. Reclamations are not included as prohibited because of the potential need to take actions to climate change-induced sea level rise in the manner described in Chapter 13 Policies 13.10.24 and 13.10.27 which reflect the principle of reclamation to be the last resort.

**Decision**

175. Policy 8.3.7 is amended as follows:

*Within ~~an~~ ~~identified~~ vulnerable ecologically significant marine sites, activities ~~using techniques~~ that disturb the seabed must be avoided.*

176. The explanatory paragraph to 8.3.7 is amended as follows:

*Some ~~fishing~~ activities use techniques or practices that result in disturbance of the seabed. Depending where this occurs, there is the potential for adverse effects on marine biodiversity. The policy seeks to specifically avoid ~~the use of these techniques~~ activities that disturb the seabed to ensure areas identified as having significant biodiversity value in the coastal marine area, and which are identified as being vulnerable to such disturbance, are protected. This will help to give effect to Policy 11 of the NZCPS. Ecologically Significant Marine Sites evaluated to be vulnerable to seabed disturbance are identified as Category A and Category B sites in Appendix 27.*

177. Rule 16.7.5 is replaced with the following:

*16.7.5 Dredging, bottom trawling, anchoring, deposition and reclamation within any Category A Ecologically Significant Marine Site listed within Appendix 27.*

*16.7.6 Dredging, bottom trawling, deposition and reclamation within any Category B Ecologically Significant Marine Site listed within Appendix 27.*

178. Include a new Appendix 27 as identified earlier in this decision.

179. A definition of bottom trawling is included in Volume 2, Chapter 25 as follows:

*Bottom trawling means the action or practice of fishing by dragging a net, including other associated mechanical or supporting devices, where the net or devices come into contact with the seabed and/or the ecology of the seabed.*

### Biodiversity Offsets

### Policy 8.3.8

**With the exception of areas with significant indigenous biodiversity value, where indigenous biodiversity values will be adversely affected through land use or other activities, a biodiversity offset can be considered to mitigate residual adverse effects. Where a biodiversity offset is proposed, the following criteria will apply:**

**(a) the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated;**

**(b) the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity;**

**(c) where the area to be offset is identified as a national priority for protection under Objective 8.1, the offset must deliver a net gain for biodiversity;**

**(d) there is a strong likelihood that the offsets will be achieved in perpetuity;**

**(e) where the offset involves the ongoing protection of a separate site, it will deliver no net loss and preferably a net gain for indigenous biodiversity protection; and**

**(f) offsets should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity.**

180. A wide range of submissions were made on this policy ranging from those who sought its deletion to a number in support with a further range seeking various amendments. Those seeking deletion essentially argued that the exclusion of offsetting in areas of significant biodiversity value would mean adverse effects in those areas always have to be avoided even if offsetting was capable of providing different but still significant biodiversity value.

181. The range of amendments sought included amongst other relief sought - deletion of the opening words excluding areas of significant biodiversity; amendments to clarify the 'mitigation' hierarchy proposed; others seeking that it is made clearer that off-setting is not mitigation; exclusion of offsetting in the marine environment; restriction to types of biodiversity by reference to Appendix 3, or application of offsetting only to significant biodiversity, or exclusion of culturally significant biodiversity.

**Section 42A Report**

182. The original report took considerable guidance from the NZ Government Guidance on Good Practice Biodiversity Offsetting in New Zealand, New Zealand Government et al, August 2014 – a document on which many submitters also relied. That document contains 10 principles which the report writer traversed in considering the submissions made and the recommendations made.

183. The detailed discussion in the original report was probably best summarised by the following views expressed at pages 84-85:

> *Given the direction set out in the guidance note, I consider that it could be appropriate to limit the biodiversity offsetting policy to those areas that are not considered significant. However, in order to reach this position, the areas that are considered 'significant indigenous biodiversity' within the Marlborough District must be considered irreplaceable, or so vulnerable that they cannot be replicated. I consider that the assessment criteria listed in Policy 8.1.1 and Appendix 3 of the MEP will classify a large spectrum of indigenous biodiversity within Marlborough as 'significant'. Some of these areas that meet the significance criteria will have very high biodiversity values which would be considered irreplaceable. However, other areas will be able to be replicated through an offset and achieve an environmental gain. As such, I consider that limiting the policy to areas of non-significant biodiversity value may result in a loss of opportunity to undertake appropriate biodiversity offsets. Accordingly, I recommend that the policy is not limited to areas of non-significant indigenous biodiversity, and instead any indigenous biodiversity offset can be considered against the policy and assessed on its merits.*

184. The recommended amendments reflected that approach with possibly the most significant being the deletion of the opening words and expansion of the criteria to reflect the Guidance approach more closely.

**Consideration**

185. The Panel agreed with that overall approach advanced by the report for the reasons provided in the original and reply reports but differed as to some of the wording. In particular the Panel preferred to emphasise that any net gain needed to be related to the like for like principle i.e. providing that gain in the context of the same area where the affected biodiversity was located. The Panel also accepted that it was impractical and unrealistic to impose concepts of perpetuity.

186. To achieve those ends some limited wording changes were made from the wording recommended.

**Decision**

187. Amend Policy 8.3.8 as follows:

*~~With the exception of areas with significant indigenous biodiversity value, w~~Where indigenous biodiversity values will be adversely affected through land use or other activities, a biodiversity offset can be considered to ~~mitigate~~ offset significant residual adverse effects. Where a biodiversity offset is proposed, the following criteria will apply:*

*(a) Residual adverse effects: the offset will only compensate for significant residual adverse effects that cannot otherwise be avoided, remedied or mitigated;*

*(b) Limits to offsetting: offsetting should not be applied to justify impacts on vulnerable or irreplaceable biodiversity.*

*(~~b~~c) No net loss: the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity;*

*~~(c) where the area to be offset is identified as a national priority for protection under Objective 8.1, the offset must deliver a net gain for biodiversity;~~*

*~~(d) there is a strong likelihood that the offsets will be achieved in perpetuity;~~*

*~~(e) where the offset involves the ongoing protection of a separate site, it will deliver no net loss and prefereably a net gain for indigenous biodiversity protection; and~~*

*~~(f)~~(d) Like for like: offsets should re-establish or protect the same type of ecosystem or habitat that is adversely affected, unless an alternative ecosystem or habitat will provide a net gain for indigenous biodiversity in the same area.*

*(e) Proximity: the proposal should be located close to the application site, where this will achieve the best ecological outcomes.*

*(f) Timing: the delay between the loss of biodiversity through development and the gain or maturation of ecological outcomes is minimized.*

*(g) Any offsetting proposal will include biodiversity management plans prepared in accordance with good practice*

**Buffers**

188. It is the evidence of Andrew Baxter for the Minister of Conservation that the ecologically significant benthic marine sites are mapped with boundaries matching the spatial extent of the values present (based on the best available information). Some are irregular in shape and do not include a buffer for protection against direct effects (accidental or intentional encroachment into the area by trawlers or dredges). But they are a useful management tool as they provide greater security in terms of long-term protection.

189. Mr Baxter cites with approval a Davidson et al (2015) report proposing three peripheral management areas or buffers around ecologically significant marine sites of 50 metres, 100 metres or 200 metres, as follows:

| Significant site location | PMA size (m) |
|---|---|
| Offshore (most or all of site >1 km from shore) | 200 m |
| Moderate distance (most of site located 200 m to 1 km from shore) | 100 m |
| Site <4 ha in size and close to shore | 50 m |

190. The report writer believes that these buffers would provide important added protection for identified significant sites, and the variable distances proposed reflect the differences between offshore and onshore sites. Sites located close to shore with better frames of reference (headlands and shoreline generally) are less likely to be encroached upon compared with offshore sites well away from reference points.[73]

191. Professor Thrush for EDS considers that buffer zones around protected areas of the sea floor may be a practical and necessary solution to keeping SNAs (ESMS) safe from disturbance. He notes there are other biological reasons to consider buffer zones useful:

- One of the strongest relationships in ecology is that species richness (a measure of diversity) increases with area. Therefore buffer zones that increase the probability of protection of the entire SNA are likely to enhance biodiversity.[74]

[73] Minister of Conservation, Andrew Baxter Evidence, paragraph 104

[74] EDS, Professor Simon Thrush Evidence, pages 12-13.

- A zone around a SNA [ESMS] is likely to limit the indirect effects of trawl and dredge disturbance such as elevated sediment concentrations. This may allow protected habitats to export organisms to aid disturbed habitats.
- SNAs [ESMSs] not only support high biodiversity but are also a source of colonists to supply organisms across the country.

**Section 42A Report**

192. The report writer referred to the fact that for other reasons an overlay map is amended to create the two categories of significance:
    - Category A – which will cover the 11 Category A sites that are vulnerable to dredging, bottom trawling, anchoring, mining, deposition of dredged materials
    - Category B – which will cover the 61 (as amended below) Category B sites that are vulnerable to dredging, and bottom trawling

193. The report continued to recommend that the same appendix providing for those two categories be utilised as the base data for the establishment of buffers. The report writer recommended buffers being included to provide a method of management of activities adjacent to ESMSs to ensure avoidance of adverse effects on those sites sensitive to seabed disturbance. In his recommendation the report writer provided a table for category A and B sites that identified the relevant buffer distance depending on species composition within the ESMS. This was based on the Davidson et al (2015) report.

**Consideration**

194. In the light of this evidence, the Panel questioned whether the mapping of ESMSs was sufficiently precise to provide the necessary protection. Mr Baxter's reference to the often irregular shape of ESMSs and the omission of buffers is of concern.

195. We concluded buffers are important to provide but queried in what form and how they should be defined. MPI[75] sought that buffers not be included in the Plan, but if buffers were to be imposed their preference was to utilise straight lines to assist fisherman or other users of the coastal marine area in being able to more readily recognise the boundaries of the buffers.

196. However, the Panel considered that the use of straight line definitions at particular locations resulted in further complications. That could affect large areas of the coastal marine area not relevant to the purpose of the buffer, which is to protect the ESMS from adverse effects.

[75] MPI, Stephen Halley Evidence, paras 9.4, 9.5 and 77 - 88

197. The Panel instead decided to utilise a methodology based on Mr Baxter's evidence which defines the recommended buffer boundaries from ESMSs using a range of distances, which relate to the species composition within the ESMS. That will be achieved by an appendix which will form the basis for the mapping of the buffers. That electronic mapping will be able to be utilised to assist users of the coastal marine area. (On the printed version of the maps because of the scale of 1:80,000 the buffers may be indistinct if visible at all. However on the electronic version they will be readily observable because of the ability to zoom into individual ESMS sites.)

198. A consequence of establishing buffers is that management must apply to activities within the specified buffer distance. The Panel does not believe that the prohibition applying to bed disturbance activities within the ESMS is appropriate in the context of the intent of the buffers. The buffers are intended to provide precautionary protection in the immediate vicinity of the sites. A discretionary activity is more appropriate in managing potential adverse effects of bed disturbance activity adjoining ESMS. This would allow those effects to be considered through a resource consent process utilising the direction provided by the objectives and policies of Chapter 8.

**Decision**

199. That buffers are to be established for all ESMS sites listed in Category A and Category B sites in new Appendix 27 in accordance with distances specified in Davidson et al (2015).

200. Insert a new discretionary activity rule prior to Rule 16.6.6 as follows:

*Any dredging, bottom trawling, or deposition within the buffer for any Ecologically Significant Marine Site specified in Appendix 27.*

**Clova Bay ESMS 3.14**

201. In terms of ESMSs, Mr Caddie for KCSRA and CBRA drew our attention to the fact that ESMS 3.14 in Clova Bay (potentially among the most important areas for snapper in Pelorus Sound) had been omitted as a site warranting Category B protection.[76] ESMS 3.14 is described as 'the intact subtidal habitats immediately offshore'. We concluded the site had been overlooked in error.

202. The Panel was also referred to Deep Bay, Tory Channel on the eastern side of Arapea Island where an ecologically significant marine site referred to in Davidson et al identified at ESMS 5.7 as having a significant cockle bed, particularly because of the larger size of the cockles. The

[76] See also Davidson et al Categorisation Report, Figure 2 map.

submitter expressed alarm that overland sediment flows from forestry activities in the Deep Bay catchment had caused the cockle bed to be smothered either entirely or substantially. The result is that the gatherers of māhinga kai no longer visit. The Panel sought a re-survey of the substantial cockles which was undertaken by Davidson et al.

203. Divers collected samples to investigate cockle density and size from the head of Deep Bay. The results of this survey indicate that cockle data collected in 2003 prior to logging, and in 2019 after logging, show cockle abundance and mean size have changed little over this period despite the evidence we received of a period of heavy sedimentation. The survival of this cockle bed is therefore fortunate. However, it remains vulnerable to a combination of forest harvest and heavy rain events or any other physical disturbance. This cockle bed is the only known feature of its kind in Marlborough and a representative example of cockle beds once more widespread throughout New Zealand.[77]

204. Given the Panel's decision on buffers for ESMS elsewhere in this decision, the Panel also had to consider the appropriate buffer for ESMS 3.14. Although the Panel did not receive specific evidence on this matter, it considered the source document for the Section 42A recommendations with respect to buffer width.[78] The Panel notes that the criteria for a 100 metre buffer is small bays or sites located near the shore.[79] The Clova Bay site meets this criteria. The Panel has therefore reached the view that a buffer of 100 metres should apply to ESMS 3.14. The decision is consistent for like habitats in other locations.

**Decision**

205. Site 3.14 is reinstated in the Category B sites with a buffer of 100 metres.

### Overlay maps 17 and 18

206. Decisions are needed as to issues in respect of Overlay Maps. Maps 17 and 18 as to whale and dolphin habitats or marine mammal routes were not included in the maps of ESMSs of maps 1 – 16 but showed a legend that included them as 'Ecologically Significant Marine Sites'. That legend is misleading and should be deleted.

207. The question under the general heading of 'Maps' is should they be Distribution maps only, or ESMS maps?

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[77] Response to Panel Minute No 45, Davidson et al, Research, survey and monitoring report number 934.

[78] Davidson et al (2015): Reassessment of selected significant marine sites (2014/15) and evaluation of protection requirements for significant sites with benthic values.

[79] Davidson et al (2015), page 21

208. Policy 8.3.5(i) requires that in the context of Policies 8.3.1 and 8.3.2, adverse effects to be avoided or otherwise remedied or mitigated, and may include:

*… (i) impacts on marine mammal sanctuary, marine mammal migration route or breeding, feeding or haul out area.*

**Whales**

209. MFA and AQNZ oppose the FNHTB request to amend the definition of 'Ecologically Significant Marine Site' to include Maps 17 and 18 which relate to whales and dolphins. The aquaculture witnesses, Drs Clement and Childerhouse, gave evidence that the Inner Sounds regions should not be included as part of the mapped area on Map 17. It should not be part of the whale migratory corridor as no whales are regularly found in these areas, and there is no evidence that any whale species are breeding, feeding or resting there either. The witnesses assume that 'lines on the map have been drawn substantially from (onlookers) sighting data and that the presence of an occasional individual in these areas has meant that these areas are equated to significant habitat' in the PMEP. They are critical of this approach.[80]

210. Other experienced witnesses agree with Drs Clement and Childerhouse and state that whales have rarely been observed travelling through Tory Channel. The Davidson 2011 Significant Site Report refers to the whales inhabiting Cook Strait rather than Tory Channel. This information is also endorsed not only by Andrew Baxter for the Minister of Conservation but by former whalers, including Thomas Norton who stated that in his extensive experience he and his whaling colleagues had seen whales head in to Tory Channel (by mistake) then turn and head back out again. Mr Perano, a descendant of whalers and former professional whaler, had never seen humpback whales stop to rest and feed in their northern and winter migration in the Cook Strait whale migratory corridor. To his evidence he attached Figure 1 detailing the Perano whaling stations and the humpback whale migration route in the Strait.

211. East Bay (an inlet) is also identified in ESMS 7.15 of Overlay Map 17 but it is also not part of a Cook Strait migratory corridor.[81] Mr Perano is very confident that East Bay is not part of the Cook Strait whaling corridor.

212. Counsel for the aquaculture industry make the valid point that while Maps 17 and 18 are excluded from the definition of an ESMS, they are based on the mapping in Davidson 2011. Presumably, therefore, they implicitly meet the significance criteria in Policy 8.1.1 and

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[80] AQNZ and MFA, Counsel Submissions, Dr Deanna Clement and Dr Simon Childerhouse, Cawthron Institute, Joint Statement of Evidence, paragraphs 18, 19, 37-40.

[81] Section 42A Report, Topic 21 Definitions (2018) at paragraph 85.

Appendix 3. As a result, a strict avoidance approach will apply to these entire areas under Policy 8.3.2(a) if they remain.

**Dolphins**

213. The witness for the Minister of Conservation indicated the areas mapped by Davidson et al (2011) represented a good starting point at the time for recognising some key marine mammal values. He believes the Cloudy/Clifford Bay Hector's dolphin area and the Admiralty Bay dusky dolphin foraging area are still reasonable in terms of mapping their known core values. The Cloudy/Clifford Bay Hector's dolphin area aligns with the Clifford and Cloudy Bay Marine Mammal Sanctuary.[82]

214. However, Drs Clement and Childerhouse, witnesses for the aquaculture industry, consider Map 17 is based on out-of-date information on dusky and Hector's dolphins. The map does not, for example, account for bottlenose dolphins, common dolphins or killer whales.[83]

215. Admiralty Bay (ESMS 2.17, Map 18) is an important winter feeding area for dusky dolphins, where they employ cooperative feeding strategies. Despite being one of the most heavily studied areas, Drs Clement and Childerhouse identify that marine mammal experts have been unable to agree on the extent of this important habitat.[84] This habitat does not equate to nationally significant habitat in terms of NZCPS Policy 11(a).[85] Admiralty Bay caters for only 6–9% of the Kaikoura population of dusky dolphins, or approximately 2–4% of the wider New Zealand population of some 30,000 dusky dolphins. Consequently, in the submission of counsel for AQNZ and MFA, a strict avoidance policy is not justified in terms of ESMS 2.17.[86]

**Consideration**

216. The Section 42A report writer's recommendation is to retain the definition as notified because the relevant rules in the PMEP provide for the protection of the sea floor only within significant sites (as mapped in 1-16). These are not the focus of the dolphin and whale maps.

217. Map 17 is a distribution map and does not include ESMS. It indicates areas where observations of marine mammals including dolphins have occurred indicating habitat, but removing the inner Sounds from Map 17 using the northern tip of Long Island as the central

[82] Minister of Conservation, Andrew Baxter Evidence, paragraph 115.

[83] AQNZ and MFA, Clement and Childerhouse Evidence, paragraphs 41-49.

[84] AQNZ and MFA, Quentin Davies/Amanda Hills/Savannah Carter Legal Submissions, paragraphs 61-62.

[85] AQNZ and MFA, Quentin Davies/Amanda Hills/Savannah Carter Legal Submissions, citing Markowitz TM, Harlin AD, Wursig B, McFadden CJ 2004. Dusky dolphin foraging habitat: overlap with aquaculture in New Zealand. Aquatic Conservation: Marine and Freshwater Ecosystems 14: 133- 149.

[86] AQNZ and MFA, Quentin Davies/Amanda Hills/Savannah Carter Legal Submissions, paragraphs 62.

location of a line linking Capes Koamaru and Jackson. The line for Map 17 is to be drawn across the entrances to Tory Channel and Port Underwood so they too are excluded.

218. Map 18 too is a distribution map only, with no ESMS involved. The motivation underlying the submission of protection (ability to carry on aquaculture) is not affected by this map – the concern would arise if Policy 8.3.5(g) came into play: *(g) impacts on habitats important as breeding, nursery or feeding areas, including for birds;* and on the evidence it does not, as the map is only a record of some sightings of dolphins, not at importance level.

**Decision**

219. Delete legend “Ecologically Significant Marine Sites” from maps 17 and 18 as to marine mammal (whale) and marine mammal (dolphin).

220. Maps 17 and 18 are to be included on a separate overlay series as species distribution maps only.

221. The boundary for Map 17 is to be drawn across the entrance to Totaranui/Queen Charlotte Sound (from Cape Koamaru to Cape Jackson), and across the entrances to Kura te au/Tory Channel and Te Whanganui/Port Underwood.

222. The status of site 7.15 is to be renamed ‘Cook Strait Whale Migratory Corridor’.

223. Site 4.17 is to be renamed ‘Hector’s dolphin’.

224. Insert the following sentence in Method 8.M.4:

*Whale migration routes and dolphin distribution in Marlbrough’s coastal marine area are depicted on maps in Volume 4.*

**ESMS 12**

225. Port Marlborough, AQNZ and MFA sought exclusion of the Port Zone at Havelock from site 3.20.They requested that the Port Zone and reclaimed land be excluded from site 3.20 because Rule 13.1.25 provides for dredging and associated disturbance of the foreshore and seabed within the Port Zone at Havelock. The Port Zone at Havelock extends from the physical port facilities out past Cullens Point to approximately Kaiuma Point and includes the navigational channel. The Port Zone overlaps with site 3.20. Due to the use of the navigational channel and associated maintenance of that channel it is not expected that the significant biodiversity values will exist within the Port Zone.

226. For these reasons, the Panel considers that the Port Zone should be removed from site 3.20.

**Decision**

227. The Port Zone is excluded from ESMS 12, site 3.20

### ESMS 13

228. A submission was received from PMNZ seeking a more accurate definition of the boundaries of the extent of the ecological feature (eel grass bed) at the head of Shakespeare Bay denoted as site 4.10. The Section 42A Report recommended that the issue be referred to the expert panel for ESMSs but the submitter had presented to the Panel a scientific report which is public information by Berthelsen et al 2016 which delineated in a research manner a suggested boundary for the eel grass bed. The Panel accepts that the evidence is sufficient to be reliable in fixing that boundary in planning terms and accordingly the boundary needs a slight adjustment as compared to the notified PMEP to reflect that report.

**Decision**

229. The boundaries of site 4.10 ESMS 13 be delineated in the PMEP in accordance with the boundaries outlined in the Berthelsen et al 2016 report.

### Birds

230. We considered whether the Important Bird Area (IBA) maps as sought by FNHTB should be used to identify feeding habitat areas in the PMEP.[87]

### Policy 8.2.3

**Priority will be given to the protection, maintenance and restoration of habitats, ecosystems and areas that have significant indigenous biodiversity values, particularly those that are legally protected.**

**New Zealand king shag**

231. Under Issue 8A of Chapter 8 and the heading 'Marine Environments' and Policy 8.3.5(i), the PMEP identifies that Marlborough's marine environment supports a significant diversity of sea birds, most of which rely on the area for breeding, raising young or for feeding. Of particular note is the New Zealand king shag, which is endemic to the Marlborough Sounds.[88]

232. FNHTB consider that Policy 8.1.1 is a duplication of Appendix 3 but the criteria in those two documents do not recognise bird feeding areas as required by NZCPS Policy 11(v) which states 'includes habitats, including areas and routes, important for migratory species'. The submitter provided strong evidence that the feeding areas of the New Zealand king shag constitute an ecologically significant site. He identifies that the map of data points currently in the ESMS of the PMEP is not complete, with the data points from western Marlborough Sounds not shown.

[87] MFA Counsel submissions challenged whether there was scope for inclusion of IBA maps raised in the Section 42A Report.

[88] MEP, Volume 1, page 8-3.

233. The MFA and AQNZ oppose this request and support the Section 42A report writer's recommendation that any potential change to the significance criteria around the king shag should be considered and endorsed by the Marine Expert Panel.[89]

234. Mr Hamill does not agree that bird feeding areas specifically need to be included in the criteria as other classes of animal are equally important. He believes that by adding to the 'High' H guideline and the Diversity and Pattern criteria in Appendix 3 the fact that the site is an important feeding area for threatened indigenous species will recognise the importance of those feeding areas.[90] In that way the relief may be partly granted by amending the importance of these feeding areas.

235. Dr Urlich takes a different approach. He identifies the Rarity criterion in Appendix 3 already considers a site that contains nationally threatened or endangered species is of High Significance. He notes that the king shag is classified by DOC as 'nationally endangered'. In addition, an Environment Court decision has made a determination that these feeding areas would be threatened by the addition of a marine farm which would have removed potential feeding habitat and consequently contribute to the king shag's extinction. The next step, Dr Urlich considers, is for the Expert Panel on Ecologically Significant Marine Farm Sites to consider information that identifies and endorses the spatial extent of the king shag feeding area.[91]

**Consideration**

236. The king shag habitat is recorded in the list of Ecologically Significant Marine Sites (ESMS) Appendix 5. The king shag is assessed to be 'nationally endangered' under the New Zealand Threat classification while NZCPS Policy 11 (i), (ii), (iii) requires the protection of indigenous biological diversity in the coastal environment, and those indigenous fauna that are listed as threatened or at risk in the New Zealand Classification System lists (stated). The authors of Davidson Environmental et al recognised the Port Gore Hunia site 2.35 as a colony used by approximately 30 king shags and the site was subsequently adopted as a significant site by the peer review panel.[92]

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[89] Section 42A Report (Hamill and Urlich), Reply to Evidence (Policy 8.1.1, Appendix 3 and Volume 4, Significant Marine Farm Sites Overlay, page 8).

[90] Section 42A Report (Hamill and Urlich), para 64

[91] Section 42A Report, Reply to Evidence, Policy 8.1.1, Appendix 4 and Volume 4, Significant Marine Farm Sites Overlay, page 8.

[92] Davidson Environmental et al. *Significant marine site survey and monitoring programme: Survey 2015-2016,* Research, survey and monitoring report number 836, page 42.

237. We concluded the reasons for the decision are to be worded in a manner which refers to Method 8.M.4 referring to the fact that Appendix 5 lists ESMS 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9 which depict the breeding locations on the ESMS overlays. There is no scope, however, to include the IBA maps.

238. A new possible breeding site at Tawhitinui has only just gone to the Expert Panel for recommended inclusion and would have to be subject to a variation to be included in the PMEP. These breeding colonies are identified as needing protection in Policy 8.3.5(g) as notified.

239. The evidence is that the feeding habitat of king shags is up to a 25 km radius from breeding colonies, but they are limited by their flying habit which avoids flying over major ridge lines, hence those ridge lines in the Tory Channel do not appear to be flown over by these birds.

240. The IBA maps are regarded as too imprecise and are non-specific to king shags. They are based on habitat for both the shags and other non-threatened bird species, and a clear example of that was that they did not take into account the topographical flight limitation on king shags.

241. These background considerations require an explanatory statement for the proposed new policy which is set out in the decision below.

**Decision**

242. Sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9 are retained in the ESMS overlays.

243. In terms of Policy 8.2.3, 'king shag' is added to the bird examples of the explanation to that policy as follows:

*A number of specific areas will fall into Priorities 2 and 3, for example wetlands, the stony beach ridges at Rarangi and the coastal limestone cliffs. In terms of Priority 4 habitats, in Marlborough bird species such as king shag, the New Zealand falcon, weka, rifleman and plant species such as pīngao, Muehlenbeckia astonii and native broom species are either acutely or chronically threatened.*

244. A new Policy 8.3.5 is inserted as follows:

*[C]*

*Take into account that king shag could feed in the coastal marine area within 25km of the breeding sites recorded as Ecologically Significant Marine Sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9*

245. Insert a new explanation to that new policy 8.3.5 as follows:

*King shag are endemic to the outer Marlborough Sounds. The breeding and roosting sites of king shag are recognised as Ecologically Significant Marine Sites within the Plan (sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9 in Volume 4). The limited number of king shag and the restricted breeding sites make king shag vulnerable.*

*King shag leave the breeding and roosting sites to forage for food in the coastal marine area. The foraging can occur up to 25km from sites. It is therefore important to consider the potential for adverse effect on king shag feeding as part of the exercise of assessing the actual or potential adverse effects of activities in the coastal marine area. However, such an assessment is only necessary within 25km of sites 1.6, 2.11, 2.14, 2.21, 3.3 and 3.9. It will also be important to take into account that land topography can limit the ability of king shag to access some areas of the coastal marine area within such a distance.*

### Threatened Environments Overlay

246. Clearance of indigenous vegetation within a 'Threatened Environments – Indigenous Vegetation Site' overlay (TEO) is not permitted within the PMEP. TEOs seek to protect the areas within Marlborough that have the least remaining indigenous biodiversity cover. Any clearance of indigenous vegetation in these areas requires consent as a discretionary activity. The rules are contained within a number of zones. Appendix 4 of the PMEP includes an overlay map identifying the threatened environments.[93]

247. There are a number of submitters that seek: the TEO to be removed or amended to exclude areas that do not require protection such as urban areas, the Coastal Living Zone, working rural and forestry areas;[94] other submitters consider the proposed rules are too onerous and include highly productive land and modified valley floors and plains;[95] another suggests the TEOs are not mentioned in Chapter 8 and therefore the implementation of the overlay areas is confusing.[96] One other supports the inclusion of the TEO as there is very little surviving indigenous biodiversity.[97]

**Section 42A Report**

[93] Section 42A Report, pages 49-58.

[94] Sharon Parkes (339.15), Talley's Group Limited (374.10), Okiwi Bay Limited (458.5), M and R Hippolite (488.2), Karaka Project Limited (502.6), the Oil Companies (1004.100), NZ Forest Products (995.23), A Harvey (388.6), Raeburn Property Partnership (861.16), E and A Ryan (347.8), M Chapman (448.31), Dominion Salt Limited (355.12).

[95] Federated Farmers (425.534), M. Chapman (348.30).

[96] PMNZ (433.34).

[97] DOC (479.198).

248. The report writer considers the TEO is a blunt instrument for protection, as it will protect all vegetation within the overlay areas regardless of the quality or value of the protection (for example, the landowner planting in a domestic garden). 'This is a very inefficient method of protection.' He tentatively recommends that the TEO be removed from the PMEP as the environmental benefits gained through restricting the removal of indigenous vegetation would be outweighed by the potential costs associated with implementing the rule.[98]

249. If the TEO and its associated rule is removed, the report writer considered Standard x.3.x.3(b) in fact protects indigenous vegetation within 20 metres of an ESMS; Standard x.3.x.4 protects specific indigenous vegetation within the coastal environment; while various voluntary methods otherwise seek to maintain and enhance areas of biodiversity.

250. Nevertheless retaining the TEO is identified by the report writer as the best way to achieve Objectives 8.1 and 8.2 and to achieve that retention, he identifies several recommendations to assist those objecting to the overlay, and to that end:

- make additions to Standard 3.x.3(a);
- remove the overlay from the Coastal Living Zone which has similar characteristics to those of urban areas;
- remove the overlay from any zone to which it does not relate;
- provide an addition to the explanation of Policy 8.3.3;
- provide an addition to one of the methods of implementation to achieve the direction set out within Policy 8.3.3 (control vegetation clearance to retain ecosystems, habitat and areas with indigenous biodiversity value.

**Consideration**

251. Among those who seek to have the overlay retained (Marlborough Environment Centre, Forest & Bird), Mr Ensor for the Minister of Conservation put forward a case for retaining TEO. He notes that the report writer for the Council sees somewhat doubtful merit in retaining the facility but, as some sites are modified, the indigenous vegetation remaining may rank highly against the Appendix 3 criteria. Further, the TEO and its associated rule implements Policy 8.3.1 Managing effects of subdivision use and development in the coastal environment (a)-(c), and gives effect to Policy 11(a) NZCPS Avoiding adverse effects on (a)(i)-(vi). This result would be compromised by the change to exclude the TEO. Mr Ensor also suggested a number of

[98] Section 42A Report, pages 49-50.

clearance rules and modifications to Standards X.3.X.3 and X.3.X.6 which the Panel considered in our evaluation of this topic.[99]

252. The evidence produced by another witness for the Minister of Conservation addresses TEOs and identifies that the inclusion of vegetation clearance rules in the PMEP goes some way to protecting SNAs and potential SNAs, particularly in areas which are most depleted. The risk of removing the overlay and its related rules would mean that the regulatory protection over most of the most depleted parts of Marlborough would be substantially eroded.[100]

253. Forest & Bird also strongly recommends the retention of the TEO,[101] noting that the limitation of this approach is that it does not cover the hilly areas of South Marlborough which have been identified in Marlborough's Protected National Areas programme. Ms Martin believes that the reasons for removal suggested by those who opposed the inclusion may be dealt with through limited and specific rule exceptions (identified in Appendix 1 to her evidence).

254. The report writer recommends that if the TEO were to be retained, the overlay relate only to the Rural/Coastal Environment/Open Space 1/Open Space 2/Open Space 3/Open Space 4 Zones, and that the PMEP maps are amended so the TEO layer is removed from the zones or areas to which the layer does not relate. Urban areas, the Coastal Living Zone, working rural and forestry areas would be excluded. This will avoid confusion for plan users. The report writer considers this approach could be an interim one while the SNA programme is fully established.

255. The report writer also recommends an explanation associated with Policy 8.3.3 and also the methods of implementation to achieve the direction achieved in the policy.[102]

256. The questions for the Panel encompassed whether the TEO be retained, coupled with stricter standards, or be deleted. We concluded that all those zones and areas to which the layer does not relate as referred to in the Section 42A Reports need to be removed from the TEO.[103]

257. We also considered from the recommendations and the submitters who informed the issue that several methods of implementation require amendment to reflect the intention of the TEO as do the AERs. We turn now to address the methods.

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[99] Minister of Conservation, Tim Ensor Evidence, paragraph 6.10, citing Marlborough District Council, 2016. Summary Report on the Results of the Significant Natural Areas Project 2015-2016, Report No. 16-004 (Simon Moore Evidence).

[100] Minister of Conservation, Simon Moore Evidence, paragraphs 3.3.2

[101] Forest & Bird, Deborah Martin, Evidence, page 8

[102] Section 42A Report, Reply to Evidence, page 30.

[103] Section 42A Report, pages 49-50; Reply to Evidence, page 30.

**Method 8.M.2 District rules**

258. MDC seeks that there should be a better link between the method and subsequent standards relying on the TEO. The Council seeks that the following sentence is added to the end of 8.M.2:

*This includes clearance of indigenous vegetation in areas that have 20% or less of remaining indigenous cover, as identified in the Threatened Environment Overlays Maps.*[104]

**Method 8.M.9 Regional Pest Management Plan for Marlborough**

259. Method 8.M.9 seeks to implement Policy 8.2.7. There were a number of submissions to Policy 8.2.7 that sought clarification of the relationship between the policy and Method 8.M.9, while Mr Chapman sought the deletion of Method 8.M.9.

**Section 42A Report**

260. The report writer had a firm view that it was not appropriate for Method 8.M.9 to direct the process for reviewing or implementing the Regional Pest Management Plan. He recommended a change to the notified wording of Policy 8.2.7 to, in part, clarify the relationship with Method 8.M.9 (which the Panel has adopted). The report writer went on to recommend the replacement of Method 8.M.9 with a new method placing emphasis on the development of biosecurity strategies to guide the management of invasive species threatening indigenous biodiversity.

**Consideration and Decision**

261. The Panel agrees with the report writer and Mr Chapman[105] that the current method is inappropriate. Method 8.M.9 is too specific and relies on a single means of implementation. The Regional Pest Management Plan may not be an appropriate means of managing of invasive species threatening indigenous biodiversity. The Panel's view is that the method should be broader in intent.

262. Method 8.M.9 is amended as follows:

*Method 8.M.9 ~~Regional~~ Pest management ~~Plan for Marlborough~~*

*~~The Regional Pest Management Plan for Marlborough (prepared under the Biosecurity Act 1993) classifies a range of plant and animal species as pests because they cause or have the potential to cause significant adverse effects on Marlborough's economy and/or environment. Individual pests are placed in one of three categories. The management regime, which includes rules for each pest, applies mostly to terrestrial environments but does include aquatic plant~~*

[104] MDC (91.134)

[105] M Chapman (348.14).

~~*and animal pests. The plan also lists plant and animal species that pose potential threats to ecological values in Marlborough. These species do not have a specific regime for control because they do not pass the required cost benefit tests set out in the Biosecurity Act. However, control of these pests will likely be based on a 'site led' approach, targeted to sites with significant ecological value where the reduction of a range of pests would be effective in protecting those values.*~~

*The Council will consider the development of strategies to guide the management of invasive species threatening indigenous biodiversity in Marlborough. Such strategies can guide the use of a combination of regulatory and non-regulatory mechanisms. They will also recognise the role of Council under other statutes such as the Biosecurity Act 1993 to manage new and emerging threats, and other initiatives to manage the immediate threats from established species. An underlying principle will be the recognition of the important role that landowners play in this regard.*

**Method 8.M.10**

263. We note from the Section 42A Report that the MDC recommended that riparian margins can also be planted.[106] MDC seeks an addition to 8.M.10 to convey that the Council will undertake planting not only of riparian margins but also of other land with indigenous species on land owned or administered by the Council.[107]

264. The report writer considers this is appropriate as it provides greater clarity as to how the Council will achieve the outcomes in Objective 8.2. Accordingly, 8.M.10 is recommended to state as follows:

*The Council will undertake planting of riparian margins and other land with indigenous species on land owned or administered by the Council where appropriate.*

**Decisions**

265. The Methods of Implementation 8.M.2 District rules, 8.M.9 Regional Pest Management Plan for Marlborough, 8.M.10 Riparian planting on Council-owned land are all amended as recommended above.

266. The submissions seeking the deletion of TEO's from the plan are not accepted entirely. The Threatened Environment Overlays will apply to the following zones only:

267. Rural, Coastal Environment, Open Space 1, Open Space 2, Open Space 3, Open Space 4

[106] Section 42A Report, pages 34-35.
[107] MDC (91.163). Section 42A Report, pages 29-30.

## Indigenous vegetation clearance rules and standards

**Standard X.3.X.3(a) Clearance of indigenous vegetation**

268. One submitter considers that the rules and standards within the PMEP do not cover all areas that are 'significant' under the criteria in Policy 8.1.1. It seeks protection of all areas considered significant, and that clearances of any indigenous vegetation meeting significant criteria should be a non-complying activity.[108] Another submitter echoes this submission and is concerned that this permitted activity standard will potentially allow for the clearance of indigenous vegetation deemed significant when assessed against the criteria contained within Appendix 3.[109] Another submitter considers that vineyards within a TEO should be required to plant a percentage (potentially 2% of each new vineyard) in natives.[110]

**Section 42A Report**

269. The report writer rejects these submissions on the grounds that restricting the removal of significant indigenous vegetation would not be an efficient or economic method of achieving Objective 8.1. To determine whether a particular area is considered significant would prompt specialist assessment, adding time, cost and uncertainty to an activity. In contrast, the report writer considers that the voluntary programme allows significant indigenous biodiversity to be identified and measures put in place to ensure it is protected on a property-wide scale.

270. Forest & Bird particularly targeted the permitted clearance of vegetation relating to X.3.X.3(b) and (c):

271. (b) indigenous vegetation dominated by manuka, kanuka, tauhinu, bracken fern and silver tussock, and which has grown naturally from previously cleared land (i.e. regrowth) and where the regrowth is less than 20 years in age;

272. (b) indigenous vegetation dominated by matagouri, and which has grown naturally from previously cleared land (i.e. regrowth) and where the regrowth is less than 50 years in age;

273. The witness provided an amended set of rules within her Appendix 1 which the report writer considered a significant tightening of the permitted activity standards. He cites Policy 8.3.3 which seeks to 'control indigenous vegetation clearances to retain ecosystems, habitats and areas with indigenous biodiversity value'. The Panel considered the contrasting views in the submissions and evidence and concluded that the vegetation clearance rules are too generous in the notified plan and should be reduced respectively to only allow exemptions for clearance of indigenous biodiversity which is less than 10 years old for all species other than matagouri

[108] Forest & Bird (715.378).

[109] Minister of Conservation (479.190).

[110] Rarangi District Residents Association (1089.13).

and for matagouri 20 years. The Panel accepted the evidence of Mr Moore for the Minister of Conservation that these communities of emergent indigenous species have important ecological roles and should not be undervalued by generalised exemptions.

274. As a concession, within the coastal environment the report writer recommended a reduced permitted threshold.

**Consideration**

275. The Panel assessed the standards for indigenous vegetation clearance and considered they did not go far enough in two of the provisions providing protection.[111]

276. Greater protection of indigenous biodiversity is required in the coastal environment to meet the requirements of NZCPS Policy 11.

277. In order to achieve this, amend standards for the Coastal Environment, Port, Open Space 3 and Lake Grassmere Saltworks zones so as to halve the allowed area of clearance as set out:[112]

*x.3.x.5. Clearance of indigenous forest within the coastal environment must not exceed ~~1,000~~ 500$m^2$ per Computer Register in any 5 year period.*

*x.3.x.6. Clearance of indigenous vegetation within the coastal environment, per Computer Register, must not exceed:*

*(a) ~~2,000~~ 1000$m^2$ in any 5 year period where the average canopy height is between 3m and 6m;*

*(b) ~~10,000~~ 5000$m^2$ in any 5 year period where the average canopy height is below 3m, except for the following species where clearance in any 5 year period must not exceed:*

*i. ~~500~~ 250$m^2$ of indigenous sub-alpine vegetation;*

*ii. ~~100~~ 50$m^2$ of tall tussock of the genus Chinochloa*

**Decision**

278. The indigenous vegetation clearance standards in Coastal Environment, Port, Open Space 3 and Lake Grassmere Saltworks zones (at x.3.x.2) are amended as follows:

*(a) indigenous vegetation under ~~or within 50m of~~ ~~commercial forest,~~ woodlot forest or shelter belt;*

[111] Section 42A Report, page 54.

[112] Section 42A Report, Errata, paragraph 6.

*(b) indigenous vegetation dominated by manuka, kanuka, tauhinu, bracken fern and silver tussock, and which has grown naturally from previously cleared land (i.e. regrowth) and where the regrowth is less than ~~20~~ 10 years in age;*

*(c) indigenous vegetation dominated by matagouri, and which ha~~s~~ve grown naturally from previously cleared land (i.e. regrowth) and where the regrowth is less than ~~50~~ 20 years in age;*

*(d) where the clearance is associated with the maintenance of an existing road, forestry road, harvesting track, ~~or~~ farm track, fence line, cycling track or walking track;*

*(e) where the clearance is on a Threatened Environments – Indigenous Vegetation Site ~~and~~ where the clearance is within the curtilage of a dwelling~~.~~;*

*(f) where the clearance is associated with operation and maintenance of the: National Grid, existing network utility operations, and existing electricity distribution activities;*

*(g) where the clearance is associated with the maintenance of existing fire breaks.*[113]

279. Standard x.3.x.3 in Coastal Environment, Open Space 3, Port and Lake Grassmere zones are amended as follows:

*x.3.x.3. - Clearance of indigenous vegetation within the coastal environment must not occur …~~:~~*

*x.3.x.5. - Clearance of indigenous forest within the coastal environment must not exceed ~~1000~~500m$^2$ per Computer Register in any 5 year period.*

280. Standards x.3.x.4 in Coastal Environment, Port and Lake Grassmere zones are amended as follows:

*x.3.x.4 Clearance of indigenous vegetation within the coastal environment must not include the following habitats/species:*

*(a) duneland vegetation;*

*(b) coastal grassland;*

*~~(c) coastal flaxlands;~~*

*(d) coastal vegetation dominated by (making up >50% of the canopy cover) ~~wharariki/coastal flax (~~Phormium species~~cookianum)~~;*

*(e) coastal broadleaved shrubland;*

[113] Section 42A Report, Errata, page 6.

*(f) coastal small-leaved shrubland;*

*(g) coastal salt turf;*

*(h) coastal speargrass herbfield*

281. Standard x.3.x.6 in Coastal Environment, Open Space 3 and Lake Grassmere zones are amended as follows:

*x.3.x.6. - Clearance of indigenous vegetation, per Computer Register, must not exceed:*

*(a) ~~2,000~~ 1,000m² in any 5 year period where the average canopy height is between 3m and 6m;*

*(b) ~~10,000~~ 5,000m² in any 5 year period where the average canopy height is below 3m, except for the following species where clearance in any 5 year period must not exceed:*

*i. ~~500~~ 250m² of indigenous sub-alpine vegetation;*

*ii. ~~100~~ 50m² of tall tussock of the genus Chinochloa.*

282. Standard 13.3.20.6 in the Port Zone is amended as follows:

*13.3.20.6. - Clearance of indigenous vegetation, per Computer Register, must not exceed:*

*(a) ~~2,000~~ 1,000m² in any 5 year period where the average canopy height is between 3m and 6m;*

*(b) ~~10,000~~ 5,000m² in any 5 year period where the average canopy height is below 3m.*

**Reordering policies (Policies 8.3.1-8.3.8)**

283. The Panel considered reordering the policies would assist in the flow of management to be applied. This change is minor and can be made under Clause 16 RMA.

**Decision**

284. Shift existing policies in the following order:

*8.3.1, 8.3.2, 8.3.5, 8.3.8, 8.3.3, 8.3.7, 8.3.4*

### Policies 8.3.1 and 8.3.2 and [New] Policy 8.3.3

285. Transpower in its submissions challenged both Policies 8.3.1 and 8.3.2 inter alia on the basis that those policies filed to properly recognise and provide for the National Grid which it said would inevitably in some physically constrained situations could not practically avoid create some adverse effects to indigenous biodiversity in the types of locations protected or managed by those policies. In the evidence of Ainsley McLeod on Transpower's behalf in the

hearing of both Topic 5 Natural Character & Topic 6 Indigenous Biodiversity she outlined some suggested wording amendments as follows:

> *I therefore support the inclusion of the following additional clause in Policy 8.3.1 and 8.3.2 respectively:*
>
> *"Policy 8.3.1 – Manage the effects of subdivision, use or development in the coastal environment by:*
>
> *… (x) recognising that there will be situations where the operation, maintenance, development and upgrade of the National Grid will result in unavoidable adverse effects. …"*
>
> *"Policy 8.3.2 – Where subdivision, use or development requires resource consent, the adverse effects on areas, habitats or ecosystems with indigenous biodiversity value shall be:*
>
> *… (x) in the case of the National Grid, avoided, remedied or mitigated to the extent possible having regard to the National Grid's technical, locational and operational constraints…"*[114]

**Section 42A Report**

286. The Section 42A report[115] addressed those amendment requests in respect of Policy 8.3.2 and again in respect of Policy 8.3.1[116] but did not address in detail the precise wording proposed. Rather he accepted as a matter of law that the NPSET required express provision for the National Grid which the report writer considered was best dealt with by a specific policy.

287. His observations in that regard were:

> *I acknowledge that Policy 2 of the NPSET provides direction that the Council must recognise and provide for the effective operation, maintenance, upgrading and development of the electricity transmission network, and Policy 5 requires that decision-makers must enable the reasonable operational, maintenance and minor upgrade requirements of established electricity transmission assets.*
> *However, I also note that Policy 8 of the NPSET requires that, in rural environments, planning and development of the transmission system should seek to avoid adverse effects on areas of high natural character and areas of high recreation value. As such, I*

[114] A. McLeod Evidence dated 11 December, 2017
[115] Page 41
[116] Page 57

*consider that the enabling functions of the NPSET must be balanced against the direction within Section 6(c) and the direction within Policy 8 of the NPSET.*
*In my view, the best way to achieve this balance is to include an additional policy specific to management of the adverse effects on indigenous biodiversity from the construction, maintenance, or upgrade of the National Grid. I consider that the MEP needs to acknowledge that in some circumstances these adverse effects may be appropriate if there are no other practical alternatives. I consider that the inclusion of an additional policy, and the suggested amendments to Policy 8.3.2 will allow a processing officer the ability to consider the merits of a proposal on a case by case basis, weighing up the requirement to avoid, remedy, or mitigate any adverse effects, with the direction to enable the construction, maintenance, or upgrade of National Grid.*

288. He then proposed a new Policy be inserted as Policy 8.3.3 the wording of which the Panel agreed as discussed below.

289. The report writer did not recommend appropriate wording in an explanatory statement for this required provision - (and nor did Ms. McLeod's evidence for her amendments.)

**Consideration**

290. The Panel considered both Ms. McLeod's suggested method of dealing with this provision required for the National Grid by additions to the existing policies but preferred the specific approach of a new Policy as suggested by the report writer, which is set out in the decision below.

291. Furthermore the Panel preferred his suggested wording as the Panel's view is that a route or method of operation for the National Grid involving potential for adverse effects on sensitive indigenous biodiversity should only be considered - where the operator of the National Grid can demonstrate that there are no practical alternatives; that avoidance of effects is not possible; and that those effects cannot be remedied or mitigated.

292. A policy to that effect still recognises and provides for the "*effective operation, maintenance, upgrading and development*" of the National Grid. However, it is important that any such enabling policy also provides objectivity in the decision-making as to whether those potential adverse effects cannot be avoided, remedied or mitigated. The Panel was not satisfied that the wording proposed by Ms. McLeod would provide that appropriate level of objectivity in decision-making. The report writer's suggested new policy does achieve that.

293. A new explanatory statement is necessary to capture all those issues and the Panel has decided on a wording to that effect, which is set out in the decision below.

**Decision**

294. Insert a new policy at 8.3.3 as follows:

*[R, C, D]*

*Policy 8.3.3 – Provide for the construction, maintenance or upgrade of National Grid infrastructure that adversely affects the values and attributes associated with the areas identified in Policies 8.3.1 and 8.3.2, provided that:*

*(a) There are no practical alternative locations or routes; and*

*(b) The avoidance of adverse effects required in Policies 8.3.1 and 8.3.2 is not possible; and*

*(c) The adverse effects that cannot be avoided are remedied or mitigated.*

295. Insert new explanatory statement to the new Policy 8.3.3 as follows:

*Operating, maintaining, upgrading and/or developing the National Grid have the potential to result in unavoidable adverse effects on indigenous biodiversity values. Reflecting the national significance of the National Grid for electricity transmission, this policy directs that, despite of Policies 8.3.1 and 8.3.2, it is important to provide for these critical activities to occur. However, the policy also places limits on the ability to adversely affect indigenous biodiversity values. The National Grid operator will have to demonstrate that the circumstances in both (a) and (b) apply. Where they can do so, the national Grid operator will be required to remedy or mitigate any adverse effects.*

*The policy assists to give effect to Policies 2, 5 and 8 of the NPSET.*

## Eel Grass Beds at Waikawa Bay

296. Te Atiawa o Te Waka-a-Maui sought that Zoning Map 41 be modified to create a new overlay for 'significant habitat' being the eel grass beds at the mouth of the Waikawa Stream. In doing so, reference was made to the publication "Waikawa Estuary (Marlborough) - Broad Scale Habitat Mapping 2016". This publication, commissioned by the Council, identifies the marine habitats that exist in Waikawa Bay Estuary.

**Section 42A Report**

297. This submission point was considered in the Miscellaneous Section 42A Report. The report writer sought the views of Peter Hamill, Team Leader – Land and Water at the Council. Mr Hamill had previously provided advice to the Panel in the Topic 6 hearings in terms of

assessing sites of ecological significance (including significant wetlands). Mr Hamill stated, as replicated in the Section 42A Report:

> *From my knowledge of the extent of seagrass beds in the Marlborough Sounds and reading the Waikawa Estuary (Marlborough) Broad Scale Habitat Mapping 2016 report prepared by Leigh Stevens and Barry Robertson I am in agreement with Te Atiawa's submission that it is a habitat that is ecologically important for many species that live in Queen Charlotte Sound. It is my view that the Waikawa seagrass beds are ecologically significant based on the criteria set out in Appendix 3 of the Proposed Marlborough Environment Plan based on the representativeness and rarity criteria. It Ranks H for representativeness as it is one of the best examples of the characteristic ecosystem in the region and Ranks H in Rarity as the seagrass bed is a regionally rare community.*[117]

298. The report writer did not make it clear in the report what their recommendation was in respect of this submission point.

**Consideration**

299. The Panel has considered the publication "Waikawa Estuary (Marlborough) - Broad Scale Habitat Mapping 2016" (the "Wriggle Report"). The figure below provides an aerial view of the relevant area. The eel grass beds are visible in the photo.

300. The area of eel grass in Waikawa Bay has been accurately mapped in the Wriggle Report at Figure 6.[118]

301. The report concludes that the Bay supports "…extensive areas of high value seagrass beds."[119] The authors go on to comment:

[117] Section 42A Report, pg 38-39
[118] Wriggle (2016), pg 13
[119] Wriggle (2016), pg vii

*Based on the relatively large area of intertidal seagrass present in Waikawa Estuary, environmental conditions appear highly conducive to supporting this important high diversity habitat, which is not a widely represented habitat in the Marlborough Sounds.*[120]

302. Mr Hamill's expert opinion is that the sea grass bed meets the criteria for ecological significance set out in Appendix 3 of the Plan. In the absence of any other evidence, the Panel has relied upon the findings of the Wriggle Report and Mr Hamill's assessment.

303. Mr Hamill did also recommended that the request be further considered by the expert panel utilised as part of the Ecologically Significant Marine Site programme. Although we appreciate the reasons why this recommendation was made, the Panel considers that there is already sufficient information before it to determine that the eel grass beds should be included in the Plan as an Ecologically Significant Marine Site. The Panel has also taken into account that this is a rare ecosystem in a Marlborough context. In this context, it is appropriate that the site is protected from bed disturbance through provisions of the Plan as soon as possible.

304. The Panel also took into account the cultural significance of Waikawa Bay to Te Atiawa. Although the Panel did not receive specific evidence of this matter at the hearing, the association between the iwi and Waikawa Bay is commonly understood. The Waikawa Marae is only a short distance from Waikawa Bay.

305. The submitter sought that the site be added to the zoning maps in Volume 4. Other ecological significant marine sites are mapped in a specific set of overlays in Volume 4. This is the appropriate location for mapping the Waikawa Bay eel grass beds.

306. The Panel debated how best to depict the eel grass habitat given the mapping in Figure 6 of the Wriggle Report. That figure depicts a large area of cover in the centre of Waikawa Bay, two large "islands of eel grass" immediately to the west and to the north-east of the contiguous area, and then very small remnants of eel grass in the north of Waikawa Bay. In terms of mapping habitat, the Panel determined that areas of contiguous cover only should be mapped. However, the Panel also considered that the two larger proximate 'islands' should also be mapped. The fact that recolonisation of eel grass can readily occur from adjacent eel grass habitat[121] influenced this decision.

**Decision**

[120] Wriggle (2016), pg 12
[121] Wriggle (2016, pg 12

307. That the sea grass bed in Waikawa Bay be added as a new Ecologically Significant Marine Site in the Ecologically Significant Marine Site Overlays, as shown on the attached map.

308. That the site be allocated the next available number in the sequence of Ecologically Significant Marine Sites in Queen Charlotte Sound (i.e., 4.X).

MARLBOROUGH
DISTRICT COUNCIL

# Proposed Marlborough Environment Plan

# Topic 6: Indigenous Biodiversity (Significant Wetlands)

**Hearing dates:** 13 – 14 March and 3 April 2018

**S42A Report Writer:** Rachel Anderson and Peter Hamill

**Conflicts of Interest:** None

**Interim decision:** None

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

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## Introduction

1. The initial identification of wetlands with significant values was a desktop exercise involving Council staff expert in their field.

2. Maps and draft rules were prepared and an information pack distributed. Site visits were undertaken to some properties with Federated Farmers providing initial valuable guidance. This was followed up with further engagement between Council staff and Federated Farmers to consider draft rules, the dissemination of further information, and a process identified for ongoing site visits.

3. An extensive period of consultation followed with owners of potential Significant Wetlands of which at the start of the consultation period there were 1539. Of approximately 400 landowners involved, half took up the opportunity for a site visit. Peter Hamill, the Council's Team Leader Land and Water Environmental Science and Monitoring Group, undertook 231 site visits and identified 4117 wetland boundaries with GPS. Each wetland boundary was delineated based on the change from wetland to dryland plants (a methodology referred to in the verbal evidence of Federated Farmers).

4. A number of submitters did not require site visits having no concerns about the process (Wither Hills with six wetlands as an example). When Plan drafting took place, 1360 wetlands were identified and 179 were removed in the further consultation process and amendments to mapping were made.

**Standards with 8m setbacks to significant wetlands**

5. An 8m setback is a continuation in similar vein of an approach used in WARMP for two decades.

## Utility infrastructure provisions

### Standard 2.39.1.14

**A line or network utility structure, or a telecommunication, radio communication or meteorological facility, or a building or depot must not be located: (a) In, or within 8m of, a Significant Wetland.**

6. Standard 2.39.1.14 is a standard for Rule 2.38.1.

7. Chorus and Spark[1] seek amendment to this standard – reference to 'building or depot' should be deleted, as these structures are already included within the definitions of telecommunications and radio communications; amendment of the standard should also

[1] Chorus (464.44), Spark (1158.42).

provide for new lines for utilities within an existing legal road as they would not have any further impact on Significant Wetlands.

8. Transpower seeks removal of the standard as it is considered contrary to the requirements under NPSET Policy 3 with no rationale for an 8 metre setback.[2]

**Section 42A Report**

9. The Section 42A Report does not support the submission regarding new lines within an existing legal road. The mapped road reserve generally goes beyond the actual formed road, and there can be substantial wetlands in some of these areas. Establishing a new utility line cannot be said to have the same effect as an 'existing road' that may in reality be some distance away.[3]

10. The amendment to delete the wording 'building and depot' is also not supported. Including this wording is not superfluous, as only a 'telecommunication facility' is defined to include another structure. Neither radio-communications nor a meteorological facility are defined in this way.

11. The submission by Trustpower asserts that the standard is contrary to Policy 3 of NPSET in that the standard does not take into account the linear network of many network utilities. Policy 3 NPSET states '[Policy 3] has direct significance for decision making on resource consent applications and notices of requirement'. Policy 3 NPSET therefore anticipates the requirement of a resource consent for network activities. Transpower's opinion is therefore not supported.

12. The 8m setback also reflects consistency between the notified PMEP and the WARMP, as to management of mapped Significant Wetlands. In some instances the Plan will be more enabling than the WARMP provisions.[4]

13. The Section 42A Report initially recommended Standard 2.39.1.14 should be retained as notified. Chorus and Spark subsequently withdrew their submission regarding the words 'building or depot'; and clarified that reference to 'legal road' in their submission means a 'formed legal road'. On this basis the Report Writers considered it is appropriate to amend Standard 2.39.1.14 accordingly.[5]

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[2] Section 42A Report, Reply to Evidence, page 1.
[3] Trustpower (1198.76).
[4] Section 42A Report, paragraph 56.
[5] Section 42A Report, Reply to Evidence, page 2.

14. In evidence, Transpower no longer sought deletion of the standard in its entirety, and instead suggests amendment to provide for a National Grid exception. It also seeks the addition of a new standard to give effect to that exception.

**Consideration**

15. Transpower's verbal evidence as to the reasoning behind wanting to place new infrastructure within 8 metres of a Significant Wetland as a Permitted Activity does not persuade the Report Writers nor the Panel that this should be provided. It is more appropriate for a new utility structure within 8 metres of a Significant Wetland to be assessed through the consent process and for the Council to have the ability to apply conditions of consent.

16. Instead it is recommended by the Report Writers that Standard 2.39.1.14 be further amended to provide an exception to the date when the new standard should apply, with which the Panel agrees, and with no additional standard needed.

**Decision**

17. Standard 2.39.1.14 is amended to read:

*A line or network utility structure, <u>except the National Grid existing on 9 June 2016</u>, or a telecommunication, radio communication or meteorological facility, or a building or depot must not be located:*

*(a) in, or within 8m of, a Significant Wetland;…*

*(b) <u>These setbacks do not apply to a line or network utility structure, or a telecommunication, radio communication or meteorological facility that is located within formed legal road…</u>*

## Standards on non-indigenous vegetation clearance provisions

### Standards 3.3.12.3 and 4.3.11.3

#### Vegetation clearance must not be in, or within 8m of a Significant Wetland ….

18. These standards apply to the Permitted Activity of non-indigenous vegetation clearance in Rural Environment (Rule 3.1.2) and Coastal Environment (Rule 4.1.11) Zones.

19. Two submitters support the provisions but seek amendment;[6] three others support or oppose the standard in part and seek:[7]

- Provision for an exception for plantation forest trees being harvested which were lawfully established prior to 9 June 2016. Commercial forest harvesting is a separate activity and is not caught by non-indigenous clearance rules.

[6] C Shaw (423.41), J Hickman (455.70).
[7] J C Tozer (319.26), Nelson Forests Ltd (990.98), Transpower (1198.88).

- Removal of non-indigenous species by non-mechanical means should be allowed for a restoration project.
- An exception should be made for fenced Significant Wetlands (as per the wetland boundaries in the PMEP); there would thus be no need for the setback between the vegetation clearance and the Significant Wetland if this occurred.
- An exception for vegetation removal that is part of the maintenance and enhancement of an existing Significant Wetland (with Council drainage staff only being authorised to carry out such work).
- An exception is sought for activities relating to the National Grid in both standards. The standards are not in line with the Network Utility Permitted Activity (Rule 2.38.6).

**Section 42A Report**

20. The Report Writers advise that the Rural Living Zone has a standard that enables some plant removal by non-mechanical means. But there is no equivalent in the Rural or Coastal Environment Zones. It is recommended that the standard is amended to reflect this. No limitation to restoration projects should be added.[8]

21. The addition of an exception for fenced wetlands is also supported. The mitigating effects of fencing are similar to the setback approach because fencing wetland usually occurs outside the wetland proper as solid ground is required – thus providing a small buffer and creating a barrier to stock. Hence there is a greater opportunity to establish wetland plant species around the wetland perimeter.[9]

22. Mr Tozer, in relation to Standard 3.3.12.3, in his evidence provided greater detail of the areas of Significant Wetlands W69 and W261 that link two wetlands together which relate to his original submission. He seeks removal of those areas of contention from the mapped Significant Wetlands; or amend the standard to enable works to be undertaken in accordance with a biodiversity management plan.

23. The S42A report writer, Mr Hamill, considered the first alternative submitted by Mr Tozer but is clear in his opinion that given the interconnection between the two wetlands, their removal is not appropriate. The issue raises possible differences in opinion about what is acceptable intervention in Significant Wetlands. And rather than providing the exception regarding biodiversity, the Report Writers are clear that activities which go beyond those permitted (vegetation removed by non-mechanical means) should go through the resource consent

[8] Section 42A Report, paragraph 107.
[9] Ibid, paragraph 108.

process. Through this, it is possible that a biodiversity management plan could be put in place.[10] The Report Writers also consider that although the Council is authorised to undertake vegetation clearance within the Drainage Channel Network, there is no authorisation for clearance in, or within 8m of a Significant Wetland, other than resource consent.

24. An exception for National Grid operation is also not supported. There is no conflict in the rules and standards as they stand. The General Rules for Network Utilities are specific to these industries, including Transpower, and prevail over the zone rules that apply to others, whereas Standards 3.3.12.3 and 4.3.11.3 are general and it would be inappropriate to amend them. The opening sentence at the start of the General Rules for Network Utilities reinforces this: '<u>Other General Rules contained in Chapter 2 may apply in addition to any relevant zone rules for network utilities</u>.' An example of this would be Rule 13.1.19 in the Port Zone that has requirements in its standards relating to network utility operators. Standards 3.3.12.3 and 4.3.11.3, or the rules they fall from, are not rules for network utilities. Subsequently, in evidence Transpower no longer sought this amendment and is no longer in conflict with Section 42A Report recommendations.[11]

25. An exception for network utilities is also sought in regard to Standards 7.3.8.3, 18.3.4.3 and 19.3.4.3 – for the same reasons as those outlined above, these were rejected.[12]

26. Nelson Forests Ltd, in opposition to the standard, sought an exception for harvesting of plantation forest trees that were lawfully established prior to 9 June 2016. This exception is rejected by the Section 42A Report as inappropriate. Commercial forestry harvesting is a separate activity and not caught by the non-indigenous vegetation clearance rules.

**Decisions**

27. Standard 3.3.12.3 and Standard 4.3.11.3 are amended to read:

*Vegetation clearance must not be in, or within 8m of a Significant Wetland …, <u>except –</u>*

*<u>(a) where the wetland is fenced, in accordance with the wetland boundaries mapped in the Plan, in which case vegetation clearance may occur up to the fenced boundary; or</u>*

*<u>(b) plants identified in Appendix 25 may be removed from a Significant Wetland but by non-mechanical means only.</u>*

[10] Appendix 1 Photographs 11-12 demonstrate very clearly the proximity of the two wetlands the one to the other, and their interconnectedness is important. Section 42A Report, Reply to Evidence, pages 5-6.
[11] See Section 42A Report, Reply to Evidence, page 6.
[12] Section 42A Report, paragraphs 109 and 188.

### Non-indigenous vegetation clearance using wheeled or tracked machinery

**Wheeled or tracked machinery must not be operated in or within 8m of … a Significant Wetland.**

28. These standards apply to the Permitted Activity of non-indigenous vegetation clearance in the Rural Environment (Rule 3.1.12), Coastal Environment (Rule 4.1.11) and Coastal Living (Rule 7.1.10) Zones.

29. Consideration of these submissions should bear in mind that the enabling Rule 3.1.12 received three submissions seeking its retention and one opposing; enabling Rule 4.1.11 received two submissions seeking its retention and no submissions in opposition; and enabling Rule 7.1.10 received no submissions seeking its removal from the Plan.

30. Five submitters to Standard 3.3.12.7 support the standard but seek amendment;[13] one in opposition but seeking amendment; others seek amendment; three seek its deletion.[14] Those that support the standard in part seek:

    - an exception for fenced wetlands, allowing wheeled or tracked machinery to be used for non-indigenous vegetation clearance to a fenced boundary;
    - an exception for the removal of flood debris to clear vegetation fallen into or within 8m of waterways in order to prevent future flooding.

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31. In response to several submitters who consider the provisions are unreasonable, impractical and unrealistic, the Section 42A Report accepts that there should be an exception allowing activities to occur up to a fenced boundary. This approach, as discussed under the cultivation standards, offers greater protection than if there was no fence and instead there was a setback.

32. The exception sought for the removal of flood debris is rejected. However, the reasons given by these submitters further clarifies that their concerns relate to forestry. Again, it is considered that a resource consent process would better address the concerns as they are primarily aimed at river bed flooding, not flooding of Significant Wetlands, contained in the standard's full text. Furthermore, Standard 4.3.11.7 does not apply to vegetation clearance in a forestry context.

33. In terms of the deletion of Standard 7.3.8.7 (which applies in the Coastal Living Zone) sought by QCSRA, the group considers the standard does not allow for activities such as septic tank

[13] G Mehlhopt (465.59), J Hickman (455.59), S and R Adams (321.2), B Pattie (380.6).
[14] J C Tozer (319.28), T and S Wadworth (1121.5), Tempello Partnership (429.4).

cleaning or transfer of building site materials. But the standard does not apply to these activities: it is applied only to removal of non-indigenous vegetation.

34. The thrust of the report writer's recommendations are accepted by the Panel with some minor variations to improve its readability of the standards to be amended which include consequential changes mirroring the amendment to 3.3.12.7.

**Decision**

35. Standards 3.3.12.7, 4.3.11.7, 7.3.8.7, 13.3.19.6, 14.3.10.4, 15.3.18, 17.3.3.2, 18.3.4.2 and 22.3.9.4 are amended to read:

*Wheeled or tracked machinery must not be operated in, or within 8m of:*

*(a) A river (except an ephemeral river or intermittently flowing river, when not flowing);*

*(b) A lake;*

*(c) A Significant Wetland (except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case wheeled or tracked machinery may be operated up to the fenced boundary); or*

(d) The coastal marine area.

## Standards on the removal of vegetation provisions

### Standard 8.3.10.1

**Within, or within 8m of, a Significant Wetland, Pest Plants identified in Appendix 25 and willow, blackberry, broom, gorse and old man's beard must be the only vegetation removed, and plants must only be cleared by non-mechanical means.**

36. Standard 8.3.10.1 applies to the Permitted Activity of removal of vegetation in the Rural Living Zone (Rule 8.1.11). The overriding rule received no submissions seeking removal or retention of vegetation.

37. C Shaw in support,[15] and QEII Trust[16] and T Stein[17] oppose the standard and seek its amendment to allow non-indigenous plant species to be removed from within, or within 8m of, a Significant Wetland, not just the plant species identified. Federated Farmers, supporting the submission of QEII Trust, provided evidence expressing support for the approach taken in the Section 42A Report.

[18] Marlborough Environment Centre (1193.118-122), Rarangi Residents (1089.27), K Loe (454.92-98).
[18] Marlborough Environment Centre (1193.118-122), Rarangi Residents (1089.27), K Loe (454.92-98).
[18] Marlborough Environment Centre (1193.118-122), Rarangi Residents (1089.27), K Loe (454.92-98).

38. In essence, all submitters are seeking the same amendment to the Standard – that is to allow all non-indigenous species to be removed from within, or within 8m, of a Significant Wetland, not only plants identified in Appendix 25 but willow, blackberry, broom, gorse and old man's beard, if the removal is part of a restoration project.

39. The Report Writers identify, however, the approach of enabling all non-indigenous plant species to be removed is not recommended. Wetlands are delicate ecosystems and are supported by some lesser known and less obvious species that are non-indigenous. Instead of generally permitting the removal of non-indigenous species, it would be preferable to add species to Appendix 25 as necessary as other submitters have sought. The Panel agrees.

40. Meanwhile, submitters that supported the concerns of QEII Trust should also be adequately met by the Methods of Implementation Chapter 8 and the expanded list of plants listed in Appendix 25. It is expected that this list will expand as regular plan changes are made over the life of the Plan and input regarding these future processes will be welcomed.

41. Standard 8.3.10.1 is recommended to remain as notified.

**Decision**

42. Standard 8.3.10.1 is retained as notified.

## Standards on cultivation and excavation

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).

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.

## Standard 3.3.14.3

### Excavation must not be in, or within 8m of, a … Significant Wetland

45. Several submitters[18] seek the retention of the standard as notified. Another submitter[19] 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.

[18] Marlborough Environment Centre (1193.118-122), Rarangi Residents (1089.27), K Loe (454.92-98).
[19] Federated Farmers (1193.118 and .122).

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]

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]

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.

**Decision**

49. Standard 3.3.14.3 is retained as notified.

### Standard 4.3.13.3

**Excavation must not be in, or within 8m of, a … Significant Wetland …**

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]

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]

**Decision**

52. Standard 4.3.13.3 is retained as notified.

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[20] G Mehlhopt (456.61), B Pattie (380.8), J Hickman (455.61).
[21] Section 42A Report, Reply to Evidence, pages 12-13.
[22] Nelson Forests (990.143).
[23] Section 42A Report, paragraph 152.

### Standard 19.3.5.3

**Excavation must not be in, or within … (b) 8m of a Significant Wetland …**

53. PMNZ supports the standard as the standard is appropriate for managing the actual and potential effects of excavation purposes.[24]

54. Several submitters seek amendment 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; amendment to enable access tracks in the Para Wetland be maintained and upgraded.[25]

55. The activities described in the amendment sought identified in the Section 42A Report are already covered by the RMA existing use rights and can continue without the need for a resource consent. No amendment is necessary.[26]

56. Federated Farmers seek removal of this standard but do not say why.

**Decision**

57. Standard 19.3.5.3 is retained as notified.

## Pest plant removal from Significant Wetlands

### Standard 3.3.27.1

**Pest Plants identified in Appendix 25 and willow, blackberry, broom, gorse and old man's beard are the only vegetation that may be sprayed.**

58. Forest & Bird support the standard in part but seek amendment to include the addition of Chinese privet and banana passion vine to the list of pest plants in the standard.

59. The addition of the two plant species is supported but it is preferable they are added to Appendix 25 rather than the Standard itself.

**Decision**

60. Standard 3.3.27.1 is retained as notified.

### Appendix 25 – Pest Plants

61. Appendix 25 contains a list of eight pest plants and is relevant to Standards relating to the removal of plants from Significant Wetlands (Standards 3.3.27, 4.3.26, 7.3.8.3, 8.3.10.1, 17.3.3.3, 18.3.4.3 and 19.3.4.3). It is also relevant to Standards 2.17.2.1 which relates to discharge of water.

62. A number of submitters seek:[27]

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[24] PMNZ (433.91).
[25] J Hickman (455.61-62, 65-66), Fish and Game (509.429), B Pattie (880.8), G Mehlhopt (456.61, 62, 72).
[26] Section 42A Report, paragraph 154.

- The addition to Appendix 25 of plants that are unwanted organisms, or are infected by unwanted organisms as declared by MPI Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act.
- The addition of Chilean Needle Grass to Appendix 25.
- The addition of Old Mans' Beard, Banana Passionfruit and Gorse to Appendix 25.
- Additional consultation regarding Appendix 25.

Another submitter seeks removal of Appendix 25 and instead seeks the ability by landowners to remove exotic species from Significant Wetlands without limitation.[28]

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63. This approach is rejected by the S42A Report as it unrealistic for landowners to have the requisite knowledge about whether plants are exotic or not and therefore creates uncertainty. Many of the delicate ecosystems within wetlands are supported by some lesser known and less obvious species that are exotic. In evidence, Federated Farmers no longer sought the removal of Appendix 25 as they agree with the recommendations in the Section 42A Report.[29]

64. The Report Writer considers that including "unwanted organisms" in the Appendix will also create uncertainty. As the Biosecurity Act already gives powers to Council to declare and implement small scale management programs to eradicate unwanted organisms it is considered preferable to rely on these powers rather than extend the scope of Appendix 25.

**Consideration**

65. The plants identified in Appendix 25 are introduced species that are potentially found in wetlands and that are included in the Regional Pest Plan for Marlborough. These species have the specialised meaning of 'pest plants' under that Plan and under the Biosecurity Act. It is considered that to give effect to the submissions regarding the addition of species to the list, the Appendix 25 heading should be changed to '***Plants unwanted in Significant Wetlands'***. This would break the link to the Biosecurity Act that is causing the current concerns. All of the submitted additions are regarded by the Report Writer as appropriate, and the Appendix should be amended accordingly.

66. In the original S42A Report a list of plants unwanted in significant wetlands was proposed to be added to Appendix 25 and the Panel agrees with the contents of that list being included.

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[27] Fish and Game (509.405), Horticulture NZ (769.137), KCSRA (869.44), Ngāti Kuia (501.87), W Lissaman (255.22).
[28] Federated Farmers (425.766).
[29] Federated Farmers, D Sycamore Evidence, paragraphs 48-56. Section 42A Report, Reply to Evidence, page 29.

67. As a consequential change, the wording of the Standards that refer to Appendix 25 will also need to be amended to read: '***Plants identified in the Appendix 25 are the only vegetation that may be …'.***

68. The report writer recommended a refocus of Appendix 25 to concentrate on plants unwanted in significant wetlands. For this reason, she did not recommend the consequential wording change for standard 2.17.2.1. This is a standard applying to the discharge of aquatic agrichemicals to any waterbody, not just wetlands.

69. Although the reason for doing so was technically sound, the recommended refocus of the appendix has resulted in a situation whereby standard 2.17.2.1 now does not operate effectively. The Panel notes that Submitter 469 (Bond) had already sought clarification with respect to the standard.

70. The Panel considers that this situation must also be resolved. The standards in 2.17.11 applying to the discharge of agrichemicals to water for the control of aquatic vegetation in the Drainage Channel Network or the Floodway Zone by the Council utilises the following control:

    *The discharge must only be for the purpose of eradicating, modifying, or controlling aquatic plants.*

71. The Panel considers that it is necessary for there to be controls on others in the community utilising aquatic agrichemicals. As such, the Panel has decided to make a consequential change to standard 2.17.2.1 to replace it with the above standard. It believes that the new standard is better suited to managing the adverse effects of aquatic agrichemicals (as only aquatic plants should be targeted) and the replacement creates consistency in the standards for aquatic agrichemical use in the Plan.

**Decision**

72. Appendix 25 is amended to read:

***~~Pest~~ Plants unwanted in Significant Wetlands.***

| **Common Name** | **Scientific Name** |
|---|---|
| African Feather Grass | *Pennisetum macrourum* |
| Eel Grass | *Vallisneria australis* |
| Parrots Feather | *Myriophyllum aquaticum* |
| Senegal Tea | *Gymnocoronis spilanthoides* |
| Reed Sweet Grass | *Glyceria maxima* |
| Egeria | *Egeria densa* |

| Lagarosiphon | *Lagarosiphon major* |
|---|---|
| Purple Loosestrife | *Lythrum salicaria* |
| Willow | *Salix sp* |
| Blackberry | *Rubus fruticosus* |
| Broom | *Cystisus scoparius* |
| Gorse | *Ulex Europeans* |
| Old Man's Beard | *Clematis vestalba* |
| Chilean Needle Grass | *Nassella neesiana* |
| Banana Passionfruit | *Passiflova sps* |
| Hawthorn | *Crataegus monogyna* |
| Briar Rose | *Rosa rubiginosa* |
| Pampas | *Cortderia selloana and Cortaderia jubata* |
| Yellow flag iris | *Iris pseudacorus* |
| Alders | *Alnus glutinosa* |
| Wattles | *Acacia sp* |
| Wilding conifers | |
| Wilding kiwifruit | *Actinidia sp* |
| Chinese Privet | *Ligustrum sinense* |

73. As a consequential change all standards in the PMEP that reference Appendix 25 (except 2.17.2.1) are amended to read:

*'Plants identified in the Appendix 25 are the only vegetation that may be…'.*

74. Standard 3.3.27.1 (consequential change relative to amendments to Appendix 25)

*~~Pest~~ Plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be sprayed.*

75. Standard 4.3.26.1 (consequential change relative to amendments to Appendix 25)

*~~Pest~~ Plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be sprayed.*

76. Standard 7.3.8.3 (consequential change relative to amendments to Appendix 25)

*Within, or within 8 metres of, a Significant Wetland, ~~Pest~~ plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be removed. Any vegetation removed under this standard must only be done by non-mechanical means.*

77. Standard 8.3.10.1 (consequential change relative to amendments to Appendix 25)

*Within, or within 8 metres of, a Significant Wetland, ~~Pest P~~plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ ~~must be the~~ are the only vegetation that may be removed, and plants must only be cleared by non-mechanical means.*

78. Standard 17.3.3.3 (consequential change relative to amendments to Appendix 25)

*Within, or within 8 metres of, a Significant Wetland, ~~Pest P~~plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be removed. Any vegetation removed under this standard must only be cleared by non-mechanical means.*

79. Standard 18.3.4.3 (consequential change relative to amendments to Appendix 25)

*Within, or within 8 metres of, a Significant Wetland, ~~Pest~~ plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be removed. Any vegetation removed under this standard must only be cleared by non-mechanical means.*

80. Standard 19.3.4.3 (consequential change relative to amendments to Appendix 25)

*Within, or within 8 metres of, a Significant Wetland, ~~Pest~~ plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ ~~must be~~ are the only vegetation that may be removed. Any vegetation removed under this standard must only be cleared by non-mechanical means.*

81. Standard 19.3.16.1 (consequential change relative to amendments to Appendix 25)

*~~Pest~~ Plants identified in Appendix 25 ~~and willow, blackberry, broom, gorse and old man's beard~~ are the only vegetation that may be sprayed.*

82. Replace standard 2.17.2.1 with the following:

*2.17.2.1 ~~Pest Plants identified in Appendix 25 and willow, blackberry, broom, gorse and old man's beard are the only vegetation that may be sprayed.~~ The discharge must only be for the purpose of eradicating, modifying, or controlling aquatic plants.*

## Mapping of significant wetlands – general issues

83. Many submitters seek protection of the Significant Wetlands and retention of the mapped Significant Wetlands in the Plan.[30]

84. Others support the mapping in part, seeking:

[30] R and L Hill (378.16), Millen Associates Limited (972.15), A Doole (524.15), A Parr (529.15), A Millen (532.15), C McBride (594.15), C McLean (598.15), C Soderberg (599.15), D McBride (662.15), F Chaytor (701.15), J Rossell (827.15), J Tillman (833.15), K Raeburn (861.15), K Walshe (865.15), M Dewar (915.15), Silverwood Partnership (1049.15), T Stein (1179.16), The Sunshine Trust (1194.15), V Frei (1209.15), W Oliver (1228.15), W Tillman (1230.15), R Heta (1066.15), S Browning (1109.15) and QEII Trust (1265.4).

A requirement for Council to undertake a comprehensive, ground-truthing wetlands assessment before they are included in the PMEP; and that all mapped wetlands should be deleted until both this process and landowner consultation have been adequately assessed.[31]

The reassessment and clarification of the mapped extent of the Significant Wetlands, especially with regard to wetlands that overlap, or are within, the road network corridor.[32]

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85. As landowners were consulted prior to the final mapping for the PMEP the Report Writers consider additional consultation and ground-truth assessment is not required. It was made clear to landowners that if no site visit was requested during this process the Significant Wetlands as initially mapped would be included in the PMEP; many landowners who did not request a site visit did not have concerns with the boundaries as mapped. The potential loss to indigenous biodiversity if the Council did not include these particular wetlands is considered an unacceptable loss, and in many cases would not reflect the wishes of the landowners concerned.

86. The submission from Nelson Forest Ltd is considered to be lodged against Zoning Maps in general and is better assessed under Matter 8 as it relates to specific Zoning Maps.[33]

**Consideration**

87. The Panel agrees with the Section 42A Report reasoning.

**Decision**

88. The mapping of the Significant Wetlands in the General section of the Plan is retained as notified.

## Mapping of significant wetland areas – specific

89. Some of the Significant Wetlands identified in the PMEP were also identified as Significant Natural Areas (SNAs) during the Significant Natural Areas Project, a non-regulatory approach to identifying and protecting significant natural areas of biodiversity. The boundaries as defined in the SNA would be of assistance in making recommendations but as they are confidential this information cannot be disclosed in the Section 42A Report.

**Site visits**

90. After hearing the evidence of Nelson Forests Ltd on Significant Wetlands, where the submitter felt it had not been consulted in the appropriate manner and its wetlands needed ground

[31] Federated Farmers (425.779).
[32] NZTA (1002.279).
[33] Nelson Forests Ltd (990.260). See post page 21.

truthing before being included in the PMEP, the Panel issued Minute 10 asking Peter Hamill to carry out site inspections.

91. Eight of the identified 10 wetlands were under the ownership of Nelson Forests. The remaining two wetlands were located on land owned by Te Ātiawa o Te Waka-a-Māui.

92. This instruction was to verify whether the wetlands notified in the PMEP were significant in relation to the relevant Significant Wetlands assessment criteria. The visits were expanded to address further concerns from PMNZ and Mr Rodney Parkes about two other wetlands.

93. Permission was given to visit all identified wetlands on 9 and 23 May 2018, and the outcomes are recorded below.

94. NZTA[34] in their original submission had not identified any specific wetlands in the general road corridor but was submitting on any wetlands being identified in the roading network. Landowners of road network corridor land were given the opportunity to request site visits during the landowners consultation process. This was not requested at that time. In tabled evidence, dated 26 February 2018, NZTA identified two wetlands (W302 and W845) that were of concern to it. Additional clarification was then required on these two areas and an assessment was carried out by the Report Writer (Peter Hamill) to confirm the wetland boundaries.

95. These wetlands have now been identified by the Report Writers, and W302 is identified to remain as a Significant Wetland as it is mapped in the PMEP, with which NZTA is comfortable. Wetland W845 was recommended to have its boundaries reassessed. Modification of this wetland was enabled through a resource consent after initial mapping. A map showing the revised boundaries was attached to the Reply to Evidence (Attachment 3).[35]

**Decision**

96. The Plan is amended to reflect the change to the revised boundaries of Significant Wetland W845 and Significant Wetland W302 is retained as notified.

## Wetland W991 – Zoning Map 36[36]

97. PMNZ submitted in opposition to the extent of the boundaries of Significant Wetlands in the PMEP and sought reduction of the boundaries of W991 to depict its actual size. The submitter also seeks removal of that part of Wetland W991 in an area of Shakespeare Bay on the

[34] (1002.279)
[35] Section 42A Report, paragraphs 370, 374; Reply to Evidence, page 30.
[36] Labelled as Zoning Map 138 in response to Minute 10 from the Panel to Peter Hamill.

southern side of Queen Charlotte Drive which is separated from the main portion of the existing wetland by road.[37]

98. The boundaries of the area to the north of Queen Charlotte Drive are consistent with the boundaries identified by qualified and experienced ecologists as part of the SNA programme. The submitter nevertheless seeks to amend the boundaries to reflect only the area identified in a Conservation Covenant (formed under the Conservation Act as shown in Appendix C of the submission). The area to the north is identified with significant indigenous biodiversity values (see Appendix 1 Photograph 1) in Mr Hamill's response.

99. Te Ātiawa submitted in support of the identification of Significant Wetland 991 but sought an extension of the mapped area to include the eel grass beds at the head of Shakespeare Bay.[38] The Section 42A Report clarified that the sea grass areas have already been identified as an Ecologically Significant Marine Site (Overlay Map 13). Identifying them as part of Wetland W991 is not appropriate as they are below mean sea level.[39]

100. The W991 wetlands are located in a relatively small gently sloping area at the junction of two small waterways. A series of manmade ponds has developed in the area to intercept silt from runoff from activities higher up in the catchment. While there is some wetland vegetation present, it is associated with the riparian margins of the two waterways rather than a separate wetland. The remainder of this area is a mixture of low stature blackberry and rank pasture grasses growing on a dry terrace above the waterway.

**Consideration**

101. On Mr Hamill's recommendation (after he had visited Wetland 991 on 20 June 2018), and after a site visit by the Panel, we agreed that part of Wetland 991 south of Queen Charlotte Drive does not meet the criteria of a Significant Wetland in the Plan.

102. Mr Hamill, while assessing the southern part of the site on the site visit, also considered that the boundaries of the portion of the wetland to the north of Queen Charlotte Drive are not particularly accurate. His recommendation is that if scope allows, they should be amended as shown on Map 9 of his response.

**Decision**

103. That part of Significant Wetland W991 on Zoning Map 36 to the south of Queen Charlotte Drive is removed from the PMEP.

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[37] PMNZ (433.210).

[38] Te Ātiawa (1186.226). Section 42A Report, paragraphs 381-382.

[39] Section 42A Report, Response to Minute 10 of the Hearing Panel. Wetland Site Visits, page 5.

104. That the northern boundaries of Wetland W991 be amended to comply with its actual size as shown on Map 9, page 21 of the response to Minute 10.

### Wetland W363 - Zoning Map 57

105. T Marshall[40] submitted in opposition to the identification of Significant Wetland W363 in the PMEP. It is submitted that the wetland should be changed from a 'Significant Wetland' to a 'Coastal Marine Zone'. The submitter had received a letter as part of the consultation process which advised the Significant Wetland as identified on his property had been removed. Thus the boundaries of W363 do not encroach on the submitter's property.

106. Wetland W363's current zoning treatment is a mix of Open Space 3 and no zone (road reserve). On receiving submission point 137.2, Mr Hamill reviewed the area as a Significant Wetland. As W363 is part of the Havelock Estuary Complex it clearly meets the criteria of Significant Wetlands, and should therefore be retained. A road has cut through the wetland and created little pockets of wetland that were once part of the whole area (see Appendix 1 Photographs 2).[41] Nevertheless, Wetland W363 is recommended to remain as mapped in the PMEP.

**Decision**

107. Significant Wetland W363 is retained as notified.

### Wetlands W220 and W799 - Zoning Map 60

108. J Timms submitted in opposition to the boundaries of Significant Wetlands W220 and W799, seeking that the wetland boundaries be amended.[42]

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109. As the boundaries as mapped are not the same as what was agreed upon during the landowner consultation process, the Report Writers consider it is appropriate to amend these boundaries to reflect the outcome of that consultation process, as unfortunately what was agreed on a site visit did not all make it into the Plan (see Appendix 1 Photographs 3 and 4).

110. The boundaries of Wetlands W220 and W799 were recommended to be amended to reflect the outcome of the landowner consultation process.

**Consideration**

111. The Panel agrees that Wetlands W799 and W220 be amended to reflect the site visit and boundary consultation process.

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[40] T Marshall (137.2). Section 42A Report, paragraphs 383-384.
[41] Section 42A Report, paragraphs 383-384.
[42] J Timms (475.1).

**Decision**

112. The boundaries of Significant Wetlands W799 and W220 be amended to reflect those depicted on the plan attached to the Section 42A Report.

## Wetland W226 - Zoning Map 61 and 167

113. Delegat Ltd lodged five submissions relating to Significant Wetland W226 – two in support and three in opposition, indicating some confusion within the company relating to multiple parties completing submissions.[43] Subsequent to the site's initial identification as a Significant Wetland, it was destroyed by fire and drainage. It is assumed the true position of Delegat Ltd is that they oppose the mapping of W226 and seek its deletion.

114. This is accepted by the Report Writer. It is appropriate to remove Wetland W226's mapping from the Plan as it has been destroyed.

**Decision**

115. Significant Wetland W226 is removed from the PMEP.

## Wetlands W52 and W53 - Zoning Map 61

116. Trustpower submitted in opposition to the inclusion of Wetlands W52 and W53 in the Plan and seek that they be removed.[44]

117. The Section 42A Report identifies that although there is very little riparian vegetation in these areas they contain water for most of the year. It is likely that they would still meet the criteria for a Significant Wetland as they are a natural open water wetland. They would also be 'great candidates' for riparian enhancement given their association with the earthquake fault line. Trustpower did not provide any information regarding the presence or absence of wetland values. Mr Hamill's suggestion that he visit the area to confirm the criteria of these sites as Significant Wetlands was not taken up.[45] His recommendation is that Wetlands W52 and W53 should remain as mapped in the Plan.

118. The Panel also noted that the landowner, Landsdowne Lifestyle, has not submitted any concerns about the Significant Wetland being identified on its property.

**Decision**

119. Significant Wetlands W52 and W53 are retained as notified.

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[43] Delegat Ltd (335.1, 473.4, 473.5, 473.72, 473.73).
[44] Trustpower (1201.170). Section 42A Report, paragraphs 391-392.
[45] Section 42A Report, paragraph 391.

### Wetlands W47 and W48 - Zoning Map 84

120. A E Sadd Ltd submitted in opposition to the inclusion of W48 in the Plan and also sought amendment of the boundaries to W47 as mapped in the Plan.[46]

**Consideration**

121. Significant Wetland 48 is predominantly surrounded by exotic conifers and some small areas of flax and several large 1 metre high *Carex secta.* The wetland is essentially a constructed pond that has been created where an ephemeral wetland once existed. At the western end there is a stand of 5-6 kahikateas that are estimated to be 30-50 years old. Most of the *Carex secta* is also located there (see Appendix 1 Photograph 5).

122. Mr Hamill, both on reviewing the identification of W48 and undertaking a site visit, considered the area as mapped is very generous and covers more area of wetland than actually exists. It is therefore appropriate that the boundaries are adjusted to truly reflect the significant areas (see Appendix 1 Photograph 5)[47].

123. But the amendments suggested would not directly satisfy the decision sought by the submitter which is to remove W48 and would be out of scope. It is better suited to a future variation to the Plan or plan change.

124. In contrast, Significant Wetland W47 is also known as the Grovetown Lagoon. The area described in the Section 42A Report is an area of Grovetown Lagoon that borders AE Sadd Limited's property and is a small inlet to the west of the lagoon. The boundary of the wetland as shown in the PMEP does encroach onto AE Sadd Limited's property more than is appropriate and should be adjusted accordingly. There is, however, an area of W47 on the AE Sadd Limited property that is part of the Significant Wetland and should remain. [That] area is approximately 2.5 m wide and 140m long (350m$^2$) (see Appendix 1, Photograph 6).[48]

125. The Panel was advised that due to the scale of the wetland it was not included in the consultation process.

**Decision**

126. The boundaries of Significant Wetland W48 are amended as shown on page 68, of the Section 42A Report.

[46] A E Sadd Ltd (1303.1).
[47] Section 42A Report, page
[48] Section 42A Report, paragraph 396.

127. The boundaries of Significant Wetland W47 be amended as shown on page 69 of the Section 42A Report but only to the extent that those boundaries reduce the extent of the wetland and not expand it in relation to the notified boundaries.

### Wetland W1005 - Zoning Map 113

128. R Farley submitted in opposition to the boundaries of Wetland W1005 as mapped in the PMEP and seeks amendment to shift the boundaries outside his property.[49]

129. Significant Wetland W1005 was identified during the consultation process and at the request of the submitter, Mr Hamill conducted a site visit to confirm its identification and boundaries. The area is dominated by wetland vegetation including flax and rushes. Wetlands on such an area of flat land are rare and this loss would be significant. The boundaries were amended as a result of the site visit and the mapped area in the PMEP now reflects these amendments (see Appendix 1 Photograph 7 for the original boundaries, and Photograph 8 for the notified boundaries).

130. As Wetland W1005 meets the significance criteria, the Report Writer advises that the boundaries should remain as mapped in the PMEP.

**Decision**

131. Significant Wetland W1005 is retained as notified.

### Wetland W377 – Zoning Map 121

132. Nelson Forests Ltd submitted in opposition to the inclusion of Significant Wetland W337 in the PMEP.

133. It was considered initially that as the wetland met the significance criteria during MDC's landowner consultation process, and as there were currently identifiable wetland values observed, it probably should be retained but having heard the submitter that its assessment required a further on-site visit.

134. Mr Hamill, on his site visit, identified the wetland is located on a valley floor surrounded by plantation forest. The wetland is dominated by raupo, swarding sedges and ferns (Photo 5). Its southern margin has a small stand of kahikatea trees scattered along the edge. The northern margin has a forest stand comprising native trees, beech, lancewood, rimu and kahikatea. Despite being surrounded by plantation conifer species, the wetland is, in Mr Hamill's experience, one of the best intact wetland systems he has visited in the Rai/Pelorus area. It is significant, ranking H in terms of rarity and representativeness.

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[49] R Farley (134.1).

135. The originally mapped margins of the wetland were found to be slightly inaccurate and the recommendation is that the boundaries be redefined and mapped as those marked on Map 3.

**Decision**

136. Amend the boundaries on Significant Wetland W377 as set out on Map 3, page 15 of the response to Minute 10.

### Wetland W989 – Zoning Map 134

137. Nelson Forests Ltd submitted in opposition to the inclusion of Significant Wetland W989 in the PMEP (Council records identified different owners). Nelson Forests, however, supports its inclusion in the Plan if the site meets the criteria for significance as determined by verification on site. (Submission point 990.27 discusses W989 in terms of Significant Natural Areas (SNA) which are not mapped in the Plan although some features, including Significant Wetlands, that are mapped in the PMEP may also be Significant Natural Areas.)[50]

138. Wetland W989 is one that has formed in an ancient river channel at the foot of a slope, a seep from the side of which supplies additional water into the wetland. It is dominated by swarding sedges, rank pasture grasses and the occasional willow (Photo 6).

139. Mr Hamill confirmed after a site visit that very few of this type of wetland remain in Marlborough as they are relatively easily drained and converted to pasture. In his assessment the wetland ranks as M in terms of rarity and may therefore be considered to be significant.

140. The wetland's originally mapped margins are, however, inaccurate and Mr Hamill's recommendation is that they are redefined as those marked on Map 5.

**Decision**

141. Significant Wetland W989 is retained in the PMEP but with the boundaries amended as defined in Map 5, page 17 of the response to Minute 10.

### Wetland W1044 - Zoning Map 140

142. NZ Forest Products Ltd submitted in opposition to the "*significant ecological area at Opihi Bay*" and seek the deletion of this area from the PMEP.[51] Although no map identifying the specifics was included it is inferred that the submission relates to Wetland W1044. The submitter did not give reasons in the submission why it is seeking removal of this wetland.

<u>*Consideration*</u>

[50] Nelson Forests Ltd (990.66, 990.207).
[51] NZ Forest Products Limited (995.38).

143. Mr Hamill on receiving the submission reviewed the identification of W1044 noting that the previous owner (Underwood Farms Limited) had been granted consent for subdivision of the property. As part of that process the wetland area was to be set aside as a reserve as meeting the Significant Wetland criteria (see Appendix 1 Photograph 10).

144. The conclusion is that the wetland is to be designated as a reserve due to its wetland values and also meets the criteria for significance. It is not recommended to remove W1044 from the PMEP for these reasons.

**Decision**

145. Significant Wetland W1044 is retained as notified.

### Wetlands W69 and W261 - Zoning Map 149

146. Mr C Tozer submitted in opposition to the boundaries of Significant Wetlands W69 and W261, seeking that the boundaries be amended and requesting a site visit.[52] Mr Hamill agreed that it was appropriate to amend these boundaries as set out in Appendix 1, Photographs 11 and 12 to the Section 42A Report.

147. Mr Tozer also submitted in partial support of Zoning Map 149, however there was no specific reference to the mapping of wetlands on that map.[53] His submission was that landowners should be incentivised, by not requiring a resource consent, to actively improve biodiversity in Significant Wetlands. As this submission was not clear as to what was being sought it was not assessed further.

148. In Mr Tozer's additional information to support his submission, he identified that a narrow constructed ephemeral drainage channel/swale links Wetlands W69 and W261. This feature has been in place for 28 years of the Tozers' ownership. Light mechanical clearing is necessary every 2-3 years to remove a layer of willow weed and other non-indigenous species, debris and silt or the drainage channel blocks up and results in flooding their productive land. Mr Tozer asks if the periodic swale clearing could take place with the assistance of Council staff on a fair cost recovery basis to alleviate their own significant costs. One of the solutions the submitter suggested is a biodiversity management plan to assist in the wetland's management.

**Decision**

149. Significant Wetlands W69 and W261 are amended as set out on page 60 and the maps on 74 and 75 of the Section 42A Report.

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[52] C Tozer (319.24-25).
[53] Ibid (990.63, .202).

### Wetland W108 – Zoning Map 149

150. Mr Rodney Parkes had queries about Wetland 108 on his property as mapped. Mr Hamill visited the site with his agreement on 16 August 2018 to refine its boundaries. The area is located at the downstream extent of the Para Wetland. A causeway and drainage channel had been constructed at some stage to isolate the area from the Para Wetland to provide for pasture development. Efforts to drain the wetland had been partially successful, the results of which is that some of the areas originally identified in the Plan are now paddocks.[54]

151. It is recommended that the boundaries of Wetland 108 are amended as shown on Map 8, page 320 of the response to Minute 10.

**Decision**

152. The boundaries of Significant Wetland W108 are amended as shown on Map 8 of Mr Hamill's response.

### Wetland W88 – Zoning Map 155

153. Coatbridge Ltd submitted in opposition to the identification of W88 and sought its removal from the PMEP.[55] Mr Hamill had previously undertaken a site visit as part of pre-notification consultation. The boundaries were adjusted from the original proposal with agreement of the landowners (see Appendix 1 Photograph 16)[56]. The submitter did not request a further site visit. In the opinion of Mr Hamill, the area contains wetland values and meets the significance criteria.

**Decision**

154. Significant Wetland W88 is retained as notified.

### Wetlands W87 and W779 - Zoning Map 155

155. Nelson Forests Ltd submitted in opposition to the inclusion of Wetlands W87 and W779 and sought their removal from the PMEP.[57] This submission also stated that if these areas were confirmed to meet the criteria for significance their inclusion would instead be supported.

156. Mr Hamill undertook a site visit and found W87 to be a constructed fire pond in the foot of a valley, surrounded by gorse and broom. He did not consider that the wetland met the criteria for significance and recommended that the wetland be removed from the PMEP.

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[54] Windemere Forests Ltd (1238.47), R Parkes (324.3). See Section 42A Report for background (paragraphs 412-414).
[55] Coatbridge Ltd (356.3).
[56] Section 42A Report, page 79
[57] Nelson Forests Ltd (990.62, .202).

157. Mr Hamill also undertook a site visit and found W779 to be an incised stream gully with steep banks dominated by gorse, blackberry and broom. There was very limited wetland vegetation in the bed of the gully. Mr Hamill did not consider that the wetland met the criteria for significance and recommended that the wetland be removed from the PMEP.

**Decision**

158. Significant Wetlands W87 and W779 are removed from the MEP.

### Wetlands W762, W781 and W784 - Zoning Map 156

159. Coatbridge Ltd submitted in opposition to the identification of Wetlands W762, W781 and W784 in the PMEP and sought their deletion.[58] The Report Writer considers that as the three wetlands all met the criteria for significance during consultation, they should be retained in the PMEP. On a site visit by Mr Hamill to the submitter's property the boundaries were discussed.

160. The wetlands are in the floor of gullies and are representative of what the valleys would once have contained. They are rare in the ecodistrict and therefore meet the criteria to be considered Significant Wetlands. In terms of Wetland W781, Mr Hamill is familiar with the area as it is the largest freshwater spring in Northbank of the Wairau River and is habitat for banded kokopu. It too meets the criteria for significance.

161. The recommendation from the Report Writer is that all three sites remain as identified in the PMEP.

**Decision**

162. Significant Wetlands W762, W781 and W784 are retained as notified.

### Wetland W1368 – Zoning Map 156

163. Nelson Forests Ltd submitted in opposition to the inclusion of W1368 in the PMEP, but stated that if the area was found to meet the criteria for significance it would instead support its inclusion.[59] The area has since been identified during consultation to have wetland values and its inclusion in the PMEP is therefore supported. Mr Hamill reviewed its status through aerial photography which identified there are wetland values that meet the criteria (see Appendix 1 Photograph 19). This is supported by the lack of planting in the area which suggests it must have always been wet. On a site visit which was undertaken with agreement, the submitter did not provide any evidence to the contrary.

[58] Coatbridge Ltd (356.1, .2).
[59] Nelson Forests Ltd (990.60 and 990.205).

164. Wetland W1368 is identified as a wetland in a small gully high up in the foot hills of the Richmond Ranges. The waterway has not eroded out to a typical steep incised gully due to the presence of a bedrock outcrop. Upstream of the outcrop the valley floor is relatively flat allowing the formation of a wetland. The wetland dominated by flax and *carex secta* with one or two invasive willows present (Photo 7). 'It is a stunning wetland with a natural community that has not been impacted by drainage attempts.' The wetland is surrounded by commercial plantation forestry on relatively gently slopes. The forest has been harvested relatively recently and has been replanted. The recent harvest seems to have had very little impact on the condition of the wetland.

165. It is Mr Hamill's assessment that the wetland ranks as H for both rarity and representativeness and as a result is considered to be significant. While the wetland has some weed species, it is dominated by indigenous species expanding into the neighbouring farmland with rushes reclaiming some of the original lowland areas. The area is fenced from stock (see Photo 4). The boundary of the wetland as notified in the Plan is not particularly accurate and is smaller than the wetland actually is.

166. Mr Hamill recommends the boundary of the wetland is adjusted to more accurately reflect the extent of the wetland as shown in Map 6.

**Decision**

167. Amend the boundary of Significant Wetland W1368 as set out on Map 6, on page 18 of the response to Minute 10.

## Wetland W1369 – Zoning Map 156

168. Wetland W1369 is a small wetland in a small gully high up in the foothills of the Richmond Ranges dominated by flax and *carex secta* (Photo 8). The wetland has formed behind a bedrock outcropping, and upstream the valley floor is relatively flat allowing the wetland's formation. It is surrounded by commercial plantation which has been harvested relatively recently and replanted. The harvest seems to have had very little impact on the condition of the wetland. In Mr Hamill's assessment the wetland ranks as M for both rarity and representativeness, an as a result is considered significant.

**Decision**

169. Significant Wetland W1369 is retained as notified.

## Wetland W92 - Zoning Map 157

170. Nelson Forests Ltd submitted in opposition to the inclusion of Wetland W92 in the PMEP but stated that if the area was found to meet the criteria for significance then it would support its inclusion.[60]

171. Mr Hamill undertook a site visit and describes this relatively large wetland as located on a valley floor dominated by open water. There are scattered areas of *Carex secta*, raupo and flax among the margins of the area dominated by willows at its southern end. In the northern end open water gives way to the same species with *Carex secta* dominating the margins. It is Mr Hamill's evidence that valley floor wetlands of this size are relatively rare in the ecological district and will provide refuge, shelter and breeding sites for native duck species. Cryptic wetland species such as spotless and marsh crake will also utilise this type of wetland. The wetland ranks as M in terms of rarity and as a result is considered significant.

172. A manmade bund artificially trapping the water at the south end of the wetland was recently eroded in a storm event resulting in a drop in water levels by 500-600 mm. In Mr Hamill's opinion this event will return the area to a more natural valley floor wetland, allowing it to retain its values as a Significant Wetland (Photo 3).

173. Mr Hamill's recommendation indicates that while the original mapping of this wetland was not particularly accurate, its western boundaries should be redefined as those marked on Map 1.

**Decision**

174. Significant Wetland W92 is retained in the PMEP with boundaries amended as shown on Map 1 of Mr Hamill's response to Minute 10.

## Wetland W972 – Zoning Map 158

175. Nelson Forests Ltd submitted in opposition to the inclusion of Significant Wetland W972 but in support of its inclusion if verified by an onsite inspection.

176. On Mr Hamill's visit this wetland is found in the valley in an area of rolling hills the slopes of which are in plantation forestry and an area of land that has been used for illegally dumping sawdust. A site visit identified that parts of the area originally identified in the Plan were in fact an area of rank pasture grass and the toe of a ridge covered in pine trees.

177. The western area of the wetland is dominated by raupo and swarding sedges while the eastern end is dominated by flax and *carex secta* despite a large number of invasive weed species.

[60] Nelson Forests Ltd (990.59 and 990.206).

178. As a result of his site visit Mr Hamill recommended that while the wetland is significant, following consultation the boundaries need adjustment to those marked on Map 7.[61] He also conducted a site visit at the request of an adjacent landowner that has part of Wetland W972 on its property.[62] Mr Hamill confirms that this area has the natural character attributes present that meet the criteria (see Appendix 1 Photograph 22).

**Decision**

179. Significant Wetland W972 be retained in the PMEP but with the boundaries amended as shown on Map 7, page 19, of Mr Hamill's response to Minute 10.

## Wetland W203 - Zoning Map 165

180. Nelson Forests Ltd submitted in opposition to the inclusion of Wetland W203 in the PMEP but stated that if the area was found to meet the criteria for significance then it would instead support its inclusion.[63]

181. Mr Hamill identified Wetland W203 is a wetland that has formed at the foot of a terrace. Prior to straightening of the nearby stream, the wetland area would have been the main bed of the stream. The diversion of the nearby stream has taken the fast flow water from the wetland but has not been able to divert the underlying groundwater and hence the wetland has formed where the stream once would have flowed.

182. The wetland is dominated by a mixture of wetland sedges, rank pasture grass and flax (Photograph 4). The wetland has some weed species present but still retains a dominance of indigenous species. The wetland has been expanding into the neighbouring farmland and reclaiming some of the original lowland areas with rushes establishing themselves. The originally mapped margins of the wetland are slightly inaccurate and Mr Hamill suggests that the wetland boundaries are redefined to those marked on Map 2. The area is fenced from stock. In his assessment, the wetland ranks as M in terms of rarity and representativeness and as a result is considered to be significant.

**Decision**

183. Significant Wetland W203 is retained with boundaries amended as shown on Map 2 of Mr Hamill's response to Minute 10.

## Wetland W793 - Zoning Map 165

184. J Collett submitted in support of Wetland W793 and seeks amendment of the boundaries.[64] Significant Wetland W793 was identified during consultation as meeting the criteria for

[61] Section 42A Report, paragraphs 437-438.
[62] Nelson Forests Ltd (990.59, 990.206).
[63] Nelson Forests Ltd (990.65 and 990.200).

significance but a site visit was not requested. It is considered that refinement of the boundaries would be appropriate, and would likely result in a decrease in the area of W793. A site visit was undertaken in November 2018. Mr Hamill subsequently confirmed in the response to Minute 37 that the boundaries of the wetland should be reduced to more appropriately align with the wetland boundaries as identified during the site visit

**Decision**

185. Retain Significant Wetland W793 but with amended boundaries as shown on page 2 of Mr Hamill's response to Minute 37.

### Wetland W323 – Zoning Map 165

186. Trustpower submitted in opposition to the inclusion of Wetland W323 in the PMEP and seeks its removal.[65] As Trustpower is the owner of the land, and it has not provided any other information regarding wetland values or the reasons why the area should not meet the significance criteria, it is recommended the wetland be retained as mapped.

**Decisions**

187. Significant Wetland W323 is retained as notified.

### Wetland W324 - Zoning Map 166

188. Trustpower submitted in opposition to the inclusion of Wetland W324 in the PMEP and seek its removal.[66] This area has been identified as a Protected Natural Area (PNA) by DOC, meets the criteria for significance and should therefore remain mapped in the PMEP.

**Decision**

189. Significant Wetland W324 is retained as notified.

### Wetland W777 – Zoning Map 166

190. Nelson Forests Ltd submitted in opposition to the inclusion of Wetland W777 in the PMEP but stated that if the area was found to meet the criteria for significance then it would instead support its inclusion.[67] The area has since been identified to have wetland values and its inclusion in the PMEP is therefore supported.

191. Due to access issues, the site was unable to be assessed on the ground. On looking at the latest aerial photographs, it is evident that the wetland is much larger than originally mapped. The area is an old meander channel of the Top Valley Stream that has become isolated from the main channel. Only a small portion of the land as notified in the Plan encroaches on to

[64] J Collett (163.1). See Section 42A Report, paragraph 443.
[65] Trustpower (1201.171).
[66] Trustpower (1201.172).
[67] Nelson Forests Ltd (990.64 and 990.201).

land owned by Nelson Forests. That area looks to be dominated by willows and other weed species and therefore a boundary adjustment to exclude it will have minimal impact on the wetland itself.

192. The recommendation is to extend the Significant Wetland boundary to include that area of wetland that was originally identified in the PMEP (Map 4).

**Decision**

193. Significant Wetland W777 is amended as shown on Map 4, page 16, of Mr Hamill's response to Minute 10.

### Wetland W191 - Zoning Map 169

194. Quaildale Farm Ltd submitted in opposition to the inclusion of Wetland W191 in the PMEP and seek its removal.[68] Although this area initially met the criteria for significance, it has since been reviewed. The area is now considered a manmade feature (a large ponding area providing stock with water in times of drought. An 'island' in the middle has been personally planted by the owners). Its removal from the PMEP is supported. The Panel decided it has insufficient wetland values to meet the criteria. Maps of the area were provided in evidence which confirms this decision – one from 1974.

**Decision**

195. Significant Wetland W191 is removed from the PMEP.

### Multiple Wetlands - Zoning Map 176

196. Trustpower submitted in opposition to the inclusion of Wetlands W319, W320, W321, W792 and W1382 and seeks their removal.[69] A site visit was requested by Ron Sutherland, representative of the submitter. This took place in April 2017. After further assessment it was agreed that W319 and W1382 should be retained as even though they were impacted by grazing stock they had the ability to naturally recover.

197. The basis and structure of the wetlands remain with the areas still dominated by native vegetation.

198. Wetland W321 on Crown land zoned Open Space 3 should also be retained as it has significant wetland values.

199. Wetlands W320 and W792 however should be removed from the PMEP. W320 is in fact a terrace slope that has been destroyed through stock grazing and no longer meets the criteria for significance, and W792 had been incorrectly identified as a Significant Wetland.

[68] Quaildale Farm Ltd (346.1).
[69] Trustpower (1201.173).

**Decision**

200. Significant Wetlands W319, W321 and W1382 are retained as notified. Wetlands W320 and W792 are removed from the PMEP.

## Wetland W49 - Zoning Map 201

201. M Waddy submitted in opposition to the identification of Wetland W49 in the PMEP.[70] At the request of the submitter, Mr Hamill conducted a site visit with Mr Waddy to confirm the identification of the wetland and its boundaries. The wetland is an old meander channel of the Flaxbourne River that is heavily dominated by flax (*phormium tenax*).

202. While not fenced, the flax is very dense around the edges and is only grazed by sheep which do not push into the flax area. There are cabbage trees present with some *coprosma propinqua*, with bush lawyer pushing through. Some willow are present. Two ponds have been dug in the past to provide stock water.

203. The area overall meets the significance criteria. The landowner was happy at the time of the visit to the area being called a Significant Wetland.

204. It is not clear whether its removal is sought or whether the concern is instead regarding the limitation of activities in that area because that had been the feedback during the site visit.

**Decision**

205. Significant Wetland W49 is retained as notified.

## Definition of 'Significant Wetland'

206. C Bowron opposes the current definition and seeks amendment to read: 'A wetland area that has been shown to have significant biodiversity value for the location in which it is situated.'

207. The Report Writers reject this submission. It is considered that the amended wording is inappropriate, particularly from a plan users' perspective. The current definition of Significant Wetland assists plan users in knowing when the rules and standards do and do not apply by mapping in the PMEP all wetland zones.

**Decision**

208. The definition of Significant Wetland is retained as notified.

[70] M Waddy (184.1).

# Proposed Marlborough Environment Plan

# Topic 7: Public Access and Open Space

**Hearing dates:** 12 – 13 March and 3 April 2018

**S42A Report Writer:** Paul Whyte

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

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

**Submitter abbreviations**

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

## Introduction

1. The Introduction to Chapter 9 states that there are two regionally significant elements of community wellbeing in Marlborough. These are the access to rivers, lakes, high country and coast and the ability to enjoy areas of open space for recreation or other purposes. As there is a strong relationship between providing for areas of public access and areas of open space, the issues and supporting policies are considered together in this chapter. The chapter is also provided direction by s 6(d) RMA which states that 'the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers' is of national importance.

2. There were a number of general submissions on Chapter 9[1] that variously seek additional reference to 'cycling'; the control of weeds; increased consultation with Ngāti Koata, particularly around riparian rights and mooring sites; recognition that current access to Port Underwood is sufficient and should therefore not be a priority for public access (if access is enhanced, it is said there will be additional presence of logging trucks in the area, which is of particular concern); recognition that some types of subdivision cannot provide esplanade reserves and provide for the operational requirements, such as those that require operational connections between land and sea (these operational issues should be accounted for); objectives and policy should avoid too restrictively zoning privately owned in breach of s 85 RMA (zoning of any land not owned by the Council or Department of Conservation as Open Space Zone is opposed); inclusion of freedom camping in the chapter's policies; amendment to create a more concise and succinct chapter; Council to make a clear commitment to ensuring public spaces are managed through regulatory and non-regulatory provisions; recognition that public access is not supported by whanau who hold riparian rights in private ownership.

### Section 42A Report

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

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

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

**Consideration**

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

**Decision**

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

## Policy 9.1.1

**The following areas are identified as having a high degree of importance for public access and the Marlborough District Council will as a priority focus on enhancing access to and within these areas: [(a) – (e)]**

7. There were a number of submissions on this policy that variously seek: public access be limited to the form of esplanade reserves and strips; Policy 9.1.1 be restricted to apply only to Coastal Marine Zone areas and that Policies 9.1.6-9.1.8 better apply to access to the Marina and Port Zones; addition of 'iwi specific areas'; addition of White Bluffs; inclusion of public access policies in the River Management Section of the MEP and inclusion of the Opawa River stop bank as part of an overall cycle network;[2] an additional area (f) for conservation land;[3] clarification on the policy's application to rivers that only flow intermittently and the liability for damages; [4] amendment to the policy to include the need to protect conservation values and mitigate natural hazards;[5] identification of parts of water bodies considered 'high priority' for public access;[6] amendment to Policy 9.1.1 to include the phrase 'zoned Coastal Marine' after 'coastal marine area'.[7]

**Section 42A Report**

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

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[2] Bike Walk Marlborough Trust (471.1) and NZWAC (481.3)
[3] Te Runanga o Toa Rangatira (501.37)
[4] ME Taylor (472.9)
[5] FNHTB (716.135)
[6] Fonterra Cooperative Ltd (1251.300).
[7] PMNZ, Louise Taylor Evidence, Appendix B_. Section 42A Report, Reply to Evidence, pages 1-2, 3 April 2018.

**Consideration**

9. Policy 9.1.1(c) should not be restricted to the Coastal Marine Zone as it is a general policy referring to coastal and land areas and there are other policies to address issues such as safety. Similarly, the reference to conservation land is also too specific, particularly as the policy focuses on a broad range of geographical areas and features.

10. In response to the identification of waterbodies, reference to the overlay 'High Priority Waterbodies for Public Access' suggested by PMNZ was omitted from the policy at the time submissions were made. This should be inserted and resolves the issue by identification of high priority areas.

**Decision**

11. Policy 9.1.1 is amended to read:

*'… (b) high priority waterbodies for public access on the Wairau Plain (as shown in the overlay map) and in close proximity to Picton, Waikawa, Havelock, Renwick, Seddon, Ward and Okiwi Bay; …'*

12. All other submissions on Policy 9.1.1 are rejected

## Policy 9.1.3

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

**(a) adverse effects on the wider environment of that location from littering, unsanitary disposal of human waste or damage to vegetation; or**

**(b) conflicts between users that would detract from public enjoyment of the area.**

13. This policy relates to minimising the effects of public access on the wider public and conflicts between users.

14. The policy is supported by a number of submitters.[8] Others seek: inclusion of the wording 'where necessary' as not all circumstances will be appropriate to provide for the disposal of litter or human waste;[9] further provisions relating to trespass, landowner access and effects on neighbouring land use;[10] an express exclusion of Port, Port Landing and Marina Zones.[11]

**Consideration**

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

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[8] H Thomson (111.1), J Wilson (231.3), NZWAC (481.5), KiwiRail Holdings (873.5) and Fish and Game (509.139)
[9] MDC (91.201)
[10] Federated farmers (425.156), DA Sycamore, Evidence; Section 42A Report Reply to Evidence 3 April 2018.
[11] PMNZ (433.44)

that concern could arise, but landowner access as a permitted activity, does not fit the intent of this particular policy[12] as increased access would likely increase damage and littering by individuals. Again, it is not considered that reference to landowner access is necessary as it is at the discretion of the landowner. The exclusion of Port, Port Landing and Marina zones sought by PMNZ is not supported, as the policy appears to be favourable to operators of the facilities in these zones.[13]

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

**Decision**

17. That Policy 9.1.3 is amended by the following:

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

*(a) <u>cumulative</u> adverse effects on the wider environment of that location from littering, <u>trespassing</u>, unsanitary disposal of human waste or damage to vegetation; or…*

## Policy 9.1.11

**An esplanade reserve to be taken for public access purposes will be preferred to an esplanade strip or access strip in the following circumstances: [(a) – (c)]**

18. This policy is supported by one submitter;[14] others seek: an additional standard to recognise the requirements of s 229(c) RMA where the site adjoins a river;[15] inclusion in the policy of 'rivers used for angling';[16] the deletion of the transfer of ownership of an esplanade reserve from Crown to MDC as this relates to Sounds Foreshore Reserves.

19. This policy does not apply to rivers in a local context, except in circumstances where Policy 9.1.1(a) and (c) apply. Extending the wording of the policy to include adjoining rivers is therefore not supported. Additional wording should be added to the explanation section to clarify this situation. Similarly, 'rivers used for angling' are not a priority and do not require explicit mention.

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[12] Section 42A Report, paragraphs 74-75.
[13] Section 42A Report, paragraphs 74-75.
[14] DOC (479.98).
[15] NZWAC (481.10).
[16] Fish and Game (509.144).

**Section 42A Report**

20. The Section 42A Report states that deletion of transfer of ownership from Crown to Council in the policy is not justified as this submission is likely an over-reaction to the explanation wording where it refers to esplanade reserves being transferred from the Council to the Crown where esplanade reserves are largely owned by the Crown and managed by DOC (such as the Sounds Foreshore Reserve).[17] This ownership, as the explanation provides, enables the Department to manage in an integrated manner access to the foreshore for the general public as well as residents and bach owners with adjoining land.[18]

21. The Section 42A Report concluded with a recommendation that the following was added to the explanatory statement:

> *This ownership enables the Department to manage in an integrated manner access to the foreshore for the general public as well as for residents and bach owners with adjoining land. Council will give priority to taking esplanade reserves adjacent to rivers and lakes where (a) and (c) above apply.*

**Consideration**

22. The Panel has taken into account the provisions of s 229 RMA and considers the existing wording of the Policy is consistent with that provision.

23. The Panel has also considered the recommended addition to the explanatory statement but believes that it adds nothing in real terms to the expressions of objective intent in the policy itself. Hence the recommended wording is unnecessary.

**Decision**

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

## Policy 9.1.12

**In considering whether to waive the requirement for, or to reduce/increase the width of an esplanade reserve or esplanade strip of 20 metres in width, the Marlborough District Council shall have regard to: [(a) – (h)]**

25. This policy relates to the circumstances of waiving, reducing, and increasing the requirement for esplanade strips.

26. One submitter requests the extension of the existing policy to provide for defence lands, existing road reserve, sensitive machinery, network utilities etc, a subdivision involving a

[17] Section 42A Report, paragraphs 95-99. DA Sycamore, Further Evidence, Reply to Evidence, page 5.
[18] Section 42A Report, paragraph 98.

minor boundary only, or where the land is protected in perpetuity, so long as public access is secured along margins of coasts, rivers, lakes etc.[19]

**Section 42A Report**

27. The report writer identifies that (h) should remain generic and reference land that is already protected. In terms of (j), 'a minor boundary adjustment' is not defined and could result in allotment of substantially smaller than 4 ha. The other proposed amendments would act to either narrow the policy's force or would result in ambiguity or relate to potential issues such as in Chapter 19 Climate Change.[20]

28. The report writer recommends a new (i) to the policy to identify existing protection mechanisms of legal public access as part of the decision-making process.[21]

**Consideration**

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

**Decision**

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

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

## Policy 9.1.13

**When considering resource consent applications for activities, subdivision or structures in or adjacent to the coastal marine area, lakes or rivers, the impact on public access shall be assessed against the following: [(a) – (i)].**

31. This policy was supported by two submitters;[22] others seek: amendment to ensure there is no reduction in public access to rivers unless this is unavoidable, and that the policy also applies to the areas 'adjacent to rivers';[23] amendment to take into account the presence of marine farms;[24] the addition of a criterion taking into account the positive impacts of an activity, subdivision or structure from locating the development in that location;[25] inclusion of a further matter referring to restrictions imposed by the Submarine Cables and Pipelines

[19] Federated Farmers (425.162) DA Sycamore, Section 42A Report, pages 9-10, 11-15; Reply to Evidence, paragraph 124.
[20] Section 42A Report, paragraph 100.
[21] Section 42A Report, paragraph 100.
[22] DOC (479.99) and KiwiRail Holdings Limited (873.26).
[23] Fish & Game (509.145).
[24] Totaranui Ltd (233.27).
[25] Trustpower (1201.88), NI Foran Evidence, Federated Farmers (425.163) DA Sycamore Evidence. Section 42A Report.

Protection Act 1996 in respect of the Cook Strait electricity cable;[26] assertion that restricted discretionary activity status would not allow for positive effects.[27]

**Section 42A Report**

32. The Section 42A Report considers the requested amendments are generally not relevant to the policy, which relates to the criteria for assessing effects on public access to the coastal marine area, lakes or rivers. Assessment of the positive effects of an activity is already included as part of a (resource consent) application and is not needed in the policy.[28] Also the reference to unavoidable is not relevant to the criteria while 'riverbed' areas can be covered by water. The particular characteristics of marine farms can be considered in terms of existing criteria.

33. Amendment to include reference to the Transpower Cook Strait electricity cable is supported, however, as it is a matter that may impact on public access. The new policy highlights restrictions on public access imposed by other legislation.[29]

**Consideration**

34. The Panel agrees with the S42A report writer.

**Decision**

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

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

## Policy 9.1.14

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

36. This policy is supported by one submitter;[30] others seek: amendment to strengthen the requirement for providing alternative access;[31] and an addition of a new policy to read: 'The 2005 Maritime New Zealand Guidelines for Aquaculture Management Areas and Marine Farms do not need to be considered in the Marlborough Sounds context.'[32]

[26] Transpower (1198.22)
[27] Federated Farmers (425.163).
[28] Section 42A Report, paragraph 107.
[29] Ibid.
[30] Trustpower (1201.94).
[31] NZWAC (481.11), Fish and Game (509.146). Section 42A Report, paragraphs 108-109.
[32] MFA and AQNZ, Counsel's Legal Submissions. Section 42A Report, Reply to Evidence, page 6.

**Section 42A Report**

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

**Consideration**

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

**Decision**

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

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

## Policy 9.1.15

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

40. This policy is supported by one submitter;[33] opposed by two others.[34] They seek: inclusion of reference to potential incompatibility with adjoining activities; [35] deletion of the reference to 'waterbodies' as not all roads are located adjacent to these;[36] additional reference to safety for forestry operations;[37] a provision included relating to the stopping of roads.[38]

**Section 42A Report**

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

[33] Fish and Game (509.147).
[34] G and C Robbins (640.5), GV Robb (738.8).
[35] Federated Farmers (425.164).
[36] NZWAC (481.12).
[37] Te Rūnanga o Ngāti Kuia (501.39), NFL (990.214), H Arnold Evidence, Section 42A Report Reply to Evidence pages 6-7.
[38] Queen Charlotte Sound Residents Association (504.47).

under the RMA (as acknowledged in the explanation to Policy 9.1.16). Finally, it is not up to the landowner to open the road as it is already public.[39]

**Consideration**

42. The inclusion of reference to safety considerations relating to forestry operations does not detract from the overall thrust of the policy and should be included. The presence of unformed legal road that has not been formed or used for road purposes and to which the public have right of access potentially forms an important resource for public access purposes. Where possible and appropriate in terms of public safety opportunities should be made.[40]

**Decision**

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

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

## Policy 9.1.16

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

44. This policy is supported by one submitter;[41] others seek: inclusion of consideration of whether the road is on or near a culturally significant site;[42] addition of criteria (f)-(g) relating to whether there is public access at the other end of the unformed legal road, and the existing land use and degree of disruption to the nearby activities;[43] the deletion of the existing considerations (a)-(e) and replacement of these with a public notice;[44] minor amendment to include reference to future use;[45] the deletion of the policy in its entirety as it is a matter best dealt with by the Local Government Act.[46]

**Consideration**

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

[39] Section 42A Report, paragraphs 111-112.
[40] NFL (990.214). Ngāti Kuia (501.39). Section 42A Report, Reply to Evidence, pages 6-7.
[41] M and K Gerard (424.41).
[42] Te Runanga Toa Rangatira (166.52).
[43] Federated Farmers (425.165).
[44] NZWAC (481.13).
[45] NMFH Peter Wilson Evidence, Section 42A Report, Reply to Evidence, pages 7-8.
[46] Fish and Game (509.148) Peter Wilson Evidence, Section 42A Report, Reply to Evidence, pages 6-7.

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

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

**Decision**

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

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

*(a) current and future level of use …*

## Objective 9.2

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

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

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

**Section 42A Report and Consideration**

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

**Decision**

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

> *Objective 9.2 – ~~Identification of circumstances when~~ Public access to and along the coast and the margins of lakes and rivers will only be restricted where necessary for security, health and safety, conservation, cultural or other similar reasons. ~~can be restricted~~.*
>
> *There are some situations where public access to the coast, lakes and rivers is already restricted, for example by natural physical restrictions like those imposed by the coastal cliffs on the western side of d'Urville Island. Public access is also restricted where land to*

*the water's edge is in private ownership (riparian rights). However, there are other circumstances where access is or may need to be limited.*

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

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

### Policy 9.2.1

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

**(a) ensure a level of security consistent with the purpose of a resource consent or designation;**

**(b) protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;**

**(c) protect cultural values of Marlborough's tangata whenua iwi;**

**(d) allow for foot access only;**

**(e) protect public health and safety and animal welfare and to manage fire risk;**

**(f) protect heritage, natural or cultural values; and**

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

51. This policy is supported by a number of submitters;[47] others seek: the addition of a further subsection to allow access to and along the coastal marine area to manage threats to biosecurity;[48] the addition of a further subsection to ensure that the restriction does not result in trespass or adverse effects to neighbouring land;[49] additional provisions to recognise the potential damage vehicles can do to the foreshore;[50] the deletion of (g): 'other exceptional circumstances'.[51]

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[47] FENZ (993.7), KiwiRail Holdings Ltd (873.28), Port Marlborough Ltd (433.47) and Te Runanga Ngati Kuia (501.41).
[48] AQNZ (401.114) and MFA (426.119) Counsel's Legal Submissions.
[49] Federated Farmers (425.166).
[50] Forest & Bird DJ Martin Oral Evidence. Reply to Evidence page 10
[51] Fish and Game (509.151).

52. Trustpower[52] requested in the Public Access and Open Space chapter that where public access may be restricted in the coastal marine area and rivers and lakes, the following be added to the policy (f) ‘protect significant infrastructure and network utilities’.

**Section 42A Report**

53. This submission was inadvertently overlooked by the report writer who subsequently addressed it[53] by recommending it is appropriate to add these activities (such as hydroelectricity infrastructure) because they are likely to be incompatible with unrestricted access. While the policy does refer to public health and safety, the proposed recommended addition will reinforce this aspect, the amendment to read:

    *(g) protect significant infrastructure and network utilities*

    (with consequential change to numbering).

54. Forest & Bird also sought additional provisions to recognise potential damage that vehicles can do to the foreshore.[54] The Section 42A Report identifies this matter is addressed in NZCPS Policy 13.13.3 which includes reference to NZCPS Policy 20, Policy 13.13.7, and Method 13.M.18 Bylaws.

55. The final report made the following recommendation:

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

    The Panel accepts that recommendation but to align more closely with Policy 20 NZCPS inserts the phrase ‘or adjacent to’ so that the complete wording reads ‘on or adjacent to the foreshore’.

**Decision**

56. Amend Policy 9.2.1 to include a new (g) and consequential changes to numbering as follows:

    *(g) protect regionally significant infrastructure and network utilities; and*

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

57. Amend Policy 9.2.1 by adding the following to the end of the explanatory statement:

[52] Trustpower (1201.89). N I Foran, Evidence. Section 42A Report, Addendum (2018), Reply to Evidence, pages 9-10.
[53] Section 42A Report Reply to Evidence, page 8 and 9
[54] Forest & Bird, D Martin Evidence.

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

### 9.M.9 Liaison

**The Council will liaise with the Department of Conservation to identify areas along Marlborough's coastline where the use of vehicles on the foreshore and seabed is not appropriate.**

**The Council will liaise with the Department of Conservation to assess the need for additional or upgraded public facilities for areas identified in Policy 9.1.1 as having a high degree of importance for public access.**

**Section 42A Report and Consideration**

58. The Section 42A Report made the following observation about this liaison Method:

> *170. In terms of 9.M.9 Liaison, Kevin Loe (454.21), Queen Charlotte Sound Residents Assoc (504.49) and Flaxbourne Settlers Association (712.32) suggests that as well as consultation with DOC, landowners and the community also be consulted in terms of vehicle use and upgraded public facilities. Consultation with these parties is likely to occur and given their interests it makes sense to include them.*

59. The Panel agreed with that recommendation but also was cognisant of the need, stressed in relation to similar provisions throughout the hearing process by various of Marlborough's tangata whenua submitters, that to meet Part 2 RMA obligations the provision should also include reference to the need to liaise with Marlborough's tangata whenua iwi.

**Decision**

60. Amend Method 9.M.9 to read:

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

*The Council will liaise with Marlborough's tangata whenua iwi, the Department of Conservation, coastal landowners and interest groups to assess the need for additional or upgraded public facilities for areas identified in Policy 9.1.1 as having a high degree of importance for public access.*

# Open Space

## Open Space 1, 2 and 3 Rules

61. A number of submissions were received on the rules in the Open Space 1, 2 and 3 Zones. A number are more appropriate for other chapters, or lack specificity. Those that are identified here seek as follows:

- Clarification as to whether as Open Space 3 Zone covers all the Sounds Foreshore, DOC reserves, Titirangi Farm Park and some privately covenanted land, and if so should there be no exotic plantings or clearance of indigenous vegetation on this land.[55] (It is the understanding of the report writer that these types of land are included in Method 9.M.1 and the rules in the Open Zone 3 cover the matters referred to.)

- Addition of standards relating to direction of outdoor lighting to the permitted activities in Open Space 1, 2 and 3 Zones[56] (deferred until Nuisance Effects considered). The report writer considers this issue may need addressing but the standard is not in urban residential zones as stated by the submitter.

- A setback of 5 metres for new buildings adjacent to the rail corridor in respect of reverse sensitivity effects in the Open Space 1 and 3 Zones.[57] KiwiRail Holdings Ltd requests a setback of 5 metres adjacent to the 'rail corridor' in respect of reverse sensitivity effects in the Open Space 1 and 3 Zones. Provision be made for new emergency service facilities as controlled activities in Rule 18 Open Space 2 Zone and that additional standards be included relating to requirements to provide firefighting water supply and access to buildings[58] (the existing Renwick Fire Station is located in the Open Space 2 Zone (Rule 18.1.8); the issue is whether fire stations should be controlled where Council can refuse consent or be a discretionary activity.

- Addition of new standards relating to reverse sensitivity noise effects in respect of activities adjacent to ports at Picton, Shakespeare Bay and Havelock in the Open Space 2 and 3 Zones.[59] This matter is dealt with in Topic 18 Nuisance Effects.

- Addition of a new rule and standards in respect of livestock crossing rivers in the Open Space 3 Zone; these provisions were inadvertently omitted from the Plan and included

[55] M and K Gerard (424.189).
[56] NZTA (1002.211), Kathryn Barrett tabled Letter, Section 42A Report, paragraph 182; Reply to Evidence, page 15.
[57] KiwiRail Holdings Ltd (873.167 and .170).
[58] FENZ (993.80) tabled letter Liz White advice, Section 42A Report Reply to Evidence, pages 16-17.
[59] PMNZ (1284.6 and .7).

in other zones.[60] As the Open Space Zone contains some farms, it is the recommendation of the report writer that the rule and standard should be inserted.

- Addition of provision for directional and educational signage in the Open Space 3 Zone.[61] As the Open Space 3 Zone contains some farms, Wither Hills Reserve and Molesworth Station, the report writer accepts the rule and standard should be inserted – echoing submissions that apply to the Rural Zone, Coastal Environment Zone and to beds of lakes and rivers.[62]
- Exclusion of Rangitoto ki te Tonga/D'Urville Island and private land from being zoned as an Open Space 3 Zone, to retain riparian rights and rights to refuse people access to cross private land.[63] The zoning does not preclude the submitter from retaining their riparian rights or refusing people access. The report writer recommends no change is appropriate.
- Freedom camping in Open Space 2 and 3 Zones as provided in Rules 18.1.3 and 19.1.3 is opposed.[64] The report writer identifies the MDC bylaw is the main determinant of freedom camping but it is under review – see Marlborough District Council Camping Control Bylaw 2012.
- Under Rules 19.1, 19.3 there should be provisions managing stock access to rivers, given that farming is a permitted activity and that in many cases land adjacent to rivers is zoned Open Space 3.[65]
- In respect of all four Open Space zones the erection of pouwhenua or other cultural signage should be a permitted activity.(Te Atiawa)

**Section 42A Report and consideration**

62. The report writer considers that the 5 metre setback for buildings adjacent to the rail corridor requested by KiwiRail is reasonable for health and safety reasons. But given that the Plan does not have a definition of 'rail corridor', we sought further information about other South Island plans in relation to a definition of 'rail corridor' and how other district plans had defined the term.

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[60] MDC (91.153 and .154).
[61] Fish and Game (509.409).
[62] Section 42A Report, paragraph 194.
[63] Ragged Point Limited (1086.2).
[64] D and C Robbins (640.60 and .61), GV Robb (738.60 and 712.33), MJ Robb (936.60 and .61), H. Thomson (113.1), KF Loe (454.124), Timms Family (475.8), Fish and Game (509.421), Flaxbourne Settlers Association (738.61), P Wilhelmus and Ormond Aquaculture (1035.9) and further evidence from SM Wilkes. Section 42A Report, Reply to Evidence, page 19.
[65] Section 42A Report, pages 24, 27-28.

63. In terms of the Hurunui District Plan, there is no definition of 'rail corridor'. The zones variously require 4 metres from a boundary of any rail corridor in the Rural Zone, a 4 metre setback for yards adjoining the rail corridor in the Residential Zone, and for the Business Zone, 4 metres in the yards adjoining the rail corridor. The Palmerton North City Plan also does not define rail corridor; a rule in the Whakarongo Residential Plan requires no buildings to be located within 25 metres of the Palmerston North to Gisborne railway tracks. In the Rural Zone no building is to be located within 30 metres of the nearest railway track. The Christchurch City Plan Residential Suburban Zone requires buildings, balconies and decks on sites adjacent to or abutting a designated 'rail corridor' to be set back 4 metres from the rail corridor boundary and the same for the Industrial General Zone.

64. The report writer recommends that 5 metres is appropriate in the Open Space 3 Zone which encompasses the Wither Hills and Molesworth Station. Whether it is appropriate for other zones is not identified. The report writer suggests that the mostly similar standards throughout the South Island should be applied to Marlborough.

65. This issue is common to a number of zones and was particularly addressed by the Panel in the context of the urban zones as well as the Rural Zone. The decision reached by the Panel was that the buffer is appropriate to enable safe maintenance of buildings but a buffer of 5m was too large for this purpose. The Panel's view was that a 1.5m buffer for maintenance of buildings was sufficient and the Panel also formed a view that it should be a consistent approach. The detailed reasoning is provided in our decision in both the Urban and Rural Environments.

66. As to the issue of permitted activity status for pouwhenua in the Open Space zones the Panel considered that was appropriate to meet the Part 2 RMA requirements of recognising and providing for the cultural significance of places of importance to Marlborough's tangata whenua iwi. Most areas zoned in this way are under public ownership through the Department of Conservation or Council which will provide a measure of practical control, coupled with the need to meet zone standards for permitted activities.

**Decision**

67. New rules are inserted as 17.2.1.7 and 19.2.10 and are to read as follows:

*A building or structure must not be within 1.5m of the legal boundary with the rail corridor of the Main North Line.*

68. That pouwhenua be provided for as a permitted activity in Open Space zones 1-4. The rule detail of how this is to be achieved is set out in Topic 2: Marlborough's tangata whenua iwi decision.

## Zoning requests

69. A number of submissions were made requesting rezoning various sections of land in respect of open space.[66] These variously seek that:

- **Map 3** - Clearwater Reserve, Blenheim is more appropriately zoned as Open Space 1[67] than Urban Residential 2 as a Council-owned and managed park.
- **Maps 9, 159 -** Seymour Square, Blenheim is more appropriately zoned from Open Space 1 to Open Space 2 due to the special events that are held in the square.[68]
- **Maps 35, 37, 138 -** Pt Sec 1244, Sec 1260 and Sec 1258 Town of Picton and Lot 4 DP3342 should be rezoned from Open Space 2 to Business 1.[69] The land is currently open space and used for car parking and access to boats berthing adjacent to the car park. It also provides an important link to the Fisherman Reserve and Coat Hanger Bridge.
- **Maps 35, 37, 138 -** Secs 1180 and 1181 Town of Picton, and Lots 1, 2 and 3 DP 7913, Pt Lot 3 DP 1682, Lot 4 DP 3342 and Lot 1 DP 1972 are rezoned from Open Space 2 to Business 1 as this would allow for future commercial opportunities in this area.[70] It is currently zoned for commercial purposes in the MSRMP. (Map page 32 Section 42A Report will be helpful in accurate mapping.) Rezone Secs 1180 and 1181 Town of Picton, Lots 1, 2 and 3 DP 7913, Pt Lot 3 DP 1682, Lot 4 DP 3342 and Lot 1 DP 1972 as Business 1, as set out on page 39 of the Original Report. Note that the map on page 32 of the Original Report will be helpful in accurately mapping the rezoning.
- **Map 219 -** Private land property number 182692 on Ward Beach Road be rezoned from Open Space 3 to Rural Environment Zone, as the original zoning was done in error, as shown on Planning Map 219.[71]

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[66] Section 42A Report, paragraphs 256-284.
[67] MDC (91.115)
[68] MDC (91.114).
[69] MDC (91.255).
[70] MDC (91.256).
[71] MDC (91.95).

- **Map 80 -** An area shown on Planning Map 80 in proximity to Tuamarina be rezoned as the area includes private land some of which is subject to a long term lease which is highly modified agricultural land.[72]
- **Map 93 -** Secs 1 and 2 SO 428440 private land located at Catherine Cove, D'Urville Island zoned Open Space 3 are rezoned to Coastal Living Zone as the titles were subdivided from Crown Land as part of the Treaty settlement processes.[73]
- **Map 111 -** Sec 1 SO 429448 private land at Wharf Road, Okiwi Bay zoned Open Space 3 be rezoned to Coastal Living Zone as this land was declared not to be suitable for residential development. Transferred from the Conservation Estate to Ngāti Koata through the Treaty process.[74]
- **Map 114 -** Rezone covenanted areas as Open Space 3. Landowner wish. (Refer to tabled evidence General.)
- **Map 114 -** Property at Hopai Bay, two areas that covenanted with DOC in Oaheka Peninsula had not been included in the Open Space 3 Zone.[75]
- **Map 124 -** Sec 14 Block 1 Linkwater Survey District, which has recently been subdivided, should be rezoned as Coastal Living Zone from Open Space 3 given its private ownership.[76] Rezone Sections 17 and 18 (part of Lot 5), Section 3 (part of Lot 2), Section 21 (part of Lot 4), Section 15 (part of Lot 6), and Sections 11, 12 and 8 (part of Lot 7) to Coastal Living. Note that the survey plan and subdivision plan on page 37 of Original Report will be helpful in accurately mapping the rezoning.
- **Map 149** – Remove Open Space 3 Zone from true left of Cravens Creek (Mr Tozer has concerns that Open Space 3 Zone along Cravens Creek will result in expectation of public access).[77]
- **Map 219** – Private land (PN182692) is zoned Open Space 3 in error. Rezone private land currently Open Space 3 as Rural Environment.[78]
- W363 Significant Wetland (Planning Map 57) be 'declassified' and rezoned to Coastal Marine Zone.[79]

[72] Gary Barnett (1258.11).
[73] Jarvie Family Trust and TM and MS Raumati (11.1).
[74] Hura Pakeke Trust (498.1).
[75] M and K Gerard (424.190) Evidence, Section 42A Report, Reply to Evidence, page 20.
[76] Ashley Cook (520.1)
[77] Section 42A Report, page 38; Reply to Evidence, page 19-20.
[78] MDC (91.95), Section 42A Report, pages 32-33, 40.

70. Opposition to a number of zonings were also submitted.[80] Other zoning requests are largely accepted as listed below.

71. The subdivision of DOC and private land in Block 1 Linkwater Survey District at Pinohia, Paradise Bay also requires rezoning of additional lots. These areas shown on SO Plan 481651 should be rezoned from Open Space 3 to Coastal Living as they are now in private ownership (Planning Map 114).

72. In addition, there are a number of sections in the Scenic Reserve which should be rezoned from Coastal Living Zone to Open Space 3 (Planning Map 124). Although there was no specific submission on these areas it is a consequential change from the submission of Ashley Cook and is a rationalization of Paradise Reserve.

73. In terms of Planning Map 80, a title search reveals the area is owned by MDC and is considered as part of an inactive riverbed and as such, zoned Open Space 3. This zoning allows farming as a permitted activity and there is no need for change.[81]

74. In regard to the declassifying an area from being a Significant Wetland to a Coastal Marine Zone (Planning Map 5), this is better addressed under the Significant Wetlands chapter. However, given that the wetland does not encroach on the submitter's property it is considered unlikely that rezoning is required.

75. Concerns about zoning of Open Space 3 on Planning Map 149 and as a consequence attracting freedom campers are held by one submitter but as explained, the process of mapping here relates to mapping riverbeds and active and non-active channels. The report writer explains that the desirability of zoning 'land' provides the Council with controls. Open Space Zoning appears the most appropriate given that it is public land but farming still permitted. No recommendation is made.[82] However, the Panel was of the view that the area involved here is so small that it serves no useful practical purpose to zone it Open Space 3 as it is surrounded by rural zoned privately owned land. It should be zoned Rural Environment on the southern side of Cravens Creek consistent with the zoning of surrounding land.

76. Two submitters[83] clarified the location of covenanted areas at Hopai – one is zoned Open Space 3 and the other site is Coastal Environment. There is no objection to rezoning the other

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[79] Tim Marshall (137.2).
[80] Te Atiawa further submissions and Mt Zion Trust and AM and WW Scholefield (515.2). Evidence by Mt Zion Trust and others (Reply to Evidence 3 April 2018).
[81] Section 42A Report, paragraphs 260-262, 264-265, 268-270, 273-275.
[82] Section 42A Report, paragraph 272.
[83] M and K Gerard (424.190).

site Open Space 3 although not critical as there is a covenant in place to protect its attributes: see Planning Map 114.[84]

**Section 42A Report recommendations**

77. The following are recommended for rezoning:

- Clearwater Reserve, Clearwater Place, Blenheim (Lot 33 DP 372968 (PN530180)) Planning Map 3 is rezoned from Urban Residential 2 to Open Space 1.
- Seymour Square, Blenheim (Lot 1 DP 6917) Planning Map 9 is rezoned from Open Space 1 to Open Space.
- Pt Sec 1244, Sec 1260 and Sec 1258 Town of Picton and Lot 4 DP 3342, Picton Foreshore Planning Map 35 is rezoned from Business 1 to Open Space 2.
- Sections 1180 & 1181 Town of Picton, Lots 1, 2 and 3 DP 7913, Pt Lot 3 DP 1682, Lot 4 DP 3342 and Lot 1 DP 1972 Planning Map 37 are rezoned from Open Space 2 to Business 1.
- Specified parts of Property Number 182692 is rezoned from Open Space 3 to Rural Environment Zone on Planning Map 219.
- Sections 1 and 2 SO 428440 are rezoned from Open Space 3 Zone to Coastal Environment Planning Map 93 as the Coastal Environment Zone is the prevalent type of zoning in the area.
- Section 1 SO 429448 is rezoned from Open Space 3 to Coastal Living on Planning Map 111.
- SO Plan 481651: Sections 17 and 18 (part of Lot 5), Section 3 (part of Lot 2), Section 21 (part of Lot 4), Section 15 (part of Lot 6), and Sections 11, 12 and 8 (part of Lot 7) are rezoned from Open Space 3 to Coastal Living on Planning Map 124.
- Sections 1, 9-10, 13-14, 16, 19-20, and 22-23 on Planning Map 124 are rezoned from Coastal Living to Open Space 3. [85]
- The two covenanted areas on Planning Map 114 are rezoned to Open Space 3 Zone.[86]

[84] Section 42A Report, paragraph 268.
[85] Section 42A Report, paragraphs 276-284.[86] Reply to Evidence, page 20
[86] Reply to Evidence, page 20

**Decision**

78. For the reasons given, all of the recommendations are accepted, except for Map 149 where the small isolated Open Space 3 zoning on the southern side of Cravens Creek is removed and replaced with Rural Environment zoning.

## Overlay maps

79. There are several submissions relating to the High Priority Waterbodies for Public Access Overlay Maps that seek inclusion of the section of Co-op Drain between behind Brooklyn Drive to Dry Hills Lane; removal of the section of Doctor's Creek and Opawa River as this area is used for a vineyard; inclusion of further information on the Overlay.[87]

80. The Section 42A Report identifies that inclusion of the additional section of Co-op Drain is appropriate to prioritize as it is shown in the Marlborough Walking and Cycling Strategy. The area near Doctor's Creek should be retained as the general intent of the policy remains and there may be other methods to avoid identified constraints. Finally, as discussed in Policy 9.1.1, the reference to 'High Priority Waterbodies for Public Access' had been omitted inadvertently and is now corrected.

**Recommendation and decision**

81. The overlay map is amended to show the section of Co-op Drain between Brooklyn Drive and Dry Hills Lane.

[87] PM Gilbert (192.4), Constellation Brands NZ Ltd (631.57), P Rene (1024.2).

# Proposed Marlborough Environment Plan

## Topic 8: Heritage and Notable Trees

**Hearing dates:** 12 March and 3 April 2018

**S42A Report Writer:** Paul Whyte, Brad Cadwallader and John Gray

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| ADP | Accidental discovery protocol |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| MHWS | Mean High Water Spring mark |
| NPSET | National Policy Statement on Electricity Transmission |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| RMA | Resource Management Act 1991 |
| STEM | Standard Tree Evaluation Method |
| Te Pokohiwi | Te Pokohiwi o Kupe |

**Submitter abbreviations**

| | |
|---|---|
| DOC | Department of Conservation |
| HNZPT | Heritage New Zealand Pouhere Taonga |
| KCSRA | Kenepuru and Central Sounds Residents' Association |
| Ngāti Kuia | Te Rūnanga O Ngāti Kuia |
| Ngāi Tahu | Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu |
| NMDHB | Nelson Marlborough District Health Board |
| NZTA | New Zealand Transport Agency |
| Rangitāne | Te Rūnanga a Rangitane o Wairau |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

## Heritage Resources and Notable Trees

1. This report assesses submissions to provisions of the PMEP including:

   - Volume 1 Chapter 10 Heritage Resources and Notable Trees
   - Volume 2 Chapter 2 Rules Heritage Resources
   - Volume 2 Chapter 2 Rules Notable Trees
   - Volume 2 Chapter 25 Definitions
   - Volume 3 Appendix 13
   - Volume 4 Zoning Maps

2. A schedule of heritage resources is identified in the PMEP in Appendix 13 and they are split into two categories. Schedule 1 comprises Category I Heritage Resources which includes all of the items on Heritage New Zealand Pouhere Taonga (HNZPT) Category I List. In total there are 15 items including buildings, pa sites, wāhi tapu sites, boats and a bridge. Schedule 2 comprises Category II and Locally Significant Heritage Resources and includes all of the items on HNZPT Category II list as well as heritage resources 'considered to be locally significant'. There are 143 items including buildings, monuments and plaques, cemeteries, wāhi tapu sites, defence works, and a moa hunter site. The items include those that occur on public land administered by Council and DOC. No notable trees are included in Schedule 1 or 2, rather they are contained in Schedule 3. The inclusion of a new schedule (to be incorporated after Schedule 2) is a recommendation emanating from the Sites of Significance in the Statutory Acknowledgements.

3. Generally heritage resource and notable trees are dealt with separately in the chapter with each having its own issue, objectives, policies and rules. The methods of implementation and anticipated environmental results are 'shared', as is the Introduction, although the main emphasis in the Introduction appears to be on heritage resources. The Issue for Notable Trees is described as follows: 'Trees that contribute to Marlborough's historic heritage and/or amenity values are at risk of being removed or adversely affected.'[1]

4. Method of Implementation 10.M.1 in the PMEP confirms heritage 'resources or trees identified will be those that meet the criteria in Policies 10.1.4 and 10.2.1 and/or those included on the New Zealand Heritage List/Rārangi Kōrero.' The items are identified on the planning maps.

[1] Section 42A Report, paragraph 26.

5. The rules applying to the heritage resources are contained in Rules 2.24-2.27 in Chapter 2, Volume 2. Essentially repairs, maintenance and safety alterations are permitted subject to standards. The whole or part demolition or removal of Schedule 1 resources are a prohibited activity (there are no submissions opposing this rule). Any other activity requires resource consent as a discretionary activity.

6. The protective mechanisms for places or sites listed on the HNZPT list are administered by local authorities through district plans prepared under the RMA. This reflects s 6(f) RMA which requires the Council to recognise and provide for protection of historic heritage from 'inappropriate subdivision, use and development'. Local authorities also protect unregistered heritage resources that are significant to the district, or to local communities within it.

7. This report is divided into several parts – Heritage Resources, Notable Trees and significant sites. Marlborough's tangata whenua iwi interests are identified throughout the chapter. All accepted amendments made in these areas are addressed in the body of the text with recommendations addressed under the heading 'Decision'. Those submissions that are rejected are identified at the end of each decision.

**Issues arising**

- Legal provisions
- Retention and protection of heritage resources
- Potential adverse effects on heritage resources
- Archaeological sites
- Recognition of significant sites
- Addition of significant sites
- Addition of Notable Trees

8. In respect of a number of the issues arising, there is some overlap.

**Legal provisions and PMEP definitions**

9. The relevant legal provisions provide the reference point at the outset as follows:

Section 2 RMA Interpretation

> **historic heritage –**
> **(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:**
> **(i) archaeological:**
> **(ii) architectural:**

**(iii) cultural:**
**(iv) historic:**
**(v) scientific:**
**(vi) technological; and**

**(b) includes –**

**(i) historic sites, structures, places, and areas; and**
**(ii) archaeological sites; and**
**(iii) sites of significance to Māori, including wāhi tapu; and**
**(iv) surroundings associated with the natural and physical resources**

Matters of national importance

**Section 6 RMA Matters of national importance**

**…**

**(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:**
**(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:**
**(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:**
**(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:**
**(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga:**
**(f) the protection of historic heritage from inappropriate subdivision, use, and development:**
**(g) the protection of protected customary rights:**
**(h) the management of significant risks from natural hazards.**

Section 7 RMA Other matters is also of relevance:

**7 Other matters**

**In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—**

**(a) kaitiakitanga:**
**(aa) the ethic of stewardship:**
**…**
**(c) the maintenance and enhancement of amenity values:**
**…**
**(f) maintenance and enhancement of the quality of the environment:**
**…**

**Definitions**

10. 'Heritage resource' is defined in the PMEP as:

*means any type of historic heritage place or area. It may include a historic building or item, historic site, a place/area of significance to Maori or heritage landscape. The term may be used to refer to both heritage resources listed in the Marlborough Environment Plan and to those registered by Heritage New Zealand.*

11. Notable Tree is defined as:

*as identified in Appendix 13.*

## Heritage Resources

**General**

12. Several submitters seek the retention of Volume 1's Chapter 10 in its entirety.[2] Others request: that the terms 'natural heritage values' and 'historical heritage values' are distinguished throughout the PMEP; that reference to 'listing' is amended; [3] that care is taken in how the term 'archaeological site' is used and that the terms 'modify' and 'destruction' are used in respect of archaeological sites; and that the same language is used as in the Heritage New Zealand Pouhere Taonga Act 2015 being either recorded or unrecorded sites.[4]

13. A number of submissions from Marlborough's tangata whenua iwi seek inclusion of an issue and/or objective that protects unregistered or undiscovered sites of significance to iwi; an Anticipated Environmental Result (AER) for cultural or iwi related sites, features, structures or resources is inserted into the PMEP;[5] a new policy and related provisions to provide greater protection for wāhi tapu and wāhi taonga sites and a new policy that provides a future works pathway to identify these sites.

### Objective 10.1

**Retain and protect heritage resources that contribute to the character of Marlborough.**

14. A number of amendments are suggested by two submitters to better reflect the intention of the RMA. The former requests reference to 'inappropriate development' as a reference to s 6(f) RMA[6] while the latter requests reference to an understanding and appreciation of Marlborough's history and culture, given the definition of 'historic heritage' in the RMA.

15. In subsequent evidence, Te Ātiawa seeks an amendment after the final paragraph to the explanation to include 'with a sense of time and place and who we are'. The iwi also requests clarification as to the meaning of the term 'that contribute to the character' to allay concerns that the sites may not be protected, but in his reply to evidence the report writer agrees to the amendment to the first sentence of the explanation as set out below.[7]

**Section 42A Report**

16. The report acknowledges that s 6(f) RMA refers to 'inappropriate development' and it is referenced in the Introduction and policies, with the report writer acknowledging some further explanation in the objective is appropriate.

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[2] J and J Hellstrom (688.191) and KCSRA (869.47).
[3] HNZPT (768.1 -.4) (768.24)
[4] HNZPT (768.24)
[5] Ngāti Kuia (501.42), Te Ātiawa (1186.26, 1186.59), Te Rūnanga o Kaikōura and Te Rūnanga o Ngāi Tahu ('Ngāi Tahu') (1189.91, 1189.92).
[6] Federated Farmers (425.170).
[7] Te Ātiawa (1186.54), Ian Shapcott Evidence, pages 12-14. Section 42A Report, Reply to Evidence, page 23.

17. The report writer also agrees with the proposed amendments to better reflect the RMA. He also supports Te Ātiawa's reference to time and place and a sense of 'who we are'.

18. But in terms of Te Ātiawa's concerns, the report writer considers the word 'contribute' is reasonably clear, and the objective is reasonably high level with the policies and rules providing more detailed 'protection'.[8]

**Consideration**

19. The Panel considers the amendments recommended better reflect the intention of the RMA and clarification of the meaning of 'that contribute to' is required. We accept the amendments to these points as recommended below. We also consider that Te Ātiawa's amendment to the second line of the second paragraph of the explanation of the objective is also an insight into the fact that heritage provides us with more than just a sense of place. It brings together an emerging focus and recognition of Marlborough's cultural heritage and people together with that of its European history.

**Decision**

20. Objective 10.1 is amended as follows:

*Objective 10.1 – Retain and protect heritage resources that contribute to <u>an understanding and appreciation of Marlborough's and New Zealand's history and cultures</u>. ~~to the character of Marlborough~~.*

*Historic heritage makes a significant contribution to the identity of Marlborough and provides us with a sense of <u>time and</u> place <u>and who we are</u>; and in doing so adds to the social and cultural wellbeing of our community. It is therefore important for heritage resources to be retained. However, retention alone does not necessarily ensure protection as many heritage resources, especially buildings, need to be maintained on an ongoing basis given their age. Where maintenance has not occurred or where past development has not taken into account a resource's heritage values, heritage resources may need to be actively enhanced to improve the contribution they currently make to our social and cultural wellbeing. <u>Use and development of a heritage resource is not precluded as long as it is not considered inappropriate</u>. This objective also reflects the Council's obligations under Sections 6(e) and 6(f) of the RMA.*[9]

[8] Section 42A Report, paragraph 63.
[9] Ibid, paragraph 64.

## Policy 10.1.2

**Support community initiatives to retain and enhance heritage resources**

21. This policy recognises that local communities can initiate projects to retain and enhance resources. Several submitters support the policy as notified. Federated Farmers considers, however, that a new policy should be added to Chapter 10 which seeks to increase public recognition of the effect both public and private landowners assume over heritage resources.[10]

**Section 42A Report**

22. The policy reinforces the theme of community involvement with a submission point seeking a new policy be added to Chapter 10 in order to increase public recognition of the efforts (and protection) that private and public landowners provide for heritage sites located on their properties. [11]

23. The report writer indicates that instead of providing a new policy, this response is better addressed by further amending Policy 10.1.2 to include not only landowners but recognises and supports their initiatives, as the issue is more a process policy rather than an outcome.[12] The report writer observes that this does not derogate from the need to consult with iwi which is covered in a further submission from the runanga.[13]

**Consideration**

24. The Panel agrees that landowners provide a vital role in the protection of heritage resources on private land. That role should be recognised through an addition to the policy. The recognition should transfer into ongoing and strengthening support for current and future landowner initiatives.

**Decision**

25. For the reasons given, the Panel amends the wording of Policy 10.1.2 as follows:

*[RPS, R, C, D]*

*Policy 10.1.2 – Support community and landowner initiatives to retain and enhance heritage resources.*

*Local communities and landowners can initiate projects to retain and enhance heritage resources. The Council ~~will~~ recognises and supports such proactive efforts as an effective way*

[10] Federated Farmers (425.182).
[11] Federated Farmers (425.184).
[12] Section 42A Report, paragraph 79.
[13] Te Ātiawa o Te Waka-a-Māui (1186.55).

*of not only protecting Marlborough's historic heritage, but also creating a community awareness of this heritage.*

## Potential Adverse Effects on Heritage Resources

### Policy 10.1.5

**Avoid adverse effects on the historic heritage value of Category I heritage resources;**

### Policy 10.1.6

**Where modifications are proposed to Category I heritage resources and other heritage resources, the adverse effects of the modifications on the values of the resources should be avoided, remedied or mitigated.**

26. Submissions suggest including: rewriting Policy 10.1.5 and combining it with Policy 10.1.6 relating to adverse effects[14]; use of (other) various terms and referencing the schedules;[15] recognising infrastructure assets attached to Category I Heritage Resources.

27. Transpower notes there are a number of utility assets attached to the Ōpaoa River Bridge which is currently listed as a Category I Heritage Resource including the fibre optic cables owned by the company. The proposed policy, as drafted, is seen as having the potential to compromise its ability to maintain and upgrade this cable in a manner that is consistent with NPSET.[16]

28. HNZPT states that with Policy 10.1.5 addressing the demolition, partial demolition, relocation and destruction of Category I heritage resources, a similar policy is requested for Category II.[17] Ideally, with Category II resources, adverse effects are generally avoided. Given the reduced significance of these items, consideration should be given to the economics of retaining the item including the cost of upgrade for public safety (these matters are provided for in Policy 10.1.7). Relocation of Category II items should not be included in this policy and is best addressed under Policy 10.1.6 due to these items generally being less tied to their original location. HNZPT also suggests rewriting the policy to overcome vagueness with the term 'modification' in Policy 10.1.6 and to apply to all activities which would complement the amendments to Policy 10.1.5.[18]

29. Ms Sylvia Allan for HNZPT has concern at the ambiguity arising with the use of the undefined relativity about the term 'destruction', particularly when it is applied to items (now) in Schedule 3 of Appendix 13 which are very large sites of significance to Māori (some are whole

[14] Federated Farmers (425.179).
[15] HNZPT (768.31) in part (of adverse effects).
[16] Transpower (1198.23).
[17] HNZPT (768.32).
[18] HNZPT (768.32).

islands).[19] In some cases, applying the word 'destruction' to such sites at both a policy and rule level will not be as effective as when applied to Schedule 1 sites which are generally buildings. In her opinion, either a definition of 'destruction' (which in the case of Schedule 3 sites includes modification) should be made or the policy should include 'modification'. It would marry up the policy protection afforded in Schedule 1 items and align with the explanation.

30. The witness seeks to add the word 'modification' to Policy 10.1.5 as follows:

> *Avoid adverse effects on the historic heritage values from the destruction, demolition or relocation of Category A ~~1~~ heritage resources identified in Schedule 1 and from the modification or destruction of sites of significance to Māori identified in Schedule 3 of Appendix 13.*

(As a consequence, she also suggests an additional modification to 10.AER.1.)[20]

31. Amendments are suggested by Federated Farmers to combine this policy with Policy 10.1.6 relating to adverse effects. HNZPT suggests rewriting Policy 10.1.6 to overcome vagueness with the term 'modification' and to apply to all activities and which would complement the amendments to Policy 10.1.5.[21]

32. HNZPT also sought a change to the naming of Appendix 13's Schedules 1 and 2. Currently they referred to Schedule I and Schedule II respectively, naming that reflected the List references in the HNZPT List. It was explained that the similarity caused confusion and that a simple renaming to A and B would alleviate the issue.

**Section 42A Report**

33. The following are the recommendations of the Section 42A Report which are generally in agreement with the submissions of HNZPT and cover the spectrum of the issues arising from Policies 10.1.5-10.1.6:[22]

- In terms of Policy 10.1.5, the current terms of Category I and Category II used in Appendix 13 should be replaced with the terms Category A and Category B to avoid confusion with HNZPT which uses these terms in in its Heritage List/ Rārangi Kōrero (the List). Reference to a list in the PMEP provisions is also deleted to avoid confusion with the HNZPT reference. The policy also specifically references the relevant schedules in Appendix 13 of the PMEP.

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[19] HNZPT, Sylvia Allan Evidence, , page 4.
[20] HNZPT, Sylvia Allan, Evidence, paragraph 3.4.
[21] S42A Report, paragraph 85, citing HNZPT (768.32)
[22] Section 42A Report, page 24.

- Wāhi tapu and other sites of significance currently contained in Schedules 1 and 2 should have their own schedule (a new Schedule 3 to be located after Schedule 2) given that their cultural values that make them significant often defy classification under Schedules 1 and 2 which essentially relate to European items other than for some Māori taonga or wāhi tapu. The report writer recommends later on in his report populating the new schedule with appropriate items from Schedules 1 and 2.
- Policy 10.1.5 should be amended to also avoid adverse effects on the destruction (rather than demolition) of items in the proposed new schedule. The report writer agrees 'destruction' is more appropriate than 'demolition' in respect of wāhi tapu sites. (This wording is consistent with the current intention of avoiding adverse effects on the Category A items, albeit that Schedule 2 wāhi tapu sites would be included in the new schedule.)
- Avoiding adverse effects on the 'relocation' (rather than the 'loss') of Category A built items should now be included in Policy 10.1.5 given the specific setting of an item is often very significant to its cultural and historic heritage values. Effectively, the 'relocation' of these items is prohibited (see Rule 2.27) but this appears to have been the intent of the policy as publicly notified.
- A new policy should be included for Category B items given that these items are not specifically addressed in the heritage policies. The new policy should essentially require adverse effects to avoid values from the destruction, demolition, partial demolition or relocation of items except where the item is of danger to public safety or repair. Accordingly the test should be less than for Category A items which in the report writer's opinion appears to be appropriate given their lesser status. Given the absence of a policy dealing with Category B items he agrees that a new policy is appropriate and provides sufficient flexibility in assessing applications.
- The changes to Policy 10.1.5 and the new policy suggested would result in a rewrite of Policy 10.1.6 to cover those items that are not subject to amended Policy 10.1.5 and the new policy in which adverse effects are to be avoided, remedied or mitigated. In the report writer's opinion this proposed new policy is appropriate and provides sufficient flexibility in assessing applications and covers all types of development rather than the less precise term of 'modification'.
- The changes to Policy 10.1.7 are generally consistent with the other suggested changes. Reference to wāhi tapu and other similar sites should be removed from Policy 10.1.7

given that Policy 10.1.8 specifically addresses this issue. Consideration of the relationship of the item with its surroundings is also included, which is consistent with Policy 10.1.4, and a more specific consideration is made in respect of economic considerations.[23]

**Consideration**

34. The report identifies, as a result of submissions, that Policy 10.1.5 requires considerable clarification. There is potential confusion with the HNZPT List categories; also a link to Appendix 13 is required. Further, demolition of Category II buildings is not covered by the policy so a new policy is required.

35. One issue that did arise, when the recommendation was considered in conjunction with the recommendations for Method 10.M.2 with respect to the use of prohibited activity rules and Rule 2.27.1 (the prohibited activity rule itself) was consistent expression. It is clear that Policy 10.1.5 has a clear direction to avoid adverse effects on Category I [*sic*] heritage resources. That direction is implemented through the method and the rule. It is therefore essential that the activities to be regulated in this manner are consistently expressed in the provisions in other decisions, the Panel confirms that the activities to be prohibited are the whole or partial demolition, or removal, of a Category I [*sic*] heritage resource. It is these same terms that must be used to explain the policy of avoidance of adverse effects. In adopting the recommendations of the report writer, the Panel amends the expression of the activities in the explanations to Policy 10.1.5 and Method 10.M.2 for reasons of consistency.

36. The Panel did debate whether the term ‘removal’ or ‘relocation’ should be used in these provisions. On balance, the Panel favoured ‘removal’ because it avoids any movement of the heritage resource within the same site (the term relocation may imply that the resource could be moved within the same site). As the report writer emphasised, the physical context of the site may contribute to the heritage value.

37. For the report writer these amendments generally meet the concerns of the other submitters.

38. Given that the recommendation for Policy 10.1.5 would be restricted to demolition, partial demolition etc, it appears that Transpower’s concerns are met in respect of maintenance and upgrading, and would be subject to a new Policy 10.1.X. This should sit between Policy 10.1.5 and Policy 10.1.6.[24]

[23] Section 42A Report, paragraphs 83-91.
[24] Section 42A Report, page 18.

39. HNZPT made submissions seeking modifications to Policies 10.1.6 to 10.1.9 including a proposal to tie these particular policies to items scheduled in Appendix 13. In its further submission, HNZPT sought to withdraw that part of its submission. The rationale, and a correct one in Ms Allan's opinion, was that those policies may apply to the consideration of other resource consent applications relating to places and items that are not included in the schedule, but where historic heritage values are at stake. The Section 42A Report recommends acceptance of the original submission without acknowledging the change in the further submission. Ms Allan included the changes to the outcomes sought by HNZPT in the appendix to her evidence.[25]

40. A new policy relating to publicly dangerous buildings was proposed in the original submission with similar wording, with a similar outcome. This was addressed in her appendix.

41. Other than those changes, in Ms Allan's opinion, the revised policy provisions provide an appropriate context and flow of policy, within which sound RMA decisions will be able to be made.[26]

42. Finally, an amended Policy 10.1.6 is considered appropriate for sites of significance to iwi.

43. In relation to policy provisions, Ms Allan appreciates and supports the Section 42A report writer's proposal to be more comprehensive in recognising that heritage policy should apply to items/aspects that would normally be within the purview of regional or coastal plans. New Policy 10.1.X should be treated the same as Policy 10.1.6 and be [RPS, R, C, D] as is now proposed for Policy 10.1.6. Further, the report writer's proposal that [C] should be added to Policies 10.1.9 to 11 (relating to archaeological sites) should be expanded to include [R] as land disturbance is frequently addressed and provided for as part of regional policy and rules, setting up potential conflict. This is particularly necessary in relation to Policy 10.1.11 where reference in the explanation to regional rules is proposed to be removed as part of a block of text.[27]

44. In terms of HNZPT and its submission that the heritage policies should also be denoted as regional and/or coastal policies (which are signified at the start of the policy as [R] or [C] in the PMEP), we consider given that some of the regional rules relate to earthworks which could affect heritage items, and some heritage items may be located below MHWS, reference to these types of plans is appropriate when applying the policy (notwithstanding that the matter is introduced as a further submission).

[25] HNZPT, Sylvia Allan Appendix to Evidence, Policies 10.1.5-10.1.6, pages 1 and 2.
[26] HNZPT, Sylvia Allan Evidence paragraphs 35-37 Appendix page 1.
[27] HNZPT, Sylvia Allan Evidence, paragraph 3.10.

45. The Panel also agreed that the inclusion of a new schedule, Schedule 3 Sites and Places of Significance to Marlborough's tangata whenua iwi, in Appendix 13, is warranted. The Panel explored with iwi representatives at the hearings the movement of a number of wāhi tapu, urupa and the argillite quarries from schedules 1 and 2 respectively to the new Schedule 3 and that was accepted as being appropriate. Those items are as follows:

| Reference | HNZPT No (if applicable) | Heritage Resource | Address | Value applies to |
|---|---|---|---|---|
| 6 | Waahi Tapu<br>7364 | Pa site, burial site, battle site | Moioio Island Tory Channel | Island |
| 9 | Waahi Tapu<br>7737 | Brothers Island | The Brothers/Nga Whatu, Cook Strait | Island |

46. Move the following items from Schedule 2 to Schedule 3.

| Reference | HNZPT No (if applicable) | Heritage Resource | Address | Value applies to |
|---|---|---|---|---|
| 1-4 | 7755 | Argillite quarries | Oparapara (Samson Bay), Croisilles – French Pass Road, Croisilles Harbour | Representative samples of quarry sites from which metasomatized argillite for tool manufacture was obtained |
| 49 | 7333<br><br>Waahi tapu area | Urupā and archaeological remains of the original Māori occupiers, and later Māori and European whaling families | Te Awaiti Bay, Arapawa Island, Tory Channel | |
| 50 | | William Keenan the Elder whanau urupā | Te Awaiti Bay, Arapawa Island, Tory Channel | |
| 131 | 5979<br><br>9561 | Moa hunter site Wairau Bar/Te Pokohiwi[28] | 19 hectare gravel bar where Wairau River meets sea at Cloudy Bay | |

47. There are some consequential small amendments to the columns necessary under cl 16 that we describe later in this decision.

[28] HNZPT (768.71-.73).

48. The Panel was also mindful that Ngati Toa also sought the same relief in the Topic 2 hearing.

49. In respect of the Pokohiwi area at the Wairau River mouth, later in this decision, other amendments are made to the description of that heritage site (131) that will be incorporated in the new Schedule 3 description below.

**Decision**

50. The decision is made to amend Categories 1 and 2 throughout the heritage provisions in the PMEP to read Categories A and B. (From this point on the decision relating refers primarily to Categories A and B rather than Categories 1 and 2. This approach differs from that taken in the decision generally where reference is always made to the notified form of the PMEP.)

51. A new Schedule 3 is to be inserted in Appendix 13 entitled “Appendix 3: Sites and Places of Significance to Marlborough’s tangata whenua iwi”. A consequential change to the notified Schedule 3 Notable Trees is required. This will become Schedule 4 Notable Trees. The new Schedule 3 will be populated from schedules 1 and 2 as follows:

| MEP Reference | HNZPT ~~List~~ No (if applicable) | Heritage Resource | Address | Value applies to |
|---|---|---|---|---|
| 6 | Wa~~a~~āhi Tapu<br>7364 | Pa site, burial site, battle site | Moioio Island Tory Channel/Kura Te Au | Island |
| 9 | Wa~~a~~āhi Tapu<br>7737 | Brothers Island | The Brothers/Nga Whatu, Cook Strait | Island |

52. Move the following items from Schedule 2 to Schedule 3. These will be subsequently numbered.

| MEP Reference | HNZPT ~~List~~ No (if applicable) | Heritage Resource | Address | Value applies to |
|---|---|---|---|---|
| 1-4 | 7755 | Argillite quarries | Oparapara (Samson Bay), Croisilles – French Pass Road, Croisilles Harbour | Representative samples of quarry sites from which metasomatised argillite for tool manufacture was obtained |
| 49 | 7333<br><br>Wa~~a~~āhi tapu area | Urupā and archaeological remains of the original Māori occupiers, and later Māori and European | Te Awaiti Bay, Arapao~~w~~a Island, Tory Channel/Kura Te Au | Urupā |

| | | whaling families | | |
|---|---|---|---|---|
| 50 | | William Keenan the Elder whanau urupā | Te Awaiti Bay, Arapao~~w~~a Island, Tory Channel/Kura Te Au | Urupā |
| 131 | 5979<br><br>9561 | ~~Moa hunter site Wairau Bar/Te Pokohiwi~~[29] Wāhi tapu, archaeological and cultural heritage area –<br><br>A. Wairau Bar/Te Pokohiwi<br><br>B. Wairau Lagoons | ~~19 hectare gravel bar~~ Locality where Wairau River meets sea at Te Koko-o-Kupe/ Cloudy Bay | All cultural and archaeological and historic heritage values within A and B |

53. As a consequence of adding Schedule 3 to Appendix 13, include a definition of Sites and Places of Significance to Marlborough's tangata whenua iwi in Chapter 25, as follows:

*Sites and Places of Significance to Marlborough's tangata whenua iwi means as identified in Schedule 3 of Appendix 13*

*54.* The amendments to Policy 10.1.5 are as follows:

Policy 10.1.5 – Avoid adverse effects on the historic heritage values of Category ~~I~~ A heritage resources identified in Schedule 1 of Appendix 13 and Sites and Places of Significance to Marlborough's tangata whenua iwi identified in Schedule 3 of Appendix 13.

*Schedule 1 contains Category A historic buildings and structures (or parts of buildings or structures), places, sites, monuments and plaques. Category A means they are of special or outstanding significance. This is the same meaning as Category I historic places in the New Zealand Heritage List / Rārangi Kōrero. Schedule 3 identifies Sites and Places of significance to Marlborough's tangata whenua iwi. ~~Heritage resources sourced from the New Zealand Heritage List/Rarangi Korero are assigned either a Category I or Category II status. Heritage resources classified as Category I are nationally significant.~~*

*Any loss or damage of or significant change to ~~a Category I heritage resource~~ an item contained in Schedule 1 or 3 would result in ~~a significant and~~ potentially irreversible loss of historic heritage that is important in a national context. For this reason, any adverse effects on the historic heritage values of ~~Category I~~ resources in Schedule 1 and 3 must be avoided. This*

[29] HNZPT (768.71-.73).

*will see a prohibited activity rule that forbids ~~loss or destruction~~ the whole or partial demolition, or removal, of a Category ~~I~~ A resource in Schedule 1 and the destruction of a resource in Schedule 3 of Appendix 13.*

55. The following new policy is added after Policy 10.1.5:

[RPS R, C, D]

*Policy 10.1.x – Avoid adverse effects on historic heritage values from the demolition or partial demolition of Category B heritage resources identified in Schedule 2 of Appendix 13, except where the item is of danger to public safety and repair is not the best practicable option after having regard to the matters in Policy 10.1.7.*

*Demolition or partial demolition of Category B items should be avoided unless it is a matter of public safety and repairs cannot be achieved having regard to the matters set out in Policy 10.1.7.*

56. As a result of the inclusion of a new policy, a consequential change is required for 10.M.2 and this will be addressed later in the decision.

57. Policy 10.1.6 is amended as follows:

*Policy 10.1.6 – While the MEP seeks to avoid all adverse effects to heritage resources, ~~W~~where modifications are proposed to Category ~~I~~A ~~heritage resources~~ and Category B ~~and other~~ heritage resources, the adverse effects of the modifications on the values of the resources should be avoided, remedied or mitigated.*

## Policy 10.1.7

**When assessing resource consent applications in relation to heritage resources, have regard to: (a) – (k)**

58. This policy relating to matters to be considered when assessing resource consents in relation to heritage resources was supported as notified by two submitters.[30] Others seek: add positive effects to the policy;[31] reference to economic feasibility, the type of effects, and making reference to the surroundings of heritage resources;[32] an amendment to contain explicit consideration of cultural sites of significance to tangata whenua and a commentary to explain that not all sites of significance to iwi are included in the historic register of MDC and that there are many such resources not in the public forum.[33]

[30] I B Mitchell (364.49) and KiwiRail Holdings Ltd (873.29).
[31] Federated Farmers (425.178).
[32] HNZPT (768.34).
[33] Te Ātiawa (1186.57).

**Section 42A Report**

59. The report indicates that changes to Policy 10.1.7 are generally consistent with other suggested changes. Reference to wāhi tapu and other similar sites are recommended to be removed from the policy, given that Policy 10.1.8 specifically addresses the issue. Consideration of the relationship of the item with its surroundings is recommended to be included, which is consistent with Policy 10.1.4 and a more specific consideration is recommended to be made in respect of economic considerations.

60. The recommendations are as follows:

> 'Policy 10.1.7 – When assessing resource consent applications in relation to heritage resources included in Schedule 1 and 2 of Appendix 13, have regard to:
>
> … (b) the effects ~~effect demolition, removal, alteration or additions will have~~ on the historic ~~and~~ heritage values of the heritage resource, including the relationship between distinct elements of the heritage resource and its surroundings;
>
> … (j) the economic feasibility of all reasonably practicable options to avoid, remedy or mitigate adverse effects ~~options for retaining a heritage resource when its demolition is proposed~~; and
>
> … This policy sets out the matters that the Council should have regard to when assessing any resource consent application with adverse effects on the historic heritage values of identified ~~to demolish, remove, alter or add to a~~ heritage resource. These matters are designed to ensure that the significance of the heritage resource is recognised and appropriately provided for in the decision making process.'

**Consideration**

61. In terms of Policy 10.1.7, Ms Allan in her evidence[34] for HNZPT considers that references in Policies 10.1.X, 10.1.5, 10.1.7 and 10.1.8 to the Schedules in Appendix 13 have the potential effect of not enabling consideration of historic heritage for sites other than those in the schedules to Appendix 13. The Section 42A Report identifies that the PMEP as notified had reference to schedules in Policies 10.1.6-10.1.8, except for Policy 10.1.7.

62. The report writer acknowledges that the reference to schedules in Policy 10.1.7, however, can be deleted for that deletion would enable consideration of applications in respect of matters/aspects not necessarily in the schedules.[35]

[34] HNZPT Sylvia Allan Evidence, paragraph 3.5.
[35] Section 42A Report, Reply to Evidence, page 24.

63. The Panel considers the policy as recommended to be amended in the Section 42A Report is inconsistent with other provisions within the chapter. We require an amendment to the policy as set out in the Section 42A Report but with deletion of the references to 'Schedule 1 and 2 of' in the recommended wording.

64. There was some debate about whether the reinstatement amendment to Policy 10.1.7 means that (j) reverts to the notified wording of the subsection. The amended (j) was included at the suggestion of HNZPT and relates to economic feasibility of all reasonably practical options for the retention of heritage resources.[36] The notified form of (j) was preferred by the Panel as the word 'options' allows a wider range of considerations than purely economic feasibility.

**Decision**

65. Policy 10.1.7 is amended as follows:

*[RPS, R, C, D]*

*Policy 10.1.7 – When assessing resource consent applications in relation to heritage resources included in Appendix 13, have regard to:*

*… (b) the effects ~~effect demolition, removal, alteration or additions will have~~ on the historic heritage values of the heritage resource, including the relationship between distinct elements of the heritage resource and its surroundings;*

*… (j) options for retaining a heritage resource when its demolition is proposed; and*

*… This policy sets out the matters that the Council should have regard to when assessing any resource consent application with adverse effects on the historic heritage values of identified ~~to demolish, remove, alter or add to a~~ heritage resources. These matters are designed to ensure that the significance of the heritage resource is recognised and appropriately provided for in the decision making process. …*

## Policy 10.1.8

**When assessing resource consent applications to destroy or modify a registered waahi tapu site or area, or to undertake activities in a place of significance to Marlborough's tangata whenua iwi, have regard to: (a) - (g)**

66. These provisions set out the matters that the Council should consider when assessing any resource application.

67. One submitter considers the policy should be deleted and the other policies apply to the sites;[37] another considers that reference be made to an 'identified' rather than a 'registered'

[36] HNZPT, Sylvia Allan, Oral Evidence.

[37] Federated Farmers (425.176).

wāhi tapu site or area and to the use of monitors;[38] while another also requests the deletion of the word 'registered';[39] one other suggests amendments mainly relating to consistency of language and also makes another suggestion requiring amendments to references to the policies also being regional plan/coastal policies which are not currently within the frames of reference.[40]

**Section 42A Report**

68. The report directly addresses HNZPT's submission that heritage policies should also be directed as regional and/or coastal policies (significant at the start of the policy as [R] or [C] in the Plan. The report writer considers that as some of the regional rules relate to earthworks which may affect heritage items and some may be located below MHWS, these references should be included.

69. Policy 10.1.8 is recommended to be amended as follows:

> 'Policy 10.1.8 – When assessing resource consent applications in relation to sites of significance to Maori, including wāhi tapu, included in Schedule 3 of Appendix 13, ~~to destroy or modify a registered wāhi tapu site or area, or to undertake activities in a place of significance to Marlborough's tangata whenua iwi,~~ have regard to:
>
> (a) the effects ~~of demolition, removal, alteration or additions~~ on the heritage values of the heritage resource, including effects on the spiritual and cultural values of iwi;
>
> (b) the position of the relevant iwi;
>
> (c) the views of Heritage New Zealand, for heritage resources on the New Zealand Heritage List / Rārangi Kōrero;
>
> (d) the effects of the destruction or alteration on the heritage resource or the effects of the proposed activity on the spiritual and cultural values of iwi;
>
> …
>
> This policy sets out the matters that the Council should consider when assessing any resource consent application with adverse effects on the historic or cultural heritage values of an identified ~~to destroy or modify a~~ wāhi tapu site or area, or other area of significance to Marlborough's tangata whenua iwi. These matters are designed to ensure the cultural and spiritual significance of the site or area is recognised and appropriately provided for in the decision making process.'

[38] Ngāti Kuia (501.46).
[39] Te Ātiawa (to come)
[40] HNZPT (768.35).

**Consideration**

70. This policy is inconsistent with other relevant provisions in the PMEP. In the Section 42A Report, Policy 10.1.8 replaces the words ‘Marlborough’s tangata whenua iwi’ with the word ‘Māori’ in the second line which widens the whole spectrum of heritage to ‘all Māori’ which is not the intent throughout the PMEP. The significance should relate what Marlborough’s tangata whenua iwi consider to be sites of significance and wāhi tapu.

71. The amended policy also has added in the words ‘for heritage resources on the New Zealand Heritage List/Rarangi Korero’ to Policy 10.1.8(c). This should not be included.

72. Our conclusion comparative to the wording suggested by the report writer is to replace the word ‘Māori’ in the first paragraph and in (a) with the words ‘Marlborough’s tangata whenua iwi’, and delete from (c) ‘for heritage resources on the New Zealand Heritage List/Rarangi Korero’ as that reference in the PMEP will confuse the Appendix 13 scheduling.

73. In addition, insert the words ‘In addition to the matters set out in Policy 10.1.7’ in the start of the statement of the policy.

**Decision**

74. Amend Policy 10.1.8 as follows:

*[RPS, C, D]*
*Policy 10.1.8 – In addition to the matters set out in Policy 10.1.7, ~~W~~when assessing resource consent applications, ~~to destroy or modify a registered waahi tapu site or area, or to undertake activities in a place of~~ in relation to sites of significance to Marlborough’s tangata whenua iwi included in Schedule 3 of Appendix 13, have regard to:*

*(a) the effects ~~of demolition, removal, alteration or additions~~ on the heritage values of the heritage resource, including effects on the spiritual and cultural values of Marlborough’s tangata whenua iwi;*

*(b) the position of the relevant iwi;*

*(c) the views of Heritage New Zealand Pouhere Taonga;*

~~*(d) the effects of the destruction or alteration on the heritage resource or the effects of the proposed activity on the spiritual and cultural values of iwi;*~~

*…*

*This policy sets out the matters that the Council should consider when assessing any resource consent application with adverse effects on the historic or cultural heritage values of an identified ~~to destroy or modify a~~ wāhi tapu site or area, or other area of significance to*

*Marlborough's tangata whenua iwi. These matters are designed to ensure the cultural and spiritual significance of the site or area is recognised and appropriately provided for in the decision making process.*

## Archaeological sites

### Policy 10.1.9

**Except as set out in Policy 10.1.11, primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.**

75. Policy 10.1.9 is supported by two submitters.[41] Others seek: the Council should provide information to applicants regarding the presence of archaeological sites so a full assessment can be identified;[42] several amendments mainly relating to the consistency of language;[43] while another implies the policy should be deleted because it could cause confusion.[44]

**Section 42A Report**

76. The report writer considers the policy is useful to clarify the MDC's stance in respect of archaeological sites, given the confusion that can arise. He notes that the policy is largely supported by HNZPT and its suggested attachment details information on archaeological sites and also satisfies Ngāti Kuia's submission of support.

**Consideration**

77. As identified by HNZPT, the policy is inconsistent with other provisions. The Council should provide information to resource consent applicants as to the presence of archaeological sites so that effects can be identified. An amendment is required to reference a new schedule in Appendix 13 (Schedule 5) of archaeological requirements as set out in the Section 42A Report[45].

78. The report writer (and the Panel) considered the inclusion of a new Schedule 5 setting out the archaeological requirements of the HNZPT Act. This is based on Attachment 2 of HNZPT's submission, headed as 'Schedule of Archaeological Requirements'.[46]

79. The Panel also considered the inclusion of 'Marlborough's tangata whenua iwi' to the heading above Policy 10.1.9 to be appropriate in order to better reflect the policies content.

[41] I B Mitchell (364.51), Federated Farmers (425.175).
[42] Ngāti Kuia (501.47).
[43] HNZPT (768.35).
[44] Ngāi Tahu (1189.88).
[45] Section 42A Report, page 20 and page 38-39.
[46] Section 42A Report, paragraph 197.

**Decision**

80. That the heading is amended by the following:

*Archaeological sites and sites of cultural significance to Marlborough's tangata whenua iwi.*

*[RPS, R, C, D]*

81. Policy 10.1.9 is amended by the following:

*Except as set out in Policy 10.1.11, and the schedule of Archaeological Requirements in Appendix 13 Schedule 5 primarily rely on Heritage New Zealand and the requirements of the Heritage New Zealand Pouhere Taonga Act 2014 to regulate archaeological sites within Marlborough.*

82. That a new Schedule 5 to Appendix 13 is inserted as follows:

**Schedule 5: HNZTPA Archaeological Site Requirements**

This Schedule sets out information to alert the public to their responsibilities regarding archaeological sites. This is relevant with regard to:

1. Demolition/destruction of any structure associated with human activity prior to 1900, whether or not it is scheduled in the Marlborough Environment Plan as historic heritage.

2. Earthworks or other works that may disturb pre-1900 surface or sub-surface archaeological sites or material.

An archaeological site is as defined by the Heritage New Zealand Pouhere Taonga Act 2014 as being any place in New Zealand, including any building or structure (or part of a building or structure), that:

i. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and

ii. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand.

It is also possible for Heritage New Zealand Pouhere Taonga (Heritage New Zealand) to declare a post-1900 site as an archaeological site.

**Consent required from Heritage New Zealand**

An authority (consent) from Heritage New Zealand must be obtained prior to the commencement of works noted in 1 or 2 above, and preferably before submitting any resource consent application.

It is an offence to modify or destroy an archaeological site, or demolish/destroy a whole building, without an authority if the person knew or ought to reasonably suspect it to be an archaeological site. For further information, contact Heritage New Zealand. The relevant legislation is the Heritage New Zealand Pouhere Taonga Act 2014, in particular sections 42 and 44 of that Act.

**Known or suspected archaeological sites**

The following resources may assist in determining if an archaeological site is or may be present:

- Historical heritage items scheduled in the Marlborough Environment Plan in Appendix 13.
- Outstanding Natural Features and Landscapes and Coastal Marine Areas in Appendix 1 with specified archaeological and/or historical heritage values.
- Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (Latest information is on the NZAA website) at www.archsite.org.nz.
- Marlborough District Council GIS information that highlights recorded sites.
- Written and oral histories of the area, including those of Tangata Whenua.

**Archaeological discovery without an authority (Protocol)**

If an authority has not been obtained and there was no reasonable cause to suspect archaeological sites are present (if there is reasonable cease then an authority should be obtained), the following protocol must be followed when an archaeological site is discovered:
(a) immediately cease operations;
(b) inform Heritage New Zealand and the relevant iwi authorities;
(c) apply for the appropriate authority, if required;
(d) inform the Council and apply for the appropriate resource consent, if required;
(e) take appropriate action, after discussion with the Heritage New Zealand, Council and relevant iwi authority to remedy damage and/or restore the site.

### Policy 10.1.10

**Liaise with Heritage New Zealand, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi to develop and implement an appropriate discovery protocol for archaeological sites.**

83. This policy is supported by two submitters. Others consider: that a policy is required and notes that such protocols are only used where an archaeological site is suspected;[47] words should be added in terms of the Council meeting costs of archaeological or cultural impact studies for sites that are accidentally disturbed.[48]

**Section 42A Report**

84. The report writer considers the policy is useful as it signals the Council will develop a protocol in association with other parties which will be useful as a non-regulatory tool attaching to resource consents. He does not agree with the Council meeting the costs as this will clearly fall on any applicant as anticipated by the Heritage New Zealand Pouhere Taonga Act 2014. In relation to the submissions from Ngāi Tahu, the report writer agrees with the thrust of their submission which provides useful additional information.[49]

[47] HNZPT (768.37).
[48] Federated Farmers (425.74).
[49] Section 42A Report, paragraph 108.

85. Policy 10.1.10 is recommended to be amended by the following:

*[RPS, C, D]*

*Work with Marlborough's tangata whenua iwi, and in liaison ~~Liase~~ with Heritage New Zealand Pouhere Taonga, and the New Zealand Archaeological Association ~~and Marlborough's tangata whenua iwi,~~ to develop and implement an appropriate discovery protocol for archaeological sites which may be included as a condition of consent on relevant planning application decisions, acknowledging that:*

*(a) cultural impact assessments and cultural monitors will be required to ensure the appropriate management of values, artefacts and koiwi in some instances; and*

*(b) different approaches to ADP may be preferred by different iwi.*[50]

**Consideration**

86. The Panel considers more detailed information than this amended policy provides is required, including reference to working with tangata whenua iwi and reference to resource consents.

87. We consider that the policy as recommended should be amended by replacing the reference to 'planning applications' with 'resource consent'. The explanation is to be amended by amalgamating the concepts in recommended (a) and (b) into the explanation.

**Decision**

88. Policy 10.1.10 is amended as follows:

*[RPS, C, D]*

*Policy 10.1.10 – Work with Marlborough's tangata whenua iwi, and in ~~Liase~~ liaison with Heritage New Zealand Pouhere Taonga, and the New Zealand Archaeological Association ~~and Marlborough's tangata whenua iwi~~ to develop and implement an appropriate accidental discovery protocol for archaeological sites which may be included as a condition of consent on relevant resource consent decisions.*

89. The explanation to Policy 10.1.10 is amended by adding the following before the last sentence:

*… the Council will liaise with Heritage New Zealand Pouhere Taonga, the New Zealand Archaeological Association and Marlborough's tangata whenua iwi to establish protocols to guide appropriate action in the event of a discovery of an archaeological site. In some instances, cultural impact assessments and cultural monitors will be required to ensure the*

[50] Ngāi Tahu (1189.89).

*appropriate management of values, artefacts and koiwi. In developing the protocols it is acknowledged that iwi may have different approaches to Accidental Discovery Protocol. These protocols will be published and provided to the community.*

## Policy 10.1.11

**Control land disturbance activities in places of significance to Marlborough's tangata whenua iwi.**

90. Three submitters support the policy as notified; another supports the policy but with reference to a schedule as discussed;[51] another supports the policy but notes the need for rules to enforce the policy.[52]

**Section 42A Report**

91. The policy repeats elements of previous policies but it is nevertheless seen as part of the PMEP strategy with respect to significant sites for iwi. The report writer considers that the addition of the schedule will provide more certainty and will address some of the concerns of Federated Farmers who submitted in opposition to HNZPT. The addition of the reference to the schedule therefore results in some changes to the explanation.

92. The report suggests a consequential change should be added to the existing subheading of Archaeological Sites, and sites of cultural significance to tangata whenua iwi to better reflect the content of the policies.

**Consideration**

93. There should be consequential change as a result of decisions to include a new Schedule 3 in Appendix 13, identifying sites of significance to tangata whenua iwi.

94. The policy should be amended as set out in the original Section 42A Report.[53] The explanation is not to be deleted and instead add 'identified' before 'places' and add in 'Schedule 3' after 'significance' in the third schedule to that text.

**Decision**

95. Amend Policy 10.1.11 to the following:

*[C, D]*

*Policy 10.1.11 – Control land disturbance activities in places of significance to Marlborough's tangata whenua iwi, identified in Schedule 3 of Appendix 13.*

[51] HNZPT (768.38).
[52] Ngāti Kuia (501.48).
[53] Section 42A Report, paragraph 109.

*Policies 10.1.9 and 10.1.10 guide how the Council will assist in the protection of archaeological sites in Marlborough. Policy 10.1.11 enables activities that potentially adversely affect sites identified in Schedule 3 to be assessed. …*

*Māori occupation of Marlborough in the past was extensive and not all sites of spiritual or cultural significance to Marlborough's tangata whenua iwi will be known and/or recorded. It also means that the significance cannot necessarily be attributed to a discrete site. For this reason, the policy applies to "identified places" of significance in Schedule 3. Land disturbance within these places is to be controlled through regional and district rules so that the potential impact of excavation, filling or vegetation removal on the mana of the relevant iwi can be assessed. This will enable Marlborough's tangata whenua iwi to exercise kaitiakitanga through involvement in the resource consent process as affected parties.*

### Consequential change to heading to Policies 10.1.9 to 10.1.11

96. The current notified heading to the section containing Policies 10.1.9 to 10.1.11 is 'Archaeological sites'. The decisions made above to amend those policies have been made against a background finding that the PMEP needs to be clearer that those policies address sites of cultural significance to Marlborough's tangata whenua iwi. As a consequential change, therefore, it is necessary to amend the Heading to those policies to state that.

**Decision**

97. Amend the heading to Policies 10.1.9 to 10.1.11 to read:

*Archaeological sites and sites and places of cultural significance to Marlborough's tangata whenua iwi*

## Notable Trees

### Objective 10.2

**Retain and protect trees that make a notable contribution to Marlborough's character.**

98. Several submitters support the objective with two also supporting the policies. One submitter states that given the provisions of s 6(f) RMA, the objective should be amended as follows:[54]

> 'To recognise and where appropriate protect notable trees from inappropriate subdivision, use and development.'

**Section 42A Report**

99. The report writer does not recommend a change to Objective 10.2. The report observes that explanation to the objective refers to s 6(f) RMA in terms of heritage value. But the

[54] Federated Farmers (452.172).

explanation also refers to the contribution notable trees make to the character and amenity values of an area, referring to s 7(c) RMA, which does not refer to 'inappropriate' development. This would be determined through the resource consent process. No change is favoured as this is a high level policy and any change would be misleading.

100. Nevertheless, some amendment to the explanation is appropriate although s 6(f) RMA only applies to trees with heritage values. The report writer recommends amending Objective 10.2's explanation as follows:

> 'Objective 10.2 – Retain and protect trees that make a notable contribution to Marlborough's character.
>
> … This objective also reflects the Council's obligations under Sections 6(f) which is to protect those trees with historic heritage values from inappropriate subdivision, use and development and 7(c) of the RMA which is to have particular regard to the maintenance and enhancement of amenity values.'

**Consideration**

101. We consider ss 6 and 7 RMA should be referred to in the explanation and this has been set out in the Section 42A Report. The words 'which is' should be removed from qualifying the two provisions of the RMA as not being necessary to understand the two sections of the RMA.

**Decision**

102. Objective 10.2 is therefore amended as follows:

*Objective 10.2 – Retain and protect trees that make a notable contribution to Marlborough's character.*

*Trees which have significant heritage value or make a significant contribution to the character and amenity values of an area are to be retained, given the contribution they make to our social and cultural wellbeing. Retaining such notable trees ensures that current and future generations can continue to appreciate and benefit from these trees. This objective also reflects the Council's obligations under Sections 6(f) <u>to protect those trees with historic heritage values from inappropriate subdivision, use and development</u> and 7(c) of the RMA <u>to have particular regard to the maintenance and enhancement of amenity values</u>.*

## Policy 10.2.3

**Consider approving any application to remove, trim or prune a notable tree or trees where:**

**(a) the tree or trees are dying, diseased or have otherwise lost the essential qualities for which the tree was originally identified;**

**(b) the tree or trees have become a danger to people; or**

**(c) the tree or trees are significantly restricting a particular use of the site that offers greater positive effects in terms of historic heritage or amenity values.**

103. One submitter seeks an addition to the policy as follows:[55]

> *Consider approving any application to remove, trim or prune a notable tree or trees where: …*
>
> *(d) the tree is a significant cause of wilding tree spread affecting indigenous biodiversity.*

104. Another submitter suggests the following:[56]

> *Consider approving any application to remove, trim or prune a notable tree or trees where: …*
>
> *(c) the tree or trees are significantly restricting a particular use of the site that offers greater positive effects in terms of historic heritage or amenity values, <u>or are restricting the ongoing operation of regionally significant infrastructure</u>.*

105. Another submitter requests an amendment to ensure the policy recognises the statutory requirement to trim trees that may present a hazard to the National Grid under the Electricity (Hazards from Trees) Regulations 2003.[57]

**Section 42A Report**

106. The report writer considers all three submissions seeking these amendments are sensible as they provide specific guidance in circumstances that could easily arise in the Marlborough region.

**Consideration**

107. All of these proposed amendments have merit because they refer to risks to regionally significant infrastructure and to the real risks of wilding spread. The Panel discussed whether it would be useful to combine (c) and a new (d) and possibly (b).

108. Policy 10.2.3 is amended as recommended by the report writer as follows with the deletion of the recommended words 'or are likely to become' as they introduce an aspect of uncertainty.

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[55] DOC (479.103).

[56] NZTA (1002.45).

[57] Transpower (1198.24).

**Decision**

109. Policy 10.2.3 is amended to read:

*Policy 10.2.3 – Consider approving any application to remove, trim or prune a notable tree or trees where:*

*(a) the tree or trees are dying, diseased or have otherwise lost the essential qualities for which the tree was originally identified;*

*(b) the tree or trees have become a danger to people; or*

*(c) the tree or trees are significantly restricting a particular use of the site that offers greater positive effects in terms of historic heritage or amenity values; or*

*(d) the tree or trees are restricting the ongoing operation of regionally significant infrastructure; or*

*(e) the tree or trees are a significant cause of wilding tree spread affecting indigenous biodiversity.*

## Methods of Implementation

110. HNZPT suggests a number of assessments relating to the renaming and renumbering of schedules that reflect their other proposed amendments by way of submissions. The report writer signals his agreement with a number of these amendments.

### Method 10.M.1

**Identifying Marlborough's significant heritage resources and notable trees**

111. HNZPT introduces the term 'confidentiality of files' which the report writer interprets as the iwi system of 'silent files' which relate to non-disclosure by iwi of highly sensitive cultural sites.[58] Marlborough does not yet have such a system which may only occur once sites of significance and wāhi tapu are identified by Marlborough's tangata whenua iwi. This will only occur when the plan change process related to the new Schedule 3 is complete.

112. Te Ātiawa refers to the incomplete nature of Schedule 3 sites at this stage, a reference to which is introduced into this method by the report writer.[59]

**Consideration**

113. The Panel considers it is important to recognise the existence of sites and places of significance to tangata whenua iwi in the PMEP and that they have an important contribution to make to Marlborough's heritage. Te Ātiawa stresses how many of these sites exist but are

[58] HNZPT (768.39).
[59] Te Ātiawa (1186.225). See also Section 42A Report, page 36.

not yet identified in Schedule 3 as proposed below. Iwi management plans are identified as a potential source of identification.

114. A decision has been made earlier to introduce a new Schedule 3: Sites and Places of Significance to Marlborough's Tangata Whenua Iwi (Policy 10.1.11). That needs to be referred to in 10.M.1 before the reference to 'Notable Trees'. See also the reference to Appendix 13 Register of Significant Heritage Resources.[60]

**Decision**

115. Method 10.M.1 is amended to read:

*The Council will identify significant heritage resources and notable trees within Appendix 13 of the MEP. Each individual resource or tree will be described in a schedule and included on planning maps.*

*Resources or <u>notable</u> trees identified will be those that meet the criteria in Policies 10.1.4 and 10.2.1 and/or those included on the New Zealand Heritage List/ Rārangi Kōrero. <u>Heritage resources and notable trees will be divided into the following Schedules:</u>*

- *<u>Schedule 1: Category A Historic Buildings, Structures, Places, Sites and Areas</u>*
- *<u>Schedule 2: Category B Historic Buildings, Structures, Places, Sites and Areas</u>*
- *<u>Schedule 3: Sites and Places of Significance to Marlborough's Tangata Whenua Iwi</u>*
- *<u>Schedule 4: Notable Trees</u>*
- *<u>Schedule 5: HNZTPA Archaeological Site Requirements</u>*

116. Schedule 3 is not yet complete and it is likely that further sites within Marlborough will be added by way of plan change.

## Method 10.M.2

### District rules

117. HNZPT proposes a number of amendments relevant to the naming and renaming of a number of schedules to reflect their other proposed amendments, and observes that method 10.M.2 should be amended to reflect the final state of the rules.[61] Marlborough Roads[62] and NZTA[63] request that the reference to 'regional rules' in this method is deleted as they are not relevant to the types of activities the rules provide for. Heritage rules only refer to district rules.

[60] Section 42A Report, paragraph 135.
[61] HNZPT (768.40).
[62] Marlborough Roads (967.70).
[63] NZTA (1002.46), Kathryn Barrett tabled letter, page 26.

118. Under this heading Te Ātiawa consider that the method should be extended to include reference to sites of significance to iwi in the list of matters that require resource consent.

**Section 42A Report**

119. While the most relevant rules will be district orientated, the report writer points out that some of the earthworks rules and coastal rules may apply (below MHWS); works in riverbeds are regional and could be invoked during land disturbance and/or modification activities.[64] This suggests that some further amendment to the heading and explanation is appropriate.

**Consideration**

120. The Panel does not consider it appropriate in a method to set out reference to matters that require consent and we consider those activities identified by bullet points in the notified PMEP should be deleted as set out in the report writer's original recommendations.[65] The identification of 'District' in the heading to the method reflects the more accurate identification of the content of the method with the deletion of the word 'District'. Ms Allan accepts this amendment as a more accurate description. She also suggested the addition of various District, Coastal and Regional notations.[66]

**Decision**

121. Method 10.M.2 District Rules is amended by the following:

*District and regional rules will be used to ensure that identified heritage resources and/or notable trees are appropriately protected. ~~The following activities will require resource consent~~.*

- *~~Any relocation, alteration of or addition to a scheduled heritage resource;~~*
- *~~Construction of a new building within the defined setting of a of a Category I heritage resource;~~*
- *~~Any demolition of a Category II heritage resource;~~*
- *~~Any removal or significant trimming of a scheduled notable tree;~~*
- *~~Any excavation, laying of overhead or underground services or construction of buildings within close proximity to scheduled notable trees.~~*

*A tree protection zone will be established to provide certainty with respect to the application of district rules seeking to protect notable trees from the adverse effects of activities undertaken*

[64] Section 42A Report, page 36.
[65] Section 42A Report, paragraph 136.
[66] HNZPT, Sylvia Allan Evidence, Appendix: Section 42A Report, page 27.

*in close proximity to them. The zone will take into account that the potential for adverse effects will vary depending on the size and dimensions of the tree.*

*Permitted activity rules will be used to enable responsible maintenance of heritage resources, ~~and~~ to provide for interpretive signage and to enable ~~and~~ minor trimming of notable trees.*

*Land disturbance not involving destruction in places of significance to Marlborough's tangata whenua iwi will be discretionary activities. This, in conjunction with affected party approval, will allow the adverse effects of the land disturbance on the spiritual and cultural values of the relevant iwi to be assessed.*

*A prohibited activity rule will apply to the loss, partial demolition, or demolition or removal ~~or destruction~~ of Category ~~I~~A heritage resources or the destruction of sites and places of significance to Marlborough's tangata whenua iwi*

## Method 10.M.5

### Discovery protocol

122. The original method was recommended by the S42A Report to be amended to include the wording 'and there is no reason to suspect the presence of archaeological sites'. HNZPT requests that in addition to archaeological sites, Council will provide information relating to areas where there is reasonable cause to suspect the presence of unrecorded sites.[67] In the report writer's opinion, and the Panel's, it is difficult for Council to provide this information without expert knowledge and he does not recommend its inclusion.[68]

123. The report writer's recommendation is to improve the wording of Method 10.M.5 as it is confusing. This may be achieved with the removal of the phrase 'and there is no reason to suspect the presence of archaeological sites'.[69]

### Consideration

124. Sylvia Allan for HNZPT and Ngāi Tahu gave evidence of the difficulties relating to an accidental discovery protocol (ADP) to be applied when finding unexpected archaeological sites during the implementation of a consent. Both witnesses consider that a protocol should be developed, including a statement on its limitations and its relationship with any necessary archaeological authority under the Heritage New Zealand Pouhere Taonga Act.[70] The Panel agrees with those views.

[67] HNZPT (768.43).
[68] Section 42A Report, paragraph 133.
[69] Ibid, paragraph 139.
[70] HNZPT, Sylvia Allan Evidence, paragraphs 3.8-3.9; Ngāi Tahu, Tanya Stevens Evidence, paragraphs 79-80.

**Decision**

125. That 10.M.5 Discovery protocol is amended by the following:

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

## Anticipated Environmental Results and Monitoring Effectiveness

### 10.AER.1 and 10.AER.2

126. In respect of 10.AER.1, which relates to the protection and identification of heritage resources making a significant contribution towards Marlborough historic heritage, one submitter requests that the extent of the monitoring of effectiveness is increased and more focused.[71] The report writer generally agrees with the changes although noting that as demolition of Category A items and the destruction of 'Schedule 3' items is a prohibited activity, some amendment is appropriate.

127. In respect of 10.AER.2, which relates to notable trees making a significant contribution towards Marlborough's historic heritage and amenity values, one submitter seeks that the surveys should be carried out at 7 year intervals, not 10 years, and that the wording concerning the ambit of the survey needs to be expanded to make it clear the survey should not only identify the condition of notable trees but also be required to identify any remedial action arising from such survey.[72]

128. In the report writer's opinion some of the requested matters are not anticipated environmental results but rather relate to methods, in which 10.M.1 refers to the Standard Tree Evaluation Method (STEM) method[73] to assess trees. An assessment within 10 years of the PMEP becoming operative appears reasonable and no change is required to 10AER.2.[74]

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[71] HNZPT (768.45).
[72] KCSRA (869.49).
[73] Section 42A Report, page 60 Report of John Gray, Report of Cadwallader Tree Consultancy, Assessment of Submitted Trees.
[74] Section 42A Report, paragraphs 140-141.

**Decision**

129. That 10.AER.1 is amended as follows:

*…*

*No loss of Category ~~I~~ A heritage resources and no destruction of Schedule 3 heritage resources ~~as measured through the grant of resource consent applications to demolish, partially demolish Category I~~ A ~~heritage resources~~.*

*Limited loss, if any of other heritage resources as measured through the grant of resource consent applications to modify such resources.*

*The instances of archaeological site damage recorded by Heritage New Zealand Pouhere Taonga decrease.*

*Maintain or improve resident satisfaction with the heritage activity of the Council as measured by customer satisfaction surveys. …*

130. The submission seeking amendment to 10.AER.2 is rejected.

## Heritage Resources Rules 2.24-2.27

### New Rule - 2.24 Permitted Activities

131. HNZPT submits that provision should be made for the creation of one sign associated with heritage resources by including a new Rule 2.24.4 for limited signage as a permitted activity.[75] That is asserted to be important for information and interpretation purposes.

132. This was agreed by the report writer[76] who suggests some limited signage should be identified, given there is currently no provision of this type of activity. The size should be not greater than 0.5 square metres.

133. As to a limit on the size of the heritage signage requested the Panel decided to increase the size of the sign to 2 square metres, and remove the recommended (b) from the standard as it is unnecessary due to it being covered by other statutory means and does not relate to the heritage value for which the permitted activity is being allowed. The Panel's view was that with the common combination of illustration panels and interpretive descriptions at heritage sites. There is no requirement for a discretionary activity class as the PMEP does not have a great number of restricted activities in order that it is kept simplified.

[75] HNZPT (768.53, .54).
[76] Section 42A Report, paragraph 163.

134. We note a consequential change has occurred to Method 10.M.2 Rules to include interpretive signage as a permitted activity.

**Decision**

135. A new rule is included as follow:

*2.24.X. Erection of one sign within the site of a Heritage Resource included in Schedule 1, 2 or 3 that is not greater than 2m² and is not flashing or illuminated for the purposes of:*

*(a) setting out information relating directly to the onsite activities or uses; or*

*(b) interpretative material on the historic heritage values of the place.*

### Rule 2.24.1 Repair or maintenance of a Heritage Resource

136. HNZPT request the rule includes a reference to Appendix 13 as this will then exclude archaeological sites (leaving their management to HNZPT) and sites of significance to Māori (which are now dealt with under other rules).[77]

137. The Panel considered the report writers recommended inclusion of reference to 'Schedule 1 or 2'[78] was not required.

**Decision**

138. The Panel amended 2.24.1 to read:

*Repair or maintenance of a Heritage Resource identified in Appendix 13.*

### Rule 2.24.3

**Maintenance (meaning protective care) of an archaeological site, where that maintenance includes:**
**(a) keeping the site in good condition by controlling noxious weeds, cutting grass and light stock grazing;**
**(b) land disturbance by cultivation that does not extend beyond the area or depth previously disturbed;**
**(c) maintenance and upgrading of a paved road, modified berm or path provided that the land disturbance does not extend beyond the area or depth previously disturbed.**

139. This rule needs to include reference to Appendix 13, Schedule 3 sites to ensure maintenance can occur of those sites. The rule also requires amendment to include fencing to ensure stock can be fenced out.

**Decision**

140. Rule 2.24.3 is amended as follows:

[77] HNZPT (464.55).
[78] Section 42A Report, paragraph 168

*Rule 2.24.3: Maintenance ~~(meaning protective care)~~ of a~~n archaeological~~ site of significance to Marlborough's tangata whenua iwi identified in Schedule 3 of Appendix 13, where that maintenance includes:*

*(a) keeping the site in good condition by controlling noxious weeds, cutting grass and light stock grazing;*

*(b) land disturbance by cultivation or fencing that does not extend beyond the area or depth previously disturbed; or …*

## Rule 2.25.1.6

**The repair or maintenance can include the patching, restoration or minor replacement of materials, elements, components, equipment or fixtures**

141. HNZPT state that Standard 2.25.1.6 is more suited to be part of the definition of repair or maintenance and should be removed.[79] Instead, the rule should reference Appendix 13 which will then exclude archaeological sites (leaving their management to HNZPT) and sites of significance to Māori (dealt with under other rules).

142. The report writer agrees that it is appropriate to reference Appendix 13 but believes that the words relating to repair or maintenance can remain as they provide detail as to what is allowed (and appear in keeping with the existing definitions of 'maintenance' in the PMEP). He does not consider these words should be deleted.[80]

**Consideration**

143. This rule needs to include reference to Appendix 13 in order to exclude, amongst other things, archaeological sites. Removal of the reference to the schedules as recommended in the Section 42A Report should also take place.

**Decision**

144. Rule 2.25.1.6 is amended as follows:

*Rule 2.25.1.6. – The repair or maintenance of a Heritage Resource identified in Appendix 13 can include the patching, restoration or minor replacement of materials, elements, components, equipment or fixtures.*

## Rule 2.26.2

**Any land use activity involving a Heritage Resource not provided for as a Permitted Activity.**

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[79] HNZPT (464.59).
[80] Section 42A Report, paragraphs 152-153.

145. HNZPT suggest additional activities concerning land disturbance in Appendix 1 Outstanding Landscapes and Natural Features, and subdivisions identified in the schedules of the PMEP should be subject to resource consent as a discretionary activity.[81]

146. HNZPT suggests that it would be beneficial for the sake of clarity that this rule should set out some of the other land use activities (such as forestry and network utilities) and needs also to reference restricted, discretionary and prohibited activities. The word 'involving' in the notified rule is asserted to be somewhat vague with potential 'adverse effects on' a better substitute.[82]

**Section 42A Report**

147. The report writer believes the rule should be amended to reflect other changes suggested in the chapter but there is no requirement to specify other activities, given that other activities are already subject to rules and other provisions of the PMEP.

148. The report writer considers such an additional rule would be a blunt instrument as the zone rules in the PMEP control land distribution in Appendix 1. Regard too can be had to heritage issues in resource consent applications.

149. Similarly, in respect of subdivision, there are specific rules in Chapter 24 Subdivision which, as a minimum, is a controlled activity with Council reserving control over a number of matters (Rules 24.3.1.9-24.1.3.26) which are likely to provide protection for heritage resources including use of the site. Subdivision is subject also to other rules such as land disturbance. Further, HNZPT Act provisions under the auspices of HNZPT also apply to the disturbance of archaeological sites.[83]

150. This rule is a 'catch all' which may be considered satisfactory. Further, the suggested term 'potential adverse effects' is also somewhat uncertain. The report writer suggests the term 'that relates to' would provide the necessary clarity.[84]

**Consideration**

151. The rule requires some amendment to improve its wording with the insertion of 'or limited as a' before 'prohibited activity' for consistency with the expression of discretionary activity rules in the PMEP. The Panel accepts the changes recommended as clarifying the wording.

[81] HNZPT (464.61).
[82] HNZPT (464.62).
[83] Section 42A Report, paragraphs 157-158.
[84] Section 42A Report, paragraph 160.

**Decision**

152. Rule 2.26.2 to read:

*2.26.2 Any land use activity ~~involving~~ that relates to a Heritage Resource identified in Schedule 1, 2 or 3 of Appendix 13 is not provided for as a Permitted Activity or limited as a Prohibited Activity.*

## Rule 2.27.1

**The whole or part demolition or removal of a Category I Heritage Resource.**

153. HNZPT suggest that Rule 2.27.1 'part demolition' is changed to 'partial demolition', while the word 'removal' is said to be ambiguous and could be taken to also mean demolition.[85] The word 'relocation' should be used. In addition, the rule should also reference the heritage resources in Appendix 13.

154. These amendments are accepted by the report writer as they improve the reading of the PMEP and are consistent with the submissions in other parts of the chapter.[86]

155. HNZPT also consider that the destruction of a wāhi tapu site or other site of significance to Māori should be a prohibited activity.[87] This amendment too is considered appropriate by the report writer, given the fact that these sites have important cultural and historic value the Council must protect. He notes that while the submission is opposed by Federated Farmers in a further submission, it generally is not seen as a significant change. Destruction of wāhi tapu sites in the notified Schedule 1 was a prohibited activity (and did not attract any opposing submissions).[88]

156. Sylvia Allan suggested that 'modification' is added as well as 'destruction' in order to provide better protection for items as prohibited activities. Subsequently, the witness suggested 'destruction or partial destruction'.

**Consideration**

157. We consider both suggested amendments should be approved for the reasons given by the report writer. And also the wording of Rule 2.27.1 should also include an exception for 'a Dangerous Building under the Building Act 2004'. Such a building presents a significant hazard and risk to public safety. The provisions of the plan allow for consideration of that risk, but also the potential loss of heritage values, through the resource consent process.

[85] HNZPT (464.61).
[86] Section 42A Report, paragraph 161.
[87] HNZPT (464.64).
[88] Section 42A Report, paragraph 162.

158. An additional rule (Schedule 3 sites) is recommended as a consequence to HNZPT's concern about the seriousness of the destruction of tangata whenua iwi sites of significance including wāhi tapu.[89] The Panel understands HNZPT's concerns but, given the importance of the issue, agrees with the report writer that there is some uncertainty in terms of 'partial destruction'. Some protection is afforded by 'modification' as a discretionary activity and it is still necessary to obtain archaeological authority.[90] However for destruction of sites of significance to Marlborough's tangata whenua iwi requires a new prohibited activity rule.

**Decision**

159. Rule 2.27.1 is amended by the following:

*2.27.1 The whole or ~~part~~ partial demolition or ~~removal~~ relocation of a Category ~~I~~ A Heritage Resource identified in Schedule 1 of Appendix 13, except for a Dangerous Building under the Building Act 2004.*

160. Add a new rule 2.27.2 as follows:

*2.27.2 The destruction of a site or place of significance to Marlborough's tangata whenua iwi identified in Schedule 3 of Appendix 13.*

## Appendix 13 Register of Significant Heritage Resources

161. Consideration of the submissions under this heading will assist in clarifying some of the amendments necessary to guide the reader through the PMEP's preparation of this chapter.

162. HNZPT provides a number of helpful amendments:[91] a new schedule to Appendix 13 for sites of significance and wāhi tapu for Marlborough's tangata whenua iwi directly after the existing Schedule 2 and the transfer of existing iwi sites to this schedule; replacement of the terms 'Category 1' and 'Category 2' in the Schedules to the PMEP with 'Category A' and 'Category B' to avoid confusion between items in the New Zealand Heritage List/Rārangi Kōrero (the List) and those schedules in district plans; deletion of the term 'locally significant' in Schedule 2 as this has become redundant.

163. Marlborough's tangata whenua iwi raised a number of other matters. Te Ātiawa consider the title of Appendix 13 is inappropriate – modify the title of the register to reflect that it is a list

[89] HNZPT (464.63).
[90] Section 42A Report, page 27.
[91] HNZPT (768.71-.73).

of significant buildings, structures, trees, or create another list of significant cultural resources.[92]

164. Te Ātiawa also requests the introductory paragraph should identify that the register is not complete and indicate that there are significant resources within Marlborough that are not contained within the register.[93]

165. Ngāti Kuia requests that Appendix 13 is amended to include any current or future management plans, and that it is amended to include sites of significance to Māori (but no details of these sites are provided).

166. Ngāti Kuia also requested that Appendix 13 be amended to include reference to sites of significance, but no details are provided.[94]

167. HNZPT also considers the inclusion of an appendix setting out archaeological requirements in terms of the HNZPT Act would be beneficial with an example attached to their submission.[95]

**Section 42A Report**

168. The Section 42A Report considers this will be useful, given the confusion that can arise between resource consent and archaeological authority procedures: see Policy 10.1.9.[96]

169. The report writer also agrees that the title of Appendix 13 requires amendment.

**Consideration and decision**

170. The Panel accepts the recommendations as follows:

_Schedule 3: Sites and Places of Significance to Marlborough's Tangata Whenua Iwi_

171. The Panel also agrees that information should be included about the incomplete Schedule 3 and the report writer suggests that appropriate wording is added to Methods of Implementation 10.M.1. (This may be seen now the Panel having amended the last sentence to Method 10.M.1 above.)[97]

172. Consequential changes to headings are also set out. Further, the existing sites relating to Marlborough's tangata whenua iwi from Schedule 1 and Schedule 2 are to be extracted and included in new Schedule 3 as set out in the Section 42A Report.[98]

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[92] Te Ātiawa (1186.224).
[93] Te Ātiawa (1186.225).
[94] Ngati Kuia (501.45, .85).
[95] HNZPT (768.69), Attachment 2.
[96] HNZPT (768.69).
[97] Section 42A Report, paragraph 210.
[98] Section 42A Report, paragraphs 219, 220.

173. As to the inclusion of reference to iwi management plans, these are not considered necessary within the content of Appendix 13 as they are included in amended Method 10.M.1.[99]

## Specific requests to add to the Register of Significant Heritage Resources

174. KSCRA and Alastair McKenzie request that the Sounds Soldiers Memorial at Torea Saddle be added to Appendix 13 (after Schedule 1 or 2).[100]

175. PJ Sim requests that Appendix 13 is amended to include Waikawa West Pt Sec B1 Māori Block site (property number 527547, Lot 1 DP 4615) at the northern end of Ranui Street (reputed to be a local landmark containing two wāhi tapu sites, water spring and urupā and is of importance to Te Ātiawa as an area used to grow fruit, vegetables and berries.[101]

176. HNZPT requests that the word 'proposed' be added in parentheses after the Heritage New Zealand List Number for:

- PMEP Reference 61 - Kakapo Bay Whaling Station
- PMEP Reference 73 - Omaka Presbyterian Church
- PMEP Reference 74 - Sunnymead Farm Cottage
- PMEP Reference 106 - Ōpaoa Wharf Building

as the items have not been fully processed yet for inclusion on the HNZPT register.[102]

### Section 42A Report

177. If the items, identified above, are included, the report writer observes, that HNZPT should give an indication of the likely timetable for scheduling because the qualification 'proposed' would be required to be deleted where included and that can only occur by way of a plan change.[103]

### Consideration

178. For HNZPT, Sylvia Allan, suggested to replace 'List' from schedules 1 and 2 for the table heading 'HNZ List No'. From her perspective this resolved the issue of whether a heritage resource process is complete.

### Decision

179. The second column in schedules 1, 2 and [new] 3 no longer reference 'list' in the title as set out in the Section 42A Report. It will now be referred to as 'HNZPT No.'

[99] See paragraph 144 of this report.
[100] KCSRA (56.1) and Alastair MacKenzie (531.1).
[101] PJ Sim (1299.1).
[102] Section 42A Report, paragraph 208.
[103] HNZPT (768.75-.78).

## Extension to Kakapo Bay site – Schedule 2, Reference 61

180. HNZPT seeks an extension of the Kakapo Bay (PMEP Reference 61) heritage site to reflect its proposed listing which encompasses the bay. The submitter provided its chief evidence for scheduling through Mr James Jacobs from HNZPT who identified its archaeological significance for its layers of Māori and European history. It is currently a proposal for entry on HNZPT's List.

181. The bay contains evidence of Māori occupation (13$^{th}$ and 14$^{th}$ century) and is well known as the location of early whaler John Jacky Guard's shore whaling station from ca 1829. The Guard family is one of New Zealand's oldest European families and was associated with people of significance in New Zealand history among whom was James Wynen (one of the founders of Blenheim) and Wesleyan missionary Rev Samuel Ironside.

182. The murder of Wynen's Ngāti Toa wife Rangiawa Kuika and son here in 1842 is regarded as one of the catalysts for the event known as the Wairau Incident. Rangiawa Kuika and son are buried in a marked area to the north of the site.

183. By 1832 Jacky Guard had purchased the bay from Te Rauparaha and Te Rangihaeata (Ngāti Toa). After whaling the site became a farming settlement and a fishing base.

184. It was asserted by Mr Jacobs that the PMEP is too limited on the extent of Kakapo Bay proposed for scheduling. While the whole bay is proposed by HNZPT for inclusion, the current PMEP identification applies only to the land known as the Guard Family Cemetery. HNZ says that does not provide appropriate recognition and protection to the historic values of the bay land which has been in the Guard family for approximately 187 years.

185. HNZPT indicates that the site area fulfils the requirements for heritage protection for Kakapo Bay under Appendix 13 (a)–(f) recording at (f) 'the whole bay forms an area of high historical significance, due to the length of documented occupation and the number of associated historical events. There are also quantities of whale bones on the floor of the bay which continues its heritage significance beyond the shore line.'

186. In her evidence Ms Allan provided Figure 4: Kakapo Bay Site illustrating the extent of the site outlined in blue.

**Section 42A Report**

187. The report writer involved in assessing the submissions for Schedule 2 Category B, Kakapo Bay heritage items and significant resources identifies not all the items sought to be included by HNZPT have not been fully processed for inclusion in the HNZPT Register.[104]

188. The wording in the PMEP implies the whole bay is to be scheduled, but the mapping shows only the cemetery being scheduled.[105] The writer's conclusion is that the whole bay forms an area of high historical significance. His conclusion is that the listing reference 61 in Schedule 2, Appendix 13 of the PMEP should be altered to include the whole of Kakapo Bay outlined in blue in the Further Submissions of HNZPT, June 2017, observing that this recognition would not place an undue burden over a number of properties.

**Consideration**

189. Ms Allan makes the point that the current description 'land and building footprint' does not do justice to the value of the locality. She says this should be changed to 'land, historic features and sub-surface archaeological remains'.[106] Figure 4 of her evidence graphically illustrates the extent of the historic boundaries which encompass many privately owned building lots.

190. Mr Jacobs recognises that giving protection to the historic values of the whole bay would involve protection over a number of privately owned properties, as the land involved has more recently been subdivided and partially built on.

191. HNZPT provided the Panel with extensive documentation detailing its meetings with some of the landowners.[107] We were advised that HNZPT had worked with landowners in person (via meetings, letters and emails) to gain support for scheduling.[108] The need for future resource consents was noted in several places. The residents were thus notified of the proposal and HNZPT advised the Panel that they did not raise any concerns.

192. While the Panel recognises the importance of protecting aspects at this location for the heritage of Marlborough, it concluded that before that could occur, discretionary activity status for building consents within the boundary now sought in Figure 4, needs to be fully spelled out for the residents; HNZPT's future management of the site also needs clear

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[104] Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan. Matter 3: Amendment to notified Kakapo Bay Whaling station site.

[105] Ibid

[106] HNZPT, Sylvia Jean Allan, Evidence, paragraph 7.28 Figure 4: Kakapo Bay site, page 19 edged in blue depicting the site which clarifies that the scheduling encompassed the whole of its proposed site.

[107] HNZPT, Response to Minute 26

[108] HNZPT, James Jacobs Evidence, paragraph 7.4.

identification. This was not adequately carried out to landowners in any of the correspondence provided to the Panel by HNZPT although the need for resource consent was noted in various places in the attached correspondence during consultation.

193. Further, the Panel noted the fact that there appears to be a discrepancy between the extent of the potentially scheduled boundaries in HNZPT's Figure 4, which encompass the whole of the proposed listed site, and a file note of HNZPT dated 9 June 2017 put in evidence which notes '*Heritage New Zealand clarified it followed a contour line to encompass* ***the flat part of the bay*** *rather than the northern slopes'*. [Our emphasis] The owners accepted this.

194. The Panel was left in doubt that the HNZPT's assertion the landowners agreed to the listing in the PMEP was carried out after adequate and full consultation as to regulatory impacts of the listing.

**Decision**

195. The Panel concludes that further work needs to be undertaken by HNZPT before Kakapo Bay is scheduled, and if that possibility is to proceed that would have to occur by way of plan change/variation. The submission is declined.

## Omaka Presbyterian Church – Schedule 2, Reference 73

196. HNZPT seeks that the Omaka Presbyterian Church in Renwick retain its listing in Schedule 2, Appendix 13 as PMEP Reference 73 despite its own scheduling process not having been completed for this building due to resource consents. This puts it in disagreement with the parish which represents the Presbyterian Church Trustees (Wairau Presbyterian Church). The Trustees initially wished to have the ability to remove it from the site and hence from PMEP protection.[109]

197. It is Mr Jacobs' evidence for HNZPT that the small timber building at Renwick, Marlborough was the first church of any denomination to be built on the Wairau Plains and amongst the oldest documented buildings (opened in 1859) in Marlborough.[110] Despite having been moved several times on its original site of 1.5 acres the structure is significant as an early example of an 1850s timber country church. The building also has spiritual and social significance for generations of local community members. Currently it is located on the boundary nearest State Highway 6.

[109] Presbyterian Church Property Trustees – Wairau Presbyterian Parish (1043.1). Simon F Gaines, Counsel, Submission, paragraphs 7-8.
[110] HNZPT, James Jacobs, Evidence, paragraph 7.4.

**Section 42A Report**

198. The Section 42A report writer places the church building as meeting four out of the six requirements for such historic recognition:

- It has value as a local landmark, over a significant length of time.
- The land was gifted by the founder of Renwick town Mr Thomas Renwick. By the time the building was moved to its present site, there had been a church built near the current site in 1886. Its current purpose appears to be from anecdotal evidence for community purposes.
- It reflects past skills, style, materials and construction that make it of value – it is a good early example of a simple country church built with local materials by local craftsman; what is unusual is that it is lined with matai boards that have never had a form of coating applied in all of its 160 years.
- Simple early examples of country churches like this are rare still in their churchyard setting, if not on the original setting.

199. There is no known association with iwi and the building and does not form part of a precinct of heritage value.[111]

200. The report writer recommends that the Omaka Presbyterian Church remain listed on Schedule 2, Appendix 13 of the PMEP as Reference 73.

*'It is noted that the Heritage New Zealand Listing Report (List No. 1474, Proposed) identifies the property on which the church sits. It is recommended that only the "Building Envelope and Interior" are recognised, as it is currently proposed in Schedule 2, Appendix 13'.*

201. It is noted in the report that the church is incorrectly mapped in the notified plan. The building mapped appears to be the adjoining larger church building immediately to the west of Omaka Presbyterian Church on the same property (see Map 53). If the decision is made to retain the Omaka Presbyterian Church (First Church), then the correct building would need to be mapped Map 53 in Volume 4.

[111] Section 42A Report. Matter 4 – Removal of Omaka Presbyterian Church.

202. The correct building is shown in the map below.

**Evidence**

203. Evidence for the Church was given by the Reverend Brendan O'Hagan who explained the Presbyterian Church does not own property for its own sake but as a means to achieve God's mission. The Church Property Trustees are appointed to support the work of active participation in the Church to monitor the flexibility of its assets held to ultimately assist in the delivery of God's mission. The church is no longer being used for its own purposes and is unlikely to be so used in the future, while the parish does not have resources for preservation work/earthquake strengthening.

204. Since the submission was lodged the Trustees have been aware that the Schedule 2 Heritage listing does not prevent the modification, demolition or relocation of the building. The proposed listing also does not prevent the construction of new buildings or structures on the surrounding land. But as a Schedule 2 listing, these activities might require a resource consent. The Trustees now consider future opportunities may arise to utilise the land where the building is located. There is land at the back and front of the existing hall where relocation could occur, that is, relocation could occur *within the same site* (the Reverend's emphasis). As a result, the parish no longer opposes the proposed listing as a Category B Heritage Resource

provided it had an assurance that any rules/standards framework is both reasonable and certain.[112]

205. Mr Simon Gaines provided legal submissions for the trustees. He supplied an analysis of the various provisions of the PMEP that apply to this building and its relocation. He advised that assurance is sought that any rules/standards/framework is both reasonable and certain.[113]

206. Ms Allan considers the policy rules and methods (including the Council's proposed Method 10.M.3) would provide an appropriate framework to manage the resource if listed. The method includes a level of financial support.[114]

207. Mr Jacobs detailed a meeting between HPT and the trustees where the details of listing by the HNZPT and scheduling the plan were discussed. The main area of concern seemed to be that scheduling would force the trustees to allocate funds to repair the building. But this will not be the case. Mr Jacobs also advised that NZHPT provides conservation advice free of charge to the owners of Heritage listings and the property may be eligible for funding through the National Heritage Preservation Incentive Fund administered by HNZPT.[115]

**Consideration**

208. After weighing all the evidence and the advice of the report writer, and after a site visit, we considered that the rules would enable the church to be relocated nearer to its frontage boundary, given the heritage values it retains and the recommendation by the parish. While very small, the building's heritage attributes would attract visitors if provided with heritage signage and positioning. The Trustees were primarily wanting flexibility to move the building within the site and HNZPT had no issue with that.

**Decision**

209. The Omaka Presbyterian Church remains listed on Schedule 2, Appendix 13. The correct building needs to be identified on maps 53 and 158, as described above. The Trustees' submission is rejected but in doing so note that on the basis the PMEP will allow relocation on the same site.

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[112] Presbyterian Church Property Trustees (1043.1), Reverend Brendan O'Hagan, paragraphs 3-14.
[113] Wairau Presbyterian Parish, Simon Gaines Submissions, paragraph 12.
[114] HNZPT, Sylvia Allan Evidence, paragraph 7.14 – 7.15
[115] HNZPT, James Jacobs Evidence, paragraphs 5.4 – 5.5

## New sites proposed for inclusion – Appendix 13

### Sounds Soldiers Memorial, Torea Saddle

210. KCSRA[116] seeks that the memorial be included in Appendix 13 to be awarded Heritage Resource Status. Further detail is provided by excerpts from the published book 'The Sounds Soldiers Memorial – Stories of the Fallen'.

211. The memorial is identified as an iconic memorial built by public contribution from a small community to remember those who did not return from WWI and WWII.

**Section 42A Report**

212. The Section 42A Report recommends that the Sounds Soldiers Memorial at Torea be listed in Appendix 13, Schedule 2, the reasons being:

- The memorial has had value as a local landmark over a significant length of time (since 1921). It is positioned as an interesting attraction on the saddle of the modern Queen Charlotte Track.
- The memorial reflects past skills, style, materials, methods of construction or workmanship that would make it of educational or architectural value. It is built of marble and other stone from the top of the North Island, typical of New Zealand country memorials.
- It is a local monument built through public subscriptions from a small community collected during 1920 to remember sons, brothers, husbands and friends. It is rare in relation to particular historical themes.
- It is important to Marlborough's tangata whenua iwi. It remembers the lives of fallen soldiers from this community both Māori and European.
- It is not part of a heritage precinct but its setting on the Torea Saddle signifies the heritage and association of the soldiers from both Queen Charlotte and Kenepuru Sounds, and therefore is of heritage value.

**Decision**

213. Appendix 13, Schedule 2, and maps 76 and 126 are amended to include the Sounds Soldiers Memorial with the 'value applies to' column being 'monument'.

### Wairau Hospital Nurses Home

214. The chief submitter to the retention of this 92 year old building (built in 1926) is HNZPT, seeking it to be listed in Schedule 2, Appendix 13 of the PMEP. It is a historic place on HNZPT's

[116] KCSRA (56.1)

list (List No. 1534) 2010. HNZPT's assessment on this building is that it meets all the requirements listed in Heritage Assessment values (a)–(d) although with no known association with iwi (e) and it does not form part of a precinct or heritage area (f).

215. Built to improve the quality of accommodation and study facilities for student nurses at Wairau Hospital, its core is two-storied brick with a reputation for architectural and social significance. It is an example of an institutional building that is now increasingly less common as district health boards no longer require on-site residential wings for nurses.

216. Ms Allan for HNZPT cites international investigations (such as those by Donovan Rypkema) which demonstrate that heritage is economically beneficial to owners and as part of a community. In Ms Allan's opinion the building should be included in Schedule 2, Appendix 13. Scheduling could afford it some protection until such time as any case for demolition is made, including raising its significance and encouraging adaptive re-use. [117]

217. The NMDHB opposes both the policy and the scheduling of the building. In May 2018 in a letter to the MDC,[118] the Board advised it would proceed with the building's demolition unless it could be sold or repurposed for other means. (This possibility was first raised by NMDHB with Council in correspondence dated 7 July 2010.) The Board has now determined there is no future use for the building and it is proposing to have the building demolished. The key elements behind the Board's decision are:

- The building has a significant amount of asbestos and is considered a seismic risk.
- Initial costing for removing the asbestos is said to be significant and the work to bring the facility back to code compliance will also be significant (the Section 42A Report also records demolition costs will be significant).
- Currently NMDHB is incurring expenditure to maintain the security perimeter fencing – funding that could better provide for health services in the community.
- The location of the Nurses' Home is within the identified expansion zone for Wairau Hospital building development.
- HNZPT have not identified where the additional land for relocation is situated. It is critical that any expansion to hospital facilities must be in a location that is configurable

[117] HNZPT Sylvia Allan Evidence, paragraph 7.10.
[118] NMDHB letter Eric Sinclair, General Manager Finance and Performance and Facilities, dated 7 May 2018, paragraphs a, b, c.

for hospital services to operate in an effective and efficient manner. Additional parking is also a requirement.

**Section 42A Report**

218. The Section 42A Report recognises the importance and social history of the building together with its rarity. It meets four of the positive criteria for the heritage assessment undertaken by the report writer. Nevertheless, the report writer recommends (albeit with regret) that the building should not be listed, primarily on the basis of amendments to the Building Act (relating to earthquakes risk assessment undertaken in 2016) and that the request to include the Nurses Home in the PMEP be declined.[119]

**Consideration**

219. As pointed out by Mr Jacobs in support of HNZPT[120], however legal precedent has addressed the relationship between the requirements of the Building Act 2016 and the RMA and concluded that the two pieces of legislation are not in conflict with one another. [121] Aspects of the Building Act should not influence the determination as to whether a property should be scheduled in a district or related type of plan under the RMA for its heritage significance. The determination of whether a property should be scheduled as heritage in a plan should be based solely on the criteria and requirements present in policies contained in the plan.

220. The Panel visited the site of the Nurses' Home which is located behind the current hospital. There is little doubt in our mind, if asbestos is removed and earthquake strengthening took place, and costs were met, the building would be eminently suitable for some form of adaptive re-use.

221. The latest information from the Board confirms, however, that it will be going ahead with the hospital's expansion, that the remainder of the site will not be suitable for relocation, even if the building could be brought up to earthquake standard (a recent assessment undertaken in 2018 places it at 15% of IL2 which is very high risk), and the asbestos could be removed.[122]

222. HNZPT did not identify where the building could be moved to, even if it could be saved. On the Panel's site visit it was clear the building is hemmed in by substantial development and could not be relocated. This is perhaps why the Section 42A report writer, in spite of his

[119] MDC, Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan.
[120] HNZPT, James Jacobs Evidence, paragraph 6.7 citing *Lambton Quay Properties v Wellington City Council* CIV-2013-485-007919 [2014] NZHC 878.
[121] HNZPT, Sylvia Allan Evidence, paragraph 7.10.
[122] NMDHB, Eric Sinclair Response to Hearing Panel's Minute, page 1.

recommendation, states: 'As an overview, and based on my experience, taking into account the above methods of assessment, I would in all probability, rate this building as of 'some' significance. A rating of (C).'[123]

**Decision**

223. For all these reasons the Panel has concluded that the Wairau Hospital Nurses' Home should not be scheduled in Appendix 13. The submission is declined.

## Ōpaoa Wharf Building

224. The Ōpaoa Wharf Building was formally entered in the New Zealand Heritage List/Rārangi Kōrero as a Category B historic place. Due to an error, however, it was removed due to HNZPT being incorrectly advised it was demolished. Re-listing has not yet progressed due to resource consents, and it is treated as a proposed listing as the building still warrants protection under the RMA. HNZPT therefore supports the inclusion of the building in the Schedule.

**Section 42A Report**

225. In terms of criteria:

- The Section 42A Report identifies that the building was built in 1915 to replace an earlier one.
- It was originally the headquarters of WE Clouston and Co, shipping agents and merchants.
- It is a basic wharf shed clad in corrugated iron and the general building fabric is in poor condition with the exception of the south side lean-to which has been highly modified and the building is likely to retain little of its original features. The structure in its present location is likely to retain some original intact features. It offers little in the way of historical significance or architectural value.
- It is not unique or rare in its location.
- It has no association with iwi.
- It does not form part of a precinct or area of heritage value although there are other similar buildings in the vicinity of this one.

226. In the report writer's opinion this building has been highly modified, has little merit or heritage significance, and is therefore on the border of inclusion in Appendix 13, Schedule 2 of

[123] Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan. Matter 2: Addition of the Wairau Public hospital Nurses Home.

the PMEP. If this building was fully assessed today in accordance with the principles in J S Kerr's 'Conservation Plan' for a new listing, it would be unlikely to make the list.

**Decision**

227. It is the Panel's decision, based on all the evidence, that the request to include the building in Appendix 13, Schedule 2 list is rejected.

## Wairau Wāhi Tapu – Schedule 3

## The Wairau coastal area

228. The Wairau Bar and Lagoons form a distinctive landscape, with the area holding a special place in New Zealand's history due to its association with the earliest period of Māori occupation and for its association with a variety of iwi.

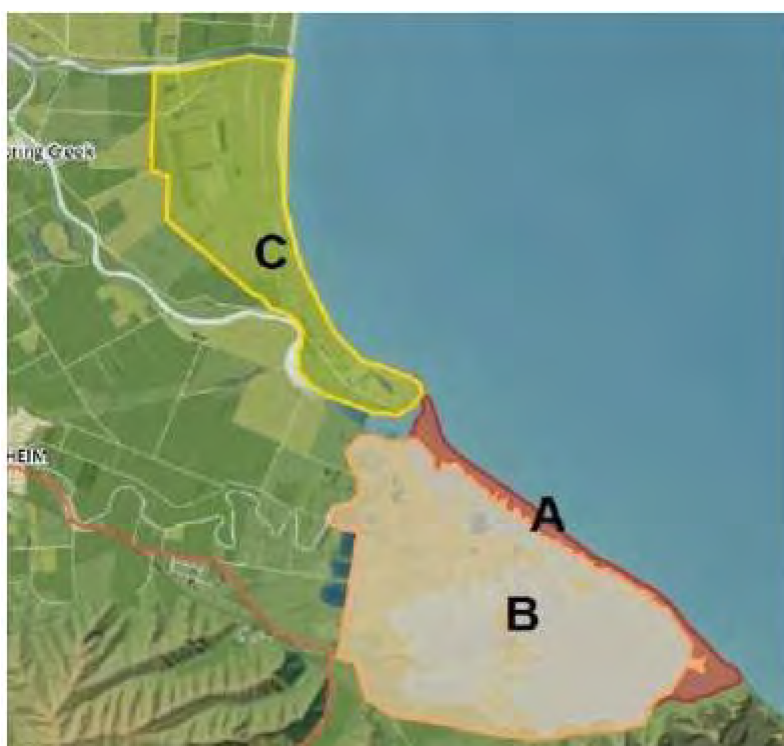
229. For early Polynesian migrants, the Wairau Bar and Lagoons was attractive for its abundant natural resources, including māhinga kai (still important for those living in the wider Wairau area) and access to argillite deposits. The name Wairau is derived from the phrase 'ngā wai-rau o Ruatere' (the hundred waters of Ruatere). This means the confluence of streams, rivers, wetlands, lakes and estuaries across the Marlborough region. These waters provided an important food resource, and as shown by archaeological remains, moa were also abundant in the area. Tangata whenua occupied the area until the mid-19th century when European settlers began displacing them.

230. The merits of recognising the significance of Te Pokohiwi in Schedule 3 (Area A) (Sites of Significance Appendix 13) were discussed by the Panel and some Rangitāne submitters during the hearing on Chapter 3 Marlborough's Tangata Whenua Iwi.

231. At the heritage topic hearing HNZPT supported the original submission of Rangitāne in the earlier hearing, and considers a wider area of the Wairau coast should be incorporated into the new Schedule 3 to address Rangitāne's concerns expressed in its original submission. Maps were provided which set out the (coloured) status of Areas A, B, C and the need for equal protection of the coast.[124] Detailed information relating to Area A was provided by HNZPT, Rangitāne providing supplementary evidence relating to Areas A and B. The iwi's representative undertook to consult further with landowners in Area C which adjoins vineyards. A number of those with long associations with the area asked to be heard, and written evidence was also provided.

[124] HNZPT, James Jacobs Evidence, paragraphs 4.1-4.23; Sylvia Allan Evidence, in particular Figure 1, paragraph 7.18, page 13.

232. In this respect, the areas of note are briefly addressed – see map below.




**Area A: Wairau Bar (Te Pokohiwi o Kupe)**

233. The extent covered by Area A is that covered by the Wairau wāhi tapu, entered on the HNZPT List in 2012 (List No 9561), and Lot 1 DP440199. It covers the gravel bar, known as Te Pokohiwi o Kupe ('Te Pokohiwi'), formed where the Wairau River meets the sea at Cloudy Bay. The southern terminus of Te Pokohiwi is the cliff-face of Te Parinui o Whiti (White Bluff). From there, Te Pokohiwi extends approximately 7 kilometres northwest, where it terminates at the Wairau River.

234. Area A also overlaps with the Moa Hunter Site, a Category B historic place entered on the List (List No 5979), which is an approximately 15 acre archaeological site at the northern end of Te Pokohiwi.

235. In addition to the Moa Hunter Site, there are other important recorded archaeological sites associated along Te Pokohiwi. The site has significant archaeological significance due to the potential for archaeological methods of investigation to provide important insight into the earliest period of human occupation in New Zealand. The registration report for the Wairau wāhi tapu states that it has cultural value in the traditional, spiritual, ritual and mythological senses. The tapu nature of the site relates to the presence of urupā, battle sites, taniwha, and the traditions, rituals and mythology associated with these sites.

236. There is also considerable potential for important unrecorded sites related to both tangata whenua and later European settlement.[125]

**Area B: Wairau Lagoons**

237. The extent of Area B is that portion of the Wairau Lagoons covered by the Wairau Bar and Lagoons Outstanding Natural Landscape, as identified in the PMEP. The extent includes the technologically, archaeologically and culturally significant waterways and canals which run for approximately 19 kilometres. It also covers the rest of the wetland system due to its importance as a māhinga kai and potential for archaeology.

238. The Lagoons are archaeologically significant as a testament to the engineering skills and environmental knowledge of the Wairau people. Through further investigations, the canals have the potential to provide important information on their creation and the people who made them.

239. There are already a number of recorded archaeological sites within the Lagoon extent itself and it is reasonable to suspect other archaeological sites may be found in the future. It is also important to note that the wetlands of these lagoons are particularly good sources of archaeological deposits.

240. The Wairau Lagoons were and still are an important location for māhinga kai for those living in the wider Wairau area. According to Rangitāne tradition, Te Huataki, leader of the Rangitāne people who settled in the area in the 17th century, was drawn to the Wairau by the rich resources of the Lagoons They were known as Wahanga-a-Tangaroa and Mataora (the Long Lagoon and the Big Lagoon respectively). The Lagoons provided eels, flounder, whitebait, other fish species, swans and ducks as food sources. The banks of the Wairau River also provided flax and the river a communications avenue.

241. The cultural value of the Lagoons as a māhinga kai area was increased by the development of the canals. Rangitāne chiefs Patiti and Te Wahatakoiro began their development, and Te Whatakoiro's son, Nganga, guided their completion during the 18th century. The Lagoons also have technological heritage value due to Rangitāne's design of the canals and the techniques used in their construction.[126]

242. Ms Allan identifies that the heritage significance of the full Boulder Bank, Te Pokohiwi area and lagoons comprising (HNZPT scheduled A and B areas) are not at issue given the growing

[125] HNZPT, James Jacobs Evidence, paragraphs 3.6-4.15.
[126] HNZPT, James Jacobs Evidence, paragraphs 4.11-4.15.

number of locations of known archaeological areas on Te Pokohiwi and within the margins of the lagoons that are already identified.[127]

**Area C: North of Te Pokohiwi**

243. Area C covers those areas north of the mouth of the Wairau up to the Wairau Diversion identified as having significant cultural archaeology relating to the wider Wairau Bar archaeological and cultural landscape.

244. In recent years, as described in Mr Jacobs's evidence, two archaeological investigations have demonstrated equally significant archaeological presence of cultural activity (including early European activity) on the northern bank, including adjacent to the Chaytor and Mountford lands in Area C.[128]

245. The area is historically significant due to the early European development that took place there in the mid-18th century. The treacherous Wairau Bar at the convergence of the Opawa and Wairau River mouths was charted and crossed by European ships in 1848. There the Port of Wairau subsequently provided for the burgeoning shipping trade (the port only disestablished early in 1968) with the remaining original Pilot's House (lived in from 1868-1886) a rare reminder of New Zealand's maritime history when pilots were stationed at many harbours.[129]

246. Area C has a readily identifiable geographical northern boundary consisting of the Wairau River Diversion but the wider cultural, archaeological and historical significance of the area is known to likely extend beyond its western and northern boundaries.

247. While the full Area C has protection directly under the Heritage New Zealand Pouhere Taonga Act 2014, it is the strong opinion of HNZPT that including it in the PMEP as a Schedule 3 item is appropriate as it informs the wider community of its values and establishes what activities permitted and what are not.[130] In Ms Allan's opinion the wider area sought to be identified should become a scheduled heritage resource as it can be suitably identified and described as an archaeological landscape.[131]

248. In her opinion, the limitations sought (beyond those in relation to Areas A and B), should be included as prohibited activities generally applying to changes in land use activities. This would

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[127] HNZPT, Sylvia Allan Evidence, paragraph 7.20.
[128] Jeremy Habberfield-Short, Strata Heritage, *Archaeological Assessment: Wairau Bar, North Bank, Montford Corporation Ltd,* 2017; Jeremy Habberfield-Short, Strata Heritage, *Desktop Assessment of Archaeological Potential of the Chaytor lands, Lower Wairau, Marlborough,* 2018.
[129] HNZPT, James Jacobs Evidence, paragraph 4.2.
[130] HNZPT, James Jacobs Evidence, paragraphs 4.14-4.18.
[131] HNZPT, Sylvia Allan Evidence, paragraph 7.19.

reflect concerns about the loss to cultural landscape and prevent land disturbance beyond that otherwise permitted in Rule 2.24.3 (which relates to vineyard, subdivision and coastal development that has occurred further to the north on the Chaytor and Mountford lands).

**Consideration**

249. In respect of Area C, the Panel considered that a number of uncertainties remain, which it explored with witnesses, to be resolved in further consultation with landowners – on boundary identification, fencing, access. If these were also to be resolved, a new plan change/variation and scheduling would be necessary.

**Decisions**

250. From the extensive evidence provided by Rangitāne and HNZPT, the Panel accepts the heritage and cultural value of Wairau Bar/Te Pokohiwi should be recognised. We accept that Area A and Area B from the HNZPT evidence should be identified in Appendix 13, Maps 160, 161, 173 but exclude that area of land in Designation B75 which relates to MDC's sewage ponds.

251. The Panel decision is to amend Appendix 13, new Schedule 3 to include the following:

| **Reference** | **HNZPT ~~List~~ No (if applicable)** | **Heritage Resource** | **Address** | **Value applies to** |
|---|---|---|---|---|
| 131 | 5979<br><br>9561 | ~~Moa hunter site~~<br>Wāhi tapu, archaeological and cultural heritage area –<br><br>A. Wairau Bar/Te Pokohiwi<br><br>B. Wairau Lagoons | ~~29 hectare gravel bar~~<br>Locality where Wairau River meets sea at Cloudy Bay | All cultural and archaeological and historic heritage values within A and B |

252. Area C requires further consultation with iwi, HNZPT and landowners before it can be scheduled, and the submission relating to that area only is declined.

## Waikawa West - Addition of Lot 1 DP4615

253. Phillip James Sim of Te Ātiawa opposes the omission of Waikawa West PV Sec B1 Māori Block Site for proposed scheduling in Appendix 13.[132] He requests that the land be given heritage resource status. Mr Sim considers that the Lot is a local landmark containing at least two wāhi tapu sites, water spring and urupā. Its importance to Te Ātiawa iwi is that it includes some flat

[132] PJ Sim (1299.1).

land used to grow fruit, vegetables and berries in the past. The land use dates back to iwi members who occupied Picton but in 1850 moved to Waikawa.

254. The relevant land is property number 527547, Lot 1 DP 4615.

**Section 42A Report**

255. The Section 42A Report assesses the site against the criteria in proposed Policy 10.1.7 and found that:

- Inspection did not reveal any historic structures or significant physical features such as a water spring or urupā. The site did not appear on the report writer's investigation to be a registered archaeological site.
- No evidence was provided relating to authorised persons of historical note despite its strong association with Mr Sim's whanau.
- In terms of (c) in Policy 10.1.7 while flax drying is relevant and pertinent, there does not appear to be any documented association of this activity with this site.
- There was no evidence presented to indicate that the site is unique or rare.
- Mr Sim asserts the site holds strong association with his whanau. The site does not form part of a historic precinct or other registered area of historic value.[133]

256. The Panel went to the locality of the site identified by Mr Sim. It is now covered in a mix of bush and trees. Subsequent to the hearing the Panel was informed that MDC had in fact purchased the site to protect its cultural and ecological associations and it is now a reserve.

**Recommendation**

257. The report writer's recommendation on the request to include Lot 1 DP 4615 in Appendix 13 of the PMEP is that it should be declined.

**Decision**

258. The submission is rejected as the reserve status makes it unnecessary.

[133] Section 42A Report. Report on submissions and further submissions: Submissions Concerning Nominations of Buildings, Structures or Sites for inclusion in Appendix 13 of the Marlborough Environment Plan. Matter 5: Addition of Lot 1 DP4615.

## Schedule 3: Notable Trees

259. K and M Daly support the retention of PMEP Reference 2 hinau tree.[134] This is located at the head of West Bay, Lochmara Bay and is identified as 500 years old. It is considered an 'iconic asset' in the bay. In the Cadwallader Tree Consultancy report, attached to the Section 42A Report, its STEM score, of 153, meets the criteria in Policy 10.2.1(b) and (e) of the PMEP.[135]

260. A Bissel and P Rattray request that four significant trees at Upper Wairau Cemetery – at the corner of State Highway 63 and Waihopai Valley – are added to the schedule.[136] One tree was planted as a marker for the Dillon family graves, another is a clear reference (landmark) point. The Cadwallader Tree Consultancy report recommends that only three trees are included as they meet the threshold for significance given the scores of 162, 153 and 186 respectively under the STEM system. (The STEM (Standard Tree Evaluation Method) score system requires an assessment of each tree or group against the criteria listed in three categories being Condition Evaluation, Amenity Evaluation and Notable Evaluation.)

261. Waihopai/Avon Residents Association requests that the 3.3 km length of *Eucalyptus saligna* (466 trees), originally planted in the 1880s by Philip Lee Dillon along the Waihopai Valley Road, is added to the schedule.[137] The report from Cadwallader Tree Consultancy (arborists) recommends that the trees are included as they together meet a high score of 231 under the STEM system. This group meets the criteria set out in Policy 10.2.1(b), (c), (e) of the PMEP.

262. KCSRA requests the 90-plus year old grove of four historic Norfolk pines in the Portage public carpark are added to the schedule.[138] They provide considerable amenity. The Cadwallader Tree Consultancy report recommends that the trees are included as they meet the score of 153 under the STEM system and meet the criteria set out in Policy 10.2.1(b) and (e).

263. Another submitter requests that the Tasmanian blue gum eucalyptus tree at Blue Gum Corner (where Rarangi Road turns into Rarangi Beach Road) is added to the schedule.[139] The report from Cadwallader Tree Consultancy recommends that the tree is included as it meets the criteria set out in Policy 10.2.1(b) as a local landmark. While it has sustained damage at its base, it shows a wound-wood response and is healthy. It meets the STEM score of 129 points.

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[134] K and M Daly (432.4).
[135] The STEM criteria by which the significance of trees is identifies relates to the Standard Tree Evaluation Method criteria (condition, amenity, notable evaluations).
[136] A Bissel and P Rattray (516.1).
[137] Waihopai/Avon Residents Association (517.1).
[138] KCSRA (869.48).
[139] Rarangi Residents Association (1089.33).

**Section 42A Report**

264. The report writer observes that the trees which are the subject of the submissions of Waihopai/Avon Residents Association and A Bissel and P Rattray are located on private land and the landowners have been offered an opportunity to comment on their inclusion. At the time of writing this report no response had been received. The other trees are located on Council managed land and there is no opposition to their inclusion.

265. On the basis of the Cadwallader Tree Consultancy report the report writer recommends the trees referred to above are all included in Schedule 3.

**Consideration**

266. The Panel sought responses through MDC of the landowners affected in respect of the line of trees on Waihopai Valley Road. Marisco Vineyard Holdings Limited, one of the affected landowners responded that the trees were already the subject of a QEII Covenant but also expressed concern at the impact of the PMEP rules in relation to ongoing maintenance of the trees, particularly having regard to the need to comply with the Electricity (Hazards from Trees) Regulations 2003. The Panel accepted that it was appropriate to allow for the maintenance of trees in a safe condition, and in a manner that enables compliance with statutory obligations, that the relevant rules should be amended to recognise those needs. The Panel considered a wording suggested by the landowner[140] to cover the situation and was generally satisfied with that suggestion except that the suggested standard was not acceptable. The suggested standard went beyond what was required to comply with the regulations and left areas of uncertainty.

267. No response was received from the other landowner but that does not affect the ability of the PMEP to provide recognition and protection of trees of significance.

268. In respect of the Upper Wairau Valley Cemetery trees, the Panel requested Council staff to communicate with the Trust which controls the cemetery as the submission seeking protection of the trees was made by private individuals. The Trust raised some issues as to potential restrictions on the ability to develop further plots or ash internment but the Panel came to the conclusion that the issues raised by the Trust did not outweigh the significance of protection of the trees.

269. On the recommendation of the Cadwallader Tree Consultancy (arborists) report (Appendix 3 to the Section 42A Report) and its findings under the STEM endorsed in the Section 42A Report, we find as follows:

[140] Letter from Hardy-Jones Clark, dated 12 December 2018

- The three trees at Upper Wairau Cemetery be included in Schedule 4 Notable Trees, Appendix 13, Map 158.
- The 3.3 km length of 466 *Manna gum (Eucalyptus viminalis)* along Waihopai Road (planted in the 1880s by Philip Dillon) is included in Schedule 4 Notable Trees, Appendix 13, Map 169. It is protected by a QEII 'Life of Trees' covenant.
- The Hinau (Elaeocarpus dentatus) tree at West Bay - Lochmara Bay, is deserving of recognition as a landmark feature and it has a STEM score of 153 so should be included in Schedule 4 Notable Trees, Appendix 13, Map 126.
- The Tasmanian blue gum, at Rarangi is recognised as being a local landmark feature so should be included in Schedule 4 Notable Trees, Appendix 13, Maps 82 and 150.

**Decision**

- Include the four Norfolk pines in the Portage carpark for their significance in Schedule 4, Appendix 13, Map 76, 126.
- Include the Tasmanian blue gum tree at Blue Gum Corner for its significance at Rarangi in Schedule 4 Notable Trees, Appendix 13, Map 82, 150.
- Retain the Hinau (MEP reference 2) for its significance in West Bay, Lochmara Bay in Schedule 4 Notable Trees, Appendix 13, Map 126.
- Include the line of Manna gum trees along Waihopai Valley Road as identified in the Cadwallader Report.
- Include a new rule as follows:

  *2.28.5: Trimming, pruning and other works to ensure that a Notable Tree complies with the Electricity (Hazard from Trees) Regulations 2003.*
- Include the three trees identified in the Cadwallader Report at the Upper Wairau Cemetery.

## Appendix 13 – Clause 16, First Schedule amendments

270. In the course of consideration of the Appendix 13 submissions and evidence a number of matters requiring amendment in the PMEP were noted by the Panel which can be addressed pursuant to cl 16 of the First Schedule. They are as follows:

271. In considering Appendix 13, the Panel noted there were no values listed under the 'values applies to' column for either reference 49 or 50. This is an omission that can be amended using powers under Clause 16 of the First Schedule.

272. In the new Schedule 3 to Appendix 13, the fourth column should have a title of location rather than address as many sites and places of significance to Marlborough's tangata whenua iwi will be unlikely to have a street address.

**Decision**

273. In order to rectify this minor omission, "Urupa" will be added as the value for Schedule 2 reference 49 and 50.

274. The fourth column of the new Schedule 3, Appendix 13 will refer to 'Location' rather than 'Address'.

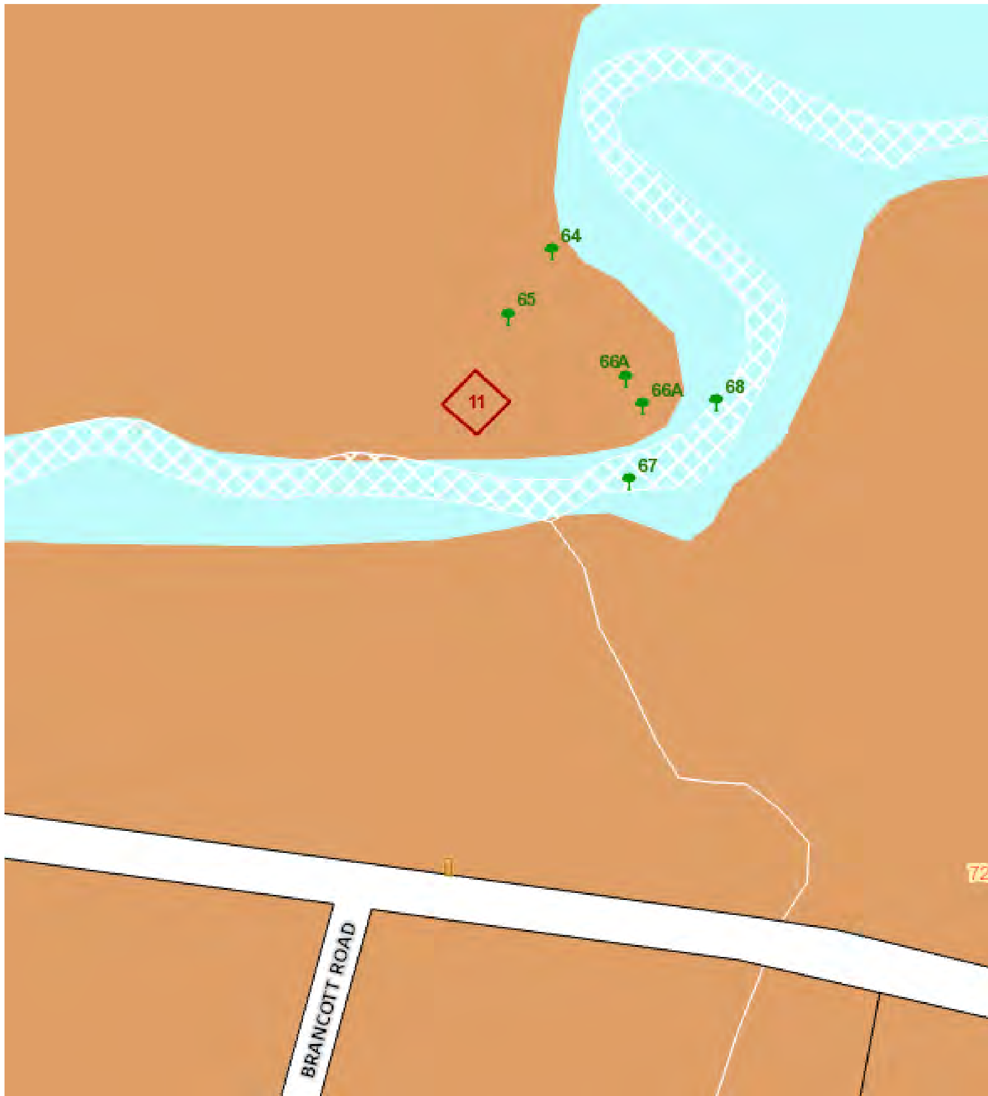
## A&P Show Grounds – Grandstand

275. As part of a suite of heritage resources at the A&P Show Grounds, the Grandstand is listed as a Category II [sic] heritage resource. See Site #126 on Volume 3, Appendix 13, Schedule 2 and Map 20 of Volume 4. The Marlborough District Council applied for and was granted a resource consent to demolish the grandstand (U180517). The decision was made on 8 April 2020. The physical demolition occurred very recently. For this reason, it is appropriate to remove the Site #126 from Appendix 13 and Map 20. This change is made as a Clause 16 change.

## Woodbourne Farm heritage listing issue

276. In the course of deliberations it came to the Panel's attention that Woodbourne Farm on New Renwick Road Fairhall is mapped at Map 158 Volume 4 in a manner which includes only the homestead of the farm as being a Category A heritage resource, whereas in Schedule 1 to Appendix Thirteen in Volume 3 the whole farm is included.

277. The relevant portion of Map 158 shows as below:




278. The relevant wording from Schedule 1 Appendix 13 is:

| 11 | 1539 | Woodbourne Homestead and farm | 720 New Renwick Rd, Blenheim | Whole property including buildings and structures |
|---|---|---|---|---|

279. Unfortunately the Panel had no submission before it which would have provided scope to correct this inconsistency. It did consider the possible use of clause 16 First Schedule RMA to either amend the Map or the Appendix description to remove the inconsistency. The map amendment seemed the most likely candidate as the Heritage New Zealand listing of this property as a Category I site also refers to the homestead and the historic farm.

280. However, the problem for the PMEP is an inconsistency between a word description and a map.

281. The general approach of courts in most types of cases, particularly building cases, where ambiguity exists between a description in a document and a map or plan, is that it is the drawing, plan or map which prevails over a wording description – on the basis that it is the most definitive thing to the eye, and most definitive to understand.

282. And in an RMA sense, as here, if the landowner had checked Map 158 to see how the property was mapped, he/she would have seen only the homestead mapped.

283. For the Panel to now change Map 158 without the landowner having opportunity to submit against that extension – which would be huge in physical extent, and also in effect terms as to what can be done on the farm – is well beyond the intent of clause 16. That clause states:

> *(2) A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.*

284. The Panel does not consider a change to a map to extend the boundaries so far as to include the whole farm property can be described as 'minor', and the effect of doing it would also not be of 'minor effect'.

285. The lesser option in terms of practical effects and extent would be to actually remove the wording reference in the Schedule to the 'farm', but that would be inconsistent with the wording in the Heritage NZ listing, and could only be done if a submission sought that deletion.

286. There being no such submission the only thing the Panel can do is to draw the inconsistency to the Council's attention. However, the Panel suggests to Council that the whole issue of the heritage status of this property should re-assessed in conjunction with the landowner and Heritage NZ, with a view to a Plan Change being made after that has occurred to remove the inconsistency as to the farm's inclusion one way or the other.

287. That course will not prejudice heritage aspects which may exist on the farm while the RMA reassessment process occurs, because of the fact that the Heritage NZ listing includes the farm. That fact provides the level of protection needed for heritage resources under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. The RMA process provides the appropriate information process at a localised RMA plan level.

MARLBOROUGH DISTRICT COUNCIL

# Proposed Marlborough Environment Plan

# Topic 9: Natural Hazards

**Hearing dates:** 28 – 29 and 31 May 2018

**S42A Report Writer:** Paul Whyte, Gavin Cooper and Laddie Kuta

**Conflicts of Interest:** None

**Interim decision:** Yes

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

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**List of Abbreviations**

| | |
|---|---|
| LIDAR | Light Detection and Ranging |
| MDC | Marlborough District Council |
| MSRMP | Marlborough Sounds Resource Management Plan |
| NESPF | National Environmental Standards for Plantation Forestry |
| NPSET | National Policy Statements for Electricity Transmission |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| S42A Report | Section 42A Report |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| KiwiRail | KiwiRail Holdings Limited |
| NFL | Nelson Forests Limited |
| NZTA | New Zealand Transport Agency |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

1. This chapter of the PMEP addresses a range of natural hazard issues that can arise in Marlborough. Amongst the range of natural hazards covered in Chapter 11, Volume 1, of the PMEP are particularly those arising from risk of inundation from floods and the consequences of land instability, either as a result of earthquake, landslip or tunnel gully erosion.

## Statutory setting

2. The statutory definition of a natural hazard contained in the RMA is:

> '**natural hazard** means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment'

3. The statutory scene is set in the RMA by Part 2, in particular s 6(h), and by the associated sections 30 and 31 as to the functions of regional and territorial authorities.

4. Section 6 (h) provides that the Council must recognise and provide for the following as a matter of national importance:

> *(h) the management of significant risks from natural hazards.*

5. Section 30 (1)(c)(iv) as to regional council functions makes provision for one function being:

> *(c) the control of the use of land for the purpose of—*
>
> *(iv) the avoidance or mitigation of natural hazards:*

6. In addition to that basic task, other relevant functions in planning terms are stipulated in ss.30 (1)(a) and (b):

> *(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:*
>
> *(b) 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: …*

7. Another subsection in s.30 as to infrastructure planning, which in some circumstances can have some relevance to this topic, is found at s.30(1)(gb):

> *(gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:*

8. For territorial authorities in s 31 there are in effect 'mirror' provisions to those found in s.30 for regional authorities. The most direct 'mirror' image for s 30(1)(c)(iv) as to the mitigation or

avoidance of natural hazards is found in s 31 (1)(b)(i). It provides that one of the functions of a territorial authority is:

> *(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of:*
>
> *(i) the avoidance or mitigation of natural hazards;...*

9. Subsections 31(a) and (aa) of the RMA, (which effectively mirror the provisions in s 30 (1) (a) and (b) for regional councils), include for territorial authority functions such as:

> *(a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
>
> *(aa) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district:*

10. Finally, s 35(5) (j) of the RMA requires that each local authority is to keep the following records:

> *(j) records of natural hazards to the extent that the local authority considers appropriate for the effective discharge of its functions; and …*

11. The application of ss 6 (h), 30 & 31, and s 35 of the RMA by a unitary authority will inevitably result in the identification of natural hazard areas through its resource management plan. It comes as no surprise then that the PMEP, in conjunction with the identification process of natural hazards through mapping, also proposes policies, rules and maps restricting built development and certain other relevant activities in those identified areas.

12. Such provisions were always likely to lead to submissions from affected landowners as to asserted unreasonableness, unfairness and/or 'unnecessary' restriction on activities.

## Summary of principal PMEP Policies the subject of submissions

13. Objective 11.1 encapsulates the overall precautionary approach in the Plan to reduce the risk of effects of natural hazards:

**Objective 11.1**

**Reduce the risks to life, property and regionally significant infrastructure from natural hazards.**

14. That Objective is achieved through policies, mapping and associated rules identifying those areas of risk, and requiring the avoiding of infrastructure and other built development in those areas identified as being at risk. Policy 11.1.1 gives effect to that identification process:

    *Policy 11.1.1 – Establish the extent of land subject to flooding, liquefaction and tunnel gully erosion and identify this land within the Marlborough Environment Plan as a hazard overlay.*

15. In terms of the significance of risk, and consequent effects, a very obvious hazard risk exists in relation to the largest river in the district – the Wairau. Its associated floodplains have become the centre of the major population bases in Marlborough and constitute the base of major economic resources such as the viticulture industry.

16. However, Marlborough also has a considerable number of other large and smaller rivers and streams, many of which in extreme rainfall events potentially give rise to a risk of inundation and flood damage, placing people and/or infrastructure and property at risk.

17. Another major issue with significant potential property and infrastructure damage consequences, but to a degree human life risk also, can be the consequences of land instability. That issue has particular significance in the Marlborough Sounds where the soils are commonly unstable and erosion prone. However, another area of major concern is located in the southern Wairau Dry Hills where loessial soil conditions can result in major tunnel gully under-runners potentially undermining infrastructure and built development.

18. Another major natural hazard risk in Marlborough addressed in the PMEP arises from potential instability as a result of earthquake damage and particularly resultant liquefaction, although limited submissions on this issue were received.

19. Finally, at the other end of the climatic scale, Marlborough experiences recurrent drought or very dry summers in the course of which the natural hazard of fire can loom requiring rules or planning maps to avoid or restrict built development in potentially exposed locations.

20. The principal measures utilised in the PMEP to respond to these identifiable potential natural hazards include planning maps such as the Flood Protection zones and Flood Hazard Overlays. Related rules are also used in the PMEP restricting activities in areas where inundation from flood events, or damage from land instability or fire, is sought to be avoided or mitigated; or where riverbed and stopbank protection measures are required.

21. Flood risk identification and its precise extent in many localities caused significant submission reaction. The PMEP's identification system of flood risk adopts four separate levels of increasing hazard numbered from 1-4 as described in Policy 11.1.9:

*Policy 11.1.9 – Establish a hierarchy of flood risk as follows:*

*(a) Level 1: Land that suffers flooding of shallow, low velocity water in a flood event with an annual recurrence interval of 1 in 50 years;*

*(b) Level 2: Land that suffers flooding but the depth/velocity of the flooding is not well understood, or cannot easily be expressed relative to natural ground level, in a flood event with an annual recurrence interval of 1 in 50 years, or land within 8 metres of any lake, river or wetland;*

*(c) Level 3: Land that suffers flooding of deep, fast flowing water in a flood event with an annual recurrence interval of 1 in 50 years, or land in the bed of any lake or river or in any wetland; and*

*(d) Level 4: Land that has the potential to suffer flooding of deep, fast flowing water in an extreme flood event that overwhelms stopbanks and other constructed flood defences.*

22. Policy 11.1.8 in a general policy statement requires avoidance of location of habitable structures where they or their associated wastewater management systems could be damaged by inundation. More particularly focused policies in 11.1.10 then provide for three differing levels of control of habitable structures and/or mitigation measures of the level of risk as it increases in seriousness of outcome for the first three risk levels:

*Policy 11.1.10 – Control the erection and placement of houses and other habitable structures within areas subject to a flood hazard overlay, and reduce the risks to life and property by:*

*(a) establishing minimum floor levels for houses and other habitable structures subject to a Level 1 flood risk, set at least 450 mm above the natural ground level as measured at any point of the building footprint. The building footprint includes any associated on-site wastewater management system;*

*(b) requiring houses and other habitable structures subject to a Level 2 flood risk to be subject to evaluation of the flooding hazard and effective mitigation actions; and*

*(c) avoiding houses and other habitable structures in locations where they will be subject to a Level 3 flood risk.*

23. However, because of the potentially devastating consequences of stopbank protection being overwhelmed in a major flood event, Policy 11.1.11 adopts a straight out avoidance approach to any structures, whether habitable or not, in Level 4 risk areas:

    *Policy 11.1.11 – Avoid locating intensive residential, commercial or industrial developments on land subject to a Level 4 flood risk.*

24. The issue of protection of floodways is also addressed by setting a range of levels in floodway protection zones, based in this case on annual recurrence intervals (ARIs). Varying measures by policy and rule provisions ensure developments and gravel removal activities do not impinge on the essential task of ensuring the flood flows are able to be carried within the protection works or natural banks as much as possible. The policy setting those ARI interval levels is Policy 11.1.4:

    *Policy 11.1.4 – Establish and maintain floodway capacities for Marlborough's rivers to the following standards:*

    *(a) to an annual recurrence interval of 1 in 100 years for major rivers on the Wairau River floodplain (below the confluence with the Waihopai River);*

    *(b) to an annual recurrence interval of 1 in 50 years for the Waitohi and Waikawa Rivers; and*

    *(c) to an annual recurrence interval of 1 in 50 years for rivers and drainage channels that provide for urban stormwater disposal.*

25. Major issues arising from the submission/hearing process on this chapter included submissions on the following matters:

- The impacts on potential development of land affected by Floodway zones and Flood Hazard overlays.
- The impacts on potential activities arising from rules protecting open floodways in riverbeds and stopbank protection works.
- As part of the previous issue, perceived unreasonableness or unfairness on landowners as a result of the precautionary approach taken to the return frequency and severity of flood risk
- Impacts of rules on potential infrastructure development and maintenance activities to protect that infrastructure.
- Impacts of rules restricting gravel extraction or other in-channel or riverbed works and drainage system.

- Impacts of the mapping approach to loessial soils and related tunnel gully risk and restrictions related to those issues.
- Mapping of areas prone to liquefaction.
- Identification of earthquake induced geotechnical risks
- Buffer requirements to reduce fire risk between activities.

## Submissions Summary

26. We set out below a summary of those areas where the most significant submission involvement occurred either in written submissions or more particularly by appearances at the hearings. The summary focuses on the policy approach, but in addition many of the issues raised rules or methods or maps in the PMEP which are intended to give effect to those policy approaches.

27. The more detailed consideration of particular submission points which follows later in this chapter of our decision makes plain whether a map, policy, rule or method is being addressed.

**Flood protection issues**

- The largest group of submitters were from the ‘Tuamarina pocket’ area to the north of the lower Wairau where in the major 1983 flood event the stopbanks had been breached and large areas inundated.
- In a number of other locations the detail of the risk level or its aereal extent in mapping was challenged.
- Also raised were the return frequencies utilised in the policies directly addressing the restrictions on location of housing and other built structures in Floodway zones and Flood Hazard Overlays.

**River Protection issues**

- Policies such as Policy 11.1.4, because of the impacts of inundation, adopt a conservative approach, to the return frequency analysis underlying the spatial mapping to ensure floodway channels are maintained clear of obstruction were also the subject of some submission.
- Policies 11.1.3 and 11.1.5 as to the need to provide for and maintain the integrity of flood protection and mitigation works drew submission as to their impact on the ground on certain properties nearby. Those policies seek to avoid potential adverse effects of activities on those works either directly, or in some cases, if nearby. Again the approach to that protection is conservative in the PMEP because of the significance of widespread potential adverse consequences if those protection works are breached.

- Policies 11.1.6 and 11.1.7 drew limited numbers of submissions about the restrictions imposed on in-channel or riverbed works and gravel extraction.
- The issue of controls on methods of clearance of sediment from drainage systems on the lower Wairau Plain and in the roading network also drew submission.

**Protection of river works infrastructure**

- In some locations the consequences of policies designed to protect Council assets providing flood protection were the subject of submission.

**Provision for maintenance and development of nationally and regionally, and even locally significant infrastructure**

- A number of submissions asserted the PMEP made inadequate provision for these activities which for cost or practical reasons were commonly located in or through floodway zones.

**Tunnel gully erosion**

- Policies such as 11.1.19 and 11.1.21 as to restrictions on development of land which were the subject of tunnel gully erosion because of loessial soils also drew submission response.

**Fire risk issues**

- Buffer requirements in Policy 11.1.22 were the subject of some submissions.

**Issues arising from restrictive rules in respect of natural hazards**

- A considerable number of submissions addressed matters of detail in respect of rules restricting structures or activities in Flood Hazard areas, Floodways and other areas recognised or identified as being potentially affected by natural hazards.

## Section 42A reports

28. The submissions on planning aspects of Chapter 11, Volume 1 were comprehensively reported on by Mr Paul Whyte a very experienced planner. His reports particularly provided the policy analysis and consideration of restrictions contained in the rules and methods.

29. Given the heavy emphasis in submissions received on the impacts of the Floodway zones and Flood Hazard Overlays, and the necessity for each of those to be considered in detail by an expert river engineer on site, pursuant to s42A RMA the, Council had also sought a report from Mr Laddie Kuta, an experienced hydraulic engineer. As considerable detailed work was necessary to support Mr Kuta and affected submitters with matters such as consultation for site access and potential on-ground mapping and rule application issues, Mr Gavin Cooper, another experienced planner, worked closely with Mr Kuta on those detailed Overlay map

issues. They provided jointly written reports as to those issues before and at the end of the hearing.

30. Their initial joint Section 42A Report included a helpful appendix which detailed their site inspections and pre-hearing contacts with submitters and contained relevant detailed maps. They also provided a further detailed report at the end of the hearing on matters and evidence advanced in those hearings. The Panel was considerably assisted by their Reply to Evidence report being supplemented by further detailed mapping addressing changes they recommended after hearing the materials provided by submitters.

31. The evidence available to the Panel from Mr Kuta was able to be objectively assessed in quite some detail as to on-ground mapping outcomes. That was due to the fact that he was assisted by a considerable resource of aerial photography and other historical survey material held by the Council of flood or immediate post-flood events in Marlborough which ranged over many decades. All of that material is held in Flood Hazard Atlas compiled by Council and held at the Council offices.

32. In the Lower Wairau floodplain that objective photographic evidence was able to be supplemented in an even more detailed manner by the availability and application of LIDAR aerial surveying, conducted by Council in 2014 and 2016, which enabled contour mapping at a very fine level of +/- 60 mm accuracy within the entire Tuamarina Pocket area. (LIDAR stands for *Light Detection and Ranging.* It is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth from the laser emitter.) That degree of precision enabled even finer movements to be recommended as to the Floodway Zone boundaries and Flood Hazard Overlay levels in response to submitter concerns.

## Interim decision

33. In the course of its deliberations on this Natural Hazards topic the Panel considered a submission by Marlborough District Council seeking extra Floodway zonings for a number of smaller catchments, which had not been sought by oversight in the PMEP as notified.

34. The Panel concluded that the relief sought for new zoning by use of the submission process by the Council's river engineering section could not be lawfully provided for, as there would not be proper opportunity to consult with potentially affected landowners, which is a required preliminary step in the First Schedule to the RMA.

35. However, as the subject matter was plainly important in the public interest in terms of potential flood protection measures, the Panel made the decision to depart from its general approach that interim decisions would not be issued. The reasons for doing so were twofold.

36. First, so that Marlborough District Council was aware at as early a stage as possible of the Panel's view of the jurisdictional barrier without having to wait for final decisions to be issued probably a year later.

37. Secondly, so that earlier notice of that outcome would enable Council to embark upon the necessary consultation process for a possible proposed Plan Variation encompassing any such new proposed floodway zonings, (which Variation might be able to be melded in at some time with the PMEP processes.)

38. An interim decision to achieve those ends was accordingly issued on 10 July 2018.[1]

## Consideration of detailed submission points of significance

## Earthquake geotechnical issues

**Policy 11.1.21 – Locate new structures and works to:**

**(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.**

39. A submission was made by D. Miller[2] 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 established minimum geotechnical reporting standards.

40. Transpower also made a submission on Policy 11.1.21 which sought that it be amended to except regionally significant infrastructure where its location was constrained by operational requirements.

**Section 42A Report**

41. 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

[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

[2] Don Miller (238.1)

at the location of infrastructure, but rather to endeavour to ensure infrastructure was not affected from the adverse effects of land instability.

**Consideration**

42. 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.

43. 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:

> *11.M.9 Geotechnical reporting standards*
> *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.*

44. 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 11.1.21 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.

45. As to the Transpower proposed exception wording the Panel agrees with the S42A Report view that the first part (a) of Policy 11.1.21 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 a specific recognition of that factor as a new subclause (b) to Policy 11.1.21 with an appropriate addition to the explanation.

46. However, the second part of the notified version of (b) of Policy 11.1.21 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.

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.

48. We have emphasised, though, that the phrase used in Policy 11.1.21 (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.

**Decision**

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.

50. The Transpower submission is accepted in part.

51. Policy 11.1.21 is amended to read:

*Policy 11.1.21 – Locate new structures and works to:*

*(a) avoid them being damaged from the adverse effects of land instability; ~~and~~ or*

*(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*

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

*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 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.*

## Forestry setback issue

### Policy 11.1.22

**Require a buffer between dwellings, ancillary structures and land used for commercial forestry.**

52. The explanation to 11.1.22 states:

    *To reduce the risk of fire in rural environments, a setback distance will be imposed to restrict the proximity of:*

    *(a) houses and ancillary structures to existing plantations of commercial forestry; and*

    *(b) new plantations of commercial forestry to existing dwellings and other habitable structures. …*

53. Buffer requirements required by Policy 11.1.22 as to setbacks for housing and associated structures from existing planted forestry, and for the planting of new forestry plantations in relation to adjacent existing dwellings or their associated structures, were the subject of some submissions.

54. However, the NESPF 2017 has imposed provisions which supersede the PMEP at law as to the setback for plantings from dwellings which is now fixed by regulation 14 of the NESPF regulations at a maximum of 40 metres. The Panel noted that the council had already completed an alignment process in respect of the notified PMEP rules. However, this policy had not been addressed through that alignment exercise. To ensure consistency between the PMEP policy and the NESPF the Panel is required to also align Policy 11.1.22(b) and this is reflected in the decision.

55. That means that in the alignment process Policy 11.1.22 (b) of the notified PMEP which would have enabled a larger distance was removed to ensure no greater restriction could be imposed on such new plantings. This is because Policy 11.1.22 (b) of the notified PMEP would have required a setback rule for new forestry planting which is an activity covered by the NESPF.

56. The PMEP by contrast still retains a setback from an existing plantation forest for the building of new dwellings and associated structures. The height of plantation trees can exceed 40 metres and provision has to be made for safety reasons to allow for spark throw from falling burning trees, as well as generous room for firefighting vehicles to have safe access corridors while avoiding fallen burning trees. Rule 3.2.17 in the Rural Environment zone (which is similarly reflected in other zones where dwellings may be erected) requires a setback for all those reasons of 100m.

57. The Panel consider it to be unwise in the extreme to reduce that distance and that 100m is the minimum safe distance that a dwelling should ever be from a forest.

58. As a result of the NESPF what the Panel regards as an unsafe buffer setback of only 40 m is imposed by a statutory regulation for planting of new plantation forestry next to an adjacent existing dwelling. However, for the reverse activity of building a new dwelling next to an existing plantation forest a setback of 100m is required by the PMEP.

59. Because of the legal situation the Panel can do nothing about that outcome, except to adhere in the PMEP to a safe and realistic setback distance, and to point out in this decision the glaring nature of the inconsistency.

60. In doing so the Panel wishes to express its amazement that a modern statutory regulation should allow such a potential hazard to life and dwellings and their associated structures to arise in the event of fire in a forest adjacent to dwellings. The increased risk to dwellings from severe dry conditions, which are currently expected to become recurrent in Marlborough from climate change, was graphically illustrated in the 2018/2019 summer in the fires in nearby Nelson forests.

**Decision**

61. Submissions seeking changes to Policy 11.1.22 are rejected, but it is noted that as a consequence of the alignment process required to comply with the NESPF 2017 Policy 11.1.22(b) has must be removed from the PMEP. Policy 11.1.22 as a consequence will read:

*11.1.22 - To reduce the risk of fire in rural environments, a setback distance will be imposed to restrict the proximity of houses and ancillary structures to existing plantations of plantation forestry.*

## Policy 11.1.11

### Tuamarina pocket mapping

62. A primary concern of submitters[3] in relation to the PMEP's treatment of properties in the Tuamarina pocket arose from the provisions of Policy 11.1.11. It provides:

    *Policy 11.1.11 – Avoid locating intensive residential, commercial or industrial developments on land subject to a Level 4 flood risk.*

63. Because almost all of the pocket area to the west of the Tuamarina River was identified as being within Level 4 Flood Hazard Area the effects of Policy 11.1.11 were seen as devastating on the ability to use properties to their maximum potential and hence on property values. They sought the deletion of Level 4 as it affected their properties and various submitters sought varying relief as to other hazard levels. The Policy was asserted also to be too broad-brush in approach not taking into account the reality of the existence of small elevated areas in the terrain which it was said were above historic flood levels. Another major driver of the submissions was the fact that prior consultation had not occurred with landowners at Tuamarina as to the detailed effect and extent of the Level 4 Flood Hazard Overlay.

64. The basic approach of submitters was to argue that while they accepted the logic of a progression of hazard identification from natural events increasing in adverse effect from Level 1 through to Level 3; Level 4 was not a true progression as its effects only came into play in the event there was catastrophic failure of protective works. With some force to the logic of their argument they asserted that on that basis all urban areas protected by river protection works, (which would include much of Blenheim itself), should be subject to the same Level 4 Flood Hazard Overlay. They pointed out, again with some compelling logic, that the land at Tuamarina to the east of SH 1 was also subject to serious deep, fast and powerful flooding in 1983 yet the Level 4 Overlay had not been imposed east of SH 1.

**Section 42A Report responses**

65. On the issue of lack of detailed consultation with Tuamarina landowners, that omission was accepted as being a fact in the Reply to Evidence. However, the Reply to Evidence did make the point that the identification of the Tuamarina Pocket as being flood prone was not a

[3] R Light (129.1), M Broughan (229.1), J Broughan (327.1), A Tyson (182.1), D & R Mundy (34.1), S Butler (385.1) and R Parkes(324.2)

planning surprise. It has been identified as such in Policy 11.2.5 of the Operative Wairau/Awatere Resource Management Plan. The difference in policy treatment between the two plans is that in the PMEP the policy directive is to 'avoid' development in the Level 4 Overlay area, whereas in the WARMP the policy directive was worded as being at the lesser level of a 'limit' on development. That policy in the WARMP stated:

> *Policy 2.5 Limit any further residential development of Tuamarina township, and Tuamarina pocket in particular, because of flood hazard.*

66. In support of the increased level of policy direction in Policy 11.1.1 of the PMEP the approach in the Section 42A reports was to make reference to the facts that clear incontrovertible photographic evidence existed from the major 1939, 1983, 1998 and 2009 flood events which showed widespread deep inundation in the pocket area. Particularly in 1983 the concern arose not only from the extent of flooding, but in the event of stopbank failure as occurred in that major flood, the dangerous depth and often speed of the floodwaters.

67. The Panel's understanding of the effect of the Section 42A Report writers' description of the Tuamarina pocket area was that it was effectively an area naturally subject to flooding at the confluence of the Wairau and Tuamarina rivers which was 'fortified' against flood hazard by the stopbank protective works. That term was used in the Reply to Evidence because the pocket area was surrounded by protective works on its north, east and south sides, with hills to the west.

68. The Reply to Evidence report informed the Panel that the base assessment utilised detailed photographic records of the 1998 flood which was assessed as a rainfall equivalent to 2% AEP event or a 1:50 year return event for the Tuamarina pocket. The maximum flood level that produced was 5.75m which was the base for the Level 1 Flood Hazard Overlay. The Level 2 Flood Hazard level was assessed by arriving at a level of 5.6m by reducing the height of the Level 1 Flood Hazard by 150 mm as the Building Code requires floor levels to be at least 150 mm above the lowest point on a property. That level of 5.6 m was transposed onto the LIDAR data set to define the transition between the shallow Level 1 flood and the unknown depth Level 2 flood. The report writers were adamant there was sufficient information available for that to be done with accuracy.

69. There was no contrasting objective aerial photography or other contouring work offered to the Panel during the hearing process.

70. The Reply to Evidence report also stressed that the protected 2% Annual Exceedance Probability (AEP) of 5.75 m could be overtopped at a flood level of 7m as a result of damage

from flooding as in 1983, damage consequent on an earthquake, debris or log jams in the Tuamarina River causing overtopping, and/or failure of pumping stations. In addition if a flood event hits the soffit of the main Wairau bridge, either because of massive flood volumes or debris dam build-ups on the bridge support structures, again overtopping becomes a serious risk. All of those were said to be realistic potential threats.

71. As to the more generic issue of why the Level 4 overlay existed here and not in a widespread manner in Blenheim a number of points were made. The first of those was simply the colossal volume of a potential overtopping flood event in the large Wairau River as compared to the much smaller Taylor River flows. Added to that was the reality that in the event of catastrophic failure of protective works, for whatever reason, the natural paleo flood relief channels still exist, and were taken into account in identifying where the consequent flood hazard areas would be adversely affected in a serious manner. The 1983 events painted that outcome graphically at the Tuamarina pocket.

72. It was frankly conceded in the Reply to Evidence that there was indeed logic to the submitters' point that land east of SH 1 should also have been subject to the Level 4 overlay, but the point was made that that omission did not mean the Overlay was invalid in the pocket area. The Panel took it this implied the omission needed to be corrected either by plan change or in the next plan review.

73. However, reference was also made to the LIDAR technology which at Tuamarina enabled much more precision in locating overlay boundaries as to flood hazard effects levels than had been used in the initial PMEP preparation, which was based predominantly on photographic and flood volume evidence and consequent depth analysis.

74. As a consequence of site visits by Mr Kuta and Mr Cooper and discussions with landowners, and, most importantly, the application of the LIDAR survey work, significant changes were proposed in the Section 42A Report. However, those changes recommended by the Section 42A Report, while welcomed by the affected submitters, did not satisfy all their concerns.

**Consideration**

75. It is important to commence our consideration of this group of submissions from landowners in the Tuamarina pocket by saying that the different planning consequences of the Level 4 Overlay are so significant that we agree with the report writers in the Reply to Evidence that in an ideal world more may have been able to be done by way of earlier consultation with individual landowners affected.

76. However, the Panel also accepts that at a plan preparation stage councils generally would face a massive and unrealistic task if they tried to consult widely on an individual property owner basis on the effects of changes contained in a proposed plan. Quite often out of necessity, consultation at plan preparation stage, particularly as to the detail of zoning or overlay maps and their effects, in part has to devolve down to the Plan notification and submission response processes. The Panel believes that by and large that process has worked for submitters in this case, where those submissions have resulted in considerable detailed on-ground reconsideration, and as a consequence of submitter input more finely drawn recommendations being able to be made by the Section 42A Report writers to the Panel.

77. The use of the term 'fortified' to describe the Tuamarina pocket area is considered by the Panel to be very apt for this low-lying area of land, because the 'pocket' is surrounded by protective works on its north, east and south sides, with hills to the west. The Panel also accepts the point strongly made in the Section 42A reports that the flood risk from the major Wairau catchment is of a massively greater magnitude than the flood risk posed in Blenheim by flood events from the much more confined Taylor River catchment. The consequence of the combination of those two factors is a potential depth of ponding in major floods in the Tuamarina pocket which is unusually severe. Added to that is the concerning increased severe risk to property and life in the event of protective works failures, because of the speed and volume of the immense flows that can occur in the Wairau River for 1:100 year events such as the 1983 flood in the order of 5,500 cumecs.

78. A comparison of relevance is that the Taylor River produces in a 1:100 year event a flow rate of 170 cumecs. In each case a 10% spill might be expected – the comparison then being an uncontrolled flow of 17 cumecs in the Taylor River area and 550 cumecs in the Lower Wairau. The Section 42A Report described the consequences of an overtopping in Blenheim as being "a few streets acting as lakes, some houses and garages flooding and wet feet in certain lower lying areas, exciting, but manageable." By contrast the description of effects at the Tuamarina pocket is of floodwater that was "fast, deep and it would be sitting in these areas until floodgates could open again." The Panel accepts those descriptions as being accurate on the photographic and other descriptive evidence.

79. Additionally, the Panel notes that the PMEP in Policy 11.1.13 draws attention to the fact that risks to life and property are greater in rural environments, the reasons being particularly outlined in the first paragraph of the explanation to that policy:

*Policy 11.1.13 – Recognise that the risk to life and property during flood events is greater in rural environments.*

*Isolation of properties affects the ability of the Council and Civil Defence to provide an emergency response in the event of flooding. The greater the distance of flooded properties from Blenheim (the location of the Emergency Operations Centre) and other towns, the longer it will take to respond to the flooding, especially in the event of large scale or District-wide events. Some communities are proactively preparing readiness plans in recognition of the additional risks created by isolation.*

80. The Panel notes the submission by Federated Farmers (425.92) challenging the wording of this policy but agrees with the original Section 42A Report observation by Mr Whyte that minor amendments to capture the points made in the explanation would clarify the reasons for the policy and his recommendation to that effect (at paragraph 99) is adopted by the Panel.

81. However, on the general points at issue underlying the Flood Hazard Overlay purposes, the Panel did not hear any evidence from submitters which detracted in any way from the general analysis contained in the Section 42A reports. That was so both as to the underlying nature of the level of risk from major flood events in the Wairau River, and as to the potential consequences in the event of a failure of protective works such as occurred in 1983. Accordingly the Panel upholds that evidence provided by the Section 42A reports as to the serious nature of those risks and the general underlying reasons why the Flood Overlays have been applied in the Tuamarina Pocket area.

82. As to the point made by the Tuamarina pocket submitters in respect of the land to the east of SH 1 the Panel is in full agreement. That is a serious omission in the PMEP which the Panel unfortunately has no jurisdiction to address in its present process because no submission requested that the Level 4 Flood Hazard Overlay apply to that land. We do, however, suggest to Council that it reconsider the boundaries of the overlay applying in the event of catastrophic failure of protective works in this Tuamarina area as part of its next plan change process – that reconsideration would accord with the policy thrust underlying the second alternative in Policy 1.1.16 (b):

*Policy 11.1.16 – Refine the boundaries of flood hazard overlays in response to:*

*(a) changes to levels of protection provided by flood defences and other flood mitigation/management works; or*

*(b) new observations of flood events or more detailed assessment of the flood hazard; or*

*(c) changes in catchment hydrology due to land use change or climate change; or*

> (d) *changes in flood hydraulics due to channel aggradation or erosion, vegetation growth within the floodway or sea level rise.*

83. The submitters' evidence and/or planning related submissions were also persuasive in two other significant respects.

84. The first of those was in relation to the points made about the unfairness of utilising a nomenclature of Level 4 for the overlay map and in Policy 11.1.9 which made that level appear to be part of a progression of flood levels, i.e. that Overlay Level 4 was applying to flood events which were larger than those described in Level 3. We are in agreement with the submitters that the use of a consecutive numeral approach in the policy and related overlay numbering carries that connotation, and further, that that is not accurate.

85. What Level 4 is identifying is the consequences of catastrophic failure of protective works, regardless of the size or volume of flood. Moreover, Levels 1 to 3 are identifying flood levels which will naturally occur in increasing depths despite the existence of the protective works, whereas Level 4 is identifying land protected by river protection works but which is placed at serious hazard risk if those works fail.

86. For those reasons we accept the recommendation in the Reply to Evidence from Mr Whyte that the use of the word 'residual' is more appropriate to differentiate the risk being guarded against in the Level 4 Overlay, from the progression of flood levels involved in Levels 1 to 3. That is best reflected by a separate policy wording using Policy 11.1.9 (d) as a separate policy and amending references to Level 4 throughout the PMEP to refer to 'residual flood hazard areas', 'residual risk areas' or 'residual risk' as appropriate for the text. We set out below the consequence of that in our decision on the title to the overlay map of Level 4, and for Policy 11.1.9 (d) and related Policy 11.1.11.

87. The second aspect where submitter evidence was persuasive with the Panel was in relation to the omission of recognition of elevated areas within the pocket area. That evidence meant that those areas either needed a lesser level of flood overlay identification, or in some limited localities even total removal of the overlays. It became obvious after the hearing that that evidence had also been persuasive with the Section 42A Report writers. Their reply to the submitter evidence addressed a number of changes of benefit to submitters after further on-site discussions, and reconsideration of the detail of the most recent LIDAR survey materials.

88. The Panel has considered each of those recommendations in detail and agrees with them as it was satisfied on the level of accuracy able to be achieved by application of the LIDAR dataset, coupled with extensive aerial photography from the 1998 flood in particular, that the

amended overlay delineations recommended were accurate. (The Broughan submission[4] provides scope for those mapping amendments as it sought a review of the Overlay as it applied to the Tuamarina pocket.)

**Decision**

89. Policy 11.1.9 is amended to read:

*Policy 11.1.9 – Establish a hierarchy of flood risk (Levels 1 to 3) as follows:*

*(a) Level 1: Land that suffers flooding of shallow, low velocity water in a flood event with an annual recurrence interval of 1 in 50 years;*

*(b) Level 2: Land that suffers flooding but the depth/velocity of the flooding is not well understood, or cannot easily be expressed relative to natural ground level, in a flood event with an annual recurrence interval of 1 in 50 years, or land within 8 metres of any lake, river or wetland;*

*(c) Level 3: Land that suffers flooding of deep, fast flowing water in a flood event with an annual recurrence interval of 1 in 50 years, or land in the bed of any lake or river or in any wetland; and*

~~*(d) Level 4: Land that has the potential to suffer flooding of deep, fast flowing water in an extreme flood event that overwhelms stopbanks and other constructed flood defences.*~~

*Through a combination of historical records and modelling, the Council has been able to characterise the nature of likely flood events. The different flood hazard levels in the policy ~~(in terms of depth and velocity)~~ reflect the potential severity of flooding (in terms of depth and velocity). Flood risk increases from Level 1 to Level 3~~4~~, creating a hierarchy of flood risk. The hierarchy allows the management of flooding to be specifically tailored to reflect the risk. In other words, avoiding or mitigating a Level 1 flood risk requires a different response to avoiding or mitigating a Level 3~~4~~ flood risk. ~~This is~~ The different responses to the levels are reflected in subsequent policies. The three ~~four~~ levels of flood risk will each be represented by separate flood hazard overlays. An annual recurrence interval of 50 years has been used as the relevant measure of flood risk as it reflects the standard specified in the New Zealand Building Code for managing flood risk to buildings. Level 2 and Level 3 also include land within or in close proximity to lakes, rivers and wetlands. This is because this land has a greater potential to be flooded. It also ensures that the risk of flooding is managed where no historical records*

[4] (229.1)

*exist or where no modelling has been undertaken.* ~~*Level 4 is an extreme flood event and is rarer than a flood with an annual recurrence interval of 1 in 100 years.*~~

90. Policy 11.1.11 is amended to read:

    *Policy 11.1.11 –* ~~*Avoid locating intensive residential, commercial or industrial developments on land subject to a Level 4 flood risk.*~~ *Identify land that has the potential to experience flooding of deep, fast flowing water in an extreme flood event that overwhelms stopbanks and other constructed flood defences as residual risk areas (Level R) and avoid locating intensive residential, commercial or industrial developments on land subject to a Level R flood risk.*

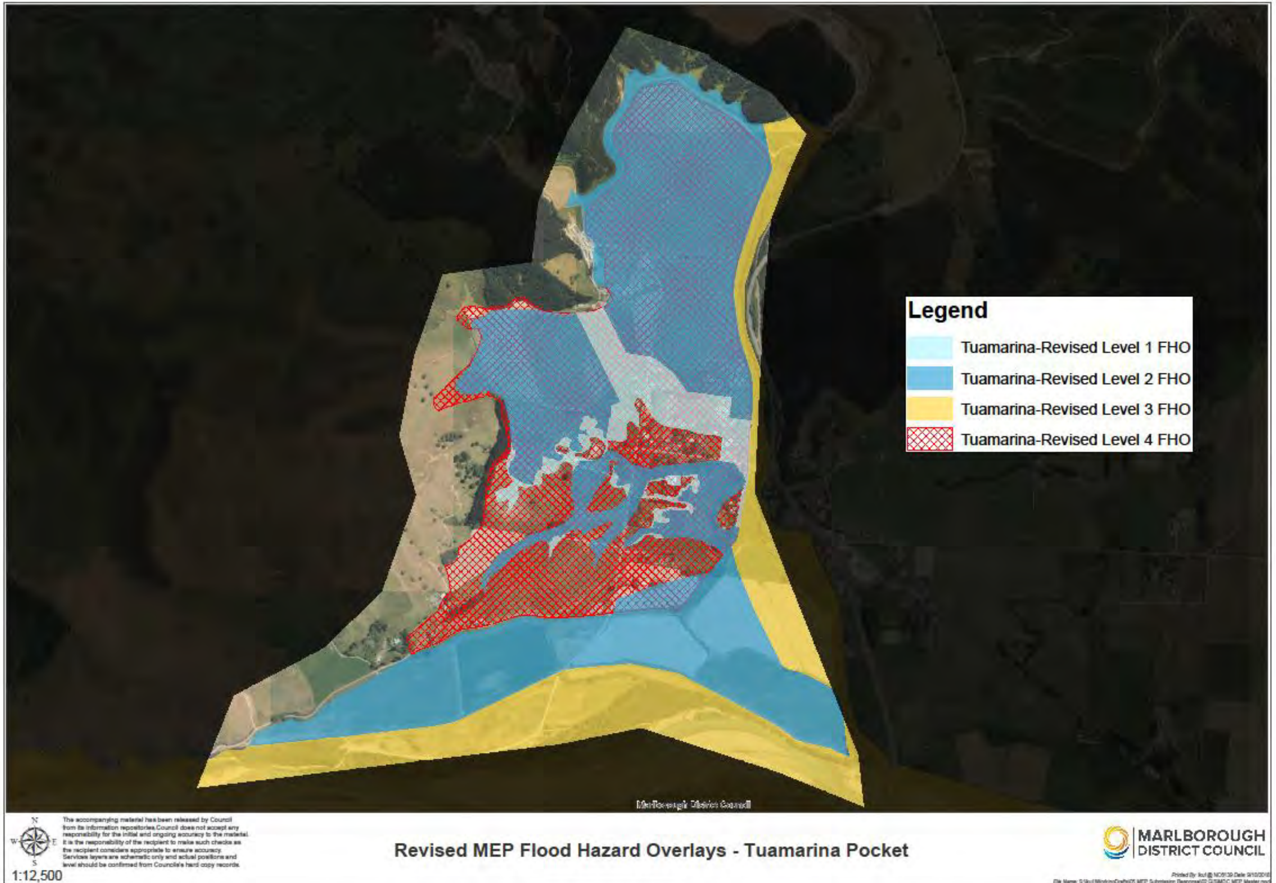
    *It is possible that areas protected by flood defences will experience extraordinary flood events that exceed the annual recurrence intervals specified in Policy 11.1.4 and subsequently overwhelm stop banks or other flood defences. In some areas, this will result in a sudden occurrence of deep, fast flowing waters that could endanger life, property and regionally significant infrastructure. Although such an event has a very low probability of occurring in any given year, the adverse effects could be catastrophic if intensive development is allowed to occur in these areas.*

    *The Council has considered this and has signalled through this policy that it would be inappropriate to allow any future commercial, industrial or multi-lot residential developments to occur in areas subject to a Level R*~~*4*~~ *flood risk. Level R indicates an extreme flood event that breaches flood protection works and is rarer than a flood with an annual recurrence interval of 1 in 100 years.*

    *This policy applies to the rezoning of land that would facilitate these developments or to resource consent applications for subdivision or development. While there are not any specific rules that apply to the Level R overlay* ~~*In the case of*~~ *resource consent applications for residential subdivision and development and other intensive activities will be assessed against this policy. T*~~*t*~~*he threshold for the application of the policy is the creation or development of lots less than one hectare. The density of development where lots are in excess of one hectare is considered an acceptable risk given the probability of flood breakout occurring.*

91. The Flood Hazard Areas overlay maps are amended by replacing the references to 'Level 4' with 'Level R'.

92. The hazard overlay mapping for the Tuamarina Pocket area is amended as set out in the response to the Panel's Minute 39 and as shown below:




93. Policy 11.1.13 and explanatory statement are amended to read:

> *Policy 11.1.13 – Recognise that the risk to life and property during flood events ~~is~~ may be greater in rural environments given longer response times.*
>
> *…*
>
> *The potential increase in flood risk caused by locating development in rural areas needs to be taken into account by individuals when purchasing properties. The Council can also recognise this issue when planning for residential growth in Marlborough. Consolidation of growth in and around existing urban areas will facilitate effective responses to flood events. This matter, along with other rezoning considerations needs to be taken into account when considering the rezoning of land in rural environments to provide for residential, commercial or industrial developments.*

## Flood Hazard Overlay Level Two impact

94. The combination of Policies 11.1.8 and 11.1.10 (a) and (b) were the subject of a submission by Mr. T. Offen[5] which was agreed with by the s42A report writer and by the Panel for basically the same reason but the Panel preferred a slight difference in wording to that recommended. The issue can be dealt with succinctly.

95. Policy 11.1.8 provides:

> *Policy 11.1.8 – Unless provided for by Policy 11.1.10(a), avoid locating houses and other habitable structures, including associated on-site wastewater management systems, where they could be inundated or otherwise damaged by flood events.*

96. Mr Offen made the valid point that on its face that wording appears to only allow for development solely in circumstances allowed for by Policy 11.1.10(a) set out below which only relates to Flood Hazard Level 1 land building development options. His submission drew attention to the fact that the wording of Policy 11.1.8 failed to refer to the fact that Policy 11.1.10(b) actually enabled other options for Flood Hazard Level 2 as well.

97. It provides as follows:

> *Policy 11.1.10 – Control the erection and placement of houses and other habitable structures within areas subject to a flood hazard overlay, and reduce the risks to life and property by:*
>
> *(a) …*
>
> *(b) requiring houses and other habitable structures subject to a Level 2 flood risk to be subject to evaluation of the flooding hazard and effective mitigation actions; and …*

98. The Section 42A report writer agreed with that submission and recommended at paragraph 98 of the original report that all that was required to overcome the issue was an additional wording added to the explanatory statement to Policy 11.1.8 drawing attention to Policy 11.1.10(b).

**Consideration**

99. With one minor word change to we agree with the addition of the recommended sentence at the end of the explanatory statement to Policy 11.1.8. The word change is from ‘justify’ to ‘enable’.

**Decision**

[5] (151.3)

100. Insert a new additional sentence at the end of the explanatory statement to Policy 11.1.8 as follows:

… *In addition, Policy 11.1.10(b) requires an evaluation to establish the nature of the flood hazard in the Level 2 risk area. The results of the evaluation may enable locating a house or other habitable structure in this risk area.*

101. The exception recognises that Policy 11.1.10(a) provides a means of mitigating the adverse effects of flooding by establishing minimum floor levels. In addition, Policy 11.1.10 (b) enables an evaluation to establish the nature of the flood hazard in the Level 2 risk area. The results of the evaluation may enable locating a house or other habitable structure in this risk area.

### Hazard Overlay and Floodway mapping in other locations not in the Tuamarina Pocket

102. In a number of other locations submissions were received from various property owners in the following situations as to the need for closer reconsideration of mapped Flood Hazard Levels or Floodway Zone boundaries.

103. Those submissions included submissions in respect of properties owned by:

- S & D Groome, T Offen and A Harvey all at Clova Bay, Pelorus Sound mapped on Map 4 & 6;[6]
- S Parkes located at Queen Charlotte Drive Linkwater mapped on Map 13;[7]
- Raeburn Property Partnership at Waikakaho valley mapped on Map 23;[8]
- CG & WA Tozer immediately adjacent to the Wairau River on its southern side in the lower Rapaura/Spring Creek area mapped on Map 23 (acceptance of this submission would necessitate a consequential change to the adjoining property to the west);[9]
- KJ, JS & JA Timms, P Wilhelmus and Ormond Aquaculture located at Wairau Valley on the southern side of the river west of the township mapped on Map 28;[10]
- Tim and Franzi Trust located at Riverlands by Cob Cottage Road mapped on Map 33;[11]
- CG & WA Tozer immediately adjacent to the Wairau River on its southern side in the lower Rapaura/Spring Creek area mapped on Map 149; and finally,[12]
- M Tschepp and J Park located in the Waihopai Valley and mapped on Map 169.[13]

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[6] S & D Groome (344.1 & 350.1), T Offen (151.1 & 151.5) and A Harvey (388.1)
[7] (339.28)
[8] (1084.7)
[9] (319.17)
[10] KJ, JS & JA Timms (475.2), P Wilhelmus and Ormond Aquaculture (1035.4)
[11] (353.1)
[12] (319.4)
[13] (631.42)

- M Patrick located at 8 Market Street, Picton and mapped on Map 34.[14]

**Section 42A Report**

104. In each of those cases the Section 42A report and/or Reply to Evidence report detailed the reconsideration carried out by Mr Kuta after discussions on-site with the submitters. The reports detailed the changes suggested to be made and the reasons for those changes. The Panel, after its consideration of the evidence from submitters, was persuaded to amend the maps in the case of the submitters listed above.

**Consideration**

105. However, as to the extent of the changes in each case, the Panel has accepted the expert evidence and assessment of Mr Kuta and has agreed with his recommendations in each case for the reasons outlined in either the original report and/or the response to evidence. The Panel did not receive countervailing expert evidence to a level of detail which either rebutted or undermined the detailed recommendations made by Mr Kuta in each case.

106. Another reason why this discussion has been included in the Panel's decision is particularly because in the case of the Tozer submission, the amendments recommended have the effect of changing the Floodway Hazard extent on the adjoining properties to the west.

107. However, the Panel considers that the relatively small adjustments recommended to be made can be regarded as reasonably within the scope of the relief sought in the Clive Tozer submission, because that submission was seeking mapping changes based on water levels. It is obvious and logical that water levels will not be restricted in their effects by title boundary lines. Moreover, the Panel considers that the effects of the change sought is beneficial for the adjoining property owners in that it removes areas from the more restrictive planning treatment of the lands, and so the changes are not at all prejudicial to the respective landowners' interests. In short the result of the amendments approved by the Panel is to lessen the PMEP impact on the affected land not to increase it.

108. A map provided by Mr Kuta in response to Minute 39 showed minor consequences to other properties that the Panel accepts because the effect of the consequential changes is less restrictive for the properties affected. A number of other submissions made seeking amendments to Floodway mapping or Flood Hazard Level mapping were not accepted on reconsideration by Mr Kuta for the reasons he set out in the Section 42A Report. The Panel has carefully considered each of those submissions.

[14] (434.1)

109. One submitter who did appear was Timberlink Limited. It sought removal of the Floodway zoning affecting a long elongated slither of land in the Taylor River area in Blenheim on which it conducts some of its activities, particularly involving the storage of timber or vehicle movements related to that activity. The land is leased from the Council and the lease enables the storage of timber.

110. The Panel's view of that request was that removal of the Floodway zoning at that location was inappropriate in terms of potential high flood levels which can inundate that land in major flood events as Mr Kuta stressed. The Panel's decision cannot of course affect the terms of the lease, but the Panel notes the lease does not enable either side not to abide by other statutorily based legal obligations. The Panel also noted the lease has only a relatively limited number of years to run. Its renewal or otherwise, and on what terms, can be reconsidered at that time.

111. Other issues of significance included a submission by G Hutchings[15] which sought removal of the Flood Hazard Level 2 Overlay on a property adjacent to the Waikawa Stream. Mr Hutchings did not appear at the hearing. Removal at one location obviously has potential implications for other properties affected up or down stream from the submitter's property. The Section 42A Report drew the Panel's attention to the fact that the Council was undertaking a detailed hydraulic analysis of the Waikawa Floodway which would also include with greater certainty the detailed design flood level around the Hutchings property.

112. The Panel is of the view that protection of this floodway is of major importance to its safe functioning as it protects many properties downstream from the submitter and that a conservative approach is warranted until the detailed broader hydraulic analysis has been carried out. Once that has been completed a plan change can be carried out with design levels having more precision. For those reasons the submission is rejected.

113. A not dissimilar situation arose in respect of the submission by the NZ Institute of Surveyors seeking to remove Flood Hazard Level 1 mapping on the lower terraces immediately north of Renwick.

114. The Section 42A Report stated that major flood protection upgrade works were planned to be carried out in the 2019/2020 year but until they were complete that it was premature to remove the Flood Hazard Overlay. The Panel was well aware that this area has been the subject of flood risk exposure which is the very reason the flood protection upgrade works are planned to be carried out. Once those works have been completed then a plan change process

[15] Grant Hutchings (48.1)

can be undertaken to reflect the detailed final outcome of the protection provided by those works. The Panel will recommend to Council that that planning process follows on the completion of the physical works.

115. The Panel recommends that once upstream upgrade flood protection works have been completed, increasing protection for the lower terraces north of Renwick, that Council embark on a detailed flood risk analysis and accompanying plan change proposal to amend the Flood Hazard Level 1 mapped area.

**Decision**

116. The Timberlink submission is rejected.

117. Amend flood hazard overlay maps 4, 6, 13, 18, 23, 24, 28 and 33 to reflect the maps provided in the Section 42A Report.

118. The Floodway Zone is amended as shown on the Section 42A Report in respect of Map 34 (Michael Patrick Limited), Map 169 (Tschepp and Park) and Map 149 (Tozer).

119. As a consequence to the changes to Mr Patrick's property on Map 34, the overlay over the adjoining property to the south is also amended.

120. As a consequence to the changes to Mr Tozer's property on Map 149, the overlay over the adjoining property to the west is also amended.

## Liquefaction mapping detail

## Policy 11.1.17

**Avoid locating residential, commercial or industrial developments on Rural Environment or Rural Living zoned land on the Wairau Plain east of State Highway 1/Redwood Street, unless remediation methods are to be used to reduce the level of liquefaction risk to an acceptable level.**

121. The potential liquefaction hazard posed in an earthquake prone area such as Marlborough with population bases and related built development on an alluvial plain was demonstrated graphically in the Christchurch 2010 and 2011 earthquakes. That risk is addressed in the PMEP in Policy 11.1.17:

> *Policy 11.1.17 – Avoid locating residential, commercial or industrial developments on Rural Environment or Rural Living zoned land on the Wairau Plain east of State Highway 1/Redwood Street, unless remediation methods are to be used to reduce the level of liquefaction risk to an acceptable level.*

122. Levide Capital Limited in its submission sought that there be accurate mapping of the Dillons Point Formation soil type subject to liquefaction risk so that planning rules could be applied to proposed developments in that area.

**Section 42A Report**

123. The Section 42A Report did not recommend any change to the PMEP because it considered the area of the Dillons Point Formation was sufficiently described in the explanatory statement to Policy 11.1.17. Where relevant at the end of the first paragraph the explanatory statement says:

> *… Land underlain by the "Dillons Point Formation" on the Wairau Plain has an elevated risk of liquefaction. The Dillons Point formation is marine sediment deposited on the eastern margin of the Plain by previous marine processes and consists of grains of small and relatively uniform particle size. These characteristics, combined with high groundwater levels, are conducive to liquefaction. The western extent of the Dillons Point formation (at a thickness that represents a significant liquefaction risk) is approximately State Highway 1 and Redwood Street.*

124. In the Reply to Evidence report, Mr Whyte amended the original recommendation to suggest an addition to the explanatory statement at the end of the first paragraph to state:

> *The northern and southern extent is generally the Richmond Ranges and the Wither Hills respectively.*

**Consideration**

125. The Panel agrees essentially with the submitter's concern that some more accuracy of aerial extent is needed as to the northern, and southern boundaries of the Dillons Point Formation soil type. The western boundary description is sufficient and as the explanation speaks of marine sediment on the eastern 'margin of the plain' that addresses the eastern boundary as being the sea.

126. The Panel agrees with the Reply to Evidence report that closer definition needs to be achieved to north and south by amendment to the wording of the explanatory statement. However, based on the local knowledge of some Panel members, there is some concern at the report writer's final suggestion. Whilst technically it is possible to suggest that the ranges to the north may still lie within a description of the 'Richmond Ranges', that terminology is commonly utilised for the ranges to the west of the Kaituna Valley, or at most to the west of the Tuamarina Valley.

**Decision**

127. To avoid ambiguity or uncertainty, the explanatory statement for Policy 11.1.17 is amended by the addition of the following sentence at the end of the first paragraph:

*… The western extent of the Dillons Point formation (at a thickness that represents a significant liquefaction risk) is approximately State Highway 1 and Redwood Street. <u>The northern and southern extent is generally the foothills of the ranges to the north and south of the Wairau Plain.</u>*

**Sediment removal from Lower Wairau drainage system**

128. The drainage system in the Lower Wairau Plain is a prime example of a method utilised to avoid or reduce flood hazard risk. Those systems, and the means of maintaining them by removal of sediment build-up, were the subject of submissions by the Marlborough District Council[16]. The size and scope of the network was made clear when the Panel was advised that there are a total of 254 identified channels in the Drainage Network, and the extent of the Drainage Network which potentially comprised a watercourse was approximately 150km long.

129. The MDC submission sought permitted activity status for the repetitive maintenance activities of sediment and invasive weed removal. MDC Rivers Section stressed that its activities were of regional significance, and related to publicly owned assets in the drainage system involved and its associated drains and culverts. It also stressed that the sediment removal activity was intermittent and limited in duration concluding that as a consequence the effects of the sediment removal were small, but the benefits were large in avoiding or reducing flood hazard risk to adjoining properties.

130. In respect of the MDC request, the Section 42A Report[17] recommended a new rule making provision for the weed removal on a broad basis. The Panel on its initial consideration issued Minute 30 seeking further information as follows. That minute describes the nature of the Panel's concerns:

> 3. *The MEP Hearing Panel (the Panel) noted that the rule would allow for sediment to be removed from any "drain" included in the Drainage Channel Network (as identified in the relevant overlay map in Volume 4 of the Proposed Marlborough Environment Plan).*
>
> 4. *The Panel recognises that for many drains, sediment removal is probably necessary to maintain channel efficiency and therefore the drainage function.*

[16] (91.63)
[17] Section 42A Report, page 333

5. *However, the Panel also notes that the Drainage Channel Network might also consist of rivers, some of which may support instream ecological values. Spring Creek is probably a notable example.*
6. *The Panel would like to be informed as to whether there are rivers that form part of the Drainage Channel Network within which the removal of sediment, in accordance with the recommended rule and standards, would have the potential to cause a significant adverse effect on instream ecology? If the answer to that question is yes, then the Panel requests that these rivers be specifically identified.*
7. *The Panel notes that one of the recommended standards restricts sediment removal when the depth of water is greater than 2 metres. This may provide appropriate protection for rivers, so the standard should be taken into account when answering the two questions above.*

131. The response provided to that minute came from Mr Peter Hamill the Council officer in charge of its Environmental Science and Monitoring (ESM) team. He reported that the ESM team and the Rivers Section of the Council have different views over which watercourses in the Drainage Network are rivers under the RMA or artificial drainage channels.

132. The Panel considers that it does not need to make a definitive ruling on that knotty issue. Rather its focus has to be on the potential 'cost' in effects terms of the introduction of the proposed permitted activity rule. Mr Hamill's response reached a similar conclusion[18].

133. He also drew the Panel's attention to a 2016 NIWA report on the ecological state of waterways in the Lower Wairau Plain which he summarised as follows:

    11. *In 2016 a follow up assessment of watercourses on the Wairau Plain (attached) was conducted by NIWA to determine and changes over time. The report shows that in general there has been a general deterioration in the ecological condition of the watercourses since 2002. The 2016 report also stated that the ecological values of watercourses on the Wairau Plains were limited by modified channels, heavy siltation and excessive in-channel vegetation dominated by invasive weeds.*

134. Amongst the species affected by weed and sediment removal were giant kokopu, which are rarely found in Marlborough, and very large numbers of eels – mainly shortfinned.

135. The invasive weed issue the Panel was told is addressed about every 10 years, and sediment removal has to be particularly carefully addressed for reasons described below[19]:

[18] Mr P Hamill, Response to Minute 30 of the Hearing Panel, para 7-10.

> 12. *The Drainage Network almost entirely made up of watercourses that form through the interception of groundwater and have very small flat catchment areas. As a result the sedimentation that enters the system is not coming from erosion of hills and mid slope failures, but from bankside collapse and inputs from subsurface drainage. This means that the volumes of sediment that end up in the waterways are of relatively small volumes.*
>
> 13. *The removal of sediment from the Drainage Network needs to be managed very carefully to ensure that the channels are not deepened any more than they currently are. If the channels are deepened it means that more ground water is intercepted which in turn reduces aquifer pressures. A deeper channel also increases the risk of bank collapse starting the whole cycle of the need for sediment removal again.*

136. Once again the Panel was informed that to avoid undue bank collapse sediment removal in the drainage system was only carried out every ten years.

**Consideration**

137. This is not an easy issue. The removal of sediment and invasive weed species are of major importance to the proper functioning of the waterways contained in the drainage network in physical and ecological terms, and the physical functioning is crucial to reduce or avoid natural hazard flood risk to properties. Policy 14.1.10 recognises those realities:

> *Policy 14.1.10 – Control water levels in the Marlborough District Council-administered drainage network by removing surplus water from the soils of the Lower Wairau Plain to enable primary production activities to continue.*
>
> *This policy signals that the Council intends to continue to maintain its drainage network as a means of allowing landowners and resource users to continue accessing the productive capacity of the soil resources of the Lower Wairau Plain. This will require the active control of water levels within the drainage network and the maintenance of drains, small rivers and infrastructure (e.g. pumps, flood gates) that make up the network.*

138. However, it is plain that the removal processes for both weed and sediment themselves have significant effects which warrant a conservative approach to their management.

[19] Mr P Hamill, Response to Minute 30 of the Hearing Panel, para 12-13

139. The Panel has decided the request for permitted activity status should be rejected, but that an addition should be made to the explanatory statement to Policy 14.1.10. That is needed to explain the ecological sensitivity of the drainage network environment and that that sensitivity requires long-term resource consent conditions to be in place so as to ensure management of the sediment and weed removal activities is appropriately controlled. The detail of such controls, and the possible need to vary them as improvements in management techniques are developed, is not seen as being able to be flexibly provided by standards in a resource management plan which would require cumbersome plan change processes to vary.

**Decision**

140. The request for a permitted activity rule is rejected but the Panel directs that the following sentences are added as an additional paragraph at the end of the explanatory statement to Policy 14.1.10:

*However, the ecological sensitivity of the drainage network environment is such that long-term resource consent conditions need to be in place so as to ensure management of the sediment and weed removal activities is appropriately controlled. There will over time be likely to be a need to vary those conditions of consents as improvements in management techniques are developed.*

## Sediment removal from culverts and roadside drains

141. At a different scale and in widely differing circumstances roadside drains and culverts also serve a very useful purpose in avoiding flood risk on the surface of roads and adjacent properties.

142. NZTA in its submissions[20] similarly sought permitted activity status for sediment removal. It stressed that its system of culverts and drains were of both regional and national significance in reducing or avoiding flood hazard risk to adjoining properties whilst protecting the safety of road users by removing flood hazard risk from road surfaces. NZTA also stressed the public ownership of the assets and the entity controlling the activities.

143. Its submissions sought permitted activity status for those repetitive maintenance activities of sediment removal. They also stressed that the sediment removal activity was intermittent and limited in duration, and again NZTA asserted that as a consequence the effects of the sediment removal were small, but the benefits were large in avoiding or reducing flood hazard risk to road surfaces and to adjoining properties.

[20] New Zealand Transport Agency (1002.129 & 130)

144. The Section 42A Report pointed out that the rules in the notified PMEP only allowed this activity in beds of rivers and lakes and otherwise drew attention to Rule 2.82 which enables maintenance of existing structures.

145. NZTA responded at the hearing by asserting that many of their roadside drains would be within the RMA definition of 'rivers' and therefore it proposed the wording of a new enabling rule. The Reply to Evidence report expressed concerns the rule proposed by NZTA would enable other parties other than NZTA to have permitted activity status – the inference being that could lead potentially to uncontrolled activities with adverse downstream effects. That report also drew attention to the possibility of 'global resource consents' to meet the need.

**Consideration**

146. The Panel shares the concerns expressed in the Reply to Evidence. It also recognises, though, that there is a major public value in the proposed activities.

147. The Panel takes the view, however, that the most practicable response is not a rule and associated standards in the PMEP but rather long term 'global' consents being sought by NZTA to carry out those activities. Those consents can have a designed suite of appropriate conditions coupled with a detailed management plan.

148. Once again, as was the case with its decision on the MDC drainage network request, there is a desirable level of flexibility available using that approach. It enables relatively ready variation of conditions as techniques develop over time, rather than the cumbersome plan change process and the limitations inherent in rules and standards which have to be crafted as being available to all and which struggle to provide the level of precision needed in management techniques.

**Decision**

149. The submission requests of NZTA on this issue are rejected.

## Works in riverbeds & floodway channels

150. Considerable submission input occurred, particularly from utility operators, in respect of the policies and rules in respect of maintaining clear floodways and riverbeds.

151. One of the more intriguing submissions received was that of Jet Boating NZ Inc[21] which sought provision of a permitted activity status for 'minor' works to enable jet boat activities and events. The Jet Boating NZ Inc representatives who appeared explained that the Association had relatively few events which did not warrant the cost and complexity of repetitive resource

[21] (64.1 & 612.1)

consent applications to prepare courses for jet boating events. They had relatively low membership numbers to bear what they saw as being unnecessary resource consent compliance costs. They drew attention to similar provisions in the Tasman Resource Management Plan. They generally emphasised, both in their written materials and orally, that the works they undertake are only 'minor' in nature, and that the channel formations or diversions they create are restored after each event – hence their assertion of 'minor' effect. Te Ātiawa filed a submission in opposition opposing the relief sought.

152. The Section 42A Report and Reply to Evidence queried whether the activities involved could really be categorised as being minor. The Panel had identified that point particularly in their questioning of the nature of works proposed. The response was that the works would only occur at most 3-4 times a year, and would not involve any greater movement of riverbed materials than could be achieved by a ten tonne digger in about 4 hours.

153. The Panel was not re-assured by that response. In the Panel's view any significant disturbance of that magnitude, or other possibly lesser diversions of natural flow paths in a river bed, have potential adverse effects from sediment movement and ecological disturbance if nothing else which, depending on location, may well have effects which could be considerably more than minor. The alternative would be for the Jet Boating NZ Inc to apply for a long term consent in which it could detail precise locations, predicted effects, sediment control and restoration measures proposed, and a suite of proposed conditions to ensure effects were indeed able to be considered as being 'minor'.

**Decision**

154. That the submissions are rejected.

## Policy 11.1.7

### Mitigate the adverse effects of gravel extraction on ecological and recreational values, water clarity and bank stability by: (a) – (b)

155. Policy 11.1.7 as to the mitigation of effects of gravel extraction provides:

> *Policy 11.1.7 – Mitigate the adverse effects of gravel extraction on ecological and recreational values, water clarity and bank stability by:*
>
> *(a) avoiding, where practicable, extraction from the wet bed of any river;*
>
> *(b) placing limits on:*
>
> *(i) the timing of operations (especially to avoid bird nesting);*
>
> *(ii) the method of extraction;*
>
> *(iii) the location of the extraction and access to the location;*

*(iv) the amount of gravel that can be extracted; and*

*(v) the length of time over which the extraction can occur.*

156. A number of submissions were made seeking inclusion of other factors in Policy 11.1.7 to be considered. The Panel accepted the recommendation and reasoning of the Section 42A Report at paragraphs 83-85 which included a reference to mitigating effects on irrigation water intakes. The one exception related to the request by Burkhart Fisheries and others[22] that reference is made in the policy to effects on 'fisheries resources'. That was recommended for acceptance by the Section 42A Report but it is regarded by the Panel as being unnecessary as the effects of sedimentation arising from gravel extraction on fish species will be able to be addressed as part of the consideration of 'ecological values'.

**Decision**

157. Policy 11.1.7 is amended to read:

*Policy 11.1.7 – Mitigate the adverse effects of gravel extraction on <u>irrigation water intakes</u>, ecological, and recreational values, water clarity and bank stability by: …*

## Rule 2.7.8 and Standard 2.9.8

**Minor upgrading in, on, or under the bed of a lake or river of the following utilities:**

**(a) transmission line existing at 9 June 2016;**

**(b) telecommunication or radio communication facility existing at 9 June 2016.**

158. Rule 2.7.8 was recommended to be amended at page 32 of the Section 42A Report in response to various submissions. The Panel agreed with the reasons for deleting unnecessary references to dates which have now passed, but the Section 42A Report and the Reply to Evidence only made that recommendation in relation to sub-clause (a) whereas the Panel is of the view that sub-clause (b) needs similar amendment for the same reasons. Furthermore the request of Transpower[23] to include reference to 'and associated cables' was recommended at paragraph 265 of the Section 42A Report but omitted from the recommended wording at page 5 of Mr Whyte's Reply to Evidence. The Panel agrees with the Section 42A Report at para 265.

**Decision**

159. Rule 2.7.8 is amended as follows:

*2.7.8. <u>Maintenance, replacement and</u> ~~M~~ minor upgrading in, on, or under the bed of a lake or river of the following utilities:*

---

[22] Burkhart Fisheries Limited and Lanfar Holdings (4) Limited (610.6), PauaMAC 7 Industry Association Incorporated (1038.8) and Legacy Fishing Limited (906.9)

[23] (1198.43)

*(a) National Grid transmission line ~~existing at 9 June 2016~~ and associated cables;*

*(b) telecommunication or radio communication facility ~~existing at 9 June 2016~~.*

160. Standard 2.9.8 has the same consequential amendments.

## Standard 2.9.1.3

**There must be no significant change to the external appearance of the structure. Painting a structure is not a significant change for the purposes of this Standard.**

161. The report writer's recommendation in relation to this standard was accepted by the Panel but the Panel has decided to slightly reword the recommendation provided in the Section 42A Report.

**Decision**

162. Rule 2.9.1.3 is amended to read:

*2.9.1.3 - There must be no significant change to the external appearance of the structure to the extent that the basic character and integrity of the structure is affected. Painting a structure is not a significant change for the purposes of this Standard*

## Standard 2.9.1.4

**No greater than 10% of the cross-sectional area of the lakebed or riverbed must be disturbed.**

163. A number of submitters[24] sought changes to clarify the area of riverbed involved and the Section 42A Report recommended a change to include after the word 'area' the phrase '(length and width), as measured from bank to bank,'. The Panel believes that an alternative phrasing achieves the clarity required with respect to rivers: 'in the active channel of a river at the time that the works are undertaken'. Further clarity is achieved by separating the standard for a lake and for a river.

**Decision**

164. Standard 2.9.1.4 is amended as follows:

*2.9.1.4. With the exception of culverts, n~~N~~o greater than 10% of the cross-sectional area of the lakebed must be disturbed and no greater than 10% of the cross-sectional area in the active channel of a river at the time that the works are undertaken must be disturbed.*

## Standards 2.9.2.3 and 2.9.2.4

**Permitted activity standards for rock protection structures**

165. Submissions were lodged by Federated Farmers seeking deletion of two standards 2.9.2.3 and 2.9.2.4 on the basis that the word 'may' was used which is not apposite for a standard. The

[24] Federated Farmers (425.456), PC Hemphill (648.37) and NFL (990.29) and NZTA (1002.121)

Section 42A Report agreed that word was not appropriate for a standard which should not allow for discretion, but the report made the point that the subject matter of the two standards should be retained with more appropriate wording. As the submission sought deletion, amendment falls within the scope of that relief.

166. The Panel agreed with that approach but was not comfortable with the recommended wording. The decision below sets out the wording the Panel has approved for these two standards.

**Decision**

167. The submission is accepted to the extent that the wording in standards 2.9.2.3 and 2.9.2.4 are amended to read respectively:

*2.9.2.3 Rock ~~may be used for protecting~~ <u>is permitted in the protection of</u> existing structures.*

*2.9.2.4 Rock from damaged or redundant structures ~~may~~ <u>is permitted to</u> be recovered from the lakebed or riverbed.*

## New Methods

### Standards protecting nationally and regionally significant infrastructure

168. Submissions by KiwiRail[25] and NZTA in a further submission and by Transpower[26] sought various rules to protect their infrastructure and proposed various rules or standards to that effect, particularly in relation to drainage works. The Section 42A Report at pages 39 & 40 assessed some of the amendments as being a rather blunt tool which would make maintenance or development of the drainage network difficult as one example. The rule proposed by KiwiRail for example would in effect create a buffer zone for the rail corridor.

169. Transpower had requested recognition in the PMEP policies of the Electricity (Hazards from Trees) Regulations 2003 so as to protect the Grid, (and similar requests were made in other submissions on other PMEP Plan provisions.)

170. Understandably in each case the various submitters stressed the importance of protection of their infrastructure as being of national or regional significance.

**Consideration**

171. The Panel did not consider that protection of nationally or regionally significant infrastructure requires policy provision for additional rule or standard protection in the Natural Hazards

[25] (873.96)
[26] (1198.51)

chapter beyond what was available elsewhere in the PMEP, save that the Panel did recognise that two major potential impacts needed to be considered - which are now addressed below.

172. The first of the potential impacts on infrastructure which was considered to require a different approach arose from the need to give effect to Policies 10 & 11 of the NPSET. Those policies require Councils to ensure rules and activities do not impact through reverse sensitivity on the operation, maintenance, upgrading and development of the electricity transmission network. The PMEP as amended by the Panel's decisions recognises the importance of a buffer zone for protection of the National Grid Yard.

173. Those Regulations as to hazards to electricity lines from trees have statutory effect and bind all persons already as a matter of law. In the Panel's view nothing more is required by the PMEP than to draw attention to the existence of the regulations – they do not need to be incorporated by specific reference in the PMEP operative provisions. That is most readily achieved by a new Information Method in the Plan.

174. A new method 4.M.11 designed to ensure that outcome is achieved, is worded as follows, (and that response is common to all submissions on the PMEP seeking those Regulations to be incorporated):

> *4.M.11 The Electricity (Hazards from Trees) Regulations 2003 were introduced in recognition that trees need to be kept at a safe distance from electricity lines for public safety and to protect electricity supply. The Regulations define safe separation distances between trees and powerlines, specify who is responsible for ensuring clearances are maintained and place potential liability on the tree owner in some circumstances if any damage or accident occurs when trees touch powerlines. Further information on Electricity (Hazards from Trees) Regulations 2003 is provided via the Transpower New Zealand Ltd and Marlborough Lines websites*

175. The second consideration was to address arguments by KiwiRail that in a similar manner the PMEP should ensure the rail network was not affected unreasonably in an adverse manner from reverse sensitivity. In that regard, it sought particularly that sufficient room for reasonable access was available on adjacent properties for necessary maintenance of structures on those properties without impinging on the rail corridor. In both rural and urban areas decisions on other submissions have recognised the need for a relatively narrow corridor of 1.5 m for that purpose.

176. In summary, the Panel preferred that the issues of integration of infrastructure with other development or activities were addressed by consultative methods. The aim is that integration

of infrastructure and public asset protection and maintenance was put in place in a manner which enabled works to be developed or conducted by using integrated approaches between the broader community and the affected infrastructure operators. The recommendations then in the original report and at page 15 of the report in response to the evidence are not accepted in full. Instead Methods 11.M.7 and 11.M.15 are to be amended as set out in the decision below.

**Decision**

177. The submissions seeking additional provisions protecting various aspects of infrastructure are only accepted to the extent of the amendments to Methods 11.M.7 and 11.M.15 below, as well as the insertion of the new Method 4.M.11 below:

*11.M.7 Council activities*

*Maintain flood defences and other flood mitigation works to provide protection from flood events as set out in a Council Asset Management Plan. Policies 11.1.3 and 11.1.4 provide guidance as to when the Council will actively manage flood hazards through such intervention and the standards to which protection will be provided. The Asset Management Plan will be prepared in consultation with Marlborough's tangata whenua iwi, relevant utility operators (particularly KiwiRail and NZTA), affected landowners and the community.*

*The Council may utilise the emergency provisions provided under Section 330 of the RMA to respond to foreseeable or actual hazard events in order to achieve Objective 11.1*

*The Council will continue to maintain soil conservation works within the Wither Hills Soil Conservation Reserve in accordance with Rivers and Land Drainage Asset Management Plan.*

*11.M.15 Gravel Management Strategy*

*Using the information gathered through Method 11.M.14, the Council will determine the sustainable yield of gravel from Marlborough rivers on an ongoing basis. The allowable annual extraction is recorded in the Gravel Management Strategy. The Strategy is used to guide the processing of gravel permit applications. The Gravel Management Strategy is incorporated into the MEP by reference. The Gravel Management Strategy will be prepared in consultation with Marlborough's tangata whenua iwi, relevant utility operators (particularly KiwiRail and NZTA), affected landowners and the community.*

*4.M.11 Electricity (Hazards from Trees) Regulations 2003*

*The Electricity (Hazards from Trees) Regulations 2003 were introduced in recognition that trees need to be kept at a safe distance from electricity lines for public safety and to protect electricity supply. The Regulations define safe separation distances between trees and*

*powerlines, specify who is responsible for ensuring clearances are maintained and place potential liability on the tree owner in some circumstances if any damage or accident occurs when trees touch powerlines. Further information on Electricity (Hazards from Trees) Regulations 2003 is provided via the Transpower New Zealand Ltd and Marlborough Lines websites*

## Standards for Structures adjacent to afforested areas or in Floodways or Flood Hazard areas

178. In the Rural Environment Zone and to a lesser extent in the Coastal Environment Zone rules there are a series of standards applicable to the location of structures in afforested areas or in Floodways or Flood Hazard areas. There was varying submission support and opposition (detailed at pages 43-44 of the original S42A report.) There was particular submission support for buffer areas from afforested boundaries for residential buildings with Federated Farmers seeking exclusion of pump sheds from the application of those rules in those areas. Other submitters sought exclusion from the operation of those rules in relation to growing structures such as grape trellising.

179. A particular exemption was sought by Mr T Offen because his property in the Coastal Environment Zone had recently been through the subdivision consent approval process as a result of which conditions were imposed to address flood hazard mitigation measures sufficiently to enable a subdivision consent to issue.

180. The Section 42A Report proposed various amendments at page 44 only some of which were accepted by the Panel.

**Consideration**

181. The Panel was generally accepting of the submissions and evidence stressing that pump sheds were unlikely to be structures capable of causing major diversions in flow or other barriers to flow. Similarly in terms of buffer distances to forestry, the existence of pump sheds would not pose any risk to human life from fires, or be likely to obstruct access for fire-fighting.

182. However, the Panel was concerned at the prospect of flood breakouts tearing out structures for grape growing and what impediment or diversionary effect to flood flows that might lead to so it issued Minute 31 to Council's Rivers Section Manager, Mr Geoff Dick, for response. In summary his response was that vineyard structures should not be located in Floodway zoned areas or in Flood Hazard Level 3 areas but otherwise were not able to be described as a significant risk in Level 2 areas. A part of his views, which essentially summarised his response, follows:

*4(ii)(d) In my opinion, outside formal managed Floodways/Floodway Zones, the risks to the wider community of not requiring resource consent for structures in Level 2 Flood Hazard areas is small. The same cannot be said for buildings or similar flood vulnerable structures where Council has an obligation to ensure Building Act requirements in relation to flood damage are met.*

183. With the benefit of that guidance the Panel concluded that the submission relief sought could be met by various amendments to the relevant rules as set out in the decision below.

184. Finally, in respect of the submission by Mr Offen it is not reasonable for a recent detailed consideration of flood levels to be affected by the PMEP's more general standards. That is best dealt with for his property, or any similar property, by a separate scheduling of properties exempt for those reasons in an appendix in Volume 3 for the Coastal Environment Zone.

185. For that purpose it will be necessary for the new appendix to be inserted in the PMEP entitled 'Properties exempt from flood hazard requirements under Standard 4.2.1.13'. That appendix will then be able to be populated with subdivision consents where detailed flood hazard assessments have been conducted and the consent granted on conditions which have taken into account those flood hazards.

**Decision**

186. The submissions on these issues are accepted in part to the extent that the relevant rules in any zone are amended as follows:

*3.2.1.7. A habitable structure or accessory building (<u>other than a pump shed)</u> must have a fire safety setback of at least 100m from any existing commercial forestry or carbon sequestration forestry on any adjacent land under different ownership.*

*3.2.1.15. A building or structure that has the potential to divert water must not be <u>erected</u> within a Level 2 Flood Hazard Area <u>provided that the following buildings or structures are exempt</u>:*

- *<u>(a) Post and wire stock and boundary fences</u>*
- *<u>(b) viticultural support structures</u>*
- *<u>(c) structures which are both less than 6m$^2$ in area and less than 2m in height; and</u>*
- *<u>(d) masts, poles, radio and telephone aerials less than 6m above mean ground level</u>*

*3.2.1.16 A building or structure must not be <u>erected</u> within a Level 3 Flood Hazard Area <u>provided that the following buildings or structure are exempt:</u>*

*(a) post and wire stock and boundary fences,*

*(b) structures which are both less than $6m^2$ in area and less than 2m in height; and*

*(c) masts, poles, radio and telephone aerials less than 6m above mean ground level.*

*3.3.10.3. There must be no carbon sequestration forestry planting within 100m of a habitable structure or accessory building (other than a pump shed) located on any adjacent land under different ownership.*

*4.2.1.6. A habitable structure or accessory building (other than a pump shed) must have a fire safety setback of at least 100m from any existing commercial forestry or carbon sequestration forestry on any adjacent land under different ownership*

*4.2.1.13 A building or structure that has the potential to divert water must not be erected within a Level 2 Flood Hazard Area provided that the following buildings or structures are exempt:*

*(a) Post and wire stock and boundary fences;*

*(b) viticultural support structures;*

*(c) structures which are both less than $6m^2$ in area and less than 2m in height;*

*(d) masts, poles, radio and telephone aerials less than 6m above mean ground level; and*

*(e) buildings and structures on those properties scheduled in Appendix 22*

*4.2.1.14 A building or structure must not be erected within a Level 3 Flood Hazard Area provided that the following buildings or structure are exempt:*

*(d) post and wire stock and boundary fences;*

*(e) structures which are both less than $6m^2$ in area and less than 2m in height; and*

*(f) masts, poles, radio and telephone aerials less than 6m above mean ground level.*

*19.2.1.8 A building or structure that has the potential to divert water must not be erected within a Level 2 Flood Hazard Area provided that the following buildings or structures are exempt:*

*(a) Post and wire stock and boundary fences*

*(b) viticultural support structures*

*(c) structures which are both less than $6m^2$ in area and less than 2m in height; and*

*(d) masts, poles, radio and telephone aerials less than 6m above mean ground level*

19.2.1.9. A building or structure must not be erected within a Level 3 Flood Hazard Area *provided that the following buildings or structure are exempt:*

*(a) post and wire stock and boundary fences,*

(b) *<u>structures which are both less than $6m^2$ in area and less than 2m in height; and</u>*

(c) *<u>masts, poles, radio and telephone aerials less than 6m above mean ground level.</u>*

187. A new Appendix 22 is inserted in Volume 3 of the PMEP entitled 'Properties exempt from flood hazard requirements under Standard 4.2.1.13'.

188. The Offen property described as within title identifiers 631325 to 631332 (inclusive) Marlborough Land Registration District and subject to Consent Notice 10549755.4 registered against such titles is to be inserted in the new Appendix 22.

## Rules 21.3.11.1 and 21.3.12.3

### Removal of aquatic weeds

189. Submissions were made by Marlborough District Council in respect of a range of rules relating to this issue to achieve more satisfactory working outcomes Most led to recommendations as to amendments and reasoning supporting them in the Section 42A Report which the Panel accepted and do not need repetition here.

190. As notified those provisions provide standards for weed removal as follows:

> *21.3.11.1. Crack willow must not be planted on any floodway, except for the Wairau River downstream of the Wye River confluence.*
>
> *21.3.12.3. The excavator must not enter flowing water.*

191. However, in respect of rules 21.3.11.1 and 21.3.12.3 the Panel preferred different wording to that recommended. The Council submission sought deletion of Rule 21.3.11.1 and the Section 42A Report agreed as the Biosecurity Act 1993 covered the crack willow situation.

192. In respect of Rule 21.3.12.3 the Council sought addition of the words "where possible" and the Section 42A Report recommended 'where practical' to achieve more certainty for a standard.

193. The report writer at paragraph 406 recommended acceptance of a submission by MDC that this rule be deleted because the Biosecurity Act prohibited the sale and propagation of crack willow and so the rule was unnecessary. The Panel acknowledged that legislative position but felt it was informative to the public that the plan providing guidance on resource management issues in Marlborough should reinforce that restriction.

**Decision**

194. Rules 21.3.11.1 and 21.3.12.3 are amended as follows:

*21.3.11.1. Crack willow must not be planted on any floodway, ~~except for the Wairau River downstream of the Wye River confluence.~~*

*21.3.12.3. The excavator must not enter flowing water unless there is no practical alternative.*

## Rule 2.7

### Permitted Activities

#### Section 42A Report

195. This submission was addressed in the Topic 9 Section 42A Report at para 159, as follows:

> *KMS Mining Ltd (1269.1 and .2) requests small –scale suction dredging where engines are no more than 7 kilowatts power be included as a permitted activity. Given that there is no analysis of potential effects potential effects and there is no suggested standards I recommend that the submission is rejected at this time.*

196. Unfortunately for what otherwise was a very carefully prepared and considered report, it can only be said that in respect of this particular submission there has been an oversight of the attachments and content of the submission as it did indeed propose detailed standards. The report was correct, though, in the statement that there was very limited if any analysis of potential effects.

197. The request for relief in the submission requested a new permitted activity rule with the following standards:

> *Add new standards to support new permitted activity:*
> *2.9.0. Small-scale suction dredging where engines are no more than 7 kilowatts power.*
> *2.9.0.1 (a) The internal diameter of the nozzle does not exceed 150mm; and*
> *(b) The mining activity is not carried out within 20 metres of any structure which has foundations in the river bed, or any ford or pipeline; and*
> *(c) The activity does not cause any flooding or erosion; and*
> *(d) No refuelling is carried out while the dredge is within the wet bed of the river; and*
> *(e) The area dredged lies within the wet bed of the river, and no material is removed from within or under the banks of the river; and*
> *(f) No suction dredge is operated within 50 metres of another dredge; and*
> *(g) No explosives or earthmoving machinery apart from the dredge is used to move material in the river bed; and*
> *(h) Any rocks moved to allow suction dredging to occur are returned as close as possible to the site from which they were removed; and*
> *(i) There is no conspicuous change in the colour or visual clarity of the water body beyond a distance of 100 metres downstream of the point of discharge; and*
> *(j) No lawful take of water is adversely affected as a result of the bed disturbance; and*

*(k) No dredging is to take place between the dates 1st May and 30th September to protect fish spawning; and*

*(l) Dredging is only to be carried out between the times of 7.00am and 7.00pm on any day with noise levels not exceeding 85dBL.*

198. Unfortunately the attachments to the submission included a statement that the submitter was likely to be overseas at the time of the hearing and as a result no appearance occurred.

199. As a consequence the Panel only had before it the material in the submission and its attachments. Those included some generalised correspondence from West Coast Regional Council on the Crown Minerals fees review 2016 Discussion Document, examples of Plan provisions from the Tasman, and Otago and West Coast regional plans, and some detailed correspondence as to Wakamarina river access and Fish and Game spawning season concerns in that river.

200. As expressed in the submission the permitted activity status requested was very broad being as follows:

*2.7.0. Small-scale suction dredging where engines are no more than 7 kilowatts power.*

201. Issues raised by the proposal include the volumes of sediment likely to be disturbed, gravel volumes involved and their physical movement effects on the natural bed of the river and/or the amenity attributes of the river, the volumes of water diverted, noise and visual impacts on other recreational river users, potential impacts on Marlborough's tangata whenua cultural values, and impacts on indigenous fauna and ecosystems.

202. Other major concerns are how the potential number of such dredges could be controlled if permitted activity status was provided as sought, and the rivers or streams in which that status was sought to be applied. It was noted by the Panel that in the example provisions provided by the submission, that a number of water bodies were excluded in those other regions from the permitted activity provisions. Plainly those Councils had concerns as to adverse effects in some rivers if the permitted activity status was provided generally, as is sought in this submission.

203. While the proposed provisions seek to limit effects by limiting the size of the power source and nozzle diameter, the volumes able to be moved and the disturbance created will still be capable of being significant, and increased in potential adverse effects if more than one pump was active.

204. The Panel did not consider that it had sufficient information on most of those issues to form a reasoned decision on whether permitted activity status on the standards proposed would

safeguard the natural quality values which it is required to protect in terms of s 6 (a), (c) and (e) and s 7 (c), (d) and (f) of the Resource Management Act 1991.

**Decision**

205. The relief requested of a new permitted activity status rule with associated standards is rejected.

## [New] Standard 2.13.1.5

206. Transpower (1198.51) requested that a new standard be included to protect the National Grid as follows:

*2.13.1.x Within the National Grid Yard:*

*(a) the activity, and associated works must maintain compliance with the New Zealand Electrical Code of Practice (NZECP34:2001) at all times; and*

*(b) vegetation planting shall be undertaken to ensure that plants are selected and managed to achieve compliance with the Electricity (Hazards from Trees) Regulations 2003.*

207. In addition it sought that the rules for Drainage Channel Network activities be amended as a consequence to make any activity not complying with this new standard a non-complying activity.

**Section 42A Report**

208. The report writer pointed out that in fact both of the sub-clauses of the new proposed standard were matters which already carried a mandatory status without being in the Plan, but nonetheless he recommended sub-clause (a) should be included to give effect to the NPSET, but with the requested (b) being an Advice Note only.

209. The report writer pointed out that the consistent approach in the PMEP is not to use non-complying status, so he recommended that the request to amend the relevant rule was not accepted.

**Consideration**

210. In other topic decisions the Panel has concluded that it is unnecessary and not helpful for the Plan to incorporate by reference other statutory documents which have their own statutory effect. That being the case here the inclusion in the Plan of these proposed new standards is not necessary to protect the National Grid as it is already protected by the mandatory nature of compliance being independently required by other statutory instruments. The proposed new standard would add nothing to the mandatory nature of those other instruments. That

being the case, it is unnecessary to incorporate them in the Plan by reference to them as standards in the manner requested.

211. As that is the Panel's conclusion, the issue of a non-complying status rule drops away. (However, the Panel would not have accepted that status was required in any case.)

**Decision**

212. The requests by Transpower for a new standard 2.13.1.5 incorporating reference to the NZ Electrical Code of Practice and the Electricity (Hazards from Trees) Regulations 2003, and for an amendment to the relevant rule to make non-compliance with that new standard a non-complying activity, are rejected.

# Proposed Marlborough Environment Plan

## Topic 10: Urban Environments

**Hearing dates:** 30 April 2018 – 2 May 2018

**S42A Report Writer:** David Jackson

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| MDC | Marlborough District Council |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| FENZ | Fire and Emergency New Zealand |
| KiwiRail | KiwiRail Holdings Limited |
| NMDHB | Nelson Marlborough District Health Board |

# Permitted activity standards

## Fire fighting standards

### Standards that apply to all permitted activities

1. FENZ sought standards for firefighting water supply and access, seeking compliance with the Code of Practice SNZ PAS 4509: 2008. It wants to ensure that there is sufficient supply of water for firefighting purposes, and for buildings on long driveways there is adequate access for fire appliances, including width, clearance and gradient. It proposes a new standard be added under 5.2[1], 6.2[2], 9.2[3], 10.2[4] and 12.2[5]:

   *X.2.x Water supply and access for firefighting*

   *X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have sufficient water supply for firefighting in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.*

   *X.2.x.2 Where a building is located more than 135m from the nearest road that has reticulated water supply (including hydrants) access shall have a minimum formed width of 4m, a height clearance of 4.0m and a maximum gradient of 1 in 5 (with minimum 4.0m transition ramps of 1 in 8).*

2. Effectively, FENZ sought the introduction of the above standards to apply to new buildings in the Urban Residential 1, 2 and 3 zones; Business 1 and 2 zones; and Industrial 1 and 2 zones.

3. FENZ sought similar relief for 18.2 in the Open Space 2 zone.[6] This request was considered in in Topic 7: Public Access and Open Space.[7]

**Section 42A Report**

4. The report writer agreed with an addition of a standard to ensure firefighting capability was supplied but he outlined concerns as to the ability to always be able to meet the compliance rule sought by FENZ in relation to SNZ PAS 4509:2008 in all urban environments. The report stated that:

   *187...Assets &Services may not be able to confirm the water supply to SNZ PAS 4509:2008 in those existing older areas, including Renwick.*

[1] FENZ (993.39).
[2] FENZ (993.44)
[3] FENZ (993.55)
[4] FENZ (993.59)
[5] FENZ (993.63)
[6] FENZ (993.82)
[7] Topic 7 Section 42A Report, pages 23, 27

and concluded on this issue:

> *189…. I believe the matter is best addressed via the Council's infrastructure upgrade process, its review of the Code of Practice for Subdivision and Land Development, and through liaison with FENZ. I do not think that requiring individual property owners to apply for resource consents will achieve a better outcome. For this reason, I support the proposed new rule referencing a 'Council reticulated water supply', but not that it meets SNZ PAS 4509:2008. In this I follow the wording recommended by Mr Sutherland under Rule 24.3.1.3.*
>
> *190. I note that the above issue does not apply to greenfield subdivision, where I understand that the infrastructure to the correct standard for firefighting capability is being installed.*

5. The recommendation made therefore was for a new rule to provide for those access areas and to generally require access to a 'Council reticulated supply'.

6. The report also addressed concerns as to access issues which required a new standard. Discussions occurred between the Section 42A Report Writer for Topic 17: Subdivision and Ainsley MacLeod for FENZ. As set out in the Topic 10 Section 42A Report[8], these discussions appeared to result in a reduction in the distance from the road (from 135m to 75m) that would trigger the access requirement. That is the distance recommended by the report writer.

**Consideration**

7. The Panel has considered similar requests from FENZ in respect of coastal and rural environments and in those settings has decided that the cost of requiring compliance with SNZ PAS 4509 is so high that it would need broader consultation to be considered as it would effectively require mandatory installation of sprinkler systems which would add significantly to housing construction costs.

8. Whilst the same considerations do not apply where reticulated water is available the advice as to an inability to be sure in some limited older urban areas that compliance can be achieved in the Panel's view militates in favour of the approach the report writer has recommended. That will ensure connection to a Council reticulated supply in urban settings even in older areas which in practical terms effectively will mean firefighting capability is enhanced and in most cases to a compliance level.

[8] Section 42A Report, page 40

9. New greenfields subdivisions in urban environments will be addressed at subdivision stage where compliance to the correct standard can be ensured.

10. This approach appeared to be supported in evidence by Mr Paul McGimpsey. He stated:

> *"Given Fire and Emergency's view on this type of infill development, and that the provision of firefighting water supply for greenfield subdivision and development in non-reticulated areas is covered by other plan provisions, and that Council is working towards compliance through network upgrades, I agree with Mr Jackson's recommendation that the rule should be amended to refer to 'Council reticulated water supply' but that full reference to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 is not warranted in the rule."*[9]

11. The Panel has reached a conclusion on using references to external documents such as the Code of Practice SNZ PAS 4509: 2008. This is recorded in Section 17 of the Introduction. However, as a result of the view of Mr McGimpsey recorded above, the Panel is not required to apply this reasoning in the current context, with the exception of Open Space 2.

12. The Panel agrees with the recommendations of the report writers with respect to new standards in the Urban Residential 1, 2 and 3 zones; Business 1 and 2 zones; and Industrial 1 and 2 zones and the wording for those standards.

13. In the case of Open Space 2, the report writer did recommend compliance with the Code of Practice. However, Topic 7 was also heard before this topic and before Mr McGimpsey provided evidence.

14. For reasons also set out in the Topic 12: Rural Environments decision, the Panel considers that reference simply to the Code creates uncertainty as to the standard that is to be met by somebody constructing a new building. For this reason, the Panel is accepting the submission in part and has not included reference to the Code in the recommended standard.

15. There is land that is zoned Open Space 2 that does not currently have access to a hydrant. Due to this circumstance, he Panel does not consider that the same standards as recommended for the urban zones are appropriate for the Open Space 2 zone. An amendment is made to the standard as a result.

[9] FENZ, Evidence Paul McGimpsey, Evidence, page 24

**Decision**

16. Insert a new standard in 5.2, 6.2, 9.2, 10.2 and 12.2 as follows:

*X.2.x Water supply and access for firefighting*

*X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have direct access to a Council reticulated water supply with fire fighting capability including hydrants.*

*X.2.x.2 Where a building (excluding accessory buildings that are not habitable) is located more than 75m from the nearest road that has reticulated water supply (including hydrants) access must have a minimum formed width of 4m, a height clearance of 4m and be free of obstacles that could hinder access for firefighting and emergency service vehicles.*

17. Insert a new standard in 18.2 as follows:

*X.2.x Water supply and access for firefighting*

*X.2.x.1 New buildings (excluding accessory buildings that are not habitable) shall have sufficient water supply for firefighting.*

*X.2.x.2 Where a building (excluding accessory buildings that are not habitable) is located more than 75m from the nearest road that has reticulated water supply (including hydrants) access must have a minimum formed width of 4m, a height clearance of 4m and be free of obstacles that could hinder access for firefighting and emergency service vehicles.*

## New standards - Construction and siting of a building or structure.

18. KiwiRail supports the standards in part, which reference construction and siting of a building or structure[10], and seeks an additional clause. It requests for safety reasons that the rail corridor is not publicly accessible. To ensure that access to all buildings can be provided without the need for occupiers to access the rail network, buildings need to be set back from the rail corridor boundary to ensure people's health and wellbeing. Given the consequence of an incident in the event of a neighbour accessing the rail corridor without the necessary safety permits in place, KiwiRail seeks a setback for new structures from the rail corridor, as follows: *A building or structure must not be within 5m of the rail corridor.* [11]

**Section 42A Report**

19. The report writer considers the setback requested is excessive for the purpose stated. A 5 metre setback would impose a large restriction on the use of a person's property, and seems disproportionate in achieving KiwiRail's desired outcome which seems to be sufficient space

[10] Standards 5.2.1, 9.2.1, 10.2.1 and 12.2.1
[11] KiwiRail (873.130, .134, .137, .140).

for property owners to be able to construct and maintain their buildings without having to go into the rail corridor.

20. In the report writer's view, a 1.5 metre setback would be sufficient. It would allow space for people to get around buildings to work on them, and space to erect scaffolding if needed (which typically is 850 mm wide). The report writer has concerns about the words 'any structure' as that would require any fence to be set back 5 metres into a person's property, effectively nullifying use of a significant portion of a person's property. The report writer suggests excluding fences from the setback (as long as the palings or main fence elements can be replaced from within owner's property).

21. The report writer considers a consequential amendment would assist with interpretation of the proposed standard if the term 'rail corridor' was defined. The term is proposed in the KiwRail submission to be used in a number of provisions throughout the PMEP. In another submission point, in relation to its Designation K1, KiwiRail indicates the rail corridor consists of the Main North Line.[12] The report writer suggests this term, linked to the designation, also be used.[13]

22. In evidence, KiwiRail reasserted they want a 5 metre setback from the boundary, not 1.5 metres as recommended by the report writer. Five metres is already recommended in the Public Access and Open Space Section 42A Report. Some zones permit structures up to 15 metres in height and therefore poles, ladders and other equipment needed for maintenance can be long, needing more space. A 5 metre setback also ensures structures do not interfere with sight lines at level crossings.[14]

23. KiwiRail accepts that fences could be caught by the proposed rule and accepts that fences up to 2.5 metres high are unlikely to have safety impacts or a need for access to the rail corridor.

24. Ms Beals proposes amending the rule as follows:[15]

> *… building or structure must not be within ~~1.5~~ 5.0 m of the rail corridor, except for a fence up to 2.5m in height ~~provided the fence is constructed, and palings or main fencing elements are able to be replaced, from within the site and without accessing the rail corridor~~.*

---

[12] KiwiRail (873.159).
[13] Section 42A Report, paragraphs 199-200.
[14] KiwiRail, Rebecca Beals, Evidence, paragraph 39.
[15] Section 42A Report, Reply to Evidence, page 12.

25. In terms of a definition of 'rail corridor', Ms Beals identifies that the company does not support the recommended definition as the legal boundary identifies the rail corridor and this is more precise than a mapped designation.[16]

26. The report writer in reply reiterates his concerns outlined in the Section 42A Report – that a 5 metre setback imposes considerable restrictions on other people's land – but nevertheless accepts that setbacks apply to buildings and private land for various other purposes such as street amenity and sight lines on corners, albeit this is for a private company but with a degree of public benefit.

27. The report writer also accepts:

- In business and industrial zones where buildings are permitted to be taller (10-15 metres), a 1.5 metre setback may not be large enough to manoeuvre, erect and support scaffolding or ladders. He argues a smaller setback could apply in residential zones as the maximum building height is less than 7.5 metres.
- The 5 metre setback would be appropriate in the Urban Residential Zone and in the other zones KiwiRail submitted on – Business 1 and 2, Industrial 1 and 2.
- The wording change in relation to fences suggested by Ms Beals, except for the 2.5 metre height. This is higher than the fences permitted in Urban Residential zones standards 5.2.1.15 and 6.2.1.10 and the Business Zone 2 Standard 10.2.1.6. It is better to align the fence height with the zone rules. (Ms Beals responded she would be comfortable with 2 metres.[17])
- Using the term 'rail corridor' in a rule but not defining the term creates potential uncertainty in interpretation. This could be avoided by referring to 'the boundary with the rail corridor'. This definition fits with the intent of the KiwiRail evidence on the basis that it is legally surveyed with a defined boundary. (Ms Beals is supportive of such wording.)

28. The Panel asked if the term 'rail corridor' could be better defined. This raised the question of how to differentiate the Main Trunk Line from the small railway line down to Taylor River and elsewhere. One way to do this is to refer to the 'Main North Line'. This is the term used in KiwiRail's submissions and evidence. The rule could then read: *The boundary with the rail corridor of the Main North Line.*

[16] KiwiRail, Rebecca Beals, Evidence, paragraph 47.
[17] Section 42A Report, Reply to Evidence, pages 11-12.

29. The report writer, as a result of the evidence from KiwiRail for consistency across zones, accepted that 5 metres was recommended in the Section 42A Report on the Open Space Zone and in other zones that KiwiRail has submitted on (Business 1 and 2 and Industrial 1 and 2). He accepts that instead of a 1.5 metre setback, a 5 metre setback could be recommended for Standard 5.2.1.21 as follows:

    *A building or structure must not be within ~~1.5m~~ <u>5m</u> of the <u>boundary with the</u> rail corridor <u>of the Main North Line</u>, except for a fence <u>up to 2m in height</u> ~~provided the fence is constructed, and palings or main fencing elements are able to be replaced, from within the site and without accessing the rail corridor~~.*

30. The same changes are suggested for Rules 9.2.1.21, 10.2.1.11 and 12.2.1.11.

**Consideration**

31. In spite of the report writer's reconsideration that a 5 metre setback for the KiwiRail corridor was appropriate for consistency purposes, the Panel nevertheless concluded a 1.5 metre setback in the rail corridor was appropriate for other reasons, namely:

- In practical terms, a substantial rail corridor setback commonly exists within KiwiRail's legal boundary and the railway tracks.
- An additional 5 metre setback would be an unacceptable inroad into private property space/availability.
- A 1.5 metre setback on residential property would allow for ladders, scaffolding and building materials to be easily manoeuvred on site without having to access the rail corridor land.
- We consider as a result that access to structures adjoining the rail corridor for maintenance purposes would not compromise health and safety, as suggested by KiwiRail.

**Decision**

32. As recommended, and for the reasons given, new standards are inserted as 5.2.1.21, 9.2.1.15, 10.2.1.11 and 12.2.1.11, and are to read as follows:

    *<u>A building or structure must not be within 1.5m of the legal boundary with the rail corridor of the Main North Line, except for a fence up to 2m in height</u>.*

## Standard 5.2.1.2

**Within the Urban Residential 1 Zone, the construction or siting of a dwelling on land must meet the following access requirements:**

**(a) access for one dwelling must be a minimum width of 3.0m;**

**(b) access for two to four dwellings must be a minimum width of 3.5m and a minimum sealed width of 3.0m;**

**(c) access for five to six dwellings must be a minimum width of 6.0m and a minimum sealed width of 5.0m.**

33. One submitter supports the rule and seeks its retention. Several others oppose the standard because increasing minimum access widths (compared to the current Plan), combined with larger minimum lot sizes and other controls, will make subdivision very difficult. They consider that the changes will reduce housing choice, promote inefficient use of expensive land, and reduce the stock of available housing, particularly affordable housing. They seek the reinstatement of the old access standards.[18]

34. For the WARMP (Rule 32.1.2.1.7) these are:

| No. Units Served | Minimum Width (m) | Minimum Formation Width (m) | Qualification |
|---|---|---|---|
| 1 | 3 | NA | |
| 2-4 | 3 | 2.5 | Sealed |
| 5-6 | 6 | 5 | Sealed. Width allows passing |

**Section 42A Report**

35. The report writer (Jackson), having read the report writer's (Sutherland) recommendation in the Section 42A Report on Topic 17 Subdivision, in relation to subdivision access standards under recommended Standard 24.3.1.3 of that topic, agreed with his recommendation that narrower access standards are appropriate in Blenheim where sites are mostly flat. Mr Jackson supports aligning the widths in Standard 5.2.1.2 with those proposed in the Subdivision Standard 24.3.1.3.[19]

**Consideration**

36. The Panel accepts from the evidence that the increase in the proposed access widths in the PMEP will make subdivision difficult for both developers and home buyers.

[18] GJ Gardner Homes (99.1), Mainland Residential Homes (506.1), Peter Ray Homes (507.1) and Andrew Pope Homes (508.1).

[19] Section 42A Report, paragraph 206.

**Decision**

37. Standard 5.2.1.2 is amended as follows:

*Within the Urban Residential 1 Zone, the construction or siting of a dwelling on land must meet the following access requirements:*

*(a) access for one dwelling must be a minimum width of 3.0m;*

*(b) access for two to four dwellings must be a minimum width of 3.0 ~~3.5~~m and a minimum sealed width of 2.5 ~~3.0~~m;*

*(c) access for five to six dwellings must be a minimum width of 6.0m and a minimum sealed width of 5.0m.*

### Standard 5.2.1.3

**No more than one residential dwelling must be construction *[sic]* or sited per Computer Register within the Urban Residential 2 Zone.**

38. Six submitters oppose the standard for reasons given.[20] GJ Gardner Homes, Mainland Residential Homes, Peter Ray Homes and Andrew Pope Homes focus on lot size, access width and bulk and locational matters. Messrs Gilbert and Hawke consider there is no practical reason why more than one rental property could not be built on a section if the density and access requirements could be met as at present. Mr Hawke's inferred decision seeks to allow for two residential dwellings on one site, provided the area and access requirements in the zone are met. He points to the fact that provision is made in the Urban Residential 1 Zone for more than one dwelling on an allotment because this is a higher density zone where multi-unit and multi-development is enabled (Policy 12.1.2 and Rule 5.2).

**Section 42A Report**

39. In response, the report writer pointed out that the characteristics sought in the PMEP for the Urban Residential 2 Zone are for lower density and lower building form development on larger lot sizes. In the report writer's opinion, the characteristics of the Residential 2 Zone, as set in the policy, are inconsistent with multiple units on an allotment. Further, the submitters have not requested amendments to Policy 12.1.3. The change requested by the submitters to Standard 5.2.1.3 would create an inconsistency between the policy and the rule. Moreover, if more than one dwelling was allowed on an allotment, then other rules would be needed to regulate bulk and location and other matters, since the existing rules rely on allotment boundaries and sizes established at the time of subdivision. For these reasons, and the fact

[20] Perry Mason Gilbert (192.2), Tony Hawke (369.7), GJ Gardner Homes (99.7), Mainland Residential Homes (506.7), Peter Ray Homes (507.7) and Andrew Pope Homes (508.7).

that housing companies did not focus on there being one house per lot in the Residential Zone, the report writer initially recommended that Standard 5.2.1.3 be retained as notified.[21]

40. In evidence, Tony Hawke responded to the report writer's initial indication that he recommended no change to Standard 5.2.1.3 as notified. Mr Hawke considered that the report writer had not understood the request he made in his submission that if there are additional dwellings on the lot, they need to meet the density and bulk and locational requirements. '*Allow for more than one residential dwelling to be sited on a title, provided the net site area for each dwelling can meet the minimum allotment area in the Residential 2 Zone.'*[22]

41. Nor did Mr Hawke accept the report writer's opinion that the change to the rule would create inconsistency with Policy 12.1.2.

42. Perry Gilbert in his submission on the same subject does not agree either with the report writer's opinion that a change in the rule would create inconsistency with Policy 12.1.2. For at present under the WARMP a building is often started before title can issue. He requests no change to that rule and requests '*Within the Urban Residential 2 Zone, the construction or siting of a dwelling must be on a Computer Register with a net site area of no less than 400 m$^{2}$*' and complies with the density and access rules.[23]

**Reply to Evidence**

43. After identifying there is scope for Mr Hawke's request because the further submitter supported the retention of the provision in the PMEP to have one house per computer register[24], the report writer identified:

- His original argument for a potential inconsistency between Policy 12.1.3 and a changed rule is no longer appropriate.[25]
- MDC staff indicate there are no 'fishhooks' with the application of the WARMP provisions for building applications as currently applicants are made aware that, if they subsequently want to subdivide, then the dwellings need to be sited so they will comply

[21] Section 42A Report, paragraph 208.
[22] Tony Hawke, Evidence, paragraph 18.
[23] Perry Mason Gilbert, Evidence, page 1.
[24] The term 'computer register' has been changed. It is now 'record of title'. See Topic 17: Subdivision decision. See https://www.linz.govt.nz/land/land-records/types-land-records/record-title-current
[25] Section 42A Report, paragraph 208.

with the subdivision rules and relevant boundary controls or they would have to seek resource consent.[26]

- There are benefits in what is now proposed by Mr Hawke – a reduced bureaucracy and more flexibility are the advantages of making the change.[27]

44. The report writer's further recommendation is to replace Standard 5.2.1.3 with a new standard that ensures that where more than one dwelling is constructed, each dwelling meets the net site requirements for the Urban Residential 2 Zone as set out in his Reply to Evidence.

45. He favoured following the original request from Mr Hawke as he included the important requirement – *provided the area and access requirements in the Residential 2 zone can be met*. It is necessary that both these are achieved (as is the case in the Urban Residential 1, Standard 5.2.1.1), not just the site area as Mr Gilbert proposed.

46. As, Mr Hawke did not tie his area just to 400 $m^2$, this is important because there are different minimum site areas that apply in the Urban Residential 2 Zone as set out in Rule 24.3.1.2, that would need to be brought into an amended rule to define the 'net site area' that the submitters discussed. Similarly, in terms of access standards, these vary in Rule 24.3.1.3 and would need to be reflected also.[28]

**Consideration**

47. The Panel decided the new standard was appropriate for all the reasons given, but with the insertion of the words 'for each dwelling' after 'net site area'.

48. Due to legislation changes, and for the reasons provided in the Topic 17: Subdivision decision, the term 'Computer Register' is amended to 'Record of Title'.

49. As a consequence of the amendments made to Standard 5.2.1.3, Standard 5.2.1.1 will also require similar amendment to ensure consistency.

**Decision**

50. Existing Standard 5.2.1.3 is deleted and replaced with new Standard 5.2.1.3 as follows:

<u>*5.2.1.3 Within the Urban Residential 2 Zone, the construction or siting of a dwelling must be on a Record of Title with a net site area for each dwelling no less than the relevant Minimum Net Allotment Area in rule 24.3.1.2, and with access that complies with rule 24.3.1.3.*</u>

[26] Section 42 A Report, Reply to Evidence, page 14.
[27] Section 42A Report, Reply to Evidence, page 14.
[28] Section 42A Report, page 14.

51. Standard 5.2.1.1 is amended as follows:

*5.2.1.1. Within the Urban Residential 1 Zone, the construction or siting of a dwelling must be on a ~~Computer Register~~ Record of Title with a net site area no less than 290m².*

## Recession planes – standards apply to all permitted activities

### Standard 5.2.1.6

**No part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property boundary.**

52. One submitter wants the provision from the WARMP restored (in the recession plane rules) that allowed a garage to be sited up against a side or rear boundary and to intrude into the recession plane a certain amount. The same rule provided that a length of up to 9 metres of garage could be sited on or near to the boundary and intrude into the recession plane.[29]

53. Other submitters made identical submissions opposing the standard. They are concerned at changes in lot size, bulk and location controls, setback and recession planes that compromise the efficient use of a site, reducing housing choice and affordability. The building controls should be revisited to ensure the recession planes promote efficient use of space and maximise the area available for outdoor living.[30]

54. Another submitter supports the standard but seeks the standard is linked to the definition of 'site' in Chapter 25, which makes it clear that setbacks cannot include right of way areas. It seeks that Standard 5.2.1.6 be amended as follows:

> *On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property boundary.*[31]

**Section 42A Report**

55. The report writer considers:

- The change sought by Mr Hawke would have a significant impact on a neighbour's amenity – more so on the southern boundary where a length of building up to 9 metres long, intruding 50% above the boundary recession plane height, could have a significant

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[29] Tony Hawke (369.10).
[30] GJ Gardner Homes (99.6), Mainland Residential Homes (506.6), Peter Ray Homes (507.6) and Andrew Pope Homes (508.6).
[31] MDC (91.198).

impact on winter sun to the neighbour located to the south (also on eastern and western boundaries). This change is not supported.

- The RMA now provides for a simpler 'consenting process' for boundary activities. If a neighbour's written approval can be obtained then the Council within 10 working days will issue a permission known as a 'deemed permitted activity'.
- In the report writer's experience, a set angle is sufficient to ensure adequate amenity to the road and footpath while roads do not require the same level of daylight access. A low recession plane inclined into the front yard of the property can be unnecessarily restrictive on building development. He therefore supports introducing a fixed angle on the road boundary of the site.
- There are four definitions of 'site' in the PMEP, but the one applicable in this instance is the first one, as follows:

  *in relation to a building or structure, means any area of land/or volume of space of sufficient dimensions to accommodate any complying activity provided for by a rule in the Plan:*

  *(a) Corner site - will be deemed to be a 'front site';*

  *(b) Front site - means a site having one frontage of not less than the minimum prescribed by the Plan for the particular zone in which the site is situated to a road, private road, or the sea; and*

  *(d)* [sic] *Rear site - means a site that is situated generally to the rear of another site and that has not the frontage required for a front site for that use in the zone.*

  *Where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan must be treated as a legal boundary for the purpose of bulk and location controls for buildings.*

56. The report writer identifies that the last sentence of the definition states that bulk and location controls for buildings are determined from the lines defining the right of way. While not defined in the PMEP, inclusion of the proposed new words in Standard 5.2.1.6 will remove any doubt as to whether this includes recession planes. The report writer supports the change and as a consequential change, the reference in the rule to 'property boundary' should be changed to 'site boundary'.

57. It is recommended that Standard 5.2.1.6 be amended as follows:[32]

> *On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26, except that a recession plane angle of 55 degrees, inclined into the site, applies in all cases on a road/street boundary. The recession plane angle must be measured from a starting point 2m above ground level at the ~~property~~ site boundary.*

58. GJ Gardner Homes and other housing companies identified in evidence that the current WARMP rules have 2.3 metres above ground for a starting point in the Residential 1 Zone as opposed to 2 metres in the PMEP. The Urban Residential 1 Zone is intensive and having a more generous recession plan allows more flexibility in the siting of buildings and better utilisation of small sites. The Urban Residential 2 Zone would similarly benefit if the recession planes started at 2.3 metres rather than 2 metres.[33]

59. The report writer in reply to this evidence supports changing the starting point for the recession plane to 2.3 metres for the Urban Residential 1 Zone as that zone seeks to allow more intensive development and the recession plane, as notified, can restrict that. The report writer does not support the same change for the Urban Residential 2 Zone as that zone has lower density and higher on-site amenity requirements (as set out in Policy 12.1.3) and would fail to differentiate the Urban Residential 1 and 2 Zones in terms of this control (the WARMP and the MSRMP use a 2 metre starting point and the PMEP is not changing this).

60. The report writer observes the recession rules in the PMEP are slightly tougher than the operative plans in some respects, but are still generous, in his experience (citing the Nelson and Tasman plan's relevant provisions to the contrary).[34]

**Consideration**

61. In terms of the standard, the Plan needs to be clear that the setbacks required do not apply to right of way areas. The Panel accepts the amended standard as recommended with minor further amendments (the amendment ties with the notified definition of 'site' which excludes rights of way and bulk and location rules). In the course of this consideration, as a consequence, the Panel needed to consider the definition of site as it affected bulk and location requirements generally. On doing so the Panel was concerned that the last paragraph addressing the treatment of rights of way areas in respect of all bulk and location

[32] Section 42A Report, paragraph 230.
[33] Section 42A Report, Reply to Evidence, GJ Gardner Homes and others, page 15.
[34] Section 42A Report, Reply to Evidence, page 16.

requirements was ambiguous and needed clarification. The notified wording of that paragraph was:

*Where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan must be treated as a legal boundary for the purpose of bulk and location controls for buildings.*

62. The Panel has decided that to ensure greater clarity to ensure the consequence of the amendment to include reference to 'on-site' is accurately achieved by adopting the following wording:

> *… Where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan shall not be included as the legal boundary but instead the inner boundary of the right of way closest to the building shall be treated as the must be treated as a legal boundary for the purpose of bulk and location controls for buildings.*

63. As a consequence, Appendix 26 Figure 1b also requires amendment to reflect the change in the Urban Residential 1 Zone, as set out in the Reply to Evidence.[35] A further consequential change is necessary to apply the same standard in the Urban Residential 3 Zone.

**Decision**

64. Standard 5.2.1.6 is amended as follows:

*On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26, except that a recession plane angle of 55 degrees, inclined into the site, applies in all cases on a road/street boundary. The recession plane angle must be measured ~~from a starting point 2m above ground level~~ at the ~~property~~ site boundary from a starting point 2.3m above ground level on sites within the Urban Residential 1 Zone, and 2.0m on sites within the Urban Residential 2 Zone.*

65. Standard 6.2.1.4. is amended as follows:

*On a site, no ~~No~~ part of a building must exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26, except that a recession plane angle of 55 degrees, inclined into the site, applies in all cases on a road/street boundary. The recession plane angle must be measured ~~from a starting point 2m above ground level~~ at the ~~property~~ site boundary from a starting point 2.3m above ground level on sites within the Urban Residential 3 Zone.*

[35] Section 42A Report, Reply to Evidence, page 15.

66. Figure 1b 'Recession Plan Cross Section' in Appendix 26, is amended to include the words '*(2.3m Urban Residential 1 Zone)'* next to '2m', as shown below:

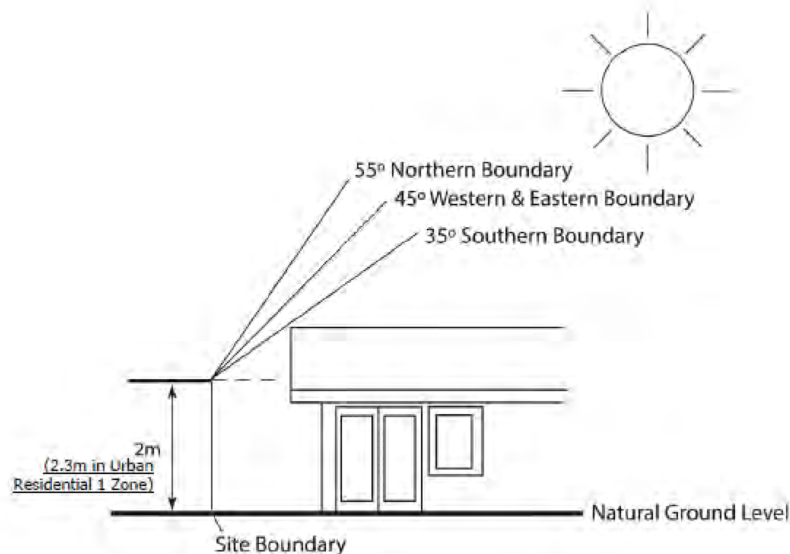

Figure 1b. Recession Plane Cross Section.

67. The final paragraph in the definition of 'site' is amended to read:

*… Where a right of way is employed, ~~the line(s) defining~~ the extent of that right of way on a survey plan shall not be included as the legal boundary but instead the inner boundary of the right of way closest to the building being assessed shall be treated as the ~~must be treated as a~~ legal boundary for the purpose of bulk and location controls ~~for buildings~~.*

## Standards applying to specific permitted activities

### Standard 5.3.7

**Relocated building**

### Standard 5.3.7.1.

**A building intended for use as a dwelling must have previously been designed, built and used as a dwelling.**

### Standard 5.3.7.2.

**All work required to reinstate the exterior must be completed within 6 months of the building being delivered to the site. This includes providing connections to all infrastructure services and closing in and ventilation of the foundations. The owner of the land on which the building is to be located must certify to the Council, before the building is relocated, that the reinstatement work will be completed within the 6 month period.**

### Standard 5.3.7.3.

**The siting of the relocated building must also comply with Standard 5.2.1.6.**

68. Coffey House Removals supports in part Standard 5.3.7.2, but wants the first sentence changed to '*All work required to reinstate the exterior must be completed within ~~6~~ 12 months*

*of the building being delivered to the site'*. The company does not give reasons why 12 months is necessary.[36]

69. House Movers support the standard in part.[37] It too does not provide reasons but requests that Standards 5.3.7.1 and 5.3.7.2 [and inferred 5.3.7.3 also] are deleted, and replaced with:

*5.3.7.a Any relocated building intended for use as a dwelling must have previously been designed, built and used as a dwelling.*

*5.3.7.b A building pre-inspection report shall accompany the application for a building consent for the destination site. That report is to identify all reinstatement works that are to be completed to the exterior of the building. A suggested pre-inspection report is attached as Schedule 2 in the submission.*

*5.3.7.c The building shall be located on permanent foundations approved by building consent, no later than 2 months of the building being moved to the site.*

*5.3.7.d All other reinstatement work required by the building inspection report and the building consent to reinstate the exterior of any relocated dwelling shall be completed within 12 months of the building being delivered to the site. Without limiting 5.3.7.c reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.*

*5.3.7.e. The proposed owner of the relocated building must certify to the Council that the reinstatement work will be completed within the 12 month period.*

*5.3.7.3f The siting of the relocated building must also comply with Standard 5.2.1.6.*

**Section 42A Report**

70. The report writer considers House Movers' request for a 12 month period to reinstatement is reasonable, and notes it would also meet the request of Coffey House Removals.

71. He also considers a report accompanying the building consent would be useful. However, it should not be called a pre-inspection report to avoid potential confusion with reports and processes under the Building Act 2004.

72. But the report writer prefers the term 'owner' of the land on which the house will be relocated to the term 'proposed owner' as the owner of the land can easily be established. Moreover, land use resource consents attach to a site, not to people.[38]

[36] Coffey House Removals (365.3 and .4).
[37] House Movers (770.9).
[38] Section 42A Report, paragraphs 263-264.

73. The report writer's recommended amendment[39] is as follows:

> *5.3.7.1 Any relocated building intended for use as a dwelling must have previously been designed, built and used as a dwelling.*
>
> *5.3.7.2 A report shall accompany the application for a building consent for the destination site that identifies all reinstatement works that are to be completed to the exterior of the building.*
>
> *5.3.7.3 The building shall be located on permanent foundations approved by building consent, no later than 2 months from when the building is moved to the site.*
>
> *5.3.7.4 All other reinstatement work required by the report referred to in 5.3.7.2 and the building consent to reinstate the exterior of any relocated building must be completed within 12 months of the building being delivered to the site. Without limiting 5.3.7.3, reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.*
>
> *5.3.7.5 The owner of the land on which the building is to be located must certify to the Council, before the building is relocated, that the reinstatement work will be completed within the 12 month period.*
>
> *5.3.7.6 The siting of the relocated building must also comply with Rule 5.2.1.*

74. In evidence, House Movers support the report writer's recommendations but would like a report template in the Plan as an appendix, and/or on the MDC website; and request that definitions be included in the Plan (these definitions were not covered in this hearing report, but have been coded to the Definitions chapter and are reproduced below:

> *Relocated Building means any previously used building which is transported in whole or in parts and re-located from its original site to its destination site; but excludes any prefabricated building which is delivered dismantled to a site for erection on that site.*
>
> *Removal of a Building means the shifting of a building off a site.*
>
> *Relocation of a Building means the placement of a relocated building on its destination site.*
>
> *Re-siting of a Building means shifting a building within a site.*

[39] Section 42A Report, Reply to Evidence, page 22

75. The report writer responds that the report template, in his view, is not so critical that it needs to be in the PMEP. He supports the template being promoted and used by the Council, but considers it is sufficient for this to be via the Council's website.

76. The report writer supports the inclusion of a 'relocated building' definition in the PMEP and considers there is no need to define in the Plan the other three terms. Having said that, there is merit in including in the 'relocated building' definition an element from the suggested definition for 're-siting of a building' as that would help clarify that relocating a building does not include re-siting a building within a site.[40]

**Consideration**

77. The Panel agree with the replacement of rules 5.3.7.1, 5.3.7.2 and 5.3.7.3 with six new standards as proposed by the report writer, with one minor amendment. In new standard 5.3.7.6, the reference to 'Rule 5.2.1' is amended to read 'Standard 5.2.1'.

**Decision**

78. A new definition be included in Chapter 25 as follows:[41]

*Relocated Building means any previously used building which is transported in whole or in parts and re-located from its original site to its destination site; but excludes any prefabricated building which is delivered dismantled to a site for erection on that site and any building which is shifted within a site.*

### Objective 12.7

**Reverse sensitivity effects on adjoining residential zones from activities within business and industrial zones are avoided.**

79. One submitter supported the policy and another supported in part, seeking amendments to the wording to widen the latitude of the objective to reflect the broader description in the overarching Issue.[42]

80. Two submitters opposed the objective. The first on the basis that it confused the concept of reverse sensitivity, where reverse sensitivity effects on business and industrial activities should be avoided rather than reverse sensitivity effects on residential properties. The other sought the replacement of the overarching Issue and consequently the objective to support it.[43]

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[40] Section 42A Report, Reply to Evidence, page 23.
[41] House Movers (Heavy Haulage Association) (770.21).
[42] NMDHB (280.58), KiwiRail (873.39)
[43] Fonterra (1251.96), Mark Batchelor (278.1)

**Section 42A Report**

81. The report writer agreed with the concerns raised by KiwiRail and Fonterra that the objective confuses the concept of reverse sensitivity. However, he notes the explanatory text to the objective does not refer to reverse sensitivity; instead it is concerned with 'protection of the amenity along the interface of business and industrial areas with adjoining areas'.

82. The report writer proposes two aspects to manage the zone interface that have not been fully addressed in the objective, these being:

    *(a) managing reverse sensitivity (the potential for residential activities to impact on lawful business and industrial activities), and*

    *(b) business and industrial activities properly managing their effects, so as to minimise adverse effects outside their sites, and their zones.*

83. After the hearing of evidence, the report writer suggested the following amendments to the objective to address these.

    *~~Reverse sensitivity~~ Adverse effects, including reverse sensitivity, ~~on adjoining~~ across zone boundaries between residential zones, ~~from activities within~~ and business and industrial zones, are minimised, and avoided where possible.*[44]

**Consideration**

84. The Panel concluded that by requiring reverse sensitivity effects to be avoided in the objective as notified had too great an emphasis on reverse sensitivity effects alone. In the Panel's view the objective should be aimed at minimising all adverse effects between zones, including reverse sensitivity as one of those effects, by avoiding or mitigating such effects.

85. The Panel did not agree fully with the recommended wording in the Reply to Evidence and preferred to use the word 'mitigated' with either avoidance or mitigation of adverse effects, including reverse sensitivity, being options.

**Decision**

86. Objective 12.7 is amended to read:

    *Objective 12.7 ~~Reverse sensitivity~~ Adverse effects across zone boundaries between ~~on adjoining~~ residential zones and ~~from activities within~~ business and industrial zones, including reverse sensitivity effects, are avoided or mitigated.*

[44] Reply to Evidence, page 26.

**Policy 12.7.1**

**Business and industrial activities are appropriately separated from the boundary of adjoining residential zones so that any adverse effects on residential activities are avoided, remedied or mitigated through:**

**(a) establishing setbacks for industrial activities from a residential boundary;**

**(b) screening of business or industrial outdoor storage areas from a residential boundary;**

**(c) restrictions on light spill;**

**(d) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; and**

**(e) standards for dust and odour.**

87. Several submitters support the policy and seek its retention as notified. One submitter requests that the policy is replaced because it does not give effect to Objective 12.7 and further states reverse sensitivity can be managed in a number of ways including the provision of appropriate separation distances between conflicting zones and ensuring that activities establish in zones appropriate to their amenity requirements (wording provided);[45] under Policy 12.5.6 another submitter was concerned about reverse sensitivity from activities in sensitive zones extended towards the Industrial 2 Zone affecting the permitted industrial activities – he seeks a new sensitivity policy that is concerned with recognising the effects of extending or providing for the extension of sensitive activities (subdivision, zoning, resource consents) towards high levels of effects (the report writer proposes addressing the relief sought under Policy 12.7.1);[46] another submitter in a submission discussing Objective 12.7 seeks the inclusion of various new policies to address the residential and business/industrial interface. The policies sought are under Objective 12.7.[47]

**Section 42A Report**

88. The report writer's preferred approach to addressing these submissions (given the array of approaches sought which range from seeking new policies to replacing the existing policy), is to amend the existing policy to better focus on the management or 'spill over' effects from business and industrial activities, and to include a new policy focused on management of reverse sensitivity along the lines proposed by Fonterra in new Policy 12.7.2.[48]

89. The report writer recommends that Policy 12.7.1 is amended as follows:

*Policy 12.7.1 - Business and industrial activities are managed ~~appropriately separated from the boundary of adjoining residential zones~~ so that any adverse effects on*

[45] Fonterra (1251.97).
[46] Timberlink (460.16).
[47] Mark Batchelor (278.1).
[48] Section 42A Report, paragraph 433 and Reply to Evidence, page 29.

*~~residential activities~~ adjoining residential zones are avoided, remedied or mitigated through:*

*(a) establishing setbacks for industrial activities from a residential boundary;*

*(b) screening of business or industrial outdoor storage areas from a residential boundary;*

*(c) restrictions on light spill;*

*(d) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; ~~and~~*

*(e) standards for dust and odour;*

*(f) standards for vehicle parking; and*

*(g) requirements for landscaping.*

90. The report writer recommends a consequential amendment be inserted into the explanation to Policy 12.7.1 as follows:[49]

*This policy recognises that some activities may result ~~in reverse sensitivity~~ conflicts at the boundary of some zones. The inherent nature of industrial activities means that, for example, higher noise levels will be produced intermittently through the use of machinery related to light manufacturing and production, or that there may be increases in traffic generation. This policy describes a range of matters for which standards will be applied to business or industrial activities located immediately adjacent to another zones, such as Open Space Zones or Urban Residential Zones. These standards will be more stringent to ensure that ~~reverse sensitivity effects do not occur and that~~ the quality of residential environments is not lowered.*

91. The report writer also recommends that a new Policy 12.7.2 is added, after Policy 12.7.1, as follows:

*Policy 12.7.2 - Manage reverse sensitivity effects by:*

*(a) encouraging new business and industrial activities to locate in an appropriate zone;*

*(b) not allowing new business and industrial activities that are likely to have adverse effects to locate in residential zones;*

[49] Section 42A Report, Reply to Evidence, page 27.

(c) *discouraging residential activities (other than those provided for elsewhere) or sensitive receptors from locating in Industrial Zones where reduced amenity is recognised and provided for, or close to such zones;*

(d) *avoiding subdivision, rezoning or resource consents that bring residential activities or sensitive receptors close to Industrial Zones such that there may be adverse reverse sensitivity effects, unless those adverse effects can be avoided, remedied or mitigated;*

(e) *ensure adequate separation distances between residential activities, and business and industrial activities; and*

(f) *ensure that the adverse effects of industrial and business activities are adequately regulated.*

92. The report writer recommends a consequential amendment be inserted into the explanation to the new Policy 12.7.2 as follows:[50]

*This policy recognises that some activities may result in reverse sensitivity conflicts, and sets out a range of approaches to manage this. Part of the solution is industrial and business activities managing their adverse effects to minimise the degree they spill over onto other sites, and particularly into other zones. For some industries in particular, it is not possible to manage the effects within the site, and zones with appropriate industrial amenity have been established to allow these activities to operate. In those instances, it is important to provide separation distances between more sensitive activities and the industry or business, or to use other techniques (for example noise bunds) to manage any conflict. Sensitive activities are residential activities, and 'sensitive receptors' which are defined in Chapter 25 and include schools, daycare centres, hospitals and elder care facilities. Where industrial activities have been provided for and are lawfully established, it is important that their activities are not compromised by the encroachment of sensitive activities, or the establishment of such activities within the business and industrial zones, so that a new reverse sensitivity conflict arises.*

93. In evidence, several submitters support the wording proposed in Fonterra's submission, and not as the report writer recommended. Mark Batchelor noted an issue with the last clause in the proposed new policy *(f) ensure that the adverse effects of industrial and business activities are adequately regulated*. He was concerned this was in the reverse sensitivity policy and

[50] Section 42A Report, paragraph 438 and Reply to Evidence, page 27.

appeared to put added onus on the industrial and business activity, rather than the activity causing the reverse sensitivity effect.

94. The report writer's response to this evidence is that the recommended revised Policy 12.7.1 and revised Policy 12.7.2 adequately cover what the submitters seek but accepts they need modification. He noted the concern Mr Batchelor had with the last clause in the recommended policy and that it seemed to put a double requirement on the industry or business to improve. He agreed the clause may be removed.

95. The report writer also decided, as the result of discussion during the hearing, that he now recommends moving other clauses from Policy 12.7.2 into Policy 12.7.1. In that way, Policy 12.7.1 will focus on managing industrial and business effects to acceptable levels, while Policy 12.7.2 would focus on the perturbing activity and the more sensitive activity and what can be done to avoid that occurring to manage the reverse sensitivity effects.

**Consideration**

96. The report writer has specifically addressed reverse sensitivity effects and in his Reply to Evidence he recommended substantial changes to the wording of policies 12.7.1 and 12.7.2 These are addressed in his Reply to Evidence.

97. The Panel sought advice on a description of 'sensitive activities'. The report writer identifies that 'sensitive activities' are residential activities, and 'sensitive receptors' as defined include school, daycare centres, hospitals and elder care facilities.[51]

98. The Panel accepts the new provisions as recommended for the reasons given, with one amendment to Policy 12.7.2(c) 'ensure adequate separation distances between residential activities, and business and industrial activities'.

**Decision**

99. Policy 12.7.1 is amended as follows:

*Policy 12.7.1 - Business and industrial activities are managed ~~appropriately separated from the boundary of adjoining residential zones~~ so that any adverse effects on ~~residential activities~~ adjoining residential zones are avoided, remedied or mitigated through:*

*(a) encouraging new business and industrial activities to locate in an appropriate zone;*

*(b) not allowing new business and industrial activities that are likely to have adverse effects to locate in residential zones;*

*(c~~a~~) establishing setbacks for industrial activities from a residential boundary;*

[51] Section 42A Report, Reply to Evidence, pages 27-28. PMEP Chapter 25 Definitions, page 25-21.

*(d~~b~~) screening of business or industrial outdoor storage areas from a residential boundary;*

*(e~~c~~) restrictions on light spill;*

*(f~~d~~) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; ~~and~~*

*(g~~e~~) standards for dust and odour;*

*(h) standards for vehicle parking; and*

*(i) requirements for landscaping.*

100. As a consequential amendment that the explanation to Policy 12.7.1 is amended as follows:

*This policy recognises that some activities may result ~~in reverse sensitivity~~ conflicts at the boundary of some zones. The inherent nature of industrial activities means that, for example, higher noise levels will be produced intermittently with machinery related to light manufacturing and production, or that there may be increases in traffic generation. This policy describes a range of matters for which standards will be applied to business or industrial activities located immediately adjacent to ~~another~~ other zones, such as Open Space Zones or Urban Residential Zones. These standards will be more stringent to ensure that ~~reverse sensitivity effects do not occur and that~~ the quality of residential environments is not lowered.*

101. A new Policy 12.7.2 is added, after Policy 12.7.1, as follows[52]:

*12.7.2 Manage reverse sensitivity effects by:*

*(a) discouraging residential activities (other than those provided for elsewhere) or sensitive receptors from locating in Industrial Zones where reduced amenity is recognised and provided for, or close to such zones;*

*(b) avoiding subdivision, rezoning or resource consents that bring residential activities or sensitive receptors close to Industrial Zones such that there may be adverse reverse sensitivity effects, unless those adverse effects can be avoided, remedied or mitigated;*

*(c) ensure adequate separation distances between residential activities, and business and industrial activities.*

102. Explanatory text to the new Policy 12.7.2 is inserted as follows:[53]

[52] Fonterra (1251.97), Timberlink (4601.16), Mark Batchelor (278.1).
[53] Section 42A Report, Reply to Evidence, pages 29-30.

*Where industrial activities have been provided for and are lawfully established, it is important that their activities are not compromised by the encroachment of sensitive activities, or the establishment of such activities within the business and industrial zones, so that a new reverse sensitivity conflict arises. This policy recognises that some activities may result in reverse sensitivity conflicts, and sets out a range of approaches to manage this. Policy 12.7.1 above seeks to manage the adverse effects of industrial and business activities to minimise the degree they spill over onto other sites, and particularly into other zones. For some industries in particular, it is not possible to manage the effects within the site, and zones with appropriate industrial amenity have been established to allow these activities to operate. Policy 12.7.2 seeks to avoid more sensitive activities from limiting the legitimate operations of business and industrial activities. Approaches can include physically separating incompatible activities, or use of other techniques (for example noise bunds) to manage any conflict. Sensitive activities are residential activities, and 'sensitive receptors' (which are defined in Chapter 25) [and] include schools, daycare centres, hospitals and elder care facilities.*

### Standard 9.3.1.1

**A licenced premise must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.**

103. Progressive Enterprises seeks an exemption to provide for supermarket off-licences on the basis that these are likely to have reduced potential for adverse effects than other off-licences. It says a district plan is not the appropriate place for such a rule, and that if the rule is retained it is very likely that none of Progressive's existing supermarkets would be able to obtain a new liquor licence. In its view, such heavy control is draconian.[54]

**Section 42A Report**

104. The report writer identifies that Marlborough District does not have a Local Alcohol Plan. The Council relies on the district plan to regulate potential adverse effects of licensed premises on residential neighbours. The report writer advises that the District Licensing Authority explained that the Council at times has issues with the effects of licensed premises bordering residential areas, and that the rules in the district plans assist with regulating these effects.

105. Rule 9.3.1.1 applies in Business 1 Zone. In the WARMP as it currently applies to the CBD, licensed premises adjoining residential zones require discretionary resource consent. The activity status in Blenheim will remain the same. The report writer is unable to see why the submitter considers none of its existing supermarkets would be able to obtain a new liquor

[54] Progressive Enterprises (1044.12).

licence, at least in Blenheim Business 1 Zone, as the district plan environment proposed under the PMEP is essentially the same.

106. For Picton, the MSRMP does not require resource consent for licensed premises, but controls hours of operation generally, and has limits on noise received within residentially-zoned land. Existing licensed premises which were lawfully established would have existing use rights under s 10 RMA, provided the effects of the activity remained the same or similar in character, intensity and scale to those that existed before any rule in the PMEP became operative.

107. The current PMEP rule 9.3.1.1 would apply only to new premises or one expanding, and only if they adjoin the residential zone. Most sites within the Business 1 Zone would not be affected. In the report writer's opinion, the additional effects of the rule are very small, and they are reasonable in terms of controlling the potential adverse effects licensed premises could have on residential neighbours.[55]

108. The recommendation of the report writer is to retain Rule 9.3.1.1 as notified.

**Progressive Enterprises**

109. Evidence tabled by Zomac Planning opposes retention of the rule as follows:

- 'The existing supermarkets are protected by RMA existing use rights' (this, they consider, is a substandard resource management outcome). Licensing and renewal comes under the Sale and Supply of Alcohol Act 2012: the RMA existing use rights under s 10 relate to the use of land and its effects, not the sale of liquor.
- Progressive has three Countdown supermarkets (Redwoodtown, Springlands and Countdown Blenheim).
- The company accepts that some off-licence premises such as bottle stores can sometimes generate locality-related concerns. The same concerns do not arise with supermarkets.
- The submitter's preferred relief is deletion of the standard. Otherwise add the words '*provided that this rule shall not apply to any existing or proposed supermarket off-licence*'.

110. In response, the report writer does not accept that the rule is ultra vires. As he had noted in his Section 42A Report, the Council does not have a Local Alcohol Plan under the Sale and Supply of Alcohol Act and therefore relies on the district plan to regulate potential adverse

[55] Section 42A Report, paragraphs 523-525.

effects of licensed premises on residential neighbours. Nor does he accept that existing use rights do not apply.

111. On reconsidering the issue, however, the report writer accepts that supermarket off-licences are likely to be less of a problem near residential areas than other off-licences. He therefore can support Progressive's amended words '*provided that this rule shall not apply to any existing or proposed supermarket off-licence*'.[56]

**Consideration**

112. The supermarket seeks an exemption to provide for supermarket off-licences on the basis that these are likely to have more reduced potential for adverse effects than other off-licences. We agree because they are part of supermarkets and will be normally limited in what can be taken away. We also considered whether a better expression might be '*Except for supermarket off-licences'* and agreed this is more succinct.

113. There is a typographical error in Standard 9.3.1.1 in the notified Plan – the word 'licenced' is misspelled in the first line and should be replaced with 'licensed'.

**Decision**

114. Standard 9.3.1.1 is amended as follows:

*Except for supermarket off-licences, licensed ~~A licenced~~ premises must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.*

## Standard 10.3.1.1

**A licenced premise must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.**

115. Several submitters oppose the standard. Derry Properties Ltd submit that in the current WARMP Rule 36.1.1 states that in the Neighbourhood Business Zone at Springlands, the sale of liquor from a supermarket is a permitted activity. The proposed Standard 10.3.1.1 places a restriction on the Springlands site that they consider unnecessary, and that would make renewal of existing liquor licences unlikely. They seek that the standard is amended to ensure there is certainty for Springlands to operate a licensed premise and continue to obtain a new liquor licence.[57]

116. Progressive Enterprises oppose the standard and consider it should be deleted as the district plan is not the appropriate place for the rule and if the rule has any merit, it should be the

[56] Section 42A Report, Reply to Evidence, page 34.
[57] Derry Properties Ltd (682.1).

Local Alcohol Plan. The submitter reiterates if the rule is retained it is very likely that none of their existing supermarkets would be able to obtain a new licence.[58]

117. Progressive notes that the operative plan has sale of liquor from a supermarket as permitted. It seeks to add the words *provided that this rule shall not apply to any existing or proposed supermarket off-licence.* Progressive supported Derry Properties with similar evidence to that put forward on Standard 9.3.1.1.

118. Derry Properties in evidence had considered resource consent for all forms of liquor is restrictive, querying what would be the environmental effects of the company's café offering a glass of wine at lunch; and the effects of the supermarket increasing its internal space allocated to wine and beer sales. In the company's opinion, the rule should focus on the types of activities that create adverse effects, not approach licensing with a 'blanket approach'.[59]

**Section 42A Report**

119. Relying on his earlier discussion under Standard 9.3.1.1, the report writer identified new information. Derry Properties correctly states that Rule 36.1.1 in the WARMP provides that the sale of liquor for a supermarket is a permitted activity within the Springlands Neighbourhood Business Zone. Rule 36.1.1 also makes the sale of liquor from other commercial activities at Springlands a discretionary activity. This is irrespective of whether the site adjoins a Residential Zone. He is aware of two sites that sell alcohol within the Springlands Business 2 Zone. The Speights Ale House has a resource consent to operate, and would be able to continue under that consent. The Countdown Supermarket would have existing use rights if Rule 10.3.1.1 of the PMEP is confirmed, provided the effects of the activity remain the same or similar in character, intensity and scale to those that existed before any rule in the PMEP became operative.

120. While the example given, of the café selling wine with lunch, might seem benign and acceptable, the same may not be true of a bar that was open 10.00am to 10.00pm, or a bottle store, adjoining a residential site. The resource consent process provides the opportunity for the community to have input in to what sort of alcohol sale, if any, might be acceptable in these suburban commercial centres, which tend to be in close proximity to residential areas.

121. The report writer notes that the Business 2 Zone, if changed to remove the alcohol rule (which is within the scope of Progressive's submission) would apply to all the Business 2 locations across the district. Many of those sites are much smaller than Springlands (single or one or

[58] Progressive Enterprises (1044.15).
[59] Derry Properties Ltd, Mark Lile, Evidence, paragraph 10.

two lots) and close to dwellings. Bottle stores and bars could therefore be permitted under the PMEP.[60]

122. The proposed PMEP rule is more restrictive for supermarkets, but is less restrictive for other activities selling alcohol in that it applies only to sites adjoining a residential zone, rather than to the entire Springlands area. Because there is no Local Alcohol Plan, the report writer considers that the controls proposed in the PMEP are reasonable in terms of controlling the potential adverse effects licensed premises could have on residential neighbours.[61]

**Consideration**

123. The report writer supports the change for supermarkets while identifying the PMEP is a key tool setting community preferences in such matters.

124. However, the Derry Properties request also has implications for the introduction or renewal of a bar that is open 10.00am-10.00pm or a bottle store adjoining a residential site.

125. The Panel agrees that the resource consent process provides the mandated process by which the community may have input to what sort of alcohol, if any, may be acceptable in these commercial centres, which tend to be in close proximity to residential areas.

126. [The Panel agrees an exception for supermarkets should be included but considered the wording ‘Except for supermarket off-licences was more appropriate.]

127. There is a typographical error in Standard 10.3.1.1 in the notified Plan – the word ‘licenced’ is misspelled in the first line and should be replaced with ‘licensed’.

**Decision**

128. Standard 10.3.1.1 is amended as follows:

*Except for supermarket off-licences, licensed ~~A licenced~~ premises must not be on land adjoining any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.*

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[60] Section 42A Report, Reply to Evidence, pages 40-41.
[61] Section 42A Report, paragraphs 559-561.

## Standard 10.2.1.4

**A building in the Business 2 Zone in Blenheim, must have a veranda, and the veranda must:**

**(a) be self-supporting;**

**(b) not extend further than 2m from the front face of a building into the street;**

**(c) not extend closer than 0.5m to the street kerb;**

**(d) generally conform with adjoining verandas in regards to height, width, and depth of fascia.**

129. One submitter supports the standard in part.[62] It seeks an amendment to allow for the functional requirements of service stations. It proposes a new sentence be added at the end of the rule: *Except that a service station need not provide a veranda.* (Note this submission was lodged under Standard 10.1 of the Plan.)

130. Another submitter opposes the standard and seeks its deletion.[63] It submits that the standard puts an unnecessary requirement for a specified veranda to be established on all buildings in the zone.

**Section 42A Report**

131. The report writer supports the amendment requested by Z Energy as it is impractical usually for service stations to provide verandas over the street, due the nature of their business and buildings.

132. The report writer does not support the submission of Derry Properties. He notes that buildings without verandas will have existing use rights and will not have to provide one, and it will only apply to new buildings. Verandas are important for providing a pleasant environment for users of suburban and other small shopping centres, having social and economic benefits.[64]

133. In evidence, Derry Properties identified that half of the frontage at Springlands comprises supermarket car park. If the supermarket is extended, the company would have to seek resource consent as it does not have a veranda. The Speights Ale House does not have a veranda and that appears to work well. If land to the east of Speights were to be developed into an office or tourism-related activity, those buildings would have no purpose for a veranda.[65]

134. The report writer on considering this evidence largely agreed with Mr Lile. Having taken a closer look at the rule, the report writer concludes that 'it does not specify that it apply only to buildings that are built up to the road boundary (to provide shelter on the footpath). Policy

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[62] Z Energy (1244.12).

[63] Derry Properties Ltd (682.2).

[64] Section 42A Report, paragraphs 552-553.

[65] Derry Properties Ltd, Mark Lile, Evidence, paragraph 11.

12.6.1, which identifies streetscape amenity in business zones requires under clause (g) 'shelter is provided for pedestrians on footpaths in the form of a veranda …'.

135. The report writer concludes that Standard 10.2.1.4 should give effect to that policy but goes further and requires a veranda on any building, and on any of its sides, irrespective of whether that veranda would serve a useful purpose. He concludes this is unintended, as the rule's standards refer to the street and footpath, but fail to say that it only applies when buildings are occupying road frontage.[66]

136. As a result, the report writer considers an amendment to Standard 10.2.1.4 is recommended to resolve the concerns of both Z Energy and Derry Properties, as follows:

> *A building in the Business 2 Zone in Blenheim, must have a veranda <u>on that part of the building immediately adjoining the road boundary</u>, and the veranda must:*
>
> *(a) be self-supporting;*
>
> *(b) not extend further than 2m from the front face of a building into the street;*
>
> *(c) not extend closer than 0.5m to the street kerb;*
>
> *(d) generally conform with adjoining verandas in regards to height, width, and depth of fascia.*

**Consideration**

137. The standard should apply only to buildings that adjoin the road boundary and this has now been made clear, and in the consequential change.

**Decision**

138. Standard 10.2.1.4 is amended as follows:

*A building in the Business 2 Zone in Blenheim, must have a veranda <u>on that part of the building immediately adjoining the road boundary</u>, and the veranda must:*

*(a) be self-supporting;*

*(b) not extend further than 2m from the front face of a building into the street;*

*(c) not extend closer than 0.5m to the street kerb;*

*(d) generally conform with adjoining verandas in regards to height, width, and depth of fascia.*

139. As a consequential amendment, a similar change is also made to Standard 9.2.1.10 in the Business 1 Zone:

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[66] Section 42A Report, Reply to Evidence, page 39.

*A building must have a ~~A~~ veranda on that part of the building immediately adjoining the road boundary, and the veranda must:*

*(a) not extend further than 2m from the front face of a building into the street;*

*(b) not extend closer than 0.5m to the street kerb;*

*(c) be self-supporting.*

*Except that a veranda is not required on a service station.*

## Definitions

### Supermarket

140. One submitter supports in part the definitions but considers the 'commercial activity' definition is too wide; there is a significant difference between supermarket, greengrocer and butchers. It seeks inclusion of the following new definition of a 'supermarket' as follows:[67]

> *A retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for the consumption or use off the premises and includes lotto shops and pharmacies located within such premises and where liquor licences are held for each premise.*

141. The report writer in his original Section 42A Report noted that as there are no provisions that use the term 'supermarket', no definition is required.[68]

**Consideration**

142. The Panel noted that as it has now introduced an exemption for supermarket off-licences, a definition of 'supermarket' is now required.

**Decision**

143. The Panel accepts the definition of 'supermarket' proposed by Progressive Enterprises as follows:

*Supermarket means a retail shop where a comprehensive range of predominantly domestic supplies and convenience goods and services are sold for the consumption or use off the premises and includes Lotto shops and pharmacies located within such premises and where liquor licences are held for each premise.*

[67] Progressive Enterprises (1044.17).
[68] Section 42A Report, paragraph 698.

# Proposed Marlborough Environment Plan

# Topic 11: Coastal Environments

**Hearing dates:** 9 – 12 and 16 April 2018

**S42A Report Writer:** Debbie Donaldson and Ken Gimblett

**Conflicts of Interest:** Yes

**Interim decision:** Yes

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

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## List of Abbreviations

| | |
|---|---|
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| FIS | The Fishing Industry Submitters |
| Fish & Game | Nelson Marlborough Fish and Game |
| Hort NZ | Horticulture New Zealand |
| MDC | Marlborough District Council |
| NZDF | New Zealand Defence Force |
| NZTA | New Zealand Transport Agency |
| PMNZ | Port Marlborough New Zealand Limited |

## Fishing

### Issue 13C

**The depletion of wild fisheries in the Marlborough Sounds.**

### Objective 13.4

**The sustainable management of fisheries in the Marlborough Sounds.**

1. A number of submitters had considerable concerns about the inclusion of these provisions in the PMEP and queried: the lack of jurisdiction for Council to control the sustainable management of fisheries; the Council's role in the sustainable and integrated management of fisheries; the narrow scope of the issue that only relate to the Marlborough Sounds; the role of kaitiaki; the Council's support advocacy role.[1]

**Section 42A Report**

2. The report writer's recommendation, after exploring all the issues arising, was the Fishing section in Chapter 13 Use of the Coastal Environment should be deleted.

**Consideration**

3. After discussing this recommendation, the Panel decided that Issue 13C and Objective 13.4 provisions were inappropriate as worded. There is concern regarding legal jurisdiction issues as to the inclusion of provisions on fishing. It is necessary to amend the provisions to put the emphasis on fish habitats. The Council has no function to control the fisheries resources itself. This is the role of the Fisheries Act 1996.

**Decision**

4. The emphasis should be placed as a result on fish 'habitats', that is already achieved in Policy 8.2.12 which covers 13.4.1 and 13.4.2 in the context of habitats and methods 8.M.6 and 8.M.11 covers advocacy and support. On this basis decision made to delete the issue and subsequent provisions. However, advocacy in terms of the fisheries management role of MPI not covered by existing methods. Insert a new method in 8.M.11 as follows: "

   *There are a number of Crown agencies with statutory responsibilities that influence the management of the indigenous biodiversity of the Marlborough Sounds, including the fishery resources that exist in the coastal marine area. The Council will take steps to encourage discussions between these agencies to facilitate a discourse on the respective management roles of each agency and how they could be better integrated to achieve Objectives 8.1 and 8.2.*

[1] Burkhart Fisheries Limited and Lanfar Holdings (4) Limited (610.003), The Fishing Industry Submitters (710.030), Legacy Fishing Limited (906.003), PauaMAC 7 Industry Association Incorporated (1038.003).

5. As a consequence Issue 13C and Objective 13.4, Policy 13.4.1, 13.4.2 and Method 13.M.9 are deleted.

## Policy as to adverse effects of Subdivision, use and development

## Policy 13.1.1

**Avoid adverse effects from subdivision, use and development activities on areas identified as having:**
**(a) outstanding natural character;**
**(b) outstanding natural features and/or outstanding natural landscapes;**
**(c) significant marine biodiversity value and/or are a significant wetland; or**
**(d) significant historic heritage value.**

6. A number of submissions were made on this policy raising issues amongst the more significant changes requested such as whether it was consistent with the RMA; requests that 'avoid' be changed to 'avoid, remedy or mitigate in Policy 13.1.1; whether it should refer specifically to s 6(e) RMA matters; or to fisheries resources.

**Section 42A Report**

7. The Section 42A Report identified that the policy should be prefaced by aiming at 'inappropriate' adverse effects on 'characteristics and values' protected by the policy and recommended amendments to capture those points. The Reply to Evidence changed stance on the recommendation of the insertion of 'inappropriate' concluding it was unnecessary as the identification of values to be assessed addressed the issue of appropriateness.

8. The Section 42A Report also identified that the outstanding aspects as requiring protection in the NZCPS should be emphasised in the explanatory statement to the policy and made a recommendation to that effect, with the Reply report adding a recommendation of addition of reference to indigenous biodiversity.

**Consideration**

9. On the issue of whether 'avoid' should be changed to 'avoid, remedy or mitigate in Policy 13.1.1 the Panel had regard particularly to the NZCPS provisions and also considered the interrelationship and consistency of this Policy with Policy 8.3.1 which states:

> *Policy 8.3.1 – Manage the effects of subdivision, use or development in the coastal environment by:*
>
> *(a) avoiding adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(a) of the New Zealand Coastal Policy Statement 2010;*

*(b) avoiding adverse effects where the areas, habitats or ecosystems are mapped as significant wetlands or ecologically significant marine sites in the Marlborough Environment Plan; or*

*(c) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects where the areas, habitats or ecosystems are those set out in Policy 11(b) of the New Zealand Coastal Policy Statement 2010 or are not identified as significant in terms of Policy 8.1.1 of the Marlborough Environment Plan.*

10. The Panel decided the issues raised were best responded to by some changes which better aligned the policy with the distinctions in the NZCPS between effects as expressed in NZCPS Policy 11(a) and 11 (b). By doing that a better alignment with Policy 8.3.1 would be achieved.

11. The iwi concerns and s 6(e) RMA imperatives were best addressed by a specific reference to sites of significance specific and a more general reference to 'cultural values'. The latter also encompassed heritage values meaning that specific reference could be replaced in that way. Cross –references could also be made in the explanatory statement to Chapters 3, 6, 7, 8 and 10.

12. The broader fisheries effects issues are dealt with later in a separate consideration in this decision.

**Decision**

13. Amend Policy 13.1.1 by replacing it to read as follows:

*Protect against inappropriate subdivision, use and development by avoiding adverse effects on the characteristics and values identified as having:*

*(a) Outstanding natural character*

*(b) Outstanding natural features and/or outstanding natural landscapes;*

*and avoiding significant adverse effects on:*

*(c) marine biodiversity or cultural values and/or a significant wetland; or*

*(d) sites and places of significance to Marlborough's Tangata Whenua iwi;*

14. Amend the explanatory statement to read:

*Policy 13.1.1 identifies ~~four~~ <u>outstanding</u> significant matters upon which the adverse effects of activities are to be avoided <u>and requires significant adverse effects to be avoided on other values and sites</u>. These matters are given particular direction through the principles of the*

*RMA (Sections 6(a), (b), (c) and (f)) and through direction provided by NZCPS Policies 11, 13, 15 and 17. However, it is important to acknowledge that implementing the policy does not mean that all activities are prohibited from occurring in the areas with the identified values; it simply makes clear that any adverse effects of activities must be avoided in those areas, rather than being mitigated or remedied.*

*Other Chapters with provisions relevant to this Policy include Chapters 3, 6, 7, 8 and 10.*

### Policy 13.2.3

**To enable periodic reassessment of whether activities and developments are affecting the values of the coastal marine area, to encourage efficient use of a finite resource and in consideration of the dynamic nature of the coastal environment:**

**(a) lapse periods for coastal permits will be no more than five years; and**

**(b) the duration of coastal permits granted for activities in the coastal marine area for which limitations on durations are imposed under the Resource Management Act 1991 will generally be limited to a period not exceeding 20 years.**

15. This policy outlines that the timeframes for which coastal permits will be granted. Submissions in opposition to the policy were predominantly occupiers of the coastal environment and they raised concerns that a 20 year duration creates potential uncertainty for large investments. NZTA sought an exemption 'where a permit enables the development, operation, maintenance or upgrade of regionally significant infrastructure'. This position is supported in a further submission by Port Marlborough. Port Clifford raised a similar issue in the context of port development.

**Section 42A Report**

16. The report writer noted that the policy periodically allowed for the impacts of activities on the coastal environment to be reassessed. She considered that this was an appropriate approach given that the resource is finite, sensitive and dynamic, and is subject to demand for use from an increasing number or activities and users.

17. Another aspect highlighted by the report writer was the deliberate inclusion of "generally" in (b). Her view was that the policy therefore allowed for applications for duration in excess of 20 years to be made and considered on their merits.

18. The report writer concluded that there should be not change to Policy 13.2.3 in response to the submissions seeking longer coastal permit terms or exemptions from the policy.

**Consideration**

19. The starting point for the Panel's consideration of this matter was Section 123 and 123A of the RMA. These provide limited guidance as the term for a coastal permit can be granted up to a maximum of 35 years. In the case of coastal permits for aquaculture activities, the minimum duration is 20 years.

20. The Panel agrees with the report writer that the coastal environment is already a dynamic environment and will probably become even more so as a result of the effects of climate change. The Panel also heard evidence across the topic on the pressures that exist in the coastal environment as a result of increased resource use. In this context, the Panel agrees with the report writer that periodic assessment of adverse effects is appropriate and that the policy should remain as notified. The concerns of the submitters are alleviated somewhat by the notified wording of (b), which clearly anticipates that there will be circumstances where longer durations can be justified.

21. The Panel also took into account the issue raised by NZTA and Port Clifford with respect to regionally significant infrastructure. Provisions elsewhere in this Plan acknowledge the importance of regionally significant infrastructure to community wellbeing. Given the wording of (b), the Panel was of the view that the explanation to the policy should clearly signal that durations in excess of 20 years should be considered for coastal permits required to authorise regionally significant infrastructure.

22. However, a lingering concern of the Panel in this regard is the sea level rise and coastal inundation. The Panel carefully considered the interim direction[2] that should be provided by the Plan for managing for sea level rise as part of Topic 16. The decision on this topic records that new infrastructure should design for the H+ scenario (i.e., 1.52 metres).[3] The Panel's view therefore is that the addition to the explanation should only apply where the H+ scenario has been used in the design of the infrastructure. This direction will ensure a consistent approach with the climate change provisions of the Plan.

**Decision**

23. Retain the policy as notified but add the following text as a new paragraph at the end of the existing explanation:

    *Longer durations than those specified in this policy may be appropriate for regionally significant infrastructure. However, sea level rise will be a challenge to constructing and maintaining infrastructure in some parts of the coastal environment in the future. In this context, longer durations are only appropriate where the developers of the infrastructure have taken into account the H+ scenario in the design of the infrastructure. See climate change provisions for further details.*

[2] The direction that applies until the outcome of a DAPP process applies.
[3] Policy 19.2.2

## Mooring Number Limitations

### Policy 13.9.2

**Subject to the matters in Policy 13.9.1, moorings will be limited by:**
**(a) regarding as appropriate the installation of one mooring per Computer Register or Computer Unit Title Register to enhance access to private property;**
**(b) regarding as inappropriate a mooring where the applicant does not own land in the vicinity of the proposed mooring location, except in the case of collective moorings; and**
**(c) linking resource consent to a particular property/commercial activity, where consent is granted for a mooring to provide access to an applicant's property or for a boat associated with a commercial activity undertaken in the vicinity of the mooring site. Consent must then be transferred to the new owner(s) on the sale of the property/commercial activity.**

24. A submission by Taurewa Lodge Trust raised concerns at the limitation on the number of moorings in this policy. The Panel agreed with the reasoning and recommendation of the Section 42A Report that no change should be made to this policy particularly as the policy is subject to Policy 13.1.19 and the range of factors outlined there which provides a broad discretion to a decision-maker.

25. However, the Panel did decide some small changes to the explanatory statement would be of assistance in limited circumstances where other access options are constrained.

**Decision**

26. Amend the fourth sentence of the explanatory statement to Policy 13.9.2 to read:

*~~Avoiding the proliferation of moorings by~~ <u>L</u>imiting numbers to one per property will <u>generally</u> help to avoid adverse effects and leave enough coastal space for other landowners to locate moorings.*

27. Add the following sentence to the end of the explanatory statement to Policy 13.9.2:

*<u>Limited flexibility exists to consider special circumstances, particularly for those permanently residing in the Marlborough Sounds without road access.</u>*

## New Mooring design policy

### Policy 13.9.9

**In determining an application for a new mooring consideration should be given to the appropriateness of the mooring type and design proposed in order to reduce the ecological effects of seabed disturbance caused by the mooring.**

28. As a result of submissions expressing concerns as to the effects of standard swing moorings and in particular the mooring chain movements on the seabed causing major seabed disturbance, the Section 42A Report[4] had proposed that a new Policy 13.9.9 be included in the Plan to address those issues.

[4] Paragraph 463

29. That policy was criticised at the hearing as being by implication an endorsement of elasticized new mooring methods which were said to be inadequate and even potentially dangerous to vessels and/or people in severe wind conditions.

**Consideration**

30. The Panel accepted that the evidence produced at the hearing meant that the policy needed amendment to ensure that the two aspects of ecological effects on the one hand and health and safety effects on the other both needed consideration at consent stage. The Section 42A Report had also acknowledged that need but the Reply to Evidence report recommendation proposed a wording which might arguably be said to have elevated the ecological considerations above those of health and safety. The Panel, therefore, has split those two considerations to ensure neither has any implied priority.

**Decision**

31. Insert a new Policy and explanatory statement as follows:

*Policy 13.9.9 – In determining an application for a new mooring, (other than applications re-consenting existing moorings) consideration should be given to the appropriateness of the mooring type and design proposed in order to:*

*(a) reduce the ecological effects of seabed disturbance caused by the mooring in terms of Policy 8.3.1; while*

*(b) ensuring that the mooring type and design protects the health and safety of people and vessels.*

*There is evidence to demonstrate that that conventional block and chain moorings can cause damage to the sea bed as a result of heavy ground chain scoring that can occur within the 360 degree arc around the mooring block. The placement of moorings can therefore have adverse effects on seabed habitats surrounding the mooring, in particular within areas of ecological, conservation, or traditional values that are sensitive to disturbance. Policy 8.3.1 requires adverse effects to be either avoided, where the site is a significant site in terms of Policy 8.1.1 or avoided, remedied or mitigated where indigenous biodiversity values have not been assessed as significant in terms of Policy 8.1.1. Policy 8.1.1 provides the criteria for the assessment of significant biodiversity values.*

*This policy requires that consideration is given to other mooring types and design that would not disturb the seabed surrounding the mooring, whilst also ensuring the mooring type and design is suitable for the location, particularly in exposed settings, and protect the health and safety of people and vessels.*

## Policy request for 'Development' in Port Zone

### Policy 13.11.2

**Reclamation or drainage in the coastal marine area shall be avoided, unless:**

**(a) the activity to be carried out on the reclamation has to be adjacent to the coastal marine area; and**

**(b) It can be shown there are no alternative land-based sites available (above Mean High Water Springs); or**

**(c) the works are for the operational needs of ports within Port Zones or for the operational needs of marinas within Marina Zones, where they are consistent with other relevant policies of the Marlborough Environment Plan.**

32. Port Marlborough sought the inclusion of 'development' in subclause (c) of this policy.

33. Initially the report writer disagreed and in the Reply to Evidence report reiterated it was not necessary but then succumbed to the request and recommended it.

**Consideration**

34. The Panel took the view that it agreed with the original analysis of this request that the phrase 'operational needs' enabled all that the policies envisaged in terms of Policies 13.17.3 (d), (f) and (g) and 13.7.4 (g) which provide a policy framework around the ports and marinas. This change sought was not seen as necessary by the Panel.

**Decision**

35. The amendment requested is rejected.

## Disposal of dredged material

### Policy 13.12.1

**Proposals to dispose of dredged or other material in the coastal marine area must demonstrate that:**

**(a) no reasonable and practicable alternatives are available on land;**

**(b) the disposal will be undertaken in a location and at times of the day or year that will avoid (in the first instance), then remedy or mitigate adverse effects on:**

- **(i) the growth and reproduction of marine and coastal vegetation and the feeding, spawning and migratory patterns of marine and coastal fauna;**
- **(ii) navigational safety;**
- **(iii) other established activities located in the coastal marine area that are likely to be affected by the disposal;**
- **(iv) water quality, including an increase in water turbidity or elevated levels of contaminants;**
- **(v) shoreline instability or coastal erosion on adjacent coastal land; and**

**(c) in the case of dredged material, the site is located so as to avoid, as far as practicable, the spread or loss of sediment and other contaminants to the surrounding seabed and coastal waters through the action of coastal processes such as waves, tides and other currents.**

36. A number of submissions were made on this policy and the succeeding one 13.2.2. The Panel agreed with the Reply to Evidence approach and to the extent not amended by that report the reasoning and recommendations in the original report.

37. However, the Reply to Evidence recommended as follows for subclause (a):

*Policy 13.12.1 – Proposals to dispose of dredged or other material in the coastal marine area must demonstrate that:*

*no reasonable and practicable alternatives are available on land, or there is a legitimate use for material within the coastal marine area (such as part of reclamation)*

38. The Panel considers the word 'legitimate' in subclause (a) needs to be amended to "appropriate".

39. The only other area of reasoning or recommendations in the original report with which the Panel did not agree related to subclauses (c) and (d) where the report recommended the following amendments:

*(c) ~~in the case of dredged material~~, the site is located so as to avoid, as far as practicable, the spread or loss of sediment and other contaminants to the surrounding seabed and coastal waters through the action of coastal processes such as waves, tides and other currents.; and*

*(d) The material that is disposed is free from waste.*

40. The Panel did not agree that those changes were appropriate or necessary and preferred the notified wording. Subclause (c) is specific to dredged material and potential sediment effects but the policy is broader than dredged material ("…dredged and other material…". Removing the text from (c) therefore makes it apply to that other material which is not appropriate given the focus within (c) on sediment. In terms of (d) the concern was that another Panel decision created a new discretionary activity rule to enable restoration or creation of shellfish reefs using mussel shell disposed of at sea for restoration purposes. The new (d) would prevent that from happening as the shells would be "waste". In other words, there would be a conflict between the policy direction and the Panel's intent to enable to the extent possible restoration or creation of shellfish reefs.

**Decision**

41. Policy 13.12.1 is amended as follows:

*Policy 13.12.1 – Proposals to dispose of dredged or other material in the coastal marine area must demonstrate that:*

*no reasonable and practicable alternatives are available on land, or there is an appropriate use for material within the coastal marine area (such as part of reclamation);*

## Use of the foreshore by vehicles

### Policy 13.13.3

**Discourage the use of motorised vehicles on the foreshore where this will impact on ecological values or safety of other foreshore users, where the foreshore acts as protection from the sea or on cultural, heritage and amenity values.**

There are some locations around Marlborough's coastline where the foreshore environment is such that motorised vehicles can be used. However, the use of motorised vehicles can have adverse impacts on other beach users, from both a safety and amenity perspective, as well as on ecological, cultural and heritage values. Where there is the potential for these values to be affected this policy discourages the use of motorised vehicles. The policy gives effect to NZCPS Policy 20.

42. Submissions by Forest & Bird[5] and Cape Campbell Farm Limited[6] sought respectively that the word 'discourage' be strengthened and that motorbike usage also be addressed, while Federated Farmers sought the policy be restricted to recreational vehicles.

**Section 42A Report**

43. The report drew attention to NZCPS Policy 20 and stated that 'vehicles' are to be controlled if certain effects occur rather than specified types. As to the request to change the word 'discourage' the report concluded:

> *As outlined within the s32 where there is the potential for identified values to be affected, this policy discourages the use of vehicles, and provides a policy framework on which the Council and the Department of Conservation will liaise to identify areas, and determine the most effective method for control (such as exclusion of access) if deemed necessary. This approach is consistent with the direction provided within NZCPS Policy 20. I consider that Policy 13.13.3 as notified is able to achieve the outcomes sort by the submitter, and therefore recommend that the submission is rejected*

**Consideration**

44. The Panel received very strong evidence supported by compelling photographs showing the extensive nature of coastal uplift near Cape Campbell as a result of the recent earthquake and the ability of vehicles as a consequence to range far more widely than was previously possible as a result of tidal influences. The fact of widespread vehicle usage was obvious and the evidence of local farmers was compelling that the level of vehicle use had increased markedly since the earthquake.

45. The Panel had regard to NZCPS Policy 20 which provides:

> *Policy 20 Vehicle access*

[5] (715.303)
[6] (1051.003)

*(1) Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where:*

*(a) damage to dune or other geological systems and processes; or*

*(b) harm to ecological systems or to indigenous flora and fauna, for example marine mammal and bird habitats or breeding areas and shellfish beds; or*

*(c) danger to other beach users; or*

*(d) disturbance of the peaceful enjoyment of the beach environment; or*

*(e) damage to historic heritage; or*

*(f) damage to the habitats of fisheries resources of significance to customary, commercial or recreational users; or*

*(g) damage to sites of significance to tangata whenua;*

*might result.*

*(2) Identify the locations where vehicular access is required for boat launching, or as the only practicable means of access to private property or public facilities, or for the operation of existing commercial activities, and make appropriate provision for such access.*

*(3) Identify any areas where and times when recreational vehicular use on beaches, foreshore and seabed may be permitted, with or without restriction as to type of vehicle, without a likelihood of any of (1)(a) to (g) occurring.*

46. The Panel was concerned many of the potential adverse effects identified in that policy were present, or potentially likely to occur in the vicinity of Cape Campbell, bringing Method 13.M.18 into play. It provides:

*13.M.18 Bylaws*

*A bylaw promulgated under the Local Government Act may be used to control the use of vehicles on the foreshore.*

47. A consequential change to the explanation of Policy 13.3.1 is also considered necessary. Policy 13.3.1 identifies that a permissive approach will apply to recreational activities but also identifies exemptions to this approach. Those exemptions are consistent with Policy 13.13.3 as there is no conflict in the provisions. However, the Panel believes that Policy 13.3.1 would

benefit from a cross reference to 13.13.3 as the latter policy illustrates how the exemption operates.

48. The Panel noted that NZCPS Policy 20 uses the term 'control' which fits with the by-law Method specified in the Plan. It decided that word should be used to rather than 'discourage' so as to more closely align this PMEP policy with the NZCPS.

**Decision**

*Amend Policy 13.13.3 as follows:*

*Policy 13.13.3 – ~~Discourage~~ <u>Control</u> the use of motorised vehicles on the foreshore where this will impact on ecological values or safety of other foreshore users, where the foreshore acts as protection from the sea or on cultural, heritage and amenity values.*

49. Amend the explanatory statement to Policy 13.13.3 as follows:

*There are some locations around Marlborough's coastline where the foreshore environment is such that motorised vehicles can be used. However, the use of motorised vehicles can have adverse impacts on other beach users, from both a safety and amenity perspective, as well as on ecological, cultural and heritage values. Where there is the potential for these values to be affected this policy ~~discourages~~ <u>controls</u> the use of motorised vehicles. The policy gives effect to NZCPS Policy 20.*

50. Add the following sentence to the end of the existing explanatory statement to Policy 13.3.1.

*<u>In this regard, Policy 13.13.3 identifies that control is to be exercised with respect to the use of motorised vehicles on the foreshore in specific circumstances.</u>*

## Water Transportation effects

### Policy 13.14.1

**Enable water transportation activities where these do not have an adverse effect on the coastal environment.**

51. Submissions in respect of this Policy from a range of water transport users expressed concern that the Policy was worded in far too restrictive a manner so as to avoid all effects. The report writer agreed as did the Panel. However, the Panel wished to see a slightly different wording to that recommended by the report writer.

**Decision**

52. Amend the Policy as follows:

*Policy 13.14.1 – Enable water transportation activities where ~~these do not have an~~ adverse effect<u>s</u> on the coastal environment <u>are avoided, remedied or mitigated.</u>*

*Amend the explanatory statement to Policy 13.14.1 as follows:*

*Due to the nature of Marlborough's coastal marine area (the extensive sheltered waterways of the Marlborough Sounds) and its central location within New Zealand, a number of water transportation activities have been in operation here for some time. It is important that provision is made to enable the activities identified in Objective 13.14 to continue where there is ~~little~~ <u>minor</u> adverse impact on the coastal environment.*

## Policy 13.15.2

**Avoid, remedy or mitigate adverse effects on water transportation by:**

**(a) maintaining safe, clear navigation routes around headlands, unimpeded by structures;**

**(b) avoiding activities and/or locating structures within significant commercial shipping routes (including shipping routes from the Port of Picton, Havelock Harbour and from Waikawa Marina);**

**(c) avoiding emissions of light that could affect the safe navigation of ships;**

**(d) ensuring the safety of navigation and use of or access to mooring sites, boat sheds and ramps, jetties, wharves, ports, marinas, water ski access lanes and areas that provide shelter from adverse weather are not affected by activities or structures in the coastal marine area; and**

**(e) requiring structures to be maintained or marked in a way that protects the safety of water transportation activities.**

53. Various submissions were made on this policy with submissions and evidence at the hearing particularly centred around issues of what were recognised navigational routes or recognised anchorages.

**Section 42A Report**

54. The report writer recommended a range of wording changes to respond to some of those submissions particularly as to 'recognised navigational routes' and 'recognised anchorages of refuge both of which were recommended to be defined. However, in essence the report and the Reply to evidence recommended the notified approach to this method of identifying effects that required to be addressed on consent applications be retained.

**Consideration**

55. The Panel agreed with the reasoning and recommended changes in the Section 42A Report save in one or two respects. The principal area where a differing conclusion was reached related to whether or it was useful or not to attempt to define both 'recognised navigation routes' and 'recognised anchorages of refuge'.

56. The Panel agreed with the recommendation that there be a definition of 'recognised navigation route' and the wording recommended because as the definition recommended in the original report at paragraph 504 states there are routes of navigation which are '*a safe sea passage and commonly used by vessels navigating within that area.'*

57. By contrast it was clear from the evidence and submissions made at the hearing that anchorages of refuge are particularly needed in extreme weather events and they cannot be readily defined in terms of common usage. Much will depend on weather conditions at the time.

58. The Panel agreed otherwise with the recommendations as to amendments for this policy which are described in the decision below.

**Decision**

59. Amend policy 13.15.2 as follows:

*Policy 13.15.2 – Avoid, remedy or mitigate adverse effects on water transportation by:*

*(a) maintaining safe, clear navigation routes around headlands, unimpeded by structures;*

*(b) avoiding activities and/or locating structures within recognised navigational routes ~~significant commercial shipping routes (including shipping routes from the Port of Picton, Havelock Harbour and from Waikawa Marina)~~;*

*(c) avoiding emissions of light that could affect the safe navigation of ships;*

*(d) ensuring the safety of navigation and use of or access to mooring sites (including Mooring Management Areas), boat sheds and ramps, jetties, wharves, ports, marinas, water ski access lanes and areas that provide shelter from adverse weather are not affected by activities or structures in the coastal marine area; ~~and~~*

*(e) ensuring that areas that provide for anchorages of refuge are not adversely affected by activities or structures within the coastal marine area; and*

*(f) requiring structures to be maintained or marked in a way that protects the safety of water transportation activities.*

60. Insert a new definition in Volume 2 Chapter 25 as follows:

***Recognised navigational route*** *is a safe sea passage and commonly used by vessels navigating within that area. The recognised navigational route may be one used by commercial vessels to & from ports, and may also include pleasure craft routes which are normally used to navigate between popular destinations*

## Further Development at Waikawa Bay

### Policy 13.17.1

**Specific areas are identified for activities related to the operation of ports, port landing areas and marinas through a Port Zone, Port Landing Area Zone and Marina Zone, respectively.**

The use of zones enables activities to occur in specific and established areas of both the coastal marine area and land regarded as appropriate for the operation of ports/port landing areas/marinas. The zoned areas are based in part on facilities that have existed for some time with largely known effects. Some additional areas have been zoned in recognition of a need for expanded facilities; for example, the port in Shakespeare Bay (which is part of the Port of Picton).

Additionally, an area alongside the existing marina in Waikawa Bay remains undeveloped at notification of the MEP (9 June 2016), but has been zoned to provide opportunities in the future for additional berthage capacity.

The varying nature of ports in Marlborough is reflected in the differences in zoning approach and subsequent rules. For example, marina facilities in Havelock are co-located with port facilities, while smaller port landing areas have different rules than those for Picton or Havelock. This policy also helps to achieve the NZCPS, especially Policy 4, regarding the integrated management of natural and physical resources in the coastal environment.

61. In accordance with a past agreement to resolve an appeal in respect of aspects of the Marlborough Sounds Resource Management Plan Port Marlborough NZ Limited itself sought that a new rule creating non-complying status for any new marina development at Waikawa be inserted in the PMEP as follows:

> *xx. The construction of marinas within the Coastal Marine Zone in that part of the Coastal Marine zone defined as "Waikawa Bay" is a non-complying activity.*

**Section 42A Report**

62. The report writer pointed out that the Plan had no other rules creating non-complying status and that there was a danger of using non-complying status without specific strongly directed policy wording. The concern was then expressed as follows:

> *Without such clear, strong, objectives and policies, there is a risk that the threshold to meet the second test above (that of s104D(1)(b)) may be set too low, inadvertently allowing consents to be granted where it may not otherwise have been desirable to do so. I do not consider that within the MEP there are clear enough objectives and policies that relate specifically to avoiding or reducing further development in Waikawa Bay (apart from polices specifically relating to moorings) and that for these reasons a full effects, and policy assessment should be undertaken in line with a discretionary activity consent.*

63. For those reasons no change was recommended from the notified wording.

**Consideration**

64. The Panel acknowledged the good faith demonstrated by PMNZ requesting this rule, but it shared and agreed with the report writer's concerns as to the use of non-complying status.

65. However, on looking at the explanatory statement to the policy the Panel did note that there was a passage which appeared to be supportive of further development, which was possibly not consistent with the submitter's request. Nor was it consistent with the s.42A report view that a full effects assessment should be undertaken before any further development occurs. That passage stated:

> *Additionally, an area alongside the existing marina in Waikawa Bay remains undeveloped at notification of the MEP (9 June 2016), but has been zoned to provide opportunities in the future for additional berthage capacity.*

66. The Panel decided to delete that passage.

**Decision**

67. Delete the last sentence of the first paragraph of the explanatory statement to Policy 13.17.1

## Effects of Port and Marina activities

## Policy 13.18.2

**Ensure that activities occurring within Port, Port Landing Area and Marina Zones do not adversely affect water, air or soil quality within or beyond the zone boundary, by:**

**(a) the setting of standards for permitted activities;**

**(b) prohibiting the discharge of effluent from boats berthed within ports, port landing areas or marinas;**

**(c) requiring the provision of facilities for:**

- **(i) the collection and disposal of rubbish, sewage effluent and other wastes from boats;**
- **(ii) boat maintenance activities (including sanding and blasting effects); and**
- **(iii) the avoidance of contamination of water by the application and removal of antifouling paints.**

68. The submissions on this policy particularly focused on its aim as notified that the activities controlled "do not adversely affect" the quality of water, soil and air both within and beyond the zone boundaries.

69. The report writer accepted that the notified wording could be interpreted to mean adverse effects were to be avoided and that that was not the intent of the policy. The report recommended a wording to replace "do not adversely affect" with a wording that would 'manage' those effects.

70. The Panel agreed with the submitters and the Section 42A Report criticism of the notified wording but preferred to use the phrase that recognised some adverse effects would occur but emphasized the need to "reduce or mitigate" those adverse effects.

**Decision**

71. Amend the opening words to Policy 13.18.2 as follows:

*Policy 13.18.2 – Ensure that activities occurring within Port, Port Landing Area and Marina Zones ~~do not adversely affect~~ reduce or mitigate any adverse effects on water, air or soil quality within or beyond the zone boundary, by: …*

## Policy 13.18.4

**The environmental effects from activities within Port, Port Landing Area and Marina Zones are avoided, remedied or mitigated through the setting of standards so that:**

**(a) vehicle parking, access and loading do not adversely affect the operation of the port/marina, road system or safe pedestrian movement;**
**(b) signage enables public identification of port and marina operations but does not dominate the landscape;**
**(c) structures and buildings in the various Port and Marina Zones do not dominate the landscape, particularly when having regard to visual effects as viewed from the adjoining zones in Picton and Havelock;**
**(d) the location or height of buildings does not shade sites in adjacent zones;**
**(e) noise levels allow the zones to function effectively, but also minimise noise nuisance for surrounding residents; and**
**(f) light spill does not occur in adjoining Urban Residential, Open Space and Business Zones.**

72. Port Marlborough NZ Limited had requested that this policy be deleted. The report writer had responded that the policy appropriately set forth the matters which needed to be addressed by standards, but recommended in the Reply to Evidence that the word "Inappropriate" be inserted at the commencement of this policy.

73. The Panel agreed with the report writer's reasoning for not otherwise amending the policy, but did not consider that the word "inappropriate" at the commencement added anything of value to the policy as notified.

**Decision**

74. Retain Policy 13.18.4 as notified.

## Temporary Structure or equipment for scientific monitoring purposes

## Rules 13.1.20, 13.3.10, 14.1.10, 14.3.5, 15.1.17, 15.3.9, 16.1.12 and 16.3.9

75. Submissions on these structures concentrated on the time period that was appropriate to allow. Cawthron Institute in particular stressed the importance of these structures being in situ for a calendar year in the coastal marine area to ensure full seasonal and tidal cycle effects were recorded.

76. The Panel agreed with the extended periods recommended by the Reply to Evidence and for the reasons given, but NZTA's submission highlighted that some clarity was needed as to the purpose of a temporary structure as it had interpreted them as being independent of any

scientific monitoring role. The Panel decided that purpose need to be inserted in the opening words of the rules so that it is plain the rule enables both structures and equipment of a temporary nature for scientific purposes in each case.

77. The Panel also agreed with the Section 42A Report's recommendation that the Cawthron request be accepted as to a larger height being necessary for the monitoring equipment as these will be indeed temporary effects and still very limited in adverse effect even if increased from 1 to 2.5 metres. However, the Panel also noted the recommended wording for that increase did not specify from where the measurement was to be taken. That does need specifying as being from the water level.

78. The decision below then amends those two matters only with other reasoning and recommendations agreed as set out in the Reply.

**Decision**

79. Amend the opening words of the relevant rules to say:

*Temporary structure for scientific monitoring purposes or temporary equipment for scientific monitoring purposes.*

80. Amend subclause (x) to read:

*The structure or equipment must not exceed 2m in length, 2m in width and ~~1~~ 2.5 m in height above water level.*

## Port and Marina zone permitted activities

## Rule 13.1

81. The report writer made a number of recommendations with which the Panel agreed for the reasons in the reports to expand the permitted activities. One of those recommendations was to include reference to 'port activities' which are defined in Volume 2 Chapter 25. However, the report writer did not recommend that any amendment was made to meet the Port company's request to specifically enable use of service lines as part of the berthing process, the report writer's view being that was already covered by phrases such as 'other activities associated with…".

82. The Panel agrees with the Port company that it would be better for this activity to be expressly specified. That is easiest done in the definition of 'port activities' which have been inserted in rule 13.1 as permitted activities.

**Decision**

83. Insert the phrase “use of service lines” in the definition of ‘port activities’ in Vol 2 Chapter 25 so it reads:

*Port activities means activities normally associated with the operation of vessels and other water related activities; cargo, handling and storage; embarking, disembarking and transit of passengers; launching, retrieval and storage of vessels; berthage and mooring activities* *<u>and use of service lines</u>**; associated marshalling, parking, and manoeuvring of vehicles and trains, maintenance activities associated with port structures and development; and ancillary activities to the above.*

## Removal of submarine cables on replacement

## Rule 13.1.19.

**Replacement of a submarine or suspended cable or line.**

## And Standards 13.3.9.2, 14.3.4.2, 15.3.8.2, 16.3.8.2 and 16.3.8.3

84. In the Reply to Evidence the report writer recommended various changes to the notified standards to meet submission requests which the Panel agreed with for the reasons given. However, those standards related to increased allowances for laying of replacement cables.

85. A different issue which concerned the Panel related to the removal of existing redundant lines that were being replaced. The Panel decided that a new permitted activity rule was needed to permit that activity, but also an amended standard that a cable or line should not be removed from an ESMS area because of the potential for serious adverse effects on the ecologically sensitive species there.

**Decision**

86. Insert a new rule 13.1.20

*<u>13.1.20 Removal of a submarine or suspended cable or line</u>*

87. Insert a new standard for that permitted activity as follows:

*<u>13.3.9.x A cable or line must not be removed from a Category A or B Ecologically Significant Marine Site.</u>*

88. Amend the other relevant standards listed above by adding:

*…<u> except where it traverses through a Category A or B Ecologically Significant Marine Site.</u>*

## Port Landing zone activities

### Policy 13.17.5

**Recognise and provide for the following operational requirements of Port Landing Area Zones at Elaine Bay and Oyster Bay:**

**(a) shipping activities;**
**(b) cargo handling, storage of cargo and loading and unloading of ships;**
**(c) building and structures, wharves, mooring structures (excluding swing moorings) and launching ramps;**
**(d) marine fuel facilities;**
**(e) maintenance, repair, removal and replacement of buildings and structures;**
**(f) placement and maintenance of navigation aids; and**
**(g) signage.**

### Rule 14.1 Permitted Activities

89. In the event that the request of a number of submitters for some rezoning of these areas to Port Zone was not agreed to by the Panel, which was the case, then a request was made for certain port zone activities to be added to the list of port related permitted activities.

90. 67. The Panel only agreed with some of those requests, but as a consequence to enable proper operation of those changes a related policy enabling is also needed, and a new standard as to odour effects.

**Decision**

91. Amend Policy 13.17.5 to read as follows:

*Policy 13.17.5 - Recognise and provide for the following operational requirements of Port Landing Area Zones at Elaine Bay and Oyster Bay:*

*(a) shipping activities;*

*(b) cargo handling, storage of cargo and loading and unloading of ships;*

*(c) building and structures, wharves, mooring structures (excluding swing moorings) and launching ramps;*

*(d) marine fuel facilities;*

*(e) maintenance, repair, removal and replacement of buildings and structures;*

*(f) placement and maintenance of navigation aids;*

*(g) ship repair and maintenance;*

*(h) transportation activities; and*

*(i) signage.*

92. Add the following activities to the list of permitted activities in Rule 14.1:

*14.1.x Maintenance, storage, servicing or repair of equipment associated with marine farming or commercial fishing*

*14.1.x Transportation activity including the construction of road, right-of-way or path, the construction of a vehicle or trailer parking, manoeuvring and transit, or transit or maintenance operations*

93. Include a new permitted activity standard 4.3.13.1:

*The storage of marine farming equipment must not cause objectionable odour at or beyond the boundary of the Port Landing Area Zone.*

## Anchoring Ecologically Significant Marine Sites

94. Submitters raised requests for amendments to Objective 13.7 and the provisions that seek to achieve the objective, to exclude anchoring within Ecologically Significant Marine Sites.

### Section 42A Report

95. The report writer considered the recommendations contained in the Section 42A Report for Topic 6. Mr Andrew Maclennan, the report writer for Topic 6, recommended that anchoring be prohibited from Category A sites based on the report "Reassessment of selected significant marine sites (2014-2015) and evaluation of protection requirements for significant sites with benthic values".[7] On this basis, the report writer for this topic recommended additions to Objective 13.7 and Policy 13.7.1, and a new standard for 16.3.2, to reflect that anchoring should not occur in Ecologically Significant Marine Sites. She also repeated the recommendations from Mr Maclennan's report with respect to the new appendix (Appendix 27) and the prohibited activity rule.[8]

### Consideration

96. Objective 13.7 and Policy 13.7.1 are enabling provisions for the anchoring of boats in the coastal marine area.

97. The potential for anchoring to adversely affect Ecologically Significant Marine Sites has been addressed in the Topic 6 decision. The Panel decided to create Category A sites within which anchoring (amongst other activities) is a prohibited activity.

98. This outcome clearly indicates that anchoring should not be enabled in all locations. The Panel therefore concurs with the report writer's recommendations that Objective 13.7, 13.7.1 and

[7] Topic 6 Indigenous Biodiversity, Section 42A Report (Maclennan), page 66
[8] Section 42A Report, page 75

Standard 16.3.2 need to be adjusted. In respect of the recommended inclusion of "…in appropriate locations" to Objective 13.7, the Panel considers that additional explanation is required to elaborate on the addition (similar to the recommended addition to the explanation of Policy 13.7.1).

**Decision**

99. Amend the explanation for Policy 13.7.1 as follows:

*…The objective seeks to enable use of the coastal marine area for this purpose. There are locations where anchoring has the potential to adversely affect the marine environment and anchoring over these sites would not be appropriate.*

## Anchoring of marine farm vessels

### Policy 13.7.2

**Restrict the long-term or permanent anchorage of boats.**

### 16.3.2. Anchoring of a ship.

### Standard 16.3.2.1.

**The ship must not be anchored to the foreshore or seabed for more than 60 consecutive days or more than 90 days within any 12 month period, within the same embayment, inlet, or estuary.**

100. The submissions of Counsel for the aquaculture industry on this issue sought an exemption for marine farm barges. Those submissions provided some practical examples of the needs for aquaculture anchoring to occur on a longer term basis that the notified policy and rule allow. :

> *Permanent barges are integral to some aquaculture operations, such as accommodation and feed storage barges used on salmon farms, or the barge for sorting and grading oysters, which minimises the time juvenile oysters spend out of the water in Croisilles Harbour.*

101. The report writer was of the view that this issue should be left for the aquaculture section of the PMEP to address.

102. However, the Panel was cognizant of the reality of what is and has been an integral part of some sectors of the aquaculture industry which it felt needed to be recognized. It decided that an exemption to enable such activities to continue should be provided for now.

**Decision**

103. Add the following sentence to the explanation of Policy 13.7.2:

*This policy does not apply to the anchoring of marine farm barges and structures.*

104. Add to the start of Standard 16.3.2.1:

*Except for marine farm barges or structures, …*

### Shellfish reef restoration

### Rule 16.6 Discretionary Activities

105. The aquaculture industry faces a major issue with shell disposal. It wishes to have the opportunity recognised in the PMEP to be able to seek consents to establish shellfish reef restorations as one possible avenue for disposal with a sustainable purpose. NIWA supported that request. The outcome is said to be a potential for significant environmental and/or ecological benefits, akin to those which have been trialled apparently successfully in the Hauraki Gulf. The industry sought provision by way of permitted activity.

106. The Panel agreed with the report writer's view that discretionary activity was needed to ensure effects were managed appropriately but noted that the report left the matter as falling with the generic discretionary activities status in the coastal marine area. Without wishing to pre-empt the outcome of any consenting process the Panel nonetheless felt there was sufficient potential merit in the concept that it should be identified in a positive manner by a specific activity addition to the list of discretionary activities in Rule 16.6.

**Decision**

77. Amend rule 16.6 by inserting a new Rule 16.6.6 as follows:

<u>*16.6.6 Restoration or creation of shellfish reef*</u>

### Temporary Recreation Buoys

### Rule 16.1.8.

**Marine navigational aid (including lighting) and any supporting structure.**

### Standard 16.3.6.

**Marine navigational aid (including lighting) and any supporting structure.**

### Standard 16.3.6.1.

**The erection or placement of a marine navigational aid (including lighting) must be carried out by, or on behalf of, Maritime New Zealand.**

### Standard 16.3.6.2.

**Prior to installation, the GPS mapping co-ordinates and a description of the marine navigational aid must be provided to the Harbour Master.**

107. Recreational users of the Sounds such as the Waikawa Boating Club will sometimes run yachting or other marine recreational events which require the laying out of a course or route marked by temporary buoys and understandably they seek to avoid having to seek resource consents for that long-standing practice.

108. The report writer recommended that there be no change to the rules which can be interpreted to allow what practically occurs now i.e. that the Harbourmaster has authority to control what occurs.

109. The Panel, however, considered that standard 16.3.6.1 as notified requires involvement of Maritime New Zealand which is not required for such temporary local events where the Harbourmaster's authority is all that is needed as has occurred in the past. Specific recognition of that method of authority is required.

**Decision**

110. Amend Standard 16.3.6.1 to read:

*16.3.6.1. The erection or placement of a marine navigational aid (including lighting) must be carried out by, or on behalf of, Maritime New Zealand, or be placed in accordance with authority issued by the Harbourmaster.*

## Naval vessels

### Rule 16.4.2.

**Use of surface water within the National Transportation Route by a high speed ship, or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots, including any associated disturbance of the foreshore or seabed.**

Any application for Resource Consent under Rule 16.4.2 will require public notification.

111. NZDF asserted that this rule was in breach of s 95 RMA requiring notification its submission reading:

> *3. Rule 16.4.2 – Use of surface water*
>
> *NZDF would also like to raise a matter regarding the requirement for public notification of controlled activity rule 16.4.2, relating to the use of water by ships. Requiring public notification for an application that has controlled activity status is not practical or efficient and cannot be supported with reference to any Section 32 analysis. Importantly, this requirement is also contrary to the notification provisions of the Resource Management Act 1991, as section 95A(5)(a)(i) specifically states that controlled activities are precluded from public notification.*
>
> *NZDF suggests that the Panel reconsider this provision and remove the requirement for public notification in relation to rule 16.4.2.*

112. The report writer had reported that in the Harbourmaster's view similar adverse effects could arise from high speed naval vessels as occurred from high speed ferry wash, and for that reason recommended no change in the notified provision.

**Consideration**

113. The provisions of s 95A (5)(a)(i) of the RMA are part of the highly complex 'step' provisions for notification. The Panel agreed on carefully working through the 'steps' in s 95 that the

controlled activity rule in the PMEP could not in terms of earlier steps require public notification.

114. However, the Panel wished to record its view that it was highly likely that the Council as consent authority acting under Step 4, which requires consideration of whether special circumstances required public notification, would conclude that public interest in such applications was so high that it was appropriate to require public notification.

115. In short the amendment sought by way of deletion of the compulsory public notification will be have to be granted, but in practical terms the result may well end up being the same pursuant to Step 4 in s 95A.

**Decision**

116. Remove the requirement for mandatory public notification in Rule 16.4.2.

## Beach renourishment standards

## Standard 16.3.12.

**Deposition of sand for beach replenishment or beach renourishment.**

**16.3.12.1. The deposition must be carried out by, or on behalf of, the Marlborough District Council.**
**16.3.12.2. Sand deposition must be limited to the amount necessary to replace what has been lost through natural processes.**

*117.* Iwi submitters Te Atiawa and Ngati Kuia expressed concerns as to aspects of this beach renourishment process seeking more detailed standards as to the type of sand to be used. The Reply to Evidence agreed with those requests and recommended extra standards with which the Panel also agreed with one exception. The second of those additional recommended standards recommended the inclusion of a requirement that the sand used must be "*free from noxious or toxic organisms".*

118. Whilst as a goal that is obviously desirable, as a standard with which absolute compliance is required, it is too prescriptive. Moreover, the Panel drew confidence from the standard requirement that the deposition must be carried out by or on behalf of the Council which is the very body charged with ensuring adverse effects of that nature are avoided.

**Decision**

119. Insert two additional standards in Standard 16.3.12 as follows:

*16.3.12.1 The activity is undertaken at Shelley Beach, Picton Foreshore or Waikawa Bay.*

*16.3.12.4 Sand used for beach replenishment must be of the same grain size as the beach to be replenished.*

## Burial Protocols for marine carcasses on foreshore

**Standard 16.3.14.**

**Burial of a dead marine mammal or other dead marine fauna on the foreshore.**

**16.3.14.1. The marine carcass must have either resulted from a stranding or have been washed up on the foreshore through natural tidal processes.**

**16.3.14.2. It must not otherwise be practical to move the carcass to a more appropriate disposal location.**

**16.3.14.3. Iwi representatives must be notified prior to the commencement of the burial.**

**16.3.14.4. Disturbance to the foreshore or seabed must be limited to the minimum amount of disturbance necessary for carcass burial.**

120. Iwi concerns to be notified at as early a stage as practicable were agreed to by the Panel. The Addendum Report had recommended a wording which met that request in part, but worded the standard as requiring notification "*on discovery and prior to the commencement of the burial*." The Panel wished to see reference to an emphasis on early notification inserted in the notification requirement.

**Decision**

121. Amend Standard 16.3.14.3 to read as follows:

*16.3.14.3 Iwi representatives must be notified <u>as early as practicable after discovery and</u> prior to the commencement of the burial.*

## Building heights at Lake Grassmere

### Standard 22.2.1.

**Construction and siting of a building or structure.**

**22.2.1.1. A building or structure constructed or sited within 500m of mean high water springs must not exceed 8m in height.**

**22.2.1.2. A building or structure constructed or sited within the Lake Grassmere Salt Works Administration, Workshops, Salt Refining and Processing Area must not exceed 15m in height.**

**22.2.1.3. Notwithstanding 22.2.1.1 and 22.2.1.2, a building or structure must not exceed 10m in height.**

122. Dominion Salt expressed concern at the use of the word "notwithstanding" at the start of standard 22.2.1.3 and requested it was replaced with 'any building not coming within'.

123. The report writer recommended instead "Any building or structure to which Rule 22.2.1.1 and 22.2.1.2 does not apply, must not exceed 10m in height."

124. The Panel preferred the wording to be as in the decision below.

**Decision**

125. Amend Standard 22.2.1.3 to read as follows:

*<u>Any building or structure is not covered by Rule 22.2.1.1 and 22.2.1.2, must not exceed 10m in height.</u>*

### Boat sheds

### Policy 13.10.19

**The purpose of a boatshed shall be to house boats and boating equipment. Where a boatshed is to be located in the coastal marine area or on land immediately adjacent to the coastal marine area and its use differs from the purpose described above, the activity is inappropriate in the coastal environment and is to be avoided.**

126. A boatshed cannot be used for anything other than storing a boat or boating equipment. Given the public nature of the coastal marine area and reserve land adjacent to the foreshore, it is important a boatshed is used for the purpose for which consent was sought. Where this ceases to occur, the building should be removed.

127. A number of submissions were made in respect of the policies addressing the issues of boatsheds and slipways particularly seeking a lessening of the management of effects by policies in the notified Plan.

128. The reasoning and recommendations of the Section 42A Report were accepted by the Panel in respect of most issues raised by those submissions. However, some limited wording changes were made in the wording of the explanatory statement to Policy 13.10.19 recommended in the Section 42A Report so as to ensure clearer guidance was provided a to the sole purpose of use in any consent and the opportunity for removal being required if that sole use was not adhered to.

**Decision**

8. Amend the explanatory statement to Policy 13.10.19 as follows:

*A boatshed cannot be used for anything other than storing a boat or boating equipment. Given the public nature of the coastal marine area and reserve land adjacent to the foreshore, it is important a boatshed is used solely for the purpose for which consent was sought. Where this ceases to occur, the building ~~should~~ may be required to be removed.*

## National Transportation Route (NTR)

129. The NTR is mapped on the NTR Overlay Map and is the transportation route through Tory Channel and Queen Charlotte Sound that is of national significance for shipping activity. The extent of the NTR Map is as outlined on the NTR Overlay within Volume 3 of the PMEP.

130. A number of submissions relating to the NTR seek: reduction of the NTR to apply only to the main channels of the Tory Channel and Queen Charlotte Sound with the exclusion of the side bays - an NTR overlay within Volume 4 PMEP requires amendment to reflect this

requirement;[9] extension of the NTR overlay to include the Port Zone at Clifford Bay;[10] extension of the NTR to include the 'Northern Entrance' to Queen Charlotte Sound.[11]

131. To protect against wave effects particularly in side bays, ship speed is limited to 15 knots in the PMEP, as it was under the MSRMP. If submissions are accepted, it would allow large and fast ships to seek resource consent to travel at 15 knots through the Queen Charlotte Sound 'Northern Entrance' as a controlled activity.

## Rules and standards governing ship speeds in Queen Charlotte Sound

**Rule 16.1.1. Use of surface coastal water by a ship in the National Transportation Route and Queen Charlotte Sound.**

- Use of surface water by a ship within the NTR is a permitted activity under Rule 16.1.1.
- This activity is subject to Standards 16.3.1.1 and 16.3.1.2 that restrict the speed of 'high speed ships' and 'ships exceeding 500 gross registered tonnes' within the NTR and Queen Charlotte Sound to 15 knots.

**Rule 16.3.1 - Use of surface coastal water by a ship in the National Transportation Route and Queen Charlotte Sound;**
**Standard 16.3.1.1 - A high speed ship must not exceed a ship speed of 15 knots.**
**Rule 16.4.1 – Use of surface water by a high speed ship or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots in the National Transportation Route for the purposes of undertaking measurements of Wave Energy, including any associated disturbance of the foreshore or seabed.**

132. The development of the management framework of the NTR and rules were imposed to manage the wake effects of the large and fast ships. The framework was introduced through Variation 3 to the MSRMP and has been operative since 2008. The characteristics of the framework identify:

**Standard 16.4.1.1 - A resource consent will apply only to the ship for which consent has been obtained and will be distinguished by the International Maritime Organisation number and name.**

133. High speed ships or ships that exceed 500 gross registered tonnes exceeding 15 knots within the NTR require consent as a controlled activity under Rules 16.4.1 and 16.4.2 subject to the standards and terms outlined in these rules.

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[9] *AQNZ (401.150, 291), Marine Farming Association (426.155, 282), Salvardor Delgado Oro Laprida (218.005), Apex Marine Farm Limited (544.021), Lloyd Sampson David (890.021), New Zealand King Salmon Company (997.003) and Sanford Limited (1140.101).*

[10] *Port Clifford (1041.054).*

[11] *Strait Shipping (790.008) and KiwiRail (873.193).*

**Rule 16.4.2 - Use of surface water within the National Transportation Route by a high speed ship, or a ship that exceeds 500 gross registered tonnes, which is travelling at a ship speed exceeding 15 knots, including any associated disturbance of the foreshore or seabed.**
**Standard 16.4.2.1 - The ship must not propagate waves that exceed the Wash Rule identified in Appendix 12 in the National Transportation Route.**

134. This rule restricts wave energy and requires measurements at approved measurement sites listed within the Appendix.

135. Ships must not exceed the Wash Rule identified in Appendix 12 Determination of Wave Energy.

**Omission**

136. The MSRMP applies prohibited status to the 'Use of surface water within that part of Queen Charlotte Sound not on the National Transportation Route by high speed ships, or ships that exceed 500 gross registered tonnes, which are travelling at ship speeds greater than 15 knots'[12]. QCSRA notes that this prohibited activity rule has not been carried through to the PMEP. This fact results in a high-speed or large ship exceeding 15 knots in other parts of Queen Charlotte Sound, not on the NTR, being a discretionary activity under the PMEP.

137. This omission has certain ramifications for Strait Shipping and KiwiRail which are unexpected.

**Reduction in the extent of the NTR to exclude side bays**
**Section 42A Report**

138. The submissions on this issue have received priority from the marine farming and fishing industry representatives. The submissions also request that the NTR overlay within Volume 4 of the notified PMEP is amended to reflect the request.

139. None of the submissions provided a reason as to why the change is sought.

140. The extent of the NTR, as mapped within the NTR overlay, reflects the areas in which the Wash Rule identified in Appendix 12 of the PMEP Determination of Wave Energy should not be exceeded, as it represents areas of the Sounds where wave wash may create adverse effects from high-speed and large ships.

141. As the waves generated from the ships in the Tory Channel and Queen Charlotte Sound will extend into side bays, given the narrow nature of these channels, the extent of the NTR has been mapped to reflect this. Thus the extent of the NTR as notified recognizes the extent of the area where environmental and other effects may occur and is required in order for environmental effects to be adequately measured, maintained and controlled.[13]

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[12] Rule 35.6 Marlborough Sounds Resource Management Plan
[13] Section 42A Report, paragraphs 530-531.

142. The report writer recommends the submissions requesting the removal of the NTR within the side bays of the Sounds are rejected.

143. The extension to include the request for the NTR to link with the Port Zone at Clifford Bay is also recommended to be rejected. This area is significantly different from the NTR and it is unlikely the NTR framework would be suitable for that environment.

**Consideration**

144. The Panel endorses the opinion of the report writer. Given that the extent of the NTR is reflective of Appendix 12 Wash Rule, it is difficult to anticipate any instance where the application of the NTR will adversely affect other activities - such as marine farming within the NTR or would raise navigational safety concerns.[14]

**Decision**

145. The submissions requesting the removal of the NTR within the side bays of the Sounds are rejected and the extension of the NTR to include Clifford Bay is also rejected.

### The expansion of the NTR to include the 'Northern Entrance' to Queen Charlotte Sound

146. KiwiRail sought that the mapped area of the NTR be extended to the Outer Queen Charlotte Sound (northern area). If this extension was not granted, then the submitter sought a series of amendments to Rules 16.4.1 and 16.4.2 which would enable ferry operators to seek consent for shipping activities in excess of 15 knots in Queen Charlotte Sound and request that the words 'and Queen Charlotte Sound' be inserted in the text of each rule.[15]

147. The NTR is currently shown on an overlay map in Volume 4 of the PMEP.

**Strait Shipping and KiwiRail**

148. The two shipping companies identify their reasons for their submissions:

- Severe south-easterly conditions or other bad weather sometimes make the entrance to Tory Channel unsafe.
- When ships suffer certain propulsion malfunctions, the 'Northern Entrance' is used as an alternative with a lower navigational risk profile.

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[14] *Section 42A Report, paragraphs 527-537.*

[15] *KiwiRail (873 various), Strait Shipping (790.8) supported by PMNZ (970.992).*

- Up to approximately 120 Strait Shipping and 288 KiwiRail sailing transits a year are made through the Northern Entrance for the sole purpose of training and keeping crews familiar with the alternative entrance.[16]
- The alternative route via the Northern Entrance adds approximately 11 nautical miles to the Picton to Wellington return trip; travelling the alternative route on the *Aratere* is 55 minutes longer: in order to maintain timetables, ships need to travel faster than the current 15 knots.
- The Outer Queen Charlotte Sound is much wider than the Inner Sound and Tory Channel, recreational traffic density is much lower with relatively few other ferry transits through the Outer Sound.[17]

**Section 42A Report**

149. In light of this information, the Panel queried whether the NTR should apply to the Northern Entrance to the Sound or whether provision be made for research to investigate that possibility. The Panel also sought clarification from the MDC's Harbourmaster, Captain Luke Grogan, on whether an amended NTR route through Outer Queen Charlotte Sound was satisfactory from his experience in terms of navigational health and safety.[18]

150. On the advice of Dr Steve Urlich, marine scientist formerly of MDC, the lack of measuring sites within the area of the Northern Entrance to Queen Charlotte Sound to pick up changes to shoreline profiles from increased ferry speed through the Northern Entrance remained of concern. As a result, the report writer considered that extension of the NTR to the Northern Entrance of Queen Charlotte Sound would require that wave wash is measured at approved sites.

151. Initially, the request of the shipping companies was recommended to be rejected, the report writer citing the cases relating to the adverse effects on the environment by the fast ferries, , including impacts on kaimoana, beaches and baches due to erosion, sites of cultural significance, water clarity and marine ecology, which had culminated in the introduction of the Wash Rule, as to why this should not occur.

152. It was therefore considered that while there is sufficient use of the Northern Entrance to warrant an extension of the NTR, there is a lack of information available to assess

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[16] *Maritime Regulations, Regulation 90 in particular.*

[17] Section 42A Report, paragraphs 514(i-v).

[18] Panel Minute 21.

environmental effects in the Outer Queen Charlotte Sounds. Further research should be undertaken before the NTR can be extended in this way. In its absence, an additional prohibited activity should be included in the PMEP preventing ships that exceed 500 tonnes from travelling at greater speed than 15 knots.

153. Nonetheless, the report writer also sought the advice of, Captain Grogan, as to whether there was likely to be significant navigational safety issues arising from ferries/ships travelling at the same speed through the Northern Entrance as their current resource conditions allow.

154. Captain Grogan's response was that to allow the change would make it less complicated for ferry masters to understand speed regulations and comply with the rules. 'Until recently, many ferry masters were not aware that any resource consent was limited to the NTR … [they] have routinely been exceeding 15 knots through the northern entrance for some time.'

155. The report writer advised as a result of this interchange she did not consider that the proposed extension to the NTR would have adverse effects on other activities. The application of the Wash Rule (in Appendix 12) or similar would ensure that wave wash is limited. She was satisfied that the use by large ships through the Northern Entrance to Queen Charlotte Sound is sufficient to warrant the extension of the NTR.[19]

156. In response to the Panel's minute, Captain Grogan confirmed that the course lanes provided by Strait Shipping align with the passage plans provided by both Strait Shipping and Interislander. The lodging of the passage plans provides sufficient opportunity for any concerns to be addressed. Captain Grogan stated that it is not uncommon for a ship to deviate from a planned passage to avoid collision or to mitigate the effects of bad weather. 'As such, it is important that the NTR encompasses an area sufficient to enable what might be considered normal or reasonable deviations from the planned passage.' Captain Grogan included a diagram to illustrate the parts of the northern entrance to where the NTR could be extended without undue maritime risk. He also produced a copy map of the suggested NTR extension. Both are attached to this decision (Figure 11.1 and 11.2).[20]

**Consideration**

157. On the basis of Captain Grogan's evidence and the report writer's (somewhat conflicting) acknowledgement above, we concluded that the Northern Entrance should be agreed as

[19] Section 42A Report, paragraphs 538-549.

[20] Harbourmaster's response to Minute 21. The Navigation Safety Bylaw 2009 requires that: The master of every vessel which is pilot exempt shall lodge with the Harbour Master a copy of the current passage plan for the whole of the voyage which occurs within defined pilotage limits.

being within the NTR as this enables resource consent (as contained in Controlled Activity Rule 16.4.1) to be applied for increased speed if the evidence gathered as controlled activity testing establishes minor effects on the route.

158. The Panel’s concern relates to whether the Wash Rule identifies measurement sites in the Outer Queen Charlotte Sound. As we understand the evidence, the rule requires measurements at ‘approved measurement sites’ listed within Appendix 12. The Panel does not have that evidence and a plan change will be required to achieve that.

159. Dr Steve Urlich raised the issue of the lack of measuring sites to pick up changes to shoreline profiles from the amended navigation route. This prompted the Panel to consider the relationship of the NTR with the content of Appendix 12. Appendix 12 as notified did not cover the Northern Entrance. The Panel requested Dr Richard Croad of Gillrich Consulting Limited to prepare several new measuring sites to include the Northern Entrance Section 3 sites under Appendix 12 of the PMEP.[21]

160. In his letter in reply, Dr Croad identified his selection criteria,[22] identifying that 17 sites were examined (site visits carried out on 7 January 2020[23]) of which five were recommended as the new ‘approved measurement sites’. The table included one optional site should the channel east of Long Island be allowed as part of the NTR to cater for log ships which use the eastern channel in which the water is deeper.[24]

161. As part of his advice, Dr Croad recommended the following:

Table 1: Approved Measurement Sites

| Channel | Location Description | NZGD2000 Coordinates | |
|---|---|---|---|
| Tory Channel | Ngaionui Point West, Arapawa Island | 174° 10.782’ E | 41° 14.462’ S |
| | Te Weka Bay | 174° 11.396 E | 41° 14.983’ S |
| | Wiriwaka Point West, Arapawa Island | 174° 12.287’ E | 41° 14.192’ S |
| | Tipi Bay West | 174° 17.001’ E | 41° 13.699’ S |
| Queen Charlotte Sound (west of 174° 9.5’ E) | Picton Point | 174° 02.177’ E | 41° 15.283’ S |
| | East Kahikatea | 174° 07.095’ E | 41° 14.170’ S |
| Queen Charlotte Sound (Northern Entrance) | North of Snake Point | 174° 10.650’ E | 41° 11.811’ S |
| | North of Double Bay | 174° 11.460’E | 41° 12.764’ S |
| | North West Blumine Island | 174° 14.066’ E | 41° 09.612’ S |
| | South West Long Island | 174° 16.079’ E | 41° 07.802’S |

Table 2: Tidal zones and tidal speed parameters that might be adopted to assess speed through the water

[21] Letter from Pere Hawes, MDC, 9 January 2020

[22] Letter to Pere Hawes, Marlborough District Council, 10 January 2020, Annex A – Potential Measurement Sites Visited and Assessed, page 4.

[23] Ibid, Table 1: Approved Measurement Sites, page 2.

[24] Ibid, Footnote 3, page 2.

| Zone | Description of Limits of Zone | A (knots) | $t_L$ (hour) |
|---|---|---|---|
| A | Zone anywhere in Queen Charlotte Sound, <u>including the Northern Entrance,</u> and separated from Tory Channel along latitude 41° 14' S at Dieffenbach Point. | 0.3 | -0.4 |
| B | Zone in Tory Channel between latitude 41°14' S at Dieffenbach Point at its western end and longitude 174° 18; E in Tory Channel at its eastern end. | 1.8 | -0.4 |
| C | Zone near the Heads in Tory Channel located east of longitude 174° 18' E. | 6.7 | 0.0 |

**Decision**

162. The NTR is expanded to include the Northern Entrance of Queen Charlotte Sound as shown on Figure 11.2 to this decision.

163. Add to Table 1 the Queen Charlotte Sound (Northern Entrance) details provided by Dr Croads recommendations and amend Zone A in Table 2 to include the words 'including the Northern Entrance'.

## MV Aratere grandparenting rule

### Rule 16.3.1.1

**A high speed ship must not exceed a ship speed of 15 knots**

164. It is submitted that as the MV *Aratere,* a KiwiRail ship, operates under a different provision in the MSRMP, which enables it to operate at speeds up to 20 knots, this grandfathering rule should be carried through to the PMEP.[25]

165. It was initially considered by the Council that the grandfathering rule was not required within the PMEP as there is already a certificate of compliance allowing the MV *Aratere* to operate as a permitted activity at speeds up to 19 knots.

166. It is clear from the report writer's recommendation, however, that there is no provision that allows a certificate of compliance to override a provision of the PMEP if the plan is operative and resource consent has not subsequently been obtained. For this reason the grandfathering rule is required within the PMEP to provide for the ongoing operations of the MV *Aratere*.

**Decision**

167. Rule 16.3.1.1 is amended as follows:

*Rule 16.3.1.1. A high speed ship must not exceed a ship speed of 15 knots, <u>with the exception of the MV Aratere which must not exceed a ship speed of 19 knots</u>.*

[25] KiwiRail (873.162), Section 42A Report, paragraphs 565-572.

## New permitted activity status for ferries outside the NTR exceeding 15 knots?

168. The MSRMP applies a prohibited activity status to the use of surface water within that part of Queen Charlotte Sound not on the NTR by high-speed ships or ships that exceed 500 gross registered tonnes while travelling at ship speeds greater than 15 knots.

169. The Section 42A Report proposes the following prohibited activity rule:

> *16.7.X The use of surface water within that part of Queen Charlotte Sound not on the National Transportation Route by high speed ships, or ships that exceed 500 gross registered tonnes, which are travelling at ships' speeds greater than 15 knots.*[26]

170. QCSRA observed that this prohibited activity rule had not been 'carried through' to the PMEP. A high speed or large ship exceeding 15 knots in other parts of Queen Charlotte Sound not in the NTR would therefore have discretionary activity status under the PMEP.

171. The report writer identified she had not seen any information within the Section 32 Report as to why the prohibited activity rule had not been included in the PMEP, especially given the fact that the Section 32 Report states the management framework for the NTR has been followed from the MSRMP.

172. KiwiRail identifies that the Section 42A Report proposes to include the rule on the basis that it was omitted from the notified Plan without reason, and that the change was not necessary to make the Plan consistent with the suite of provisions agreed through the Environment Court hearing on Variation 3. Its witness Rebecca Beals says this:

> *The Environment Court hearing was on the provisions of the MSRMP, and simply because it was omitted and is part of the suite from the Environment Court is not justification for its inclusion through this process. There are inferred decisions in relation to ferry speeds and the use of Tory Channel, however I am not aware of a specific submission which would give scope to include this new prohibited activity rule. There is a submission point that notes this is missing (504.87), however that submission does not seek any relief, and the Council did not infer any relief from it in its summary of submissions (unlike the submissions on the use of Tory Channel).*[27]

**Consideration**

173. MDC staff undertook a review of submissions without success, to confirm none had supported suggested Rule 16.7.X. Not only is the suggested rule out of scope, Ms Beals made an appropriate observation on the role of a prohibitory activity rule from her planning

[26] Tranz Rail New Zealand v Marlborough District Council W001/2008, NZEnC 14, 22 January 2008.
[27] KiwiRail, Rebecca Beals, Evidence, paragraphs 72-79.

perspective. In this case, a prohibitory activity would not allow consent to be sought to measure effects in order to determine whether or not an increase in speed of any future shipping will comply with the wash rule. Because the effects of increased speed are well understood in this situation, there is already sufficient information to provide for an application for resource consent to be lodged.

174. There is also no inherent incompatibility within the zone given the recognition (in this case) of Queen Charlotte Sound as a shipping route or any significant risk to the environment that justifies prohibited activity status.

175. While there is no guarantee under the discretionary activity rule that consent will ultimately be forthcoming, it provides for an application to be assessed on its merits.

**Decision**

176. As stated in the MDC report, suggested Policy 16.7.X is out of scope.

**Figure 11.1**

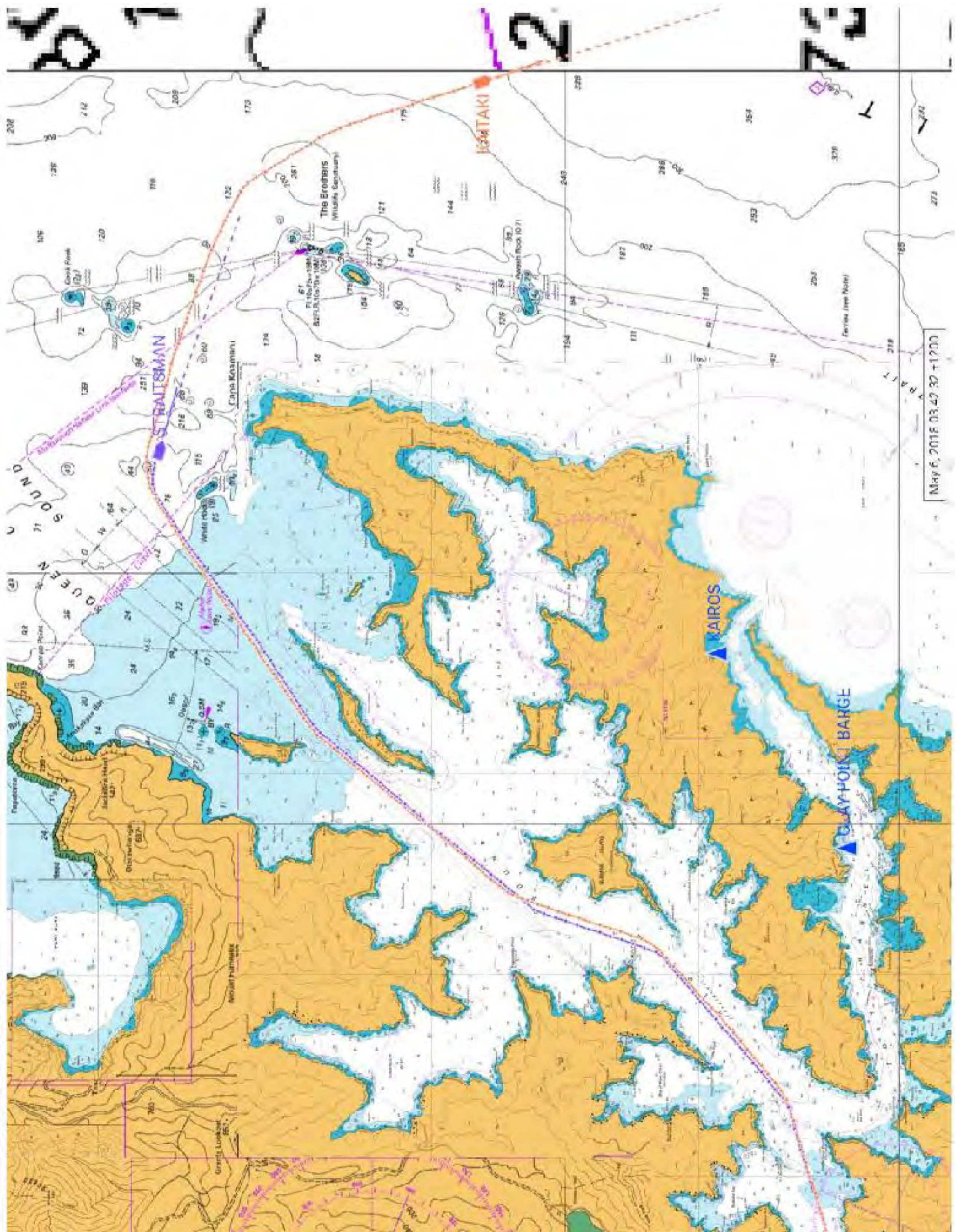
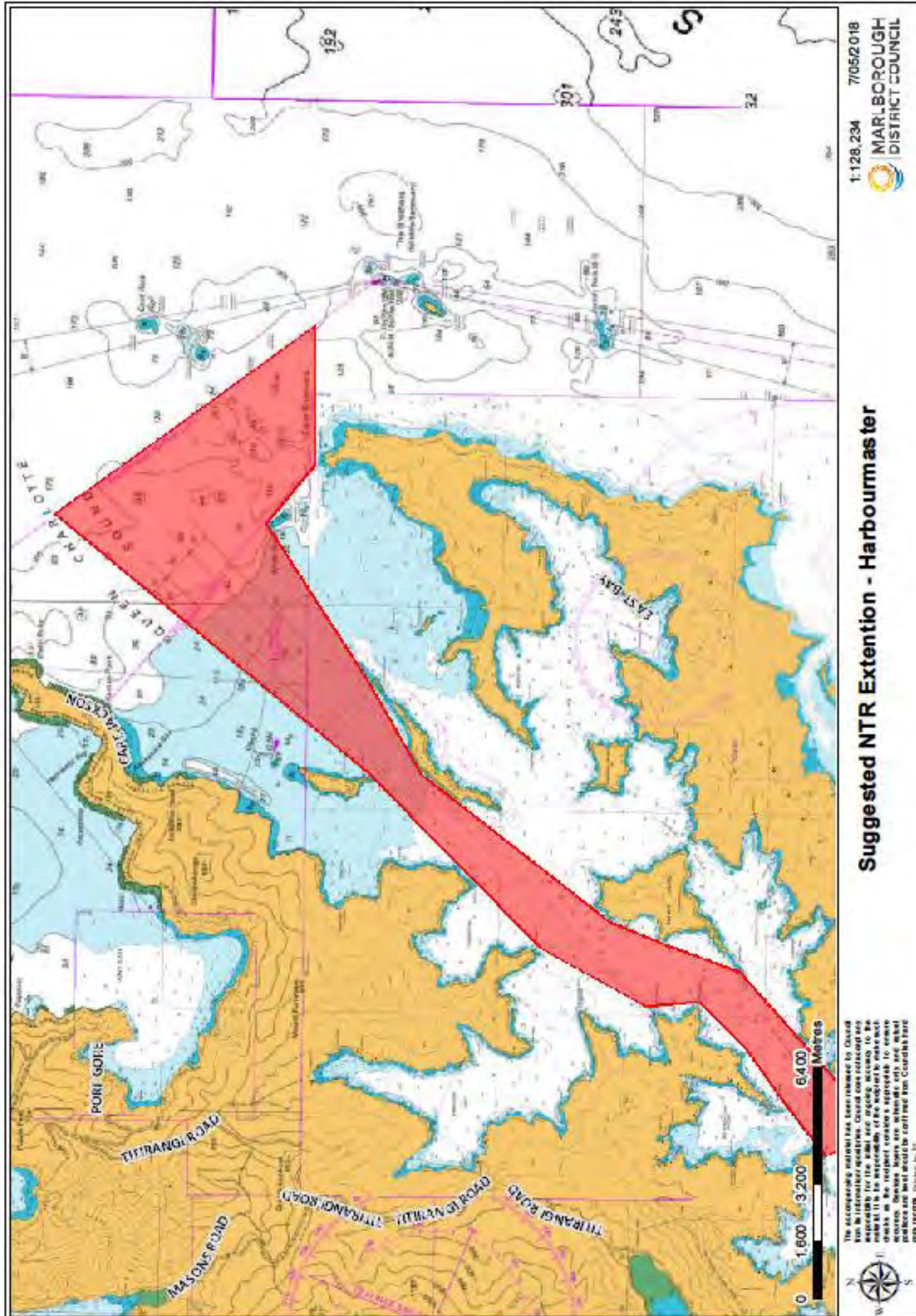


**Figure 11.2**



## Zoning

### Port Landing Zone and Port Zone

177. Port Marlborough operates Port Landing zones at Oyster Bay in Port Underwood, and Elaine Bay in Pelorus Sound. It owns the port landing infrastructure, while MDC owns the underlying land.

178. PMNZ identify the purpose of the Port Landing facilities is to provide for safe and efficient loading and landing of cargo and supplies primarily associated with Marlborough's aquaculture industry, in an appropriately zoned and controlled area. Both Port Landing zones are located remotely in the Marlborough Sounds and as a consequence present economic and logistical challenges to maintain. They are nevertheless viewed as an important part of the infrastructure required to support aquaculture in Marlborough and therefore, they remain part of PMNZ's infrastructure portfolio.

179. Submitters from the aquaculture industry drew the Panel's attention to NZCPS Policy 20(2) which requires identification of the locations where vehicle access is required for the operation of existing commercial activities and provision is made for access. The Panel kept this in mind during its considerations.

180. The relevant NZCPS policy states:

> *Identify the locations where vehicular access is <u>required for boat launching</u>, or as the only practicable means of access to private property or public facilities, or <u>for the operation of existing commercial activities,</u> and <u>make appropriate provision</u> for such access.*

181. PMNZ consider that the Port Zone should be extended to both Oyster Bay and Elaine Bay and if not, seek some Port Zone requirements be provided in amendments to various policy provisions.

### Elaine Bay – Zoning Maps 65 and 103

182. The submissions requested rezoning of the commercial wharf from Port Landing Zone to Port Zone;[28] extension of the Port Landing Zone to include more of the coastal marine area and adjacent road;[29] extension of the Port Landing Zone to the west to better reflect the area occupied by the port landing activities within the bay.[30]

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[28] AQNZ (401.155, 156, 249, 295), MFA (426.067, 161, 285, 286), Goulding Trustees Limited (750.010, 011), Just Mussels Limited and Tawhitinui Greenshell Limited (842.017, 018), and Shellfish Marine Farms Limited (1150.001, 012) – Opposed in Further Submission by PMNZ (946).
[29] AQNZ (401.294) and MFA (426.285).
[30] PMNZ (433.208).

**Oyster Bay – Zoning Maps 77 and 139**

183. The submissions request rezoning of the commercial wharf from Port Landing Zone to Port Zone;[31] extension of the zone to include more of the coastal marine area Open Space Zone and adjacent road.[32]

**Okiwi Bay – Zoning Maps 64 and 111**

184. The submissions request the rezoning of the wharf area and boat ramp at Okiwi Bay from Open Space 3 to Port Landing Zone.[33]

**Differences between permitted activities in the Port Zone and those in the Port Landing Zone.**

185. The list of the permitted activities in the Port Zone is extensive. The following is a brief summary: cargo processing; passenger terminals and associated activities; port engineering; truck fuel facility; border control; maintenance, storage etc associated with marine farming or commercial fishing; manual scraping of anti-foul or bio-foul; maritime education or research facility; port administration; living accommodation for port staff, transportation activity; geotech bore drilling and dredging, and discharge of contaminants to air from a range of activities.[34]

186. By way of contrast the following are provided for in the Port Landing Zone at Elaine Bay and Oyster Bay at Policy 13.17.5(a)–(g) – shipping activities; cargo handling, storage of cargo and loading and unloading of ships; building and structures, wharves, mooring structures (excluding swing moorings) and launching ramps; marine fuel facilities; maintenance, repair, removal and replacement of buildings and structures; placement and maintenance of navigation aids; and signage. The two zones have quite distinct operational requirements.

**Section 42A Report**

187. The report writer's initial limited response under this heading was given before she had had the opportunity to visit the three sites of Okiwi Bay, Elaine Bay and Oyster Bay. She initially concluded from the submissions that the smaller port areas such as Elaine Bay and Oyster Bay, while playing an important role in commercial fishing, have more sensitive environments than the larger ports such as Picton. Thus the need for permitted activities associated with ports is not required. In order to protect the sensitive environments, it is not appropriate to re-zone them as Port Zone, as there are a number of permitted activities within this zone that would likely create adverse effects.[35] Even so she recognised the smaller port areas have an

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[31] AQNZ (401.155, 156, 296, 297) and MFA (426.067, 161, 287, 288).
[32] AQNZ (401.294) and MFA (426.285).
[33] AQNZ (401.155, 156, 159) and MFA (426.067, 161, 164).
[34] Section 42A Report, paragraph 851.
[35] Addendum dated 22 March 2018.

important part to play in providing for loading and unloading of mussels and marine farming gear as well as fishing produce.

188. The Section 42A Report includes aerial photographs and extracts from zoning maps to access locations and activities associated with these bays. The report writer's overall recommendation on the submissions was to reject the Port Zone extension and the extension of the Port Landing Zone as requested for all three bays, with the current Port Landing Zone in Elaine Bay and Oyster Bay to remain as notified.[36]

**Report writer's site visit – 13-14 March 2018: Okiwi Bay - Zoning Maps 64 and 111**

189. The submissions from AQNZ and MFA seeking rezoning to the wharf at Okiwi Bay to Port Landing Zone refer to the 'wharf and boat launching ramp at Okiwi Bay'. These are located in different places, the wharf being at the end of Wharf Road and the boat ramp located within the main bay of the Esplanade Okiwi Bay.[37] The wharf at Okiwi Bay is an important linkage between the marine farm sites within Croisilles Harbour and land transport roads.[38]

190. The wharf area and the facilities at and surrounding this wharf are at a lesser scale and extent compared with the nature of the wharves at Elaine Bay and Oyster Bay. Both of these bays have cranes and lifting equipment on the wharves and provide for marine fuel facilities. These activities are reflected within the proposed permitted activity provisions of the Port Landing Zone in the PMEP as notified. These activities are not currently provided at Okiwi Bay.

191. In addition, the extent of land available for the activities identified in Okiwi Bay does not reflect those at Oyster Bay and Elaine Bay. The road access to the wharf, Wharf Road, is a narrow gravel road and at present the wharf is not overly visible when viewed from Okiwi Bay. Any extension, in the report writer's opinion would result in diminishing the bay's visual amenity as it currently exists. The report writer recommends that any extension to Okiwi Bay should be undertaken through the resource consenting process which would allow the conditions to address more closely any wider effects of the activity.[39]

192. On her visit to Okiwi Bay, the report writer also noted that while there was no indication of commercial activities taking place at the boat ramp area in the centre of the bay, there were properties at the rear of Okiwi Bay that appear to provide storage facilities. This boat ramp in the main landing area of Okiwi Bay beach appears to provide for both commercial and

[36] Section 42A Report, Reply to Evidence, pages 96-100.
[37] Section 42A Report, Addendum dates 22 March 2018, paragraph 66.
[38] AQNZ and MFA, Counsel Submissions, paragraph 84, Appendix 1. Also verbal evidence at hearing.
[39] Section 42A Report, Addendum 22 March 2018, paragraphs 63-73.

recreational facilities; if a Port Landing Zone were to proceed here, this could result in adverse visual and amenity effects in this sensitive location.

193. The Reply to Evidence identifies that within his verbal submission at the hearing, Counsel for MFA and AQNZ acknowledged that the Port Landing zoning on this site would identify the different expectations within this area in terms of noise and activity, from that in the Open Space 3, as currently zoned.

**Consideration**

194. In terms of Okiwi Bay and its current wharf at the end of Wharf Road the Panel considered the Port Landing Zone should include the road. Even though this is an unusual step to approve, it is practically the only useable area for Port Landing Zone facilities because of the steep contour of the surrounding land. The wharf is nevertheless identified as a critical outlet for all marine farms in Croisilles Harbour and areas associated. It is an important transport mode.[40]

195. With regard to the main boat ramp launching area at the Okiwi Bay beach, Port Landing Zone is not approved because it is a major recreational launching area with heavy weekend and holiday use with which aquaculture or other port-related activities would clash.

**Decision**

196. The Panel rezones as Port Landing Zone the existing launching facility on the west side of Okiwi Bay and the road to the launching facility. This is to be reflected on Maps 64 and 111.

197. The Panel rejects the submission seeking Port Landing Zone for the boat ramp area in the central part of the bay.

## Elaine Bay – Zoning maps 65 and 103

198. Elaine Bay provides a wharf and marina that extends to the south of the main area of the wharf. The submitters seek that this area become Port Landing Zone which would encompass a seaward extension of the zone and that extension to include some of Elaine Bay Road that provides access to the Port Landing Area. They also seek to apply Port Landing zoning to the boat launching ramp located on the west of the existing Port Landing Zone located to the east of the residential properties at 202-208 Elaine Bay Road.

199. At the outset the Section 42A Report writer recommends rejecting the notion of this bay becoming a Port Zone, a position the submitters acknowledge has logic given the heavy engineering facilities provided in that zone. The reasons why are identified where we outline

[40] MFA (401.155, 156, 159), AQNZ (426.067, 161, 164). Counsel Submissions, page 84 Appendix 1.

the differences between permitted activities in the Port Zone and those in the Port Landing Zone.[41]

200. The report writer's concern in relation to the boat launching ramp, is that this area is in close proximity to the Coastal Living zoned properties located at 202-208 Elaine Bay Road. The properties are elevated and overlook the area proposed by the submitter as Port Landing Zone. Thus the nature of activities provided for within the Port Landing Zone Area, as permitted activities, is not consistent with activities that would be anticipated to take place in this location. The activities would be likely to significantly alter the nature and characteristics of this area, which presently is used as a low scale launching ramp for recreational and commercial vessels. In addition, the submitter had provided very little evidence as to why the extension of the zone is required.[42]

**Consideration**

201. The Panel considered that the map included in the original submission of PMNZ as to the Coastal Marine Zone showed an area at the south-west corner of the notified Port Landing Zone.[43] We requested more detail as to the nature of the activities conducted in that area which are said to require the extension of the Port Landing zoning.

202. PMNZ informed us that this area provides for the maintenance of port infrastructure to take place in the Port Landing Zone i.e. citing the report writer that activities need to occur within the Coastal Marine Zone on the landward side of the existing wharf to facilitate its maintenance.[44] PMNZ's submission seeks to achieve consistent treatment in the PMEP for the area between the shoreline and wharf infrastructure.[45]

203. The report writer, however, considers the inclusion of the small area of the Coastal Marine Zone between Elaine Bay Road and the identified Port Landing Zone on the western side of the port for inclusion as Port Landing Zone should be approved. There were no reasons within the s 32 report why this should not be included.[46]

**Decision**

204. Maps 65 and 103 of the PMEP are amended to rezone the strip of Coastal Marine Zone located between the current Port Landing Zone and Elaine Bay Road to Port Landing Zone. The

[41] See details of facilities at page 19 of this decision (paragraphs 69-70).
[42] Section 42A Report, Reply to Evidence, page 96.
[43] Minute 20, 26 April 2018.
[44] PMNZ Memorandum Response to Minute 20, 22 May 2018, paragraphs 5-7.
[45] Section 42A Report, paragraph 864.
[46] Section 42A Report, paragraphs 864-866.

balance of the requests for Port Landing Zone both on the seaward site and on the road are rejected.

## Oyster Bay – Zoning maps 77 and 139

205. The zoning as notified in the PMEP, appears to encompass all of the physical wharf structures, plus a margin for any vessel. The site visit undertaken by the report writer prompted the same response that she indicated for Elaine Bay. The area between the Port Landing Zone at the road is very steep with considerable vegetation and would require removal and excavation. She considers that the proposed PMEP zoning provides for activities that are relative to the operations and scale within the commercial wharf area at the present time. But the aquaculture industry identified the access to Oyster Bay Wharf is currently on a road located within the Open Space 3 Zone. MFA and AQNZ seek that the Port Landing Zone should be enlarged to include the road from Port Underwood Road to the existing port facility. In the alternative, the access road should be zoned Road.

**Consideration**

206. The Panel queried the legal status of the access road in an email to Steve Murrin, Journey Manager for Marlborough Roads. Mr Murrin's response was to provide a photo illustrating the legal road, Port Underwood Road, to illustrate the access to the port facility is not on the legal road and is not maintained by the Council.[47] We concluded as a result of this information that the extension of the Port Landing Zone should include the area of surfaced roadway to the junction with the public road.

207. We note that Counsel for MFA and AQNZ considers that the access to the Oyster Bay Wharf is currently an Open Space 3 Zone.

**Decision**

208. The Port Landing Zone at Oyster Bay is extended to encompass that part of Oyster Bay Road which is not a legal road but is in practical terms part of the road surface.

209. The zone status and extent of Port Landing Zone at Oyster Bay is therefore amended to include the part of the surfaced roadway area to the junction with the public road (Port Underwood Road). Maps 77 and 139 are amended accordingly.

## New rules and standard

210. Both MFA and AQNZ request that if Port Landing zoning was disallowed for Elaine Bay and Oyster Bay then in the absence of this zone change, they requested, through legal submissions, two additional permitted activities to Policy 13.17.5(a)–(g) these being:

[47] MFA and AQNZ, Memorandum.

(h) ship repair and maintenance

(i) transportation activities.

211. And to add to the list of permitted activities in Rule 14.1:

- Maintenance, storage, servicing or repair of equipment associated with marine farming or commercial fishing.
- Transportation activity including the construction of a road, right-of-way or path, the construction of a vehicle or trailer parking, manoeuvring and transit or maintenance operations.

**Consideration**

212. The Panel assessed the provisions of the Port Zone to determine which are the most appropriate to combine with the provisions in the Port Landing Zone, concluding that those identified were available in the zoning for Elaine Bay and Oyster Bay.

**Decision**

213. Two additional permitted activities are amended to Policy 13.17.5(h)-(i) and to Rule 14.1. The two further permitted activities are provided as identified above.

## Waikawa Marina – Zoning maps 41 and 43

214. A number of submissions relating to Zoning Map 41 seek: expansion of the Marina Zone boundary to provide for in-situ structures, marina reclamations and the entry and exit areas to the marina (20 metres beyond visible structures is requested);[48] rezone the properties at 64–72 Beach Road and the narrow parcel of land beside Endeavour Stream from Urban Residential 2 Zone to Marina Zone to enable expansion of marina activities. The witness provided a concept plan for the development of the area, but it was recognised within verbal evidence that this plan is 10 years old, and is only an initial scoping plan. [49]

215. PMNZ in evidence produced a map[50] of the Waikawa Marina vicinity showing an area on the eastern side of the marina bund structures which PMNZ sought to be included within the Marina Zone boundaries in the PMEP.[51]

216. A witness for PMNZ, Louise Taylor, advised at the hearing that the area to be included was to ensure the maintenance of the land structures, including their base under water, could occur as a permitted activity.[52]

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[48] PMNZ (433.205, .206).

[49] PMNZ (433.204), Rose Prendeville, Evidence, page 10. See also reply to evidence, page 101.

[50] PMNZ, Louise Taylor, Evidence presented at hearing, Figure 2

[51] PMNZ, Louise Taylor, Evidence, page 14.

217. She advised that the area depicted as Figure 2 extends beyond what is visible on the surface to include the base of the marina structures on the seabed. If the submission is granted the witness advised that the MDC would need to have a better mapping definition than that contained in PMNZ's Figure 2.[53]

**Consideration**

218. In Minute 20 to the PMNZ, the Panel requested the submitter provides a GIS detailed map establishing the exact location of the structures to be identified in the MDC's GIS mapping.

219. In response, PMNZ provided a map (Appendix A – Map) which included the zoning sought by PMNZ at Waikawa Bay showing the Marina zoning extending 20 metres horizontally beyond the mean low water springs (MLWS). This map also shows the other landside area that PMNZ seeks to be rezoned.

220. The expansion of the Marina Zone to provide for in-situ structures is supported as it would enable activities that are operational requirements of the Marina Zone to occur as a permitted activity and is unlikely to cause any adverse effects.

221. Rezoning of the private properties on Beach Road and the area near Endeavour Stream was sought on the basis of some dated concept plans. The proposal is not supported in the present setting as it would result in the Marina Zone being much closer to the residential interface of the Beach Road properties, allowing a range of permitted activities to be undertaken without Council control which might have potential adverse effects on the residences impacted.

222. We considered that the proposed wider new zone area on Beach Road was dated. We considered that given the close proximity of the residences on the other side of the road, a detailed proposal assessing effects would be needed to justify rezoning and also to enable resident's consideration of any future marina related proposal.

**Decision**

223. Amend Zoning Maps 41 and 43 to provide a 20 metre extension to the Marina Zone beyond all visible structures as shown on the PMNZ Appendix A to their response to Panel's Minute 20, and as recommended by the report writer.[54]

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[52] PMNZ, Louise Taylor, Panel Minute 20 and Evidence.
[53] PMNZ, A Beatson, Memorandum: Waikawa Bay Marina Zone, Response to Minute 20, paragraphs 2-3.
[54] Section 42A Report, paragraph 901.

## Shakespeare Bay - Zoning Map 36

224. A number of submissions relating to Zoning Map 36[55] variously seek: rezone the narrow strip of Open Space 3 Zone that separates the Port Zone from the Coastal Environment Zone to Port Zone because it is unnecessary and will be difficult to manage;[56] reduce Port Zoning to reflect its boundaries within the operative MSRMP.[57]

**Consideration**

225. The purpose of the Open Space 3 Zone in Zoning Map 36 is to provide for public access along the coastal marine area from Queen Charlotte Drive around Shakespeare Bay. There is a clear direction under the RMA and NZCPS to promote public access in the coastal environment and therefore the submission to rezone this area is rejected.

226. In addition to the provision of public access, it was the intention of the MDC, that this area of open space would also provide an opportunity to screen any subsequent Port development (as a result of the extension of the Port Zone within the PMEP) on the land below the road. This would recognise that Shakespeare Bay retains a greater level of natural character than the other port areas of Picton and Havelock.[58]

227. Nevertheless, within the proposed Port Zone at Shakespeare Bay there are areas of ecological significance, such as Significant Wetland W991 and Ecologically Significant Marine Site 4.10. There is a clear obligation on MDC to manage activities that have adverse effects on these identified ecological sites and it is considered that the permitted activities allowed in Port Zone may result in adverse effects to these areas, particularly the significant wetland.

228. It is considered that the best way to protect this area is to remove the Port zoning and rezone the area as Open Space 3 Zone. Port Zone would be retained for all other areas (including the Ecologically Significant Marine Site).

229. The Panel queried the recommendation to amend Zoning Map 36 to delete wetland area W991 from Port zoning and apply Open Space 3 zoning but not to change the submitted zoning of ESMS 4.10 being the eel grass bed. We concluded that the report writer's recommendation as to W991 was because of NZCPS Policy 11(3)(b) which requires protection of wetlands. Te Ātiawa's request made at the hearing for further protection of the eel grass beds is out of scope but because the beds are already on ESMS 4.10 they have a level of protection anyway through that identification.

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[55] Section 42A Report, page 164.
[56] PMNZ (433.209).
[57] Te Ātiawa (1126.015, .227).
[58] Section 42A Report, paragraph 907.

**Decision**

230. In regard to the requested amendment to Zoning Map 36 to rezone the area identified as Significant Wetland W991 as Open Space 3 Zone, we accept Peter Hamill's recommended changes to the wetland boundary, as shown on Map 9 of the response to Minute 10 of the Panel, to better reflect PMNZ's concerns.[59]

## Picton – Zoning Map 35

231. PMNZ sought that the Open Space 1 Zone land immediately adjacent to the Marina Zone at Picton (near 39 and 41 Waikawa Road) be zoned Marina Zone in order to reflect the activities taking place there. The area affected was depicted in Annexure B of the PMNZ submission as 'indicative area to be zoned'.

**Section 42A Report**

232. The report writer visited the site and determined that there was an area of water that is zoned Open Space 3 either side of the jetty on which boats are moored within the marina. On this basis, she agreed with PMNZ that the rezoning of this area would better reflect the activities being undertaken in this area, and would enable PMNZ to undertake works to the marina facilities.

233. However, the report writer also noted that the Open Space 1 zoning proposed provided for public access around the Marina, in line with Policy 9.1.1 of the PMEP.

234. The report writer made two recommendations. Firstly, that the water area of the Marina as depicted in Annexure B be rezoned as Marina Zone. Secondly, that a strip of Open Space One zoned land at least 3m in width be retained between the Marina Zone and the Urban Residential 2 Zone.

**Consideration**

235. The Panel concurs with the report writer's recommendations. In particular, the Panel notes that Rule 24.1.18 of the Plan requires that, where land zoned Urban Residential 2 adjoins the Picton Marina and is to be subdivided, an esplanade reserve of esplanade strip of 3m must be provided. There is therefore a clear intent in time to achieve continuous public access around the marina. Rezoning all of the land adjoining Picton Marina as Marina Zone could frustrate that outcome as marina activities, and structures associated with those activities, could be undertaken that could physically block public access.

[59] See Topic 6 – Indigenous Biodiversity - Significant Wetlands.

236. On the other hand, PMNZ's stated need to operate and maintain the marina infrastructure is also important. The marina is recognised as regionally significant infrastructure in Volume 1, Chapter 3.

237. The second recommendation of the report writer, retaining a strip of Open Space 1 zone of the same dimensions as Rule 24.1.18 (i.e., 3 metres) meets both needs and is endorsed by the Panel. The Panel concurs with the report writer that the appropriate width for the area retained as Open Space 1 is 3 metres. The requirement of Rule 24.1.8 provides useful guidance in this respect.

**Consideration**

238. The Panel does not agree with the first recommendation of the report writer to rezone any coastal marine area as Marina Zone. That is simply because, on closer inspection of the zoning relative to what exists "on the ground" (via aerial photography), there is no coastal marine area zoned Open Space 1. This is clear from the figure below:

239. In terms of the land zoned Open Space 1, the Panel notes that Rule 24.1.18 of the Plan requires that, where land zoned Urban Residential 2 adjoins the Picton Marina and is to be subdivided, an esplanade reserve or esplanade strip of 3m must be provided. There is therefore a clear intent in time to achieve continuous public access around the marina. Rezoning the land adjoining Picton Marina as Marina Zone could frustrate that outcome as marina activities, and structures associated with those activities, could be undertaken that could physically block public access.

240. On the other hand, PMNZ's stated need to operate and maintain the marina infrastructure is also important. The marina is recognised as regionally significant infrastructure in Volume 1, Chapter 3.

241. The second recommendation of the report writer, retaining a strip of Open Space 1 zone of the same dimensions as Rule 24.1.18 (i.e., 3 metres), has been carefully considered by the Panel. The report writer considered that this outcome would meet both of the needs identified above

242. That may be the case, but that remedy ignores current land use and what is physically on the ground on the relevant properties. With the exception of the seawall, all of the land is open space, including a formed pathway. The land is not obviously used for marina purposes. Rezoning some of the land as Marina Zone would risk the public's current opportunity to utilise these strategic land parcels (with or without future connection around the remainder of the marina). The Panel is reluctant to remove or reduce the extent of this opportunity given that the land is within one of Marlborough's significant urban communities.

**Decision**

243. That the submission by PMNZ is rejected and the land adjoining 39 and 41 Waikawa Road (shown in Annexure B of the PMNZ submission) is retained as Open Space 1 Zone.

## Lake Grassmere – Zoning maps 187, 188, 203

**Introduction**

244. Dominion Salt Limited (DSL) operates a solar sea salt production field, refining and processing facilities at Lake Grassmere Marlborough.

245. The Lake Grassmere operation is not only significant for the manufacturing and employment opportunities it brings to Marlborough but DSL's management practices maintain sustainable water levels in the lake year round providing flood control in winter and supporting significant flora and fauna in the area. A DOC summary report for the South Marlborough SNA Programme in 2004 identified the lake is nationally significant for five species of birds, and regionally significant for five others either for feeding, roosting or breeding. An additional MDC Report in 2005 provided further details on the ecological significance of the Lake Grassmere area.[60] DSL has indicated its support for the setting up of a Landcare Group by residents for the area.[61]

246. A number of submission points were received in relation to Zoning Map 187 from DSL variously seeking: extension of the Lake Grassmere Salt Works Zone over adjoining roads, over

[60] North, M. 2004 Wairau Ecological Region – Blenheim, Grassmere, Flaxbourne, Wither Hills and Hillersden Ecological Districts. Survey report for the Protected Natural Areas Programme. Occasional Publication No. 60. Department of Conservation, Nelson at 139. Appendix 2.
Marlborough District Council. July 2005. South Marlborough: Significant Natural Areas Project – A Summary of Results from an Ecological Survey of Significant Natural Areas on Private Land in Marlborough, south of the Wairau River at 51.

[61] Section 42A Report, Reply to Evidence, page 106.

the Open Space area bordering the coastline so that it encompasses 25 metres either side of the pipeline and infrastructure within the Coastal Marine Area; inclusion of the area to the south as highlighted in the plan, used for 'administration, workshops, salt refining and processing area'.[62] This area is also zoned within the Lake Grassmere Salt Works Zone. DSL consider the zoning sought is indistinguishable from land on the site already used for this purpose and initially did not provide any maps to support the proposed extensions.

**Site Visit**

247. The Panel undertook a site visit to familiarise itself with DSL's operation in December 2018. Only when seen from the hill to the south, looking down on the operation is its large scale appreciated. The site visit provided clarity as to the requested zoning of the site, the expansion of its facilities, together with the accuracy of the location and dimensions of the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor. Of importance was the proposal to create the new Salt Works Outlet Area which would incorporate both the Salt Works Zone and Open Space 3 Zone and the extent of the proposed additional administration areas.

**Issues Arising**

- Extent of the Lake Grassmere Salt Works development.
- Accurate mapping of the pipeline.
- Length of the Pipeline Corridor.
- New Salt Works Outlet area.
- Panel's site visit.
- Rules as amended.

248. In order to further clarify these issues, the Panel made several requests for further information from Dominion Salt Limited both during the hearing and via minutes after. These responses included the following:

- Supplementary legal submissions in response to questions from the Panel provided during the hearing;
- Response to Minute 18 of the MEP Hearing Panel; and
- Response to Minute 34 of the MEP Hearing Panel.

[62] DSL (355.017), Memorandum dated 24 April 2018.

249. Figure 11.3 attached to this decision, taken from DSL's memorandum in response to Minute 18, now contains an accurate map reflecting the zoning amendments the company seeks. It is the result of the new assessments illustrating the changes to be made. It encompasses its operations in respect of the current and old intake pipelines. The Panel as a result of this amendment, sought further clarification from DSL if Appendix 21 to the notified plan is still accurate.

250. DSL responded that factually, Appendix 21 does not entirely encompass its operations in the intake area. The old intake pipeline is approximately only 4 metres outside the boundary of Lake Grassmere Salt Works Zone Intake and Pipeline Extension Corridor.

**Extent of the Salt Works Development**
**Section 42A Report**

251. The report writer initially recommended there was no clear justification for the expansion of the Lake Grassmere Salt Works Zone although it was foreseeable that production of solar salt may require expansion of some areas of the operation in the future.

252. The extent of the proposed expansion was provided in the evidence given by DSL at the subsequent hearing.[63] This expansion of the site appeared significant compared with the limited size of the existing development within the zone. As a result of the report writer's closing statement and after hearing from the Panel, DSL reduced the area for rezoning significantly.[64]

253. Within the DSL Supplementary Submissions of 24 April 2018 responding to questions of the Panel asked at hearing, areas marked in hatched red in their Appendix 3, identify the areas DSL seek to have amended including the Administration and Processing area. These small areas, in relation to the scale of the overall operation, are used for temporary facilities such as storage of equipment, mining of bitterns using a mobile mixer[65], mixing of gypsum using mobile equipment, and the screening of gravel using mobile equipment.[66] In his evidence, Mr Euan McLeish, Production Manager of DSL, identified there is in fact only a modest amount of land suitable for processing. This was clear from the Panel's subsequent site visit and from Smart Map prints put in evidence, illustrating the large extent of the salt processing ponds by comparison.[67]

[63] DSL, Euan McLeish, Evidence, paragraphs 7-9.
[64] Section 42A Report, Reply to Evidence, page 108.
[65] Bittern is a solution that remains after evaporation of halite (common salt).
[66] DSL Memorandum, paragraphs 17-19, Appendix 3 attached, 24 April 2018.
[67] DSL Evan McLeish Evidence 26 March 2018, paragraph 6, 7, 12.

254. The report writer was satisfied that the areas now proposed are small in size and located in clear proximity to the existing development. She considered the expansion of the 'Salt Works Administration Area' into this location could appear to be a continuation of the existing built area. She concluded also that the development of this area within this zone would not result in adverse effects on amenity of the area.

255. Overall, the report writer's acceptance of the proposed development did not stretch to the southern end of the salt ponds (marked on Figure 11.4, attached[68]) which DSL identified would be permanent structures in which to house its operations in the medium term. No information at this stage was provided to suggest these structures should be 15 metres in height which would exceed the permitted height of 10 metres within the identified zoning as notified in the PMEP.

**Reply to request for further evidence**

256. In its memorandum of 24 April 2018, DSL provided two pages of an Appendix 3 showing map delineations on aerial photographs of the locations for which it seeks the Administration and Processing Area status in the PMEP. These delineations appeared to be hand drawn only. The maps provided need to be of GIS mapping standard for accuracy.[69] In response to Minute 34 of the Panel, Dominion Salt provided an appropriately, GIS mapped depiction of the three administration areas being requested.

**Consideration**

257. The Panel's site visit enabled an overview from within the zone on an elevated centrally located highpoint. The site visit satisfied the Panel that Areas 1 and 3 could be approved for re-zoning to meet the expansion needs described in evidence for increased administration areas. The Panel was satisfied the scale of development on those extra areas could be readily absorbed within the effects of the existing scale of development at the location.

258. However, Area 2 was regarded as not so readily being able to meld into existing levels or scale of development. Moreover, the Panel remained unsatisfied from the evidence as to what exactly would be the nature of the proposed development, its height, bulk and other effects which would need to be understood to be able to make an appropriate assessment of effects. The size of Area 2 and its proximity to Kaparu Road and hence its visibility was such that further detail would be necessary as full built development and/or use of such a very large area could not be readily absorbed within the scale of the existing development.

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[68] Photo: Additions sought to Lake Grassmere Salt Works Administration Workshop, Salt Refining and Processing Area marked up as 1, 2, 3.
[69] Panel Minute 34.

*Height issue*

259. The appropriate height limit for any buildings on Areas 1 and 3 then arises. The general height limit standard applying in the Salt Works zone is 15 metres. The location of Area 1 adjacent to existing built structures of about that height, and its relatively small size in added area satisfied the Panel that a height of 15 metres over extended administration areas would not cause significant extra adverse effects.

260. The potential addition of Area 3 as a new administration building area separate from other existing development initially caused some concern that the effects of buildings of such height could be significant in a visual sense from SH 1. However, having now seen on the site visit the way in which the hill from which the site visit overview occurred blocks most views from SH1 the Panel was more comfortable with the general height standard of 15m in the zone applying. Moreover, the Panel notes that the height of the hill, which shields most of this area, is 36 metres, which will assist in reducing any effects from what would be long-distance views of SH1 from the south or from Marfells Beach Road. The Panel decided, therefore, that the height standard applicable to the rest of the zone should apply also to Areas 1 and 3.

**Decision**

261. The PMEP is amended as follows:

- Zoning Map 187 is amended to reflect the proposed expansion for the Lake Grassmere Salt Works Administration, Workshops, Salt Refining and Processing Area Zone as illustrated as areas 1 and 3 only as shown on the Response to Minute 34.
- The inclusion of Area 2 as shown on the Response to Minute 34 is rejected.
- The height limit for buildings and structures within new areas 1 and 2 zoned Lake Grassmere Salt Works Administration, Workshops, Salt Refining and Processing area are subject to relevant Chapter 22 standards and no additional restrictions applied.

## Accurate Mapping of the Pipeline Corridor

262. DSL initially indicated that Appendix 21 Volume 3 PMEP showed the accurate location and dimensions of the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor Zone: see Volume 4 Maps 187-188 (the zoning maps). In the notified PMEP however, Appendix 21 shows only approximate locations and dimensions of the base width of the Pipeline Corridor at (approximately) 55 metres shorter than it should be on those maps. The datum line as shown in Appendix 21 of the PMEP reflects these provisions.

263. DSL now seek the pipeline corridor be extended 25 metres north-east, as shown in Figure 11.3, to ensure that DSL can carry out maintenance on the old intake pipeline which the company wishes to repair in the future. The old intake pipe extends seaward approximately the same distance as the current pipeline.

264. DSL advised that if the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor was accurately mapped in Volume 4 Maps there would be no need for Appendix 21 of the notified plan.

265. Questions about the length of the pipeline corridor arose because the physical pipeline itself only extends 30 metres from mean high water springs (MHWS) (the old pipeline was 15 metres) whereas, the Pipeline Zone extends 1000 metres from MHWS. It was explained the November 2016 earthquake caused uplift along a sizeable area of the East Coast including Clifford Bay adjacent to Lake Grassmere. The pipeline's intake was raised 36cm relative to sea level resulting in:

- The intake is now at a shallower depth and is affected by more silt and seaweed washed into the settling ponds requiring more frequent cleaning.
- Reduced tidal flow into the settling ponds has reduced the pumping window into the main lake over each tide (adjusted by providing more pumps).

266. DSL as a consequence seeks to retain the notified length of the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor Zone (1000 metres) to allow for contingencies such as future changes to sediment transport along the coast, while a future earthquake uplift may need the intake pipe to be extended further.

267. Originally DSL sought that the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor be extended 25 metres either side of the pipeline. This is now considered unnecessary because the length and situation of the pipeline will now allow the excavation to be carried out with a boom to clean sand away unimpeded, the operational requirements of the salt works to continue, maintenance of the pipeline to be undertaken, and finally providing cuts for stormwater overflow as permitted activities within the Salt Works Zone.[70] The locations of all these activities are illustrated on Figure 11.3 to this decision.[71]

[70] DSL, Counsel Supplementary Submissions.
[71] Appendix 1, Lake Grassmere Salt Works Zone Intake and Pipeline Corridor.

268. DSL requests changes to the dimensions. The effect of the identification of the Lake Grassmere Saltworks Intake and Pipeline Extension Corridor is to accurately demonstrate its location.

**Consideration**

269. The Pipeline Extension Corridor extends 1000 metres from MHWS. In terms of extending the physical pipeline from its current location at 30 metres from MHWS (see paragraph 133 above),[72] increased sediment transport along the coast may well change over time. Further climate change weather-related events may well be a factor in creating a build-up of sediment unable to be readily cleared away. Meanwhile, earthquakes in the area may well cause further uplift requiring further repositioning of the pipeline. The November 2016 earthquake caused uplift along a sizeable area of the east coast including in Clifford Bay adjacent to Lake Grassmere. The pipeline's intake pipe from that event was raised 36 cm, the results identified above.

270. During the hearing it became evident that the areas comprising the Lake Grassmere site could not be adequately determined on the maps at a 1:40,000. A 1:10,000 scale would allow users of the hard copy version to identify the different areas and elements that make up the site. The submitter noted that the site, if appropriately mapped, would make Appendix 21 redundant. The Panel agreed that suitable mapping would serve plan users better than unnecessarily having the double up of map and an additional appendix.

**Decision**

271. The PMEP is amended as follows:

- The length of the pipeline corridor is set at 1000 metres.
- Zoning Map 187 is amended to accurately map the Lake Grassmere Salt Works Zone intake and pipeline extension corridor, as shown on Appendix 1, Response to Minute 18.
- The Lake Grassmere Saltworks Zone is to be mapped at the 1:10,000 scale and the additional zoning maps are inserted at Map 88.

## New Salt Works Outlet Area

272. Mr McLeish identified that the Open Space 3 Zone between the saltworks and the internal road (to which the public does not have access) and the pipeline should also be zoned as part of the Lake Grassmere Salt Works Zone. DSL further noted the current zoning prevented maintenance activity in that area.

[72] Supplementary Submissions of Counsel for DSL. Topic 11 Use of the Coastal Environment, 24 April 2018, paragraphs 13-14.

273. In response to the Panel's request at the hearing for further clarity, DSL provided Supplementary Submissions[73] setting out what they were seeking.

274. A number of issues arose from the zoning of the area between the Lake Grassmere Salt Works Zone (Salt Works Zone) and the Pipeline Corridor as Open Space 3 Zone.

- The two areas are separated by the Open Space 3 Zone. Therefore it is unclear that the Pipeline Corridor is part of the Salt Works Zone its inclusion only being implied by the rules relating to the Pipeline Corridor.[74]
- Rule 22.1.5 allows for the construction and use of a temporary stormwater flood outlet channel as a permitted activity; if required, DSL would construct the channel with the outlet located within the southernmost section of the Pipeline Corridor. This would need to go through the area zoned Open Space 3 to which Rule 22.1.5 does not apply. Consequently the company would need a resource consent to construct the channel in this area.
- DSL carries out regular activities such as intake repairs, unblocking the pipe and maintenance within the area zoned Open Space 3 between the Pipeline Corridor and the Salt Works Zone along which a gravel legal road runs along the coastline within Open Space 3.

275. DSL's solution to requiring a resource consent for its activities is to create a new Salt Works Outlet Area hatched in black on the map attached (Figure 11.3).[75] The rules for Open Space 3 Zone would apply as well as permitted activity Rules 22.1.2, 22.1.4 and 22.1.5. These prescribe the standards applying to the limited activities which mirror those already carried out within the proposed new Salt Works Outlet Area. In addition, DSL sought a new rule of the maintenance of the intake pipelines. These were set out in the tracked changes version of Chapter 22, provided in the response to Minute 18, dated 24 May 2018.

**Consideration**

276. The report writer and the submitter were agreed on the following rule: Lake Grassmere Salt Works Zone Permitted Activities

*22.1.X Within the Salt Works Outlet Area the following are permitted activities subject to their relevant standards:*

*(a) Activities identified in Rules 22.1.2 to 22.1.5;*

[73] Supplementary Submissions of Counsel for Dominion Salt Limited, dated 24 April 2018.
[74] Chapter 22: Lake Grassmere Salt Works Zone, page 22-23.
[75] Maps included, Memorandum in response to Minute 18

*(b) Activities permitted in the Open Space 3 Zone.*

277. This is based on submission point 355.011 using the wording suggested by the report writer.

278. The Panel considered the zoning change would enable the operational requirements of the salt works to continue by providing the link to the pipeline corridor. The zoning of this area will provide for the activities anticipated to occur there unimpeded, such as maintenance of the pipeline, as permitted activities.

**Decision**

279. The Open Space 3 Zone between the Salt Works Zone and the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor, is to be rezoned as Lake Grassmere Saltworks Zone.

## New provision 22.1.20

280. The solution proposed by DSL to establish a new Salt Works Outlet Area encompasses some of the area zoned both Open Space and Salt Works Zone to provide the link from the Salt Works Zone to the Pipeline Corridor and provide for the activities that are anticipated to occur there such as maintenance of the pipes. It is therefore important that this mapping is accurate, requiring the exact location and extent of the pipeline.

281. As proposed by DSL, the report writer recommends the following[76] is included in the PMEP:

*22.1.20 Within the Salt Works Outlet Area the following are permitted activities subject to their relevant standards:*

*a) activities identified in rules 22.1.2 to 22.1.5*

*b) activities permitted in the Open Space 3 Zone*

**Decision**

282. Create a Salt Works Outlet Area as set out in response to Minute 18 dated 24 May 2018 and add the new area to the map legend.

## Rules as amended

283. **The WARMP** methods of implementation for the Lake Grassmere salt works operation have been carried over into the PMEP. Permitted Activity Rule 22.1.1 provides for solar production refining, handling, packaging, storage and sale of salt and associated by-products. No change is considered as these operating systems have proven to be efficient and proven management by inclusion of the wording "and the full range of process required".

284. The report recommended that Rule 22.1.1 be amended as follows:

[76] Section 42A Report, pages 174-176, Reply to Evidence, page 110.

Solar production, refining, handling, packaging, storage and sale of salt and associated by-products, and the full range of processes required.[77]

285. Dominion Salt sought an alternative expression for Standard 22.2.1.3 that would result in 'notwithstanding' being replaced with 'any building not coming within'. The report writer agreed that an alternative expression was appropriate but instead recommended the following:

*22.2.1.3 Any building or structure to which Standard 22.2.1.1 and 22.2.1.2 does not apply must not exceed 10 metres in height ~~Notwithstanding 22.2.1.1 and 22.2.1.2, a building or structure must not exceed 10m in height~~.*

286. Another recommendation of the report writer was for the following change:

> *22.3.4.1 The temporary channel must only be constructed and used when a storm event is forecast or immediately following a storm event.*

**Consideration**

287. In terms of Permitted Activity Rule 22.1.1, the Panel subsequently changed the words 'full range' in Rule 22.1.1 to 'associated' range of processes as being more appropriate as 'full range' is too uncertain.[78]

288. The Panel also agreed that the term 'notwithstanding' does not function effectively when considered alongside 22.2.1.1 and 22.2.1.2. However, it determined that the wording should be 'any building or structure not covered by 22.2.1.1 and 22.2.1.2 must not exceed 10m in height'

**Decision**

289. The following rule is to be inserted:

> *22.1.X Within the Salt Works Outlet Area the following are permitted activities subject to their relevant standards:*
>
> *(a) Activities identified in Rules 22.1.2 to 22.1.5;*
>
> *(b) Activities permitted in the Open Space 3 Zone.*

290. Standard 22.2.1.3 is amended as follows:

*22.2.1.3 ~~Notwithstanding~~ Any building or structure not covered by Standards 22.2.1.1 and 22.2.1.2~~, a building or structure~~ must not exceed 10m in height.*

[77]). Section 42A Report, page 175
[78] Section 42A Report, paragraphs 974 – 976, 981.

291. Standard 22.3.4.1 is amended as follows:

*22.3.4.1 The temporary channel must only be constructed and used when a storm event is forecast or immediately following a storm event.*

292. *Rule 22.1.1 is amended as follows:*

22.1.1 *Solar production, refining, handling, packaging, storage and sale of salt and associated by-products, and the associated range of processes required.*

## Rule 22.1.3

**Take and use of coastal water and the maintenance of existing seawater intake pipelines within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor shown in Appendix 21.**

293. DSL requested that permitted activity Standard 22.1.3 is revised to separate out the 'take and use of coastal water' from the remainder of the rule as more certainty is required as to the nature of the activities enabled in the Pipeline Corridor.

294. In her Reply to Evidence, the report writer agreed with DSL that the zoning of the area linking the Salt Works Zone to the Pipeline Corridor does not allow the company to undertake works namely the construction of an outlet channel (to accommodate flooding) as permitted within the Salt Works Zone but does not apply within the Open Space 3 Zone where the works need to occur.

**Decision**

295. The following amendment was proposed with which the Panel agrees:[79]

*22.1.3 – Take and use of coastal water from ~~and the maintenance of existing seawater intake pipelines~~ within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor ~~shown in Appendix 21.~~*

296. Lake Grassmere Settling Ponds and Roading - Lake Grassmere Saltworks Zone is applied to the ex-settling ponds. The area runs adjacent to the eastern end of Kaparu Road through to the Lake Grassmere Salt Works Zone intake and pipeline extension corridor. The area is shown as unzoned in the notified plan.

297. There was general concern about the lack of detail as to roads and waterbodies in and around the Salt Works Zone.

298. The redundant settling pond shown in photograph 3 in the response to Minute 18 was shown as river bed on the notified plan. DSL sought for it to be zoned Lake Grassmere Salt Works Zone.

[79] Section 42A Report, Reply to Evidence, page 109-110.

**Decision**

299. The ex- settling pond area shown in photo 3 contained in response to Minute 18 is rezoned Lake Grassmere Salt Works Zone.

## Zoning of internal roads

300. DSL states that the Council has zoned as road internal parts of the salt works site. But in DSL's experience, these are not places that the public has access to in practical terms. The processes undertaken in this area of the site are similar to those that occur in other parts of the salt works. The submitter seeks that all of the appurtenant areas on its land be zoned for consistency.

301. The report writer identifies that within the PMEP zoning map those areas are identified as indicative river beds. She considers that within these areas the management framework for the land as Lake Grassmere Salt Works Zone still applies to this land.

302. The report writer's recommendation is that as the submission provided no clear justification for the need for the expansion of this zone, nor a map to indicate any expansion, she was unable to assess the zoning request and that the submission from DSL is rejected.[80]

303. The report writer reiterated her rejection of the submission in her Reply to Evidence. The Panel agrees with her reasoning.

**Decision**

304. The request for the zoning of roads is rejected.

## Lake Grassmere – Scheduled sites

305. The above decisions, combined with a decision on another DSL submission point in the Topic 19: Land Disturbance decision, add additional overlays to the Plan. The effect of the overlays is to allow location specific rules apply to specific activities. The same also applies in the case of the existing Intake and Pipeline Extension Corridor.

306. Having made decisions on these submission points on their merits, but in isolation to each other, the Panel has reflected on the best structural option for giving effect to its decisions. As they stood, the decisions would introduce a level of complexity to the permitted activity rules in 22.1, and their accompanying standards in 22.2 The Panel considered that this complexity would create the potential for confusion in the implementation and administration of the rules.

[80] Section 42A Report, paragraph 962.

307. In the process of considering a remedy to this matter, the Panel noted the content of Appendix 16 of Volume 3. As notified, Appendix 16 contains three scheduled sites[81] and it operates to allow a set of specific rules apply to each of the scheduled sites. This is exactly how the Salt Works Outlet Area and Salt Works Lake Maintenance Area (see Topic 19 decision) are designed to operate with respect to DSL's operations at discrete parts of Lake Grassmere.

308. The Panel has determined that Appendix 16 should therefore be utilised to provide for the rules that apply to each of the relevant spatial areas. To achieve this end, the relevant spatial areas have to be mapped as scheduled sites in the relevant zoning maps of Volume 4. This would have the effect of removing complexity from 22.1 and 22.2 of Volume 2. Those sections would simply contain the rules that apply to the Lake Grassmere Salt Works Zone in its entirety.

309. The Panel also noted that the Intake and Pipeline Extension Corridor operates in much the same way to the two new overlays: A discrete set of rules applies to specific activities in the Corridor. For consistency, the Panel is making a consequential change to also relocate the rules that apply to the Corridor to Appendix 16.[82]

310. There is one further consequential change required to implement this structure and that is a minor change to the introductory wording of 21.1 to recognise that the rules in Appendix 16 may enable activities in addition to the rules of Chapter 22. A wording for doing so is set out below.

**Decision**

311. The Salt Works Outlet Area and the Intake and Pipeline Extension Corridor, in addition to the Salt Works Lake Maintenance Area, are to be depicted as scheduled sites on the relevant zoning maps in Volume 4.

312. The rules and standards applying to the new Salt Works Outlet Area and the existing Intake and Pipeline Extension Corridor, in addition to the new Salt Works Lake Maintenance Area, are added to Appendix 16 of Volume 3 as a new schedule, as follows:

[81] Decisions on Topic 21: Zoning add two additional scheduled sites.
[82] The Panel has also decided to delete Appendix 21 as a result of accurately mapping the Intake and Pipeline Extension Corridor on the relevant zoning maps.

## *Schedule 7 – Salt Works Outlet Area, Lake Grassmere Salt Works Intake and Pipeline Extension Corridor and Salt Works Lake Maintenance Area.*

*Where not otherwise expressly provided for, or limited by, the rules in Schedule 7 of Appendix 16, the rules of the Lake Grassmere Salt Works Zone apply to all activities when undertaken by the operator of the salt works within the Salt Works Outlet Area, Lake Grassmere Salt Works Intake and Pipeline Extension Corridor and the Salt Works Lake Maintenance Area.*

## *Schedule 7A – Salt Works Outlet Area*

### *7A.1 Permitted Activities*

*Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Salt Works Outlet Area identified in Appendix 21, and where they comply with the applicable standards in Chapter 22:*

*[D]*

*7A.1.1 Buildings, bunds, roads and other developments associated with the Salt Works activities existing at 9 June 2016.*

*[D]*

*7A.1.2 Maintenance of existing seawater intake pipelines and associated structures*

*[C]*

*7A.1.3 Discharge of stormwater from Lake Grassmere and surrounding catchments or diluted brine to the coastal marine area.*

*[C, D]*

*7A.1.4 Construction and use of a temporary stormwater flood outlet channel from Lake Grassmere to the coastal marine area, including any disturbance of the foreshore and seabed.*

*[R, D]*

*7A.1.5 Activities permitted in the Open Space 3 Zone.*

### *7A.2 Standards that apply to all permitted activities*

*7A.2.2 When undertaking an activity in accordance with permitted activities in the Open Space 3 Zone, the relevant standards for the activity in 19.3 must be complied with.*

## *Schedule 7B – Lake Grassmere Salt Works Intake and Pipeline Extension Corridor*

### *7B.1 Permitted Activities*

*Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor identified in Appendix 21, and where they comply with the applicable standards in Chapter 22:*

*[C]*

*7B.1.1 Take and use of coastal water.*

*[C]*

*7B.1.2 Maintenance of existing seawater intake pipelines and associated structures.*

*[C]*

*7B.1.3 Discharge of stormwater from Lake Grassmere and surrounding catchments or diluted brine to the coastal marine area.*

*[C]*

*7B.1.4 Construction and use of a temporary stormwater flood outlet channel from Lake Grassmere to the coastal marine area, including any disturbance of the foreshore and seabed.*

*[C]*

*7B.1.5 Activities permitted in the Coastal Marine Zone.*

***7B.2 Standards that apply to all permitted activities***

*7B.2.2 When undertaking an activity in accordance with permitted activities in the Coastal Marine Zone, the relevant standards for the activity in 16.3 must be complied with.*

## *Schedule 7C – Salt Works Lake Maintenance Area*

***7C.1 Permitted Activities***

*Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Salt Works Lake Maintenance Area, and where they comply with the applicable standards in Chapter 22:*

*[R, D]*

*7C.1.1 Excavation*

313. The introductory wording to 22.1 is amended to read:

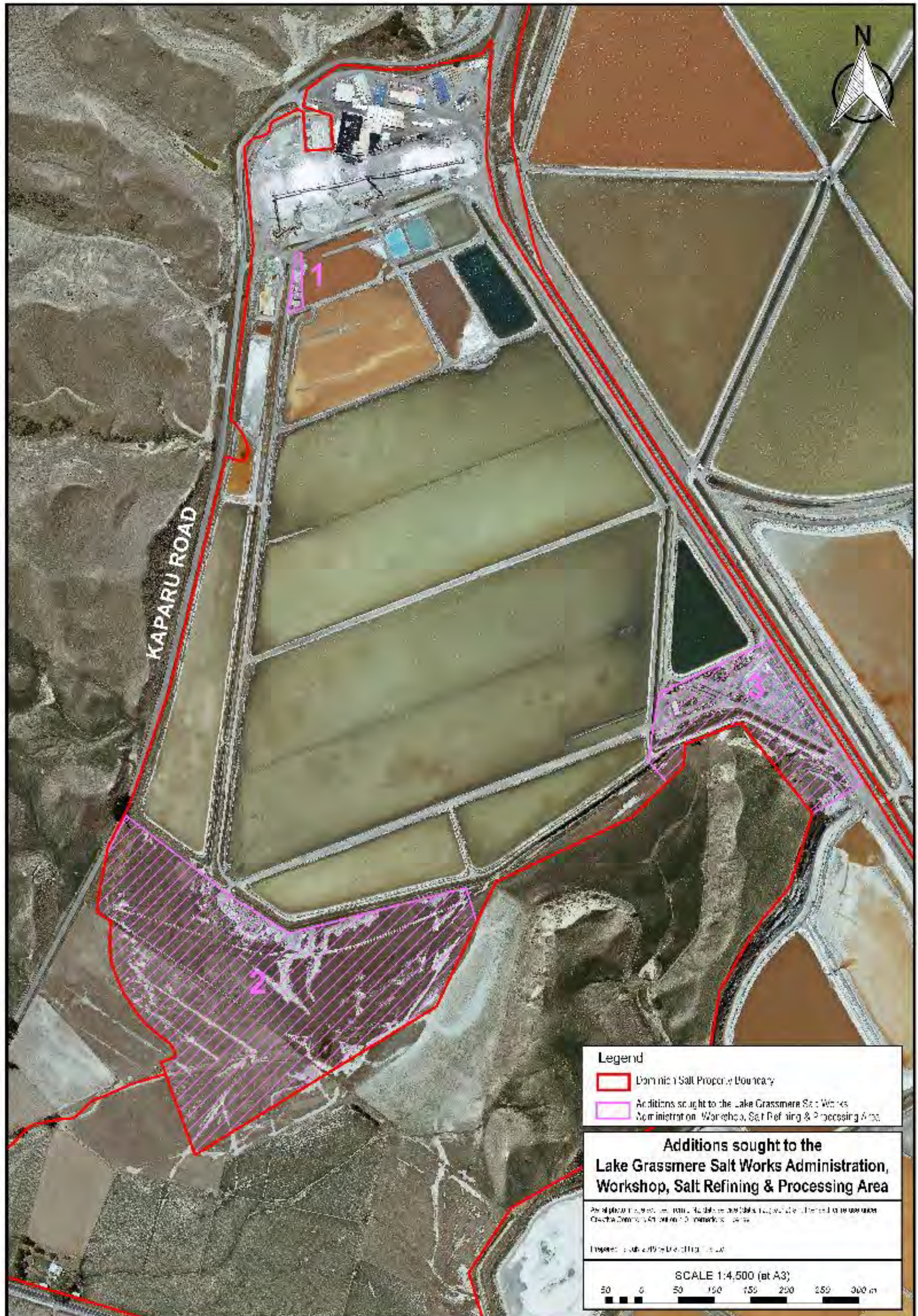
*"Unless <u>expressly permitted by rules in Schedule 7 of Appendix 16 or</u> expressly limited by a rule elsewhere by a rule in the Marlborough Environment Plan…"*

## Figure 11.3

Lake Grassmere Salt Works Zone intake and pipeline extension corridor

SCALE 1:1,250 (at A3)

**Figure 11.4**



## Port Zone - Clifford Bay

314. A number of submission points from Port Clifford Limited (PCL) received in relation to the Port Zone at Clifford Bay seek: retention of the Port Zone but amend its boundaries to provide for a smaller 'pocket port' concept (where the submission envisages the use that may include, but not limited to, export of goods and international road freight services); amend the objectives and policies to include reference to the Clifford Bay Port Zone; remove Rule 13.5.2 which requires resource consent for any activity for the purpose of constructing any port facility within Port Clifford.[83]

315. The Port Zone extension sought by PCL (identified within Appendix A to its submission), identifies an area where the following zoning and overlays apply to the site:

- Zoning
  - Coastal Marine Zone
  - Open Space 3 Zone
  - Rural Environment Zone
- Overlays
  - Significant Wetland (W78)
  - Threatened Environment – Indigenous Vegetation Site
  - Coastal Natural Character – Very High Rating.[84]

316. The PMEP provisions relevant to the PCL proposals are as follows:

*Objective 13.1 - Areas of the coastal environment where the adverse effects from particular activities and/or forms of subdivision, use or development are to be avoided are clearly identified.*

*Policy 13.1.1 - Avoid adverse effects from subdivision, use and development activities on areas identified as having:*

*(a) outstanding natural character;*

*(b) outstanding natural features and/or outstanding natural landscapes;*

*(c) significant marine biodiversity value and/or are a significant wetland; or*

*(d) significant historic heritage value.*

[83] Port Clifford Limited (1041.001) Duncan Whyte Evidence.
[84] Section 42A Report, paragraphs 995-996.

**Section 42A Report**

317. The Section 42A Report does not identify that the Port Zone needs to be rezoned. Zoning is a tool to achieve objectives and policies within the PMEP and is not itself an outcome.[85] The submission from PCL to amend the zone's boundaries did not provide any information on the surrounding areas. But there was the potential in the little that was provided, to indicate the proposed extension may result in significant adverse effects to the existing coastal environment.

318. The evidence produced at the hearing, however, provided some clarification of what was required. PCL sought to significantly reduce the boundaries of the existing Port Zone within a rectangle of land marked up and included in the mapping produced.

319. In terms of the NZCPS Policy 13 Natural Character implications, the submitters' focus was on the second part of Policy 13(1)(b) *'avoid, remedy or mitigate other activities other than those which do not have significant adverse effects on natural character on all other areas of the coastal environment.'*

320. Nevertheless, the report writer's primary concern remained. The proposed Port Zone extension signalled that the new port would be located over Significant Wetland (W78) and dunelands. Under NZCPS Policy 11(b)(iii) to which the submitter did not refer, the suggested removal of these features to give way to the 'pocket port' would be considered a significant adverse effect on the environment to be avoided.

**Consideration**

321. Port Clifford submitted that the objective and policies should include reference to 'remedy and mitigate' adverse effects to bring Policy 13.1.1 into alignment with the NZCPS. This was rejected by the Section 42A Report writer citing NZCPS Policy 7: Strategic planning, which provides Policy 7(1)(b) to identify the areas in the coastal environment where development is inappropriate in preparing regional policy statements – Policy 7(1)(b)(i).This is what the PMEP achieves with the provisions relevant to the protection of the coastal environment.

> *Policy 13.1.2 - Areas identified in Policy 13.1.1 as having significant values will be mapped to provide certainty for resource users, Marlborough's tangata whenua iwi, the wider community and decision makers.*

322. The two policy provisions above identify the areas with significant values to be avoided, and where this occurs, these areas are to be mapped in the PMEP to provide certainty to plan users. The policies seek to identify areas of the coastal environment that the Council has an

[85] Section 42A Report, Reply to Further Evidence, page 113.

obligation to protect from adverse effects from development use and subdivision to give effect to the provisions of the RMA and the NZCPS.[86]

323. The Panel provided PCL with the opportunity to seek legal advice as to the implications of the NZCPS on the zoning map changes its submission requested[87] (as under s 66(1) RMA the MDC must prepare the PMEP in accordance with the NZCPS). The effect of the request by PCL ignores NZCPS Policy 11 (b)(iii) Indigenous biological diversity (biodiversity) relating to indigenous ecosystems and habitat found only in the coastal environment that are particularly vulnerable to modification (such as coastal wetlands and significant effects on dunelands), as well as other potentially relevant provisions in Policy 11.

324. The wording of Policy 11(b)(iii) requires avoidance of significant adverse effects on:

> *(iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh.*

325. In its memorandum[88] in reply to Minute 22, PCL responded that the company does not believe it is necessary to add anything further to those particular matters it had already addressed in the hearing, namely:

- There is an existing Port Zone that is much larger than the proposed pocket port that currently forms part of the existing environment.
- As the proposal is in an existing zone, the legal test found in NZCPS Policy 11(b) is firstly to avoid 'significant adverse effects' and secondly 'to avoid, remedy or mitigate other adverse effects_…'. These three (secondary) options are allowed for in PCL's proposal. The witness stated this 'must be the case' or there are other ports across New Zealand that would be constrained with no change permitted.
- If Significant Wetland W78 is a coastal wetland of significance, this has never been identified or discussed before in the previous TranzRail hearing under WARMP.
- It is hypothesized that an 'artificial channel' from the area identified as W78 to Lake Grassmere has long been established as can be observed in historical aerial imagery. This may have drained water or taken it from Lake Grassmere to create the area now identified as W78.

[86] Section 42A Report, paragraphs 69-72.
[87] Hearing Panel Minute 22, 10 April 2018.
[88] PMEP Response to Minute 22, Port Clifford Limited, 9 May 2018.

- Objective 13.1 and Policies 13.1.1 and 13.1.2 should be amended to include reference to the words 'remedy and mitigate' adverse effects.[89] The company's intent appears to be an attempt to modify Policy 13.1.1 to bring it into alignment with the NZCPS Policy 11(b) (second part) in order to modify 'or play down' the 'avoidance' of significant adverse effects of developments in the coastal environment. Specifically PCL sought to separate out the wetland (PCL was a further submitter to the PMNZ submission on this matter).

326. We find from the Section 42A Report that the submitter did not submit on Policy 8.3.1(b) that identifies the need to 'avoid' adverse effects on areas mapped as significant wetlands. Both Policy 13.1.1 and Policy 8.3.1 in fact reflect the obligations on the Council to give effect to the directions within the NZCPS that include Policy 11(b)(iii) to avoid significant effects on (inter alia) coastal wetlands and dunelands.[90]

327. Nor did the submitter seek to remove the Significant Wetland (W78) from the PMEP Planning Maps about which the submitter had the opportunity to comment. Instead the submission only queried how the area was established as a significant wetland in the first place. 'Significant' by definition is just that – established through the criteria identified in Chapter 8 and applied to the wetland in Clifford Bay by Peter Hamill, an experienced scientist for the MDC who gave earlier evidence at the hearing.

328. In his evidence Mr Whyte, witness for the submitter, produced a series of maps providing two options for the proposed development.[91] Also produced as *Appendix 2*: *Extracts from PCL submission Planning Maps*, were two further maps identifying the various zones marked in black applying to the proposal. The first of these illustrates the 'Proposed Port Zone' entirely encompassing in purple the whole of what is identified as a 'Significant Wetland' and the second map including in green a small sliver of coastal environment called 'Threatened Environments'. The proposed zone has been moved to the northwest and includes more land for the 'pocket port' than coast which was previously included in the TranzRail case.[92]

329. From these maps the Panel's conclusion is that the proposal remains within the existing TranzRail area but in a different northwest location than the previous TranzRail proposal. The new proposed area also encompasses a Significant Wetland, the only remaining wetland

[89] Port Clifford (1041.20).
[90] Section 42A Report, Reply to Evidence, page 16.
[91] Port Clifford, Duncan Whyte Evidence, pages 19-20. *Extracts from AECOM Feasibility Study 27 May 2016.*
[92] Ibid, pages 21-22.

feature in this whole coastal area. The Panel found it difficult to imagine a more significant adverse effect on a wetland than to propose its entire destruction.

**Decision**

330. The submitter failed to appreciate the significance of the legal barrier it faced in NZCPS Policy 11(b)(iii) given that the Council is required by law under s 66 RMA to ensure its resource management plans are in accordance with the NZCPS (2010).

331. After hearing further evidence on this submission and assessing the maps illustrating the boundaries of the proposed pocket port boundaries, the PCL submission is rejected. The proposed zone would effectively remove Significant Wetland W78 and dunelands from the PMEP and would not give effect to the NZCPS Policy 11(b)(iii) nor the relevant provisions of the RMA or the PMEP.

332. The submission on creating a pocket zone within the Port Zone at Clifford Bay is rejected.

## Bio-fouling, Cleaning

### Manual scraping of anti-foul paint coating or bio-foul waste from a ship

333. The relevant NZCPS provision is:

**NZCPS Policy 12 Harmful aquatic organisms**

*(1) Provide in regional policy statements and in plans, as far as practicable, for the control of activities in or near the coastal marine area that could have adverse effects on the coastal environment by causing harmful aquatic organisms to be released or otherwise spread, and include conditions in resource consents, where relevant, to assist with managing the risk of such effects occurring.*

*(2) Recognise that activities relevant to (1) include:*

*(a) the introduction of structures likely to be contaminated with harmful aquatic organisms;*

*(b) the discharge or disposal of organic material from dredging, or from vessels and structures, whether during maintenance, cleaning or otherwise; and whether in the coastal marine area or on land;*

*(c) the provision and ongoing maintenance of moorings, marina berths, jetties and wharves.*

334. And the definition of Harmful Aquatic Organisms is:

*Aquatic organisms which if introduced into coastal water, may adversely affect the environment or biological diversity, pose a threat to human health, or interfere with legitimate use or protection of natural and physical resources in the coastal environment (NZCPS Glossary).*

335. The NZCPS has a significant crossover with MPI's role in marine biosecurity and the Biosecurity Act 1993 which provides new tools for the management of bio-fouling including the Craft Risk Management Standard for Bio-fouling (CRMS) which came into effect November 2018.[93]

336. There are two sections to this part of the decision, the first is the technical aspects of bio-fouling and the second is the rules recommended to implement them.

337. Submitters assert: that the permitted activity rule does not provide for the in-water cleaning of microfouling from a ship hull – this activity may have minimal impact on the release of contaminants and assist in stopping macrofouling from occurring;[94] the Council should amend the provisions relating to the removal of bio-fouling to include provisions for in-water cleaning with standards taking into account the guidance in the Australia and New Zealand Anti-fouling and In-water Cleaning Guidelines;[95] restricting normal scraping from occurring within 10 metres of the coastal marine area is unnecessarily limiting as it normally takes place in close proximity to the CMA and is managed to ensure contaminants do not enter the area – the rule should be deleted (Standard 13.3.4. provides the appropriate benchmark for the use);[96] it is unclear why there is no rule permitting this activity within the Port Landing Zone when this activity is permitted in the Port Zone and should be subject to the same standards as specified in the Port Zone.[97]

**Section 42A Report**

338. The report writer's initial response ranged over a number of resulting issues arising:

- That water bio-fouling takes place within the CMA and is important to occur for the maintenance of boats and maintenance of biosecurity risk.
- The issue has not been clearly or specifically provided for in the PMEP.
- Any activity in the plan which is not specifically provided for as a permitted activity within the Port, Port Landing or Coastal Marine Zone requires resource consent as a discretionary activity; while manual scraping of bio-foul waste is provided for as a permitted activity within the Port and Marina Zones, the standards restrict it from occurring within 10 metres of the coastal marine area.

[93] Minister of Conservation, Sarah Hucker, Evidence, paragraph 24(b).
[94] DOC, NZDF, MPI.
[95] http://www.agriculture.gov.au/biosecurity/av/vessels/biofouling/anti-fouling-and-inwater-cleaning-guidelines
[96] PMNZ (433.121).
[97] PMNZ (433.145).

- The Australia and New Zealand Anti-Fouling and In-Water Cleaning Guidelines (the Guidelines) assist authorities to decide the appropriateness of in-water cleaning on a case by case basis determining (a) the environmental risk of in-water cleaning; (b) specific guidance when it may be acceptable. These guidelines if incorporated within the PMEP will provide sufficient control to ensure effects on the environment are mitigated. The Guidelines distinguish bio-fouling origin in three categories – regional, domestic (outside the region) and international.[98]

- The report writer recommended Permitted Activity Rules within the Port, Port Landing, Marina and Coastal Marina Zone, together with a series of standards. She recommended that the Permitted Activity Rules within these areas are amended to provide a new permitted activity together with a number of new amended standards and a new definition.[99] She also identified a new abrasive cleaning method used in the Guidelines to avoid contaminant risk and coating damage.

339. The Minister of Conservation and MPI through the DOC witness, Ms Sarah Hucker, gave extensive evidence on why the rules in the PMEP did not give adequate guidance to the NZCPS Policy 12, including track changes to proposed new rules, providing a copy of the Anti-Fouling and In-Water Cleaning Guidelines June 2013, and detailing reasons why she suggests a number of amendments to the report writer's recommendations, providing, in conjunction with MPI, a series of proposed changes.

340. Recommendations from Ms Hucker include:

- A new condition which explicitly provides for the cleaning of microfouling without the need for capture and removal from the coastal marine environment (consistent with the Guidelines).

- The exclusion of barnacles because they are low risk (also provided for in the MPI's CRMS).

- Deletion of the word 'treatment' in the report writer's recommendations because this would likely involve a contaminant and require discretionary activity consent: the word 'treatment' should be amended by the word 'cleaning' of bio-foul.

- Refer to 'macro-fouling' as well as 'micro-fouling' as a new definition. Micro-fouling is a layer of microscopic organisms referred to as a slime layer and easily removed; macro-

[98] Section 42A Report, paragraph 1103, citing Guidelines, Appendix 5, page 29.
[99] Minister of Conservation, Sarah Hucker, Evidence, paragraphs 1108-1111.

fouling is the removal of organisms visible to the eye such as barnacles tube worms or other large attached organisms.[100] The macro-fouling definition allows for the low level macro-fouling capture and removal from the coastal marine area.

341. The witness identified that their proposed condition (d) on macro-fouling is stricter than the Australia and New Zealand Guidelines because it confines this type of cleaning to a Level of Fouling (LOF 2) Ranking less than or equal to a published and widely-used LOF 2 scale development developed by NIWA in 2005. The Panel was advised by Ms Hucker[101] the reason this limit to LOF 2 was agreed to for the Greater Wellington Regional Council (GWRC) proposed rule. This was because access to technology in New Zealand to undertake in-water cleaning with 100% capture capable of dealing with large areas of a vessel hull is limited; particularly if the extent of macrofouling is more than discrete patches.

342. Ms Hucker also referred to the Guidelines cleaning method stating that New Zealand needs to be conscious that this applies dependent on the type of anti-fouling coating. It is the case for biocide coatings which are soft and gradually release a copper compound or other pesticide to deter bio-fouling organisms. It is not the case for mechanically resistant coatings that are designed for regular cleaning.[102]

**Consideration**

343. LOF 2 is still considered a low level of macrofouling, described as: "Light bio-fouling 1-5% of visible surface covered by very patchy macrofouling. [The] remaining area is often covered in slime…."[103]

344. The LOF 2 restriction together with a condition that requires the operator to "…capture any biological material greater than 50 microns in diameter, with any captured cleaning debris disposed of at an approved landfill' means that to Ms Hucker, the risk of introducing a harmful aquatic organism or pest species is minimal.

345. The Panel requested clarification from the Minister of Conservation and from MPI in the context of the permitted activity rule and standards for in-water bio-foul cleaning proposed by DOC and MPI querying, how big is 50 microns? And is the average boatie able to comply with a requirement that there be no discharge of material greater than 50 microns when undertaking in-water cleaning of bio-foul?[104]

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[100] Section 42A Report, paragraph 1103, citing Guidelines, Appendix 5, page 29.
[101] Minister of Conservation, Sarah Hucker, Evidence, paragraphs 46.
[102] Minister of Conservation, Sarah Hucker, Evidence, paragraph 37.
[103] Minister of Conservation. Sarah Ellen Hucker, Evidence, paragraph 46.
[104] Panel Minute 35.

346. The response from Counsel for both Ministers indicated that 50 microns is 0.05mm; a micron is 1/1000 of a millimetre and therefore 50 microns is very small.

347. Counsel's observation is that the 'average boatie' is able to comply with the performance standard requirement of no discharge of biological material greater than 50 microns into the water column by employing specialised operators with contamination and filtration equipment. These commercial operators are able to provide services to locations in the Marlborough Sounds.[105]

**The Issue of macrofouling**

348. The report writer's concerns were expressed, however, with the standard (d) proposal from the Minister of Conservation and MPI on the basis that the 50 micron standard for macrofouling less than this size (if from outside the region) would not require capture, and therefore would pose a biosecurity risk. It would be more beneficial to provide macrofouling to LOF 2 – then it would be equivalent to be of 'Marlborough origin' as recommended and also be defined. The report writer expressed other reservations:

- The measurement of 50 micron size referred to in the rule might be difficult for plan users to determine;
- It was likely that most boat owners would be advised to seek specialist advice to determine the nature, level (and size) of macrofouling and how to remove this; and
- A note to the proposed rule would be appropriate to guide plan users that specialist advice should be sought to ensure compliance with that particular standard.

349. MDC's Biosecurity Officer also raised concern that the rule and standard as proposed overlapped with the Biosecurity Act 1993 and failed to give consideration to the origin of the bio-fouling as a necessary criteria for the suitability of in-water fouling.

350. As a result the report writer sought leave to discuss her concerns further with MDC's Biosecurity Officer and Ms Hucker of DOC for the Minister of Conservation and MPI.

**Minute 35**

351. The Panel issued Minute 35 granting leave to the report writer to discuss the potential effects of these activities and their complexities with Minister of Conservation, MPI and also with MDC's Biosecurity Officer. A record of that meeting of the related parties was provided to the

[105] Minister of Conservation, MPI, Submissions D Van Mierlo, page 2.

Panel – a record which endorsed much of what had already been recommended in the agreements reached previously:[106]

- DOC and MPI's preferred options did not make any distinctions about bio-fouling origin. The stricter approach of limiting discharge to LOF 2 applies to macrofouling of any origin and it was decided trying to enforce a rule that allowed a different standard for 'local' or 'regional' sources of bio-fouling would be difficult to determine and enforce.
- The proposed wording for a permitted activity rule will allow for in-water cleaning of microfouling and some macrofouling.
- The permitted activity should provide for the cleaning of microfouling, including goose barnacles in water without the need for capture.
- Some in-water cleaning of macrofouling should be provided for by the permitted activity: all parties agreed removal of 'light fouling' should be allowed by capture and with disposal.
- DOC and MPI agreed that the term 'light fouling' as used within the Marlborough Regional Port Management Plan 2018 is consistent (in accordance with the Biosecurity Act 1993) with the wording less than or equal to 2 on the Level of Fouling rank (Floerl et al (2005) as proposed by DOC and MPI in the PMEP Topic 11 hearing.
- The use of consistent terminology across the MDC plans is considered preferential. The definition of 'light fouling' in the Marlborough Regional Pest Management Plan (RPMP) 2018 is: 'means small patches (up to 100 millimeters in diameter) of visible fouling, totaling less than 5% of the hull and niche areas. A slime layer and/or goose barnacles are included in this definition.'
- Agreement was reached to use the term 'light fouling' within the rule, with a definition of 'light fouling' to be included within Chapter 25 of the PMEP.

352. The report writer accepted that the proposed rules and standards submitted within the evidence of MDC, MPI and DOC with minor amendments appear to provide clear and measurable standards for inclusion in a permitted activity rule, concluding that 'provisions, namely permitted development rules within the PMEP, that provide for "in-water cleaning of bio-fouling from ships, moveable structures or navigational aids and associated discharge of contaminants and biological material" as a permitted activity within the Port, Marine, Port Landing and Coastal Marine zones, will be efficient and effective in achieving the objectives of

[106] Section 42A Report writer: Response to Minute 35, 31 October 2018.

the Plan and, in turn, the purpose of the Act while mitigating the effects of this activity [on] the environment'.

353. The Panel agreed with the reasoning supplied in response to Minute 35 with two exceptions.

354. The first is that the notes recommended were not viewed as being appropriate save for the note drawing particular attention to the anti-fouling guidelines. The second point was that the officer designations proposed were again considered inappropriate as the obligation and authority conferred is the Council's.

**Decision**

355. Insert a new permitted activity rule in Chapters 13, 14, 15 and 16 as follows:

*xx.x.x In-water cleaning of bio-fouling of ships, moveable structures or navigational aids and associated discharge of contaminants and biological material.*

356. Insert a new standard in Chapters 13, 14, 15 and 16 as follows:

*xx.x.x In-water cleaning of bio-fouling of ships, moveable structures or navigational aids and associated discharge of contaminants and biological material.*

*(a) the owner or operator of the ship, structure or navigational aid shall ascertain, and produce on request by the Council, details of the anti-foul coating used on the ship, structure or navigational aid, the planned service life as specified by the coating manufacturer, and the cleaning method recommended by the coating manufacturer, and*

*(b) the anti-foul coating on the ship, moveable structure or navigational aid shall not have exceeded its planned service life as specified by the manufacturer, and*

*(c) the cleaning method shall be undertaken in accordance with the coating manufacturer's recommendations, and*

*(d) the cleaning of microfouling and goose barnacles may occur without capture, and*

*(e) any coverage of macrofouling cleaned (other than goose barnacles) shall be no more than light fouling, and all biological material greater than 50 microns in diameter dislodged during cleaning shall be captured and disposed of at an approved landfill, and*

*(f) if any person undertaking or responsible for the cleaning, suspects that harmful or unusual aquatic species (including species designated as unwanted organisms or pest species under the Biosecurity Act 1993) are present on the ship, structure or navigational aid, that person shall take the following steps:*

*i. any cleaning activities commenced shall cease immediately, and*

*ii. the Marlborough District Council and the Ministry for Primary Industries shall be notified without unreasonable delay: and*

*iii. the cleaning may not recommence until notified by the Council to do so, or in the event a designated unwanted organisms or pest species is found, notified to do so by the Ministry for Primary Industries.*

357. Insert a new note under the standard, as follows:

*Note: For further context and guidance on anti-fouling and in-water cleaning of vessels and structures refer to the Anti-fouling and In-water Cleaning Guidelines (June 2013).*

358. Add the following Definitions to Chapter 25 of the PMEP:

*Light fouling: means small patches (up to 100 millimeters in diameter) of visible fouling, totaling less than 5% of the hull and niche areas. A slime layer and/or goose barnacles are included in this definition. Macrofouling: any organism or life stages of an organism not included in the definition of microfouling.*

*Microfouling: a layer of microscopic organisms including bacteria and diatoms and the slimy substances they produce. Often referred to as a 'slime layer', microfouling can usually be removed by gently passing a finger over the surface.*

*Navigational aid: has the same meaning as in Section 2 of the Maritime Transport Act 1994.*

## Coastal Marine Zone, Port Zone, Marina Zone and Port Landing Zone: Permitted Activities

359. The start point of the protection of the coastal environment in respect of the removal of antifoul paint is identified under prohibited activities in the coastal marine zone:

*16.7.6 Removal of anti-foul paint from a ship*

This is a regional coastal rule protecting coastal waters.

360. The following rules enable removal subject to standards in the Port Zone and Marina Zone. These are district rules relating to activities on land in those two zones only.

### Rule 13.1.11.

**Manual scraping of an anti-foul paint coating or bio-foul waste from a ship.**

### Rule 15.1.7.

**Manual scraping of an anti-foul paint coating or bio-foul waste from a ship.**

361. MFA and AQNZ submissions set out relevant provisions for minor infringement of these rules. They consider that minor spot removal of bio-fouling (including marine pests) from a ship that

individually removes antifouling should be permitted. Maintenance and applications of antifouling below MHWS should be prohibited other than minor works and a keel strip.

362. To achieve this the submitters seek in the Coastal Marine Zone:[107]

- a new Permitted Activity added to Rule 16.1: 'Inadvertent removal of anti-foul paint from a ship'; and
- a further Permitted Activity added to 16.1: 'Removal of slime layer if removal with nothing more abrasive than a brush'.

363. MFA and AQNZ provided the following as a new permitted activity in the Port Landing Zone:

*14.1.xx. Manual scraping of anti-foul paint coating or bio-foul waste from a ship.*

**Consideration**

364. For reasons in the discussion of standards below, the Panel does not agree with a concept of removal of antifoul paint or biofoul waste in the coastal marine area. Policy 23 (5)(a) NZCPS applies only to port and other marine facility operators.

365. As to the request for the permitted activity in the Port Landing zones at Elaine Bay and Oyster Bay the lack of facilities at those remote locations means the Panel is not satisfied that the potential risks can be sufficiently mitigated.

**Decision**

366. The relief requested in the Coastal Marine Zone and Port Landing Zone is rejected.

## Standards 13.3.4.1, 13.3.4.2, 15.3.3.1 and 15.3.3.2

**13.3.4.1. The activity must not be undertaken within 10m of the coastal marine area.**
**13.3.4.2. All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured and stored for disposal in a covered container located in a roofed area.**
**15.3.3.1. The activity must not be undertaken within 10m of the coastal marine area.**
**15.3.3.2. All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured and stored for disposal in a covered container located in a roofed area.**

367. PMNZ consider that Rules 13.3.4.1 and 15.3.3.1 that restrict manual scraping anti-foul or biofuel waste from a ship occurring within 10 metres of the coastal marine area is unnecessarily limiting as this activity typically takes place in close proximity to the CMA. The activity is managed to ensure the contaminants do not enter the CMA and as a result PMNZ requests the rule be deleted.

[107] The Panel is advised by MFA and ANZ this is consistent with relevant biosecurity protocols. See a minor discharge in terms of NZCPS Policy 23(5)(a).

**Section 42A Report**

368. After traversing the relevant General Rules (Rules 2.17.4 and 2.17.5) and Standards (13.3.4.2 and 13.3.4.5) and PMNZ's statement that these provisions provide the intention that the General Rules will be able to be achieved, the report writer had to assume that Standard 13.3.4.1 is to apply a 'belt and braces' approach to the rule, to effectively add an additional buffer around the coastal marine area to help reduce contaminants entering the coastal marine area from this activity.[108] But no information has been supplied by the Council about why the 10 metre setback from the coast has been applied, and no similar standard applied within the MSRMP.

369. The report writer acknowledges that in reality this activity takes place in locations closer to the CMA than 10 metre within the Port and Marina zones. As a result, she considers it is within scope to amend the rule to remove the 10 metre restrictions from the coastal marine area, but nevertheless maintain a restriction that prevents the activity from taking place within that area. The activities are common place within the Port and Marina zones.

370. As a result, her recommendation addressing the Permitted Activity Standards 13.3.4 and 15.3.3 reads:

*Manual scraping of an anti-foul paint coating or bio-foul waste from a ship.*

371. And with 13.3.4.1 and 15.3.3.1 amended to read:

*The activity must not be undertaken within ~~10m of~~ the coastal marine area.*

**Consideration**

372. The Panel decided to retain the standard for manual scraping of anti-foul coating only. While bio-foul waste is a separate issue it has to occur as part of removal of antifouling paint. The Marina and Port Zones should provide for these activities to occur on land.

373. The essence of what must be achieved to avoid effects on the CMZ is the capture of any antifoul paint or any biofoul waste removed. That requires an amendment to Rule 13.3.4.2 to make it clear that capture is the important issue. Because the Panel has decided that capture is mandatory then the standards 13.3.4.1 and 15.3.3.1 become redundant. The storage for disposal should be a separate rule.

**Decision**

374. Standard 13.3.4.2 is amended as follows:

[108] PMNZ (433.121, 164).

*13.3.4.2 All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured. ~~and stored for disposal in a covered container located in a roofed area~~.*

375. A new standard is inserted as follows:

*13.3.4.x The waste and contaminants captured must be stored for disposal in a covered container located in a roofed area.*

376. Standard 15.3.3.2 is amended as follows:

*15.3.3.2 All anti-foul or biofoul waste, coating waste or other contaminant removed must be captured. ~~and stored for disposal in a covered container located in a roofed area~~.*

377. A new standard is inserted as follows:

*15.3.3.x The waste and contaminants captured must be stored for disposal in a covered container located in a roofed area.*

## Discharge of Sewage from ships in Coastal Waters

### Policy 15.1.20 and Rules (Prohibited Activities) 13.6.4–13.6.6 - Port Zone, 14.5.4–14.5.6 - Port Landing Area Zone, 15.7.4–15.7.6 - Marina Zone 16.7.2–16.7.3 and Coastal Marine 15.M.10–15.M.12, 15.M.14.

**Issues Arising**

- Issues of concern to Marlborough's tangata whenua iwi
- Regulatory framework.
- Relevance of Resource Management (Marine Pollution) Regulations 1998 (Regulations 2 and 3).
- Relationship between NZCPS Policy 23: Discharge of contaminants and MARPOL regulations
- Potential risks from discharge of untreated sewage to the CMA.
- Alternatives for discharge of untreated sewage.
- Distances from shore for disposal of untreated sewage in the CMA.
- Stronger educative messages.

Issue of concern to Marlborough's tangata whenua iwi

378. The discharge of human waste to fresh and coastal water is culturally inappropriate. All of Marlborough's tangata whenua iwi have expressed concern (via submissions) outlining their strong views on this issue.

379. The Section 42A Report identifies Ngai Tahu's concern at the discharge of treated or untreated human sewage into the CMA and how this is deeply culturally offensive to iwi. The Runanga however supports the rules proposed on the basis that that prohibition signals over time that the Runanga would like to see all discharge of human waste cease.[109]

380. Policy 15.1.20 states:

> *Policy 15.1.20 - Except for Grade A or Grade B treated sewage, control the discharge of human sewage from ships in the Marlborough Sounds.*

381. This policy is implemented by the Rules in Volume 2 for all zones within the Marlborough Sounds that are contained wholly or partially within the coastal marine area.

**Regulatory Framework**

**Prohibited Activity Rules**

382. Discharge of untreated human sewage into the coastal marine area is specified as prohibited in:

- Port Zone Rules 13.6.4 – 13.6.6.
- Port Landing Zone Rules 14.5.4 – 14.5.6.
- Marina Zone Rules 15.4.4 – 15.7.6.
- Coastal Marine Zone Rules 16.7.2 – 16.7.3.

383. A number of submissions (16) were received in support of the policy and rules as notified relating to discharge of sewage from ships into coastal waters. Other submitters' concerns (234) range from: lack of evidence from the Council to justify the provisions;[110] failure to recognise the provisions of the Resource Management (Marine Pollution) Regulations 1998; lack of pump-out facilities; expense of installation of holding tanks; impact on boat owners/operators; absence of consultation; cultural values; compliance monitoring; alternative non regulatory methods; the proposed policy and rules replace existing regulatory control on sewage discharge from vessels contained within the Resource Management (Marine Pollution) Regulations 1998; [111] concerns for the implications of provisions for the health and safety of boaters.[112]

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[109] Ngai Tahu (1189.112), Section 42A Report paragraph 1229.
[110] Pelorus Boating Club (1124. 011, .010).
[111] Yachting NZ (503.10, .13, .16).
[112] Waikawa Boating Club (580.001, 0.10).

384. Yachting NZ Inc in one of its submission points requested clarification of whether the Resource Management (Marine Pollution) Regulations 1998 (Marpol) are subject to the policy provisions of the NZCPS Policy 23(2). The relevant regulations are:

*Resource Management (Marine Pollution) Regulations (1998)*

*(1) …*

*(2) On or after 1 July 2000, no person may discharge sewage in the coastal marine area from a ship or offshore installation unless that discharge occurs –*

*(a) more than 500 metres (0.27 nautical miles) seaward from mean high water springs; and*

*(b) more than 500 metres (0.27 nautical miles) from a marine farm; and*

*(c) in water depths greater than 5 metres; and*

*(d) more than 200 metres (0.108 nautical miles) from an area that the Minister of Fisheries has declared by notice in the Gazette to be a material reserve under regulations made under section 186 of the Fisheries Act 1996.*

*(3) A rule may only be included in a regional coastal plan or a proposed regional coastal plan relating to the discharges under this regulation if –*

*(a) the rule increases the distances seaward or increases the depth specified in subclause (2) for any harbours, estuaries, embayments, or other parts of a region, or increases the distances from a marine farm, marine reserve, or mataitai reserve specified in subclause (2), for all or any part of the year; and*

*(b) the rule takes effect on or after 1 July 2000.*

385. Regulation (2) limits discharge 'from a ship or offshore installation'.

**Relationship between NZCPS Policy 23: Discharge of contaminants and MARPOL regulations**

386. Yachting NZ provided a measured opinion of the relationship between the Marpol Regulations and NZCPS Policy 23 Discharge of contaminants. These submissions:

- Discounted any relationship between NZCPS Policy 23(2)(a) and (b) and the Marpol Regulations, considering the NZCPS Board of Inquiry when it sat in 2008 recognised that these regulations control the discharge of sewage from ships, boats and yachts.[113]

[113] Yachting NZ, J Brabant Submissions, citing NZCPS Working Papers (2009), Volume 2, page 300, footnote 188.

- Concluded as a result that making such specific provisions for sewage discharge in the Regulations is not contrary to the policy provisions of the NZCPS and in particular Policy 23.
- Advanced the Marpol Regulations as providing for specific and limited variations for the control of sewage through coastal plan provisions subject to the regulatory provisions controlling sewage discharge under Regulations (2) and (3).
- Considered that the issue of sewage discharge from boats is only dealt with in the NZCPS Policy 23(5) as a general provision for councils in managing discharges from ports or other marine facilities.
- Considered any departure from the regulatory controls by way of rules in the coastal plan derives from the Marpol Regulations, not from the policy direction in the NZCPS. The regulations consequently do not affect the Council's obligation under Policy 23(2)(a) of the NZCPS to 'not allow' the discharge of untreated human sewage directly into the coastal environment from land based activities.

**Consideration**

387. The NZCPS was drafted after the Marpol Regulations were introduced. From the Working Papers relating to the NZCPS called in aid by Yachting NZ, it appears the Board of Inquiry was obviously aware of the Marpol Regulations. As a result, the provisions relating to the Regulations are not referred to within the NZCPS document with the exception of the inclusion of wording from Regulation 3(a) relating to 'distances and depths' and discharges to water. The NZCPS does not refer to discharge of waste from ships, boats and yachts except in a very general and different context under Policy 23(5)(a)(b)(c) and (d).[114]

388. The correct approach to the interpretation of a statutory instrument such as NZCPS, and the Marpol Regulations, requires that every reasonable effort is made to adopt an interpretation of both so as to ensure effect is given to both, that is, if possible, they are interpreted in a manner that ensures they work in a complementary manner with each other, rather than one overriding the other. There is an implication of this approach in the wording of NZCPS Policy 23(2)(b)(i).

389. The Regulations do not override the NZCPS. Other than in managing need for facilities for requiring the collection of sewage and waste for recreational and community boating NZCPS

[114] Proposed New Zealand Coastal Policy Statement (2008), Board of Inquiry Report and Recommendations, Volume 2 Working Papers, July 2009, pages 287 - 299.

Policy 23(5)(d), Policy 23(5)(a) and (c) relate directly to the operations of ports and other marine facilities.

390. Any relevant rule proposed in the PMEP must therefore be within the scope of Regulation (3). Any change to the depth or distance dimensions stated in the Regulations thus restrict what the Panel references from Regulation 3, and in respect of treated sewage from boats and normal ship operations from Regulation 12(2) and 12A(2).

391. Any change to the depth or distance dimensions stated in the Marpol Regulations is restricted to what the regulations permit and any provision proposed in the plan must be within the scope of the discretion.

392. As advised by the report writer, one submitter proposes that the MDC address the discharge restrictions as outlined within the Regulations and develop a map of the area where the Council advises boat owners that they should discharge sewage. That map is suggested to show areas that are the deep main channels of Queen Charlotte Sound.[115] The map is suggested to be used as a non-regulatory method, providing information to boat users, and displayed in marinas and boat clubs, websites, and cruising guide.[116]

393. Mr Broughton's submission suggested:

> *… I propose a compromise. Leave the regulated limit at 500 metres to align with national marine regulations, but develop a map showing a more restrictive zone where Council advises boat owners that they may discharge sewage. That map would I suggest, show just the deep main channel of Queen Charlotte Sound from about Picton Harbour seawards. Possibly not anywhere in Tory Channel, and possibly not anywhere in Endeavour Inlet either.*

The considerations following this part of the decision assist in shaping whether Mr Broughton's submission is a most appropriate course for the Panel to follow in its decision.

**Potential risks from discharge of untreated sewage to the coastal marine area**
**Risk to health and aquaculture**

394. We concluded the science of risk to human health from gastrointestinal upsets from the contaminant sources is undeniable and obvious. So too is the evidence compelling of serious risks to aquaculture and human health through adverse potential effects on aquaculture product. The Panel heard compelling evidence as to potential unsatisfactory increased risk in

[115] We note that the discharge of human waste mentioned in the PMEP only relates to the Marlborough Sounds and not to the whole of the coastal marine area as submitted by YNZ.
[116] Peter Broughton (138.001), Section 42A Report, page 223.

crowded waters in areas such as Waiheke Island leading to closure of aquaculture harvesting in near proximity over summer holiday periods. Such closures in the Sounds would be potentially very damaging for the aquaculture industry and all those in the region reliant on product.

395. Even more compelling was the detailed evidence as to the close monitoring programme conducted by the industry to protect human health. The risks described by Mr Alan Campbell for MFA arising from even a single incident of e-coli or other viral contamination are significantly adverse.[117]

396. Moreover, indirectly, in reputational terms for the nation's aquaculture product, is that the adverse effects of a closure arising from contamination from human sewage could be potentially very damaging and long-lasting.[118]

397. Other examples of evidence of concern existed in the Marlborough and Tasman regions of the potential impacts on aquaculture where closures have occurred at Portage and Golden Bay – in both cases water quality concerns resulted in temporary closures.

398. The Council is bound to give effect to the directive from the NZCPS on the issue of aquaculture. Particular policies of relevance are Policies 8 and 23 – particularly 8(a)(i) and 8(c) as follows:

> *Policy 8 Aquaculture - Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by:*
>
> *(a) including in regional policy statements and regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment, recognising that relevant considerations may include:*
>
> *(i) the need for high water quality for aquaculture activities; and*
>
> *(ii) the need for land-based facilities associated with marine farming;*
>
> *(b) taking account of the social and economic benefits of aquaculture, including any available assessments of national and regional economic benefits; and*
>
> *(c) ensuring that development in the coastal environment does not make water quality unfit for aquaculture activities in areas approved for that purpose.*

[117] MFA, AQNZ, Alan Campbell, Evidence, paragraphs 28-32.
[118] MFA, AQNZ, Alan Campbell, Evidence, paragraphs 9-10.

**Marine risk from recreational gatherings**

399. In addition to the risk for aquaculture is the risk for any water contact recreational effects, particularly given the emphasis in the PMEP on the recreational amenity afforded by the Sounds.

400. Of added concern, the Panel received other evidence during the hearing of large gatherings of recreational boats at various locations over the summer period raising the risk of significant potential adverse effects to and from the boating fraternity. An example of this is the situation at Endeavour Inlet where the evidence was commonly indicative of in excess of 200 boats gathering for an extended period in a relatively confined area.

401. We considered too the weight that should be given to the precautionary principle in NZCPS Policy 3 and to iwi cultural concerns.[119] Policy 3: Precautionary approach prescribes the:

> *3(1) Adopt[ion of] a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.*

402. The precautionary principle is applicable as the effects of the discharges from boats on the water will always be uncertain and require as large a mixing zone as possible in the coastal environment. NZCPS Policy 3(1) is almost exactly on point as the potential consequences of an adverse effect on human health can be significant, as can be the economic consequences to aquaculture if contamination of aquaculture product was to occur.

**Alternatives for discharge of untreated sewage in the coastal marine area**

403. The Panel considered what weight should be given to practicalities as to distance to be travelled to discharge sites on land or on water; to dilution factors (whether mixing zones really are a solution); to on-board treatment systems and their effectiveness/ failings/complexities as to management.

404. We concluded serious consideration must be given to any alternative means of disposal of untreated sewage other than by discharge to sea.

405. The Panel's view is that consideration must involve reasonable solutions, and in the marine environment where issues of vessel and human safety arise, they must also be safe solutions. The imperative in s 5(2) RMA to ensure the *health and safety* of the community is further statutory reinforcement that sound sustainable management of resources is essential.

[119] Ngāti Kuia (501.74).

406. Adopting a rule which requires for large areas of Pelorus and Queen Charlotte Sounds that vessels leave the Sounds and discharge untreated sewage in the exposed waters of the Outer Sounds, or even more exposed Cook Strait waters, is potentially unsafe in adverse weather conditions which commonly prevail in those areas. That conclusion is informed by the evidence, particularly provided by boating associations which appeared at the hearing including the Waikawa Boating Club.

407. Moreover, the Panel's view is that it is also costly, time consuming and wasteful of fuel and that such a rule would be highly likely to be breached more than observed. A further relevant consideration is the difficulty in policing or enforcing the rule.

408. We consider that for such a rule to be workable and achieve its purpose it needs to be practical enough to achieve 'buy-in' or adoption by the boating public. We heard evidence from experienced small boat owners representing their organisations to the effect that small boat owners would always choose and prefer to discharge well away from shore and from marine farms.

409. Our opinion is that extra distance in a rule is unlikely to create a barrier to observance, and in fact is likely to be adopted and observed as good boating practice.

410. The problem with requiring discharge to land-based collection points is that there are not enough of them (3) for the number of boats needing to be serviced. Nor, given the 1500 kilometres of coastline in the Marlborough Sounds, are there enough locations to avoid lengthy, expensive and time-consuming trips solely for the purpose of discharge. That is particularly so for parts of the Sounds distant from major ports where such collection facilities may exist. If in future sufficient collection points were installed, the issue of a more restrictive rule can always be considered.

411. The Panel is satisfied on the evidence it heard that on-board treatment systems and holding tanks are currently inadequate to enable a prohibited activity rule for discharge of untreated sewage throughout the Sounds.

412. 'Reasonable' mixing zones are a concept utilised in s 15B(2) RMA and should be considered in the estimates of distance from shore:

**Section 15B**

**(1) …**

**(2) No person may, in the coastal marine area, discharge water into water from any ship or offshore installation, unless—**

**(a) the discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or**

**(b) after reasonable mixing, the water discharged is not likely to give rise to any significant adverse effects on aquatic life.**

413. NZCPS Policies 23(1)(d), (e) and (f) provide some guidance on the manner of best managing the effects of contaminants generally through the use of mixing zones:

> *(d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;*
>
> *(e) use the smallest mixing zone necessary to achieve water quality in the receiving environment.*
>
> *(f) minimise adverse effects on the life-supporting capacity of water within a mixing zone.*

**Distances for disposal of untreated sewage in the coastal marine area**

414. At least in the interim, until onshore collection is practical throughout the Sounds or on-board treatment systems become well proven and practical, the Marpol Regulations enable a practical method of disposal of untreated sewage but at distances which significantly reduce risk to human health and biodiversity in shallower waters. In practical terms, this requires settling on distances which enable discharge only in deeper more distant waters and preferably exclude embayment waters from the discharge mixing areas.

415. The Waikawa Boating Club and Marlborough Berth and Mooring Association Incorporated in verbal evidence consider that primarily there is no justification for the increase in distance from 500 metres in the Regulations to 1000 metres. It is no accident that the distance from shore is expressed in nautical miles as well as metres as this is the distance measurement used on marine charts.[120] Yachting NZ indicated that the Auckland Unitary Plan had cut back substantially to reinforce the 500 metres discharge distance as a result of submissions.[121]

[120] Yachting NZ, Legal Submissions, paragraph 31.

[121] The Marlborough Sounds with its incised valleys and waterways is a very different location from the Hauraki Gulf in Auckland.

416. In an overall assessment the Panel queried whether 500 metres could be extended to 1000 metres as per Rules 16.7.2 and 16.7.3 for untreated sewage, or any other distance, for example, 750 metres.

417. Our preferred view is 750 metres as map evidence of the effect of the 1000 metre distance satisfies us that 1000 metre distance is unworkable in practical terms. It would exclude most of the Inner Queen Charlotte and Pelorus Sounds where landform alone, not even taking into account marine farm locations, is within 1000 metres of most locations on the water.[122] Even at 750 metres there are four localities, two in Pelorus Sound and two in Queen Charlotte Sound, where there is so little open water space available 750 metres from shore that little if any reasonable mixing would be able to occur. Those areas need to be excluded as well.

418. The Panel queried whether, if marine farms are to be given protection, customary fishing grounds for iwi also be provided for through some mapping or listing in the possible new iwi sites of significance (in the now prepared Appendix 3).

419. As with other claims to areas of special cultural significance to Māori, the Panel's view is that, unlike the marine farms which will be very closely mapped to a detailed GPS level, sites of special significance will need to be identified by tangata whenua iwi for inclusion in the new proposed Appendix 3 as a plan change, and at that stage if a marine area, the change would be the time and process to consider and consult on such a rule change.

420. The Panel queried if it should consider whether there is scope for imposing a treatment requirement on each vessel or if not, there is at least pump-out capacity from holding tanks. As discussed above, the evidence is accepted that treatment systems are not reliable enough at present. Capacity for holding tanks is only reasonable to consider if there are pump-out facilities to accept the waste.

**Stronger educative messages**

421. The Panel considered whether there should be either a new policy wording or explanation providing a stronger educative message as to the increasing need to comply with Policy 23 of the NZCPS, and if so, what the wording should be and where it would be best placed in Chapter 13 PMEP.

422. The message which the Panel wishes to emphasise is that the PMEP's more protective provisions are but an interim measure of a progressive path to ensuring there is no discharge

[122] Section 42A Report, paragraph 1237 citing Duffy (97.002), Figure 20: Maps Provided by Duffy showing extent of proposed policy and rules (areas where discharge is permitted shown in dark green) in the coastal marine environment.

of untreated human sewage to the Sounds waters. The message needs to be given in Policy 15.1.20 of the PMEP to the boating community that measures need to be imposed progressively through RMA plan processes to ensure compliance with the NZCPS directive in Policy 23(2)(a).

423. In other words, the more protective approach in this PMEP will be inevitably made more restrictive in time as collection facilities are developed throughout the Sounds. Recreational boat builders and owners need to be aware that they will need to install larger storage tanks and/or more effective on-board treatment systems in coming years to be prepared for the inevitable rule prohibiting discharge of untreated sewage in Sounds waters once those collection facilities are in place.

424. The Council, tangata whenua iwi, the broader community and all of those utilising the Sounds, including marine industries with involvement in the Sounds, need to commit to cooperative planning to make provision on a widespread basis for such collection points to be installed so as to enable the prohibitory rule to be reasonably made.

425. Council has already made considerable commitments in the PMEP in 15.M.10, 15.M.11, 15.M.12 and 15.M.14 which form a base for that wider planning initiative which is required.

426. 15.AER.2 in the monitoring effectiveness column needs an amendment to reflect changes made:

> *15.AER.2*
> *Water quality in Marlborough's coastal waters is suitable to support and sustain swimming, food gathering and marine ecosystems.*
> Monitoring effectiveness
> *All coastal water bathing sites are graded either good or very good, in accordance with the Ministry for the Environment's Microbiological Water Quality Guidelines for Marine and Freshwater Recreational Areas.*
>
> *With the exception of regionally significant infrastructure, there are no discharges of human sewage into the coastal waters of the Marlborough Sounds <u>in the areas identified in the MEP where such discharges are a prohibited activity.</u>*
>
> *The number of point source discharges directly to coastal water, other than stormwater discharges, do not increase. No discharges into water that breach water quality standards set in the MEP.*

**Decision**

427. The explanation to Policy 15.1.20 is amended to read:

*… In addition, in many locations there is limited movement of water that would provide for mixing of the contaminants with the receiving waters.*

*The control implemented via this policy is an interim measure as part of a progressive response to eliminate the discharge of untreated human sewage into the coastal waters of the Marlborough Sounds. Other measures are likely to be proposed for discharges from ships to give effect to Policy 23(2)(a) of the NZCPS. The policy will inevitably be made more restrictive in time as collection facilities are developed throughout the Marlborough Sounds. The interim measure also provides recreational boat owners time to prepare for more stringent controls.*

*The continuation of discharging human sewage into such valued and significant enclosed waters has been questioned by the community. …*

428. 15.AER.2 Monitoring effectives table is amended as follows:

*… With the exception of regionally significant infrastructure, there are no discharges of human sewage into the coastal waters of the Marlborough Sounds in the areas identified in the MEP where such discharges are a prohibited activity. …*

429. Insert a new overlay in Volume 4 labelled:

*Restricted area for discharges from ships*

430. Amend rules 13.6.4, 14.5.4, 15.7.4 and 16.7.2 to read:

*From 9 June 2022, the discharge of human sewage, except Grade A or B treated sewerage, from a ship within ~~1000m~~ 750m of MHWS or into the coastal marine area identified as a Restricted Area for Discharges from Ships.*

431. Otherwise the submissions are rejected.

## Effects on Aquaculture of land based sewage disposal

432. The Panel considered whether the MFA request be granted as to the overlay request of 1000 metres around each marine farm requiring notification in the event of sewage leak.[123]

433. The Panel considered this is an impractical suggestion and one that achieved no useful purpose for a number of reasons. First, because it would have no effect on old systems which are the most likely to be leaking; second, the rules for new sewerage (for land based) disposal

[123] MFA, Counsel Submissions, paragraph 34.

fields are designed to ensure no such leaks occur (see Rule 7.3.13.4124); thirdly, Method 16.M.20 as to 5-yearly warrants of fitness provides a more practical solution; finally, because landowners were highly unlikely to be aware for some time of a leak.

**Decision**

434. The relief requested is rejected.

## Discharge of contaminants to land

435. NZCPS Policy 23 states:

**(1) …**

**(2) In managing discharge of human sewage, do not allow:**

**a. discharge of human sewage directly to water in the coastal environment without treatment; and**

**b. the discharge of treated human sewage to water in the coastal environment, unless:**

**(i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and**

**(ii) informed by an understanding of tangata whenua values and the effects on them.**

**(3) …**

**(4) …**

**(5) In managing discharges from ports and other marine facilities:**

**a. require operators of ports and other marine facilities to take all practicable steps to avoid contamination of coastal waters, substrate, ecosystems and habitats that is more than minor;**

**b. require that the disturbance of relocation of contaminated seabed material, other than by the movement of vessels, and the dumping or storage of dredged material does not result in significant adverse effects on water quality or the seabed, substrate, ecosystems or habitats;**

**c. require operators of ports, marinas and other relevant marine facilities to provide for the collection of sewage and waste from vessels, and for residues from vessel maintenance to be safely contained and disposed of; and**

**d. consider the need for facilities for the collection of sewage and other wastes for recreational and commercial boating.**

436. The first point to note about Policy 23 is that it refers to the discharge of 'contaminants' so it may be expected to encompass a wider range of issues relating to discharges than untreated

[124] Rule 7.3.13.4 There must be: (a) no ponding or effluent; (b) no run-off or infiltration of effluent beyond the property boundary or into a river, lake, Significant Wetland, drainage.

sewage as in the Marpol Regulations. The provisions of NZCPS Policy 23(1) indicate that more extensive reach as does Policy 23(5).

437. Scrutiny of Policy 23(2)(a) and (b)(i)(ii) provides two step provisions relating to the discharge of human sewage:

- The discharge of human sewage is not allowed directly to water in the coastal environment if it has not been treated; and
- it is not allowed even if it has been treated, unless there is adequate consideration of alternative methods, sites and routes for the undertaking, and there is an understanding of the effects on Māori values informed by an understanding of Policy 23(2)(b)(ii).

438. The latter reference has been taken from the Marpol Regulations Clause 3. But this does not provide an override of Marpol by NZCPS Policy 23. The wording applies for consideration in the process of choosing methods, places and systems of treated discharge from the larger land based facilities noted below and from there to the coastal environment.

### Policy 15.1.9

**Enable point source discharge of contaminants or water to water where the discharge will not result:**

**(a) in any of the following adverse effects beyond the zone of reasonable mixing:**

**(i) the production of conspicuous oil or grease films, scums, foams or floatable or suspended materials;**

**(ii) any conspicuous change in the colour or significant decrease in the clarity of the receiving waters;**

**(iii) the rendering of freshwater unsuitable for consumption by farm animals;**

**(iv) any significant adverse effect on the growth, reproduction or movement of aquatic life; or**

**(b) in the flooding of or damage to another person's property.**

And;

### Rule 16.7.4

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

439. In relation to amending Policy 15.1.19, Yachting NZ submitted that there needs to be a clear distinction between policies for discharges from land and from ships. MDC confirmed this in its submission, seeking amendments to the wording of Policy 15.1.19 and Rule 16.7.4 to clarify the application of this policy and the rule to apply to the discharges from land based activities to coastal water avoiding the confusion that this policy also may apply to discharge from ships.125 (NZCPS Policy 23 would have benefited from that definitive distinction).

[125] MDC (95.156, .157). The Section 42A Report writer acknowledged in a memorandum to her evidence on Policy 15.1.19 that her recommendations now accepts these submissions were not reflected in her original report where she had recommended that the Policy be retained as notified.

440. The Section 42A Report writer notes that the amendments to Policy 15.1.19 as submitted by MDC will ensure the application of this policy is clear and will apply to land based activities only.[126] In a memorandum, the report writer wished to clarify the matter – that MDC's submission is accepted and that Policy 15.1.19 is recommended to read:

> *15.1.19. – Progressively work toward eliminating the discharge of human sewage to coastal waters <u>from the land-based activities</u> in the Marlborough Sounds, with the exception of regionally significant infrastructure.*

441. Prohibited Activity Rule 16.7.4. is recommended to be amended to read:

> *16.7.4. Discharge of treated or untreated human sewage <u>from land-based activities</u> into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.*

442. PMEP Chapter 15 Resource Quality (Water, Air, Soil) amendment may seem to be beyond the influence of the NZCPS Policy 23. But it provides a series of policies (Policy 15.1.18, 15.1.19, 15.1.20) with each one noted 'This policy gives effect to Policy 23 of the NZCPS'.[127]

443. The NZCPS Policy 23(2)(b) use of the phrase 'treated human sewage' implies how it will approach land-based discharge as amended in PMEP Policy 15.1.19 except for regionally significant infrastructure.

444. Regionally significant infrastructure is defined in Policy 4.2.1(a) as reticulated sewerage systems.[128] This includes the 'pipe network, treatment plants (and associated infrastructure)' operated by the MDC indicating discharge of treated sewage to the coastal marine environment is acceptable as long as it assesses suitable sites, places, routes and identifies Māori concerns in relation to these.

445. An implication of Policy 23(1) (processing and treating on land before discharge) is implied in the reference to the 'small mixing zones' in Policy 23(1)(e) as an end process after treating discharge on land to achieve a required water quality standard before discharging to the coastal marine area. In other words the degree of treatment for treated sewage would influence the size of the smallest mixing zone unlike for example the bigger one required for untreated sewage from ships where the 750m distance is necessary.

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[126] Section 42A Report writer, Memorandum 9th April, Use of the Coastal Environment, corrections to S42A Report, 9 April 2018.
[127] Volume 1, pages 15-19.
[128] The reference here to 'sewerage' is defined as 'a system of drainage by sewers', 'sewage works' is a place where sewage is treated, 'waste matter conveyed in sewers', NZ Pocket Oxford Dictionary, Fourth Edition, page 1049.

446. The NZCPS human waste discharge provisions chiefly relate to treatment in land-based facilities, such as the regionally significant infrastructure, before discharge to the Marlborough Sounds coastal environment.

**Decision**

447. Policy 15.1.9 is amended to read:

*15.1.19. Progressively work toward eliminating the discharge of human sewage <u>from the land-based activities</u> to coastal waters in the Marlborough Sounds, with the exception of regionally significant infrastructure.*

448. Rule 16.7.4 is amended to read

*16.7.4. Discharge of treated or untreated human sewage <u>from land-based activities</u> into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.*

## Chapter 5 Allocation of Public Space in the Coastal Marine Area

### Outline of plan provisions

449. There are two Section 42A Reports which address the management of the occupation of the CMA generally, and the issue of allocation of use of freshwater resources and Coastal Occupancy Charging (COC).

450. The first addresses the management of the occupation of the coastal marine area (CMA) generally and the relevant provisions are found in Issue 5J, Objective 5.10 and Policy 5.10.1, Policy 5.10.2 and Policy 5.10.3.[129]

451. The second Section 42A Report identifies the specific policies that relate to the proposed COC regime specifically – Issue 5J, Objective 5.10, Policies 5.10.4-5.10. 8 and method statements 5.M.10 and5.M.11.[130]

452. COCs are a resource management issue for the Marlborough region and require a framework within the Plan to provide for their merit.

453. Appendices were provided to illustrate proposed changes.

### Relocation of Chapter 5 provisions to Chapter 13

454. Several submitters support the provisions under Issue 5J as notified but seek that the issue, objective and subsequent policies and methods are moved to Chapter 13 Use of the Coastal Environment.

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[129] Section 42A Report (Plan), paragraphs 134-138.
[130] Section 42A Report (COC), paragraphs 16-18.

**Section 42A Report**

455. The report identifies the purpose of Chapter 5 (Volume 1) is to provide the framework for the allocation of resources, namely freshwater and space within the CMA, while Chapter 13 provides the management framework for activities undertaken in the coastal environment.

456. The provisions in Chapter 5 thus address higher level concerns about how space within the CMA should be allocated, the degree to which various occupations generate public versus private benefits, and the circumstances where a user should pay to use the resource.

457. Even though the report identifies that Chapter 5 deals with higher level concerns about the allocation of space as opposed to the management of specific activities, the report writer initially recommended to reject the submissions of Federated Farmers and Forest and Bird, to relocate the allocation of coastal space to Chapter 13.[131]

458. In considering further submissions by AQNZ and MFA which support Forest and Bird's submission,132 that identify the relevance of coastal occupancy charges (COC) as only relevant to the coast, the report writer accepted that allocation of COCs is more efficiently linked to the use of the CMA. She considers that relocation to Chapter 13 would make it easier to navigate the provisions that apply to the CMA within the PMEP. The relevant provisions of Chapter 5 could be incorporated within Chapter 13 by amending its heading to 'Use of the Coastal Environment and Allocation of Space Within the Coastal Marine Area'.[133]

**Consideration**

459. The aspects of an intended COC regime include the finances required each year by the Council to fulfil its role as sustainable manager of the coastal marine area and the allocation of the related costs among the beneficiary ratepayers and the various coastal occupiers. The allocation of freshwater resources requires not only the sustainable management of the marine farms, but the more general natural and physical resources of the coast and all the specific issues addressed in Chapter 13.

460. While acknowledging there is a boundary between 'use' and 'allocation', the Panel agrees it is more appropriate to address COCs in Chapter 13 where the focus is already on the activities utilising aspects of the coastal environment which is a public resource. Those specific issues relate to the provision for and effects of jetties, moorings, boat sheds, utilities, marinas, wharfs and aquaculture. Currently the provisions relating to allocation of space within the

[131] Federated Farmers (425.79) and Forest and Bird (715.100-.110).
[132] AQNZ (FS597) and MFA (FS608), Counsel's Submission, paragraph 49. Parts of Chapter 13 will need to apply to aquaculture following the notification of the aquaculture provisions.
[133] Section 42A Report (Plan), Reply to Evidence, pages 3-4.

CMA are tucked away at the back of Chapter 5 Allocation of Public Resources but these principally relate to allocation of freshwater.

461. As a result of this change, the report writer recommends that the following paragraphs are inserted after the notified Introduction to Chapter 13 (Volume 1), which the Panel finds appropriate for addressing the issue:

> *…*
>
> *The Council's role also involves managing resources that are in the public domain, which includes the extensive areas of coastal marine area within Marlborough. The Council frequently allocates or authorises the use of these natural resources for private benefit.*
>
> *Allocating rights to use public resources has become a fundamental part of the overall fabric of Marlborough's social and economic wellbeing. For example, within the coastal marine area there are many moorings, boatsheds and jetties throughout the Sounds, all of which contribute to the social wellbeing of residents and holidaymakers.*
>
> *The importance of the community and visitors being able to continue to use and develop these coastal marine areas within the constraints of the Resource Management Act 1991 (RMA) cannot be underestimated. Any significant reduction or change in approach to resource use could have significant implications for Marlborough's economic, cultural and social wellbeing.*
>
> *Management frameworks for specific uses and activities in the coastal marine area are included within the first part of this chapter. The remainder of the chapter under the heading 'Allocation of Space within the Coastal Marine Area' contains provisions to deal with higher level concerns about how space in the coastal marine area is to be allocated, the degree to which various occupations generate private versus public benefits and the circumstances in which a user should pay to use the coastal marine area.*

**Decision**

462. For the reasons given the recommendations to the structural changes of Chapter 13 and the Introduction, the following amendments are accepted.

463. Amend the heading for Chapter 13 to read:

*'Use of the Coastal Environment <u>and Allocation of Coastal Space</u>'*

464. Add the heading *<u>Allocation of Space Within the Coastal Marine Area</u>* to the end of the Chapter 13 between the methods and Anticipated Environmental Results.

- Amend the Introduction to Chapter 5 as the introduction to the new section in Chapter 13 as recommended by the report writer to reflect this new structure.[134]

465. Relocate Issue 5J, Objective 5.10 and Policies 5.10.1 – 5.10.8 and Methods 5.M.10 and 5.M.11 within Volume 1 Chapter 13 Use of the Coastal Environment and Allocation of Coastal Space.[135]

## Coastal marine area/common marine coastal area

## Coastal occupation charging

466. Section 64A RMA states as follows:

**64A Imposition of coastal occupation charges**

**(1) Unless a regional coastal plan or proposed regional coastal plan already addresses coastal occupation charges, in preparing or changing a regional coastal plan or proposed regional coastal plan, a regional council must consider, after having regard to—**

**(a) the extent to which public benefits from the coastal marine area are lost or gained; and**

**(b) the extent to which private benefit is obtained from the occupation of the coastal marine area,—**

**whether or not a coastal occupation charging regime applying to persons who occupy any part of the common marine and coastal area should be included.**

**…**

467. In the Section 32 Report, the Council considered the private and public benefits associated with coastal occupations deciding that where the private benefit is greater than that of the public, charging for occupation is justified.136

468. At the outset of discussion of this issue the report writer recommended a small number of amendments that better align with the provisions of s 64A RMA (Imposition of Coastal Occupancy Charging), the Marine and Coastal Area (Takutai Moana) Act 2011, and s 2 RMA Definitions,. The report writer suggests an amendment is necessary to the provisions of Chapter 5 relating explicitly to the COC regime referring to persons occupying 'the common marine and coastal area' as defined in the Marine and Coastal Area (Takutai Moana) Act 2011. Given that s 64A RMA also refers to both 'coastal marine area' and the 'common marine and coastal area' in differing provisions relating to a coastal charging regime, the recommendation

[134] Section 42A Report (Plan), Reply to Evidence, pages 4-5.
[135] Ibid, page 4.
[136] Section 42A Report (COC), paragraph 39, citing Section 32 Report – Chapter 5 Allocation of Public Resources, page 3.

was to replace the term 'coastal marine area' and instead use the term 'common marine and coastal area.'[137]

469. The report writer consequently recommends amendments to the provisions set out in Appendix 2 of the Section 42A Report.

**Consideration**

470. The terms 'coastal marine area' and 'common marine and coastal area' referred to in s 64A(1) RMA are each defined separately in s 2 RMA, the latter by a cross-reference to s 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act). To compound matters further the Takutai Moana Act also has a separate definition for 'marine and coastal area'.

471. The Panel's view was that the Plan definitions which apply to the Coastal Charging regime need to ensure no ambiguity arises. In the context of a charging regime certainty is important. It is necessary to remove any opportunity for any person levied with a charge in future to argue that there is some underlying technical wording defect arising out of the language used in the Plan, or subsequent documents to impose coastal charges.

472. Section 64A RMA states that a regional council must consider after making the statutory considerations whether a COC shall be applied to persons who occupy any part of the 'common marine and coastal area'. However, the statutory consideration required is as to the extent of public benefit gained or lost, or private benefit gained from occupation of the 'coastal marine area'.

473. In the Panel's view the pragmatic approach is to have the Plan referring to one phrase as it did in its notified from – 'coastal marine area', with the definition including all other related statutory definitions for the purposes of the coastal charging regime.

474. COCs nevertheless must not be imposed on a customary rights group or customary marine title groups exercising a right under Part 3 of the Takutai Moana Act. This specified exemption needs to be incorporated in the PMEP.

475. In the context of Marlborough, there are parts of the Port of Picton and the Havelock Marina that have been issued with general land titles.[138] These areas will be exempt from a charging regime under the s 384A RMA.

[137] Section 42A Report (COC), paragraphs 72-76.

[138] Picton Harbour Queen Charlotte Sound/Totaranui – Pt Lot DP4964, 158,396 ha, and Havelock Marina – Pt Blk A Blk XII Whakamarina SD, 572,982 ha.

**Decision**

476. Insert in Chapter 25 definitions section a definition of coastal marine area as follows:

**Coastal marine area** has the same meaning as Section 2 of the Act, (but particularly for the purposes of the coastal occupancy charge provisions in the Plan to give practical and purposive effect to the provisions of Section 64A of the Resource Management Act 1991 the phrase shall be interpreted to also mean and include where required both the common marine and coastal area, or the marine and coastal area).

## Issue 5J - People want to be able to use and develop the coastal marine area for private benefit.

477. The submissions of Federated Farmers and Forest and Bird[139] support the issues under Issue 5J as notified while seeking for this part of Chapter 5 as noted be relocated to Chapter 13. As other decisions above have moved the coastal charging aspects of Chapter 5 to Chapter 13 and have amended its title to include 'and Allocation of Coastal Space' to reflect that move, the second paragraph of the explanatory statement is now no longer needed. Its purpose in the notified Plan was to link this section of Chapter 5 to Chapter 13, and with that movement now agreed to, that discussion is no longer needed in the explanatory statement to Issue 5J.

**Decision**

478. The explanatory statement to Issue 5J is amended by deleting the second paragraph.

## Objective 5.10

**Equitable and sustainable allocation of public space within Marlborough's coastal marine area.**

479. Several submitters support the objective as notified. Others seek: the word 'equitable' is removed as they consider the word is vague in its context - it could mean equity of opportunity to apply for use within the CMA, or that the space is equally apportioned between different users – 'equitable' should be replaced with 'efficient' to reflect lower transaction costs and lowest/highest net benefit to society; the commentary in the objective should use the word 'manages' conflict between users rather than 'avoids' conflicts;[140] it is unclear what equitable means in relation to sustainable allocation;[141] oppose in part the explanation to Objective 5.10 because it fails to recognise the inherent rights to utilise the fisheries resource under the Fisheries Act 1996;[142] oppose on the basis it does not take into account cultural values;[143] support with the acknowledgement of cumulative effects in a finite

[139] Federated Farmers (425.79) and Forest and Bird (715.100-.110).
[140] AQNZ (401.34) and Marine Farming Association (426.34).
[141] Sanford Limited (1140.4).
[142] The Fishing Industry Submitters (710.7).
[143] Te Ātiawa (1186.46).

resource with an amended wording to read 'Equitable and sustainable … while recognising cumulative effects in a finite resource'.[144]

480. AQNZ and MFA's submissions seek to replace the word 'equitable' with 'efficient'. The NZCPS Policy 6(e) is identified as promoting the efficient use of occupied space by requiring that structures be made available for public or multiple use wherever reasonable and practicable.[145] The industry maintains the word 'equity' is fraught – it is not a word used within the RMA or the NZCPS. It provides the various dimensions of 'equity' – such as 'production', 'allocation', 'dynamic' and 'innovative'. Those who suggest that 'equity' means 'fair and impartial' amplifies the industry's concern, for the Council might (unwittingly) open up novel allocation arguments in a resource management context. 'Efficiency' is also not limited to economic matters either. In its broad sense, it may require an evaluation of a specific proposal 'balancing' the issues and benefits in s 5 RMA.

**Section 42A Report**

481. The Section 42A Report writer identifies that Issue 5J relates to the fact that people want to be able to use and develop the CMA for private benefit. The resolution of the issue is in Objective 5.1 regarding the equitable and sustainable allocation of public space within Marlborough's CMA.

482. The report writer acknowledges the submissions made by AQNZ and MFA that the use of the term 'avoid' within the commentary of Objective 5.10 is most likely to be optimistic.[146] She recommends that replacing 'avoid' with 'manage conflicts between users' is more realistic. That wording acknowledges that there could be some conflicts between users of the CMA, however the allocation of space and the framework within the PMEP to control activities will assist in managing these conflicts. For this reason, the submission of AQNZ and MFA is recommended to be accepted in part.

483. How the objective is defined, thus giving a guide to what is considered 'equitable', is interpreted through Policies 5.10.1-5.10.8 where it is provided that there is no inherent right to occupy, that any allocation will occur on a first-in-first-served basis, and where space is allocated – that is, to an area that is *reasonably available* (our emphasis) for the activity to proceed. That concept is reflected in Policy 5.10.3.The report writer also refers to an Oxford Dictionary definition of the word 'equitable' as 'fair and impartial', and therefore what is an equitable method of determining allocation will take place. The word 'equitable' in Objective

[144] FNHTB (716.48).
[145] AQNZ, MFA Counsel's Submission, paragraphs 5-13.
[146] Section 42A Report (Plan), paragraphs 155-156.

5.10 provides an expectation that everyone will be entitled to the same impartial and fair *process* by which the level of allocation will take place within the CMA.

484. The report writer's conclusion is to emphasise that equitable is fair and impartial with the addition of an amended explanation.[147]

485. Te Ātiawa considers that the explanation to the objective, in spite of describing equitable/sustainable allocation in terms of public use and enjoyment, provides no consideration of cultural/spiritual values. The Panel questioned whether there would be merit in including a specific cross-reference in the relevant chapter to Chapter 3 Marlborough's Tangata Whenua Iwi that would reflect the importance of this topic to iwi. The report writer endorses this approach, agreeing that visibility within provisions to link the plan users to those provisions within Chapter 3 would be valuable.

**Consideration**

486. We do not consider 'efficiently' is necessarily an appropriate term by which to address the implications of equitable when it relates to COCs. In the case of the aquaculture industry group, counsel refers to in the application of *Queenstown Airport Corporation Limited.*[148] In addressing s 7(b) RMA 'The efficient use and development of natural and physical resources' the Environment Court held:

> *In these proceedings efficiency can be understood in terms of allocative, social and operational efficiency. Allocative efficiency seems to accord with the general rule of economics given by Mr Ballinger – an efficient level of any activity occurs where its marginal costs match its marginal benefits and social efficiency, where the external costs are identified and if possible quantified and brought to account.*[149]

487. In this case costs and benefits are not easily quantified in monetary terms.

488. The Panel accepts the term 'equitable' as impartial and fair, and aligns with the dictionary definition as identified by the report writer, and should be retained.

489. On the question of whether the phrase 'available to all that wish to occupy the space' should be retained, we concluded that it was unnecessary, given the competition in the CMA of Marlborough Sounds for space, and should be deleted. We consider too that the word 'avoids' should be replaced with 'manages' otherwise it sets the barrier too high for users to address.

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[147] Section 42A Report (Plan), Reply to Evidence, pages 5-7.
[148] [2012] NZEnvC [206] [2012] 18 ERNZ 489 at [221].
[149] Ibid

490. In relation to Te Ātiawa's cultural/spiritual values within the objective's explanatory text, providing a cross-reference back to Chapter 3 is important because the reference in Objective 5.10 is to Marlborough's 'coastal marine area' which otherwise constrains iwi to apply to occupy under the definitions of s 2 RMA.

**Decision**

491. The explanation of Objective 5.10 is amended as follows:

*Objective 5.10 – Equitable and sustainable allocation of public space within Marlborough's coastal marine area.*

*The control of the occupation of space in the coastal marine area is a specific function of the Council. The Council allocates or allows the right to use public resources for private benefit. This is within the Council's role of promoting the sustainable management of the natural and physical resources of the coastal marine area. The objective is therefore to ensure that the process of allocation of space within the coastal marine area is undertaken in a fair and impartial manner. The policies that follow outline how equitable allocation will be achieved. The objective is also intended to ensure that these resources and their associated qualities remain available for the use, enjoyment and benefit of future generations in a way that minimises adverse effects on the environment, ~~avoids~~ manages conflicts between users and ensures efficient and beneficial use.*

*In managing the allocation of space within the coastal marine area the Council must recognise and provide for the cultural and spiritual values of the coastal marine area to Marlborough's tangata whenua iwi. In particular, the importance of te moana for tikanga and the exercise of kaitiakitanga, and as a source of kaimoana. The provisions of Chapter 3 – Marlborough's Tangata Whenua Iwi must be applied when considering allocation within the coastal marine area.*

## Policy 5.10.2

**The 'first in, first served' method is the default mechanism to be used in the allocation of resources in the coastal marine area. Where competing demand for coastal space becomes apparent, the Marlborough District Council may consider the option of introducing an alternative regime.**

492. Two submitters support the policy as notified. One other seeks it be deleted. Others seek: amendments to support the policy in part but for these amendments to include an additional policy to read 'If alternative methods of allocation are considered these will be publicly notified and also discussed within the Sounds Advisory Group;[150] if mooring areas are

[150] QCSRA (504.13).

established, iwi should have space set aside for iwi use;[151] any alternative regime proposed by the Council around allocation of space should be publicly notified: see s 165G RMA;[152] the second sentence of the policy should be removed on the basis that an alternative regime could be referred to within the commentary;[153] the policy is opposed in respect of the allocation of resources in the CMA for mooring resource consent opportunities (latecomers cannot expect allocation of resources to wait around).[154]

**Section 42A Report**

493. In summary, the report writer identifies:

- QCSRA's submission is accepted in part to provide more guidance to plan users. However, any alternative method of allocation requires a First Schedule RMA plan change process, including public notification.
- The submissions of the aquaculture industry are acknowledged because an alternative regime for allocation is provided for within the RMA, but the policy as notified provides appropriate direction as to how the objective will be achieved. This reflects that this change may take place within the life of the Plan if considered necessary by the Council. The submissions of AQNZ and MFA are not supported.
- In response to the submissions by Ngāti Kuia, the provisions within the Plan do not manage the allocations of moorings within Mooring Management Areas (MMA). The provisions guiding MMAs provide for MMAs to be established where there is competing demand within the CMA to accommodate swing moorings. Policy 13.8.3 provides for the provision of moorings within MMAs as either a permitted activity (where a bylaw exists) or as a restricted discretionary activity (subject to matters of discretion, including location within the MMA, the type of mooring sought and the availability of space within the MMA). This is not a method of allocation but provides a management framework where there is capacity demand. The submission of Ngāti Kuia is not supported. The only way that iwi could secure moorings is for Council to purchase existing moorings or apply for and gain consent for a new mooring and then allocate it to iwi.[155]

[151] Te Rūnanga O Ngāti Kuia (501.20).
[152] QCSRA (504.13).
[153] AQNZ (401.36) and MFA (426.36).
[154] Michael Rothwell (1253.2)
[155] Section 42A Report (Plan), paragraphs 176-189.

- In terms of Mr Rothwell's submission, moorings outside the MMAs are considered through a resource consent process. Again, any alternative method of allocation considered by the Council will require a plan change in accordance with the First Schedule process of the RMA including public notification.

**Decision**

494. The explanation to Policy 5.10.2 is amended as follows:[156]

*The default process for processing resource consent applications under the RMA is 'first in, first served.' The Council processes resource consent applications in the order they are received, provided they are accompanied by an adequate assessment of environmental effects. Using this approach the Council has to date effectively managed the demand for space in the coastal marine area. However, if competing demand for space becomes an issue, the Council may consider the introduction of other allocation methods. There may also be certain circumstances under which a specific allocation mechanism is introduced to address a specific issue. <u>If an alternative allocation method is introduced this would result in changes to the plan that would be subject to the plan change process under the RMA.</u>*

## Coastal occupation charging

495. The RMA provides for COCs in s 64A the enabling provisions of which in subsection (1) are set out above paragraph 342 of this Topic decision. The following operational provisions of s 64A are set forth below:

> **64A Imposition of coastal occupation charges**
>
> **… (2) Where the regional council considers that a coastal occupation charging regime should not be included, a statement to that effect must be included in the regional coastal plan.**
>
> **(3) Where the regional council considers that a coastal occupation charging regime should be included, the council must, after having regard to the matters set out in paragraphs (a) and (b) of subsection (1), specify in the regional coastal plan—**
>
> **(a) the circumstances when a coastal occupation charge will be imposed; and**
>
> **(b) the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and**
>
> **(c) the level of charges to be paid or the manner in which the charge will be determined; and**
>
> **(d) in accordance with subsection (5), the way the money received will be used.**
>
> **(4) No coastal occupation charge may be imposed on any person occupying the coastal marine area unless the charge is provided for in the regional coastal plan. …**

[156] Queen Charlotte Sound Residents Association (504.13).

> **(5) Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area.**

496. The relevant Policy in the PMEP is as follows:

> *Policy 5.10.4 - Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.*

497. Numerous submissions support the policy. Others seek: the policy be deleted;[157] there is a lack of clarity in the policy as to what the Council's intentions are – it is impractical to make an assessment on the basis of a benefit arising to the owner/occupier or loss to the public - having a boat on a mooring creates no material loss to the public - and the issue of lost benefit to the public is adequately catered for by the restrictions on the number of moorings in a bay.[158]

**Section 42A Report**

498. The report writer provides a lengthy response to Mr Bond's concerns, setting out the scheme of the provisions and methods relating to moorings and in the Reply to Evidence providing additional wording to make the explanation to the policy clearer.[159]

499. As at the date of hearing, the report writer details the steps the Council will take:

- Policy 5.10.4 needs to be read in conjunction with Policies 5.10.5-5.10.8 and Method 5.M.10, as collectively they provide the overall regime intended to apply to the COC regime.
- Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.
- The circumstances in which the Council will waive the requirement for a charge to be paid.
- The matters that will be considered in determining whether to approve applications to seek a waiver from the charging regime.
- The way in which the level of coastal occupancy charges will be calculated.
- The way in which money collected will be used in order to promote the sustainable management of the CMA.

[157] Ian Bond (469.1); D C Hemphill (648.11).
[158] Ian Bond (469.1).
[159] Section 42A Report (Plan), paragraphs 205-219.

- The level of charges will be set out in the Annual Plan (Method 5.M.11) and provisions relating to the imposition of charges and the waiver application process will be set out in regional rules in the Plan (Method 5.M.10).

500. Volume 2 PMEP Chapter 16 contains the provisions that manage moorings established within a Mooring Management Area, and swing moorings for waka in Waka Mooring Management Areas which are both provided for as permitted activities where a licensing system for the allocation and management of swing moorings in Mooring Management Areas has been established in a bylaw. A licence for the mooring is issued by the Mooring Manager prior to the establishment and occupation of the mooring.

501. If a bylaw is not in place to manage and allocate swing moorings within Mooring Management Areas and Waka Mooring Management Areas, consent for a restricted discretionary activity is required, and applications will be publicly notified. Mooring outside Mooring Management Areas require consent as a discretionary activity.[160]

502. Mooring Management Areas are located in areas where there is high demand for public space.

503. Section 64A RMA states that a COC, if deemed appropriate by the Council, shall be applied to persons who occupy any part of the common marine area. The second (COC) Section 42A Report identifies amendment to Policy 5.10.4 and its explanatory text to replace certain occurrences of the phrase 'coastal marine area', with 'common marine and coastal area', and vice versa, in order to align with s 64A(1) RMA, plan provisions and clause 16 First Schedule. As a result to refer to the charges being imposed on the consent holders of coastal permits where there is greater private rather than public benefit, as imposed on the coastal permits themselves.[161]

504. The report writer also references the matter of discretion considered for applications to establish moorings in MMAs for which a licensing system has not been established, including location, availability of space and the type and specifications of mooring, impacts on cultural and customary values.[162]

505. In terms of jetties, there was a great deal of concern about the use of private jetties and wharfs for public use when landowners do not have road access. For Mr Hemphill, who opposed Policy 5.10.4, the conditions of the resource consent for the wharf make it very

[160] Section 42A Report (Plan), paragraph 205.
[161] Section 42A Report (COC), s 64A(1) RMA, paragraphs 80-82.
[162] Section 42A Report (Plan), paragraph 213.

expensive to use. The Panel understands that where there is public access, COCs are abated for the relevant resource consent.

**Consideration**

506. The Panel notes that s 64A (1) RMA specifies that after considering public and private benefits a Council has to decide:

> ***…whether or not a coastal occupation charging regime applying to persons who occupy any part of the common marine and coastal area should be included***.

In other words charges are applied on persons rather than structures. It is therefore necessary to add 'consent holders of' prior to 'coastal permits'. Consequential amendments also apply.[163]

507. Further, the explanation to the policy is not consistent with Policy 5.10.5(c) which makes it clear that COCs will apply to moorings in the MMA. It is appropriate to add 'and the occupiers of permitted activity moorings in a Mooring Management Area' after 'the consent holders of coastal permits' in the explanation to make it consistent with Policy 5.10.5(c). Also add 'and the occupiers of permitted activity moorings in a Mooring Management Area' after 'coastal occupations' in the recommended wording to replace the current explanatory text for Method 5.M.10 to make it clearer to the user of the plan and consistent with Policy 5.10.5(c).

**Decision**

508. Policy 5.10.4 is amended as follows:

*Policy 5.10.4 – Coastal occupancy charges will be imposed on the consent holders of coastal permits and the occupiers of permitted activity moorings in a Mooring Management Area where there is greater private than public benefit arising from occupation of the coastal marine area.*

509. Amend the explanatory statement to Policy 5.10.4 as follows:

*The RMA enables the Council to apply a coastal occupancy charge to ~~activities occupying~~ persons who occupy space within the coastal marine area, after having regard to the extent to which public benefits from the coastal marine area are lost or gained and the extent to which private benefit is obtained from the occupation of the coastal marine area. The Council has considered the private and public benefits associated with coastal occupations and the occupiers of permitted activity moorings in a Mooring Management Area and has determined that where the private benefit is greater than the public benefit, charging for occupation of*

[163] Section 42A Report (COC), paragraph 84(b).

*coastal space is justified. The assessment of benefits (private/public) is directed to those arising or lost as a consequence of the structure occupying coastal space, not the associated activity that may be facilitated by the structure being present.*

### Policy 5.10.5

**The Marlborough District Council will waive the need for coastal occupancy charges for the following:**

**(a) public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;**

**(b) monitoring equipment;**

**(c) activities listed as permitted, except for moorings in a Mooring Management Area;**

**(d) retaining walls; and**

**(e) port and marina activities where resource consents authorised under Section 384A of the Resource Management Act 1991 are in place until such time as those resource consents expire.**

510. Numerous submitters supported the policy as notified. Many others sought exemptions for private jetties and moorings, Maori interests, boating clubs, protection structures and stormwater outfalls, ports and marinas, public structures, retaining walls.[164]

**Section 42A Report**

511. With regard to the various exemptions sought, the following are the recommended amendments by the report writers for the reasons listed in the reports:

- Change Policy 5.10.5 to make it clear that the structures listed are *exempt* from the COC rather than the COC being waived in accordance with Clause 16 First Schedule. This is because the use of the word 'waive' implies that a person will need to make an application for the waiver (and it is addressed by Policy 5.10.6) whereas exemptions from the regime at the outset fall into a different category.[165]
- The port-related commercial undertakings that have been granted coastal permits under Section 384A of the RMA are exempted from attracting coastal occupancy charges until after 30 September 2026.[166]
- A new exemption for coastal protection structures and stormwater outfalls is recommended.[167]

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[164] Michael and Kirsten Gerard (424.10); PMNZ New Zealand Limited (433.14); Department of Conservation (479.50); Pinder Family Trust (578.3); Judy and John Hellstrom (688.34); The Fishing Industry Submitters (710.10); Guardians of the Sounds (752.3); Sea Shepherd New Zealand (1146.3); The Bay of Many Coves Residents and Ratepayers Association Incorporated (1190.28); The Marlborough Environment Centre Incorporated (1193.39).

[165] Section 42A Reports (COC), paragraphs 83-84(c); (Plan), paragraphs 235, 243.

[166] Taurewa Lodge Trust (1185.2), Brent Yardley (258.2), Queen Charlotte Sound Residents Association (504.15), PMNZ (433.15).

[167] Section 42A Report (Plan), paragraphs 243-244.

- Replace the term 'public infrastructure' with the recommended wording 'regionally significant infrastructure', and replace 'other government agencies' with 'other providers of regionally significant infrastructure'.
- In terms of PMNZ's infrastructure, clarify that exemption under s 384A RMA which applies to port-related commercial undertakings by amending Policy 5.10.5(e) and the accompanying explanation.[168]
- Given the provisions of s.64A(4A) RMA which reads:

**(4A) A coastal occupation charge must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.**

this policy should be amended to include a specific exemption from the proposed charging regime for customary marine title or customary rights groups (see recommended amendment Policy 5.10.5.X).[169]

512. The Waikawa Boating Club considered Policy 5.10.5 should include a pre-determined waiver for a substantial number of permanent moorings where they are provided by membership-based boating clubs such as Waikawa. The concern indicated by this submitter that fishermen and those for whom the moorings provide a safety network, and the many others who are freeholding, contribute nothing to the consents or upkeep of the club's moorings.[170]

513. The report writer does not accept that these club facilities should have pre-determined waiver (exemption). Their use is still exclusive of non-members. The option to apply for a full or partial waiver is still available to this category, allowing consideration of the matters listed in Policy 5.10.6.[171]

514. The report writer accepts the point made in answer to questioning that the waiver process will require time and resources, but it is likely to be less cost than a resource consent process, and an applicant should not repeatedly have to turn up for answers because it is a regulatory issue and one that is efficient. In addition, once a consent holder (or an organisation) has qualified for any reduction in a coastal occupancy charge, and unless circumstances change, that reduction may well prevail into future imposition of the annual charges (and might not need to be repeatedly argued).[172]

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[168] Section 42A Report (Plan), paragraphs 253-266(b).
[169] Totaranui Limited (233.12), Section 42A Report (Plan), paragraphs 223-232, 266.
[170] Waikawa Boating Club, Paul Williams oral evidence.
[171] Section 42A Report writer oral evidence.
[172] Section 42A Report (COC), Reply to Evidence, paragraph 2. Oral Evidence.

**Decision**

515. Policy 5.10.5 is amended as follows:

*Policy 5.10.5 – The Marlborough District Council will ~~waive the need for coastal occupancy charges for~~ exempt the following from any requirement to pay coastal occupancy charges:*

*(a) public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;*

*(b) monitoring equipment;*

*(c) activities listed as permitted, except for moorings in a Mooring Management Area;*

*(d) retaining walls; ~~and~~*

*(e) (e) coastal protection structures and stormwater outfalls for the purpose of enabling the provision and operation of public regionally significant infrastructure;*

*(f) (f)~~(e)~~ port ~~and marina activities where~~ related commercial undertakings authorised via resource consents ~~authorised~~ under Section 384A of the Resource Management Act 1991 ~~are in place~~ until such time as those resource consents expire~~.~~; and*

*(g) (g) protected customary rights groups or customary marine title groups exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.*

*These ~~waivers~~ exemptions exist because the facilities owned by the Council, ~~and~~ the Department of Conservation and other providers of regionally significant infrastructure provide a significant level of public benefit as they are used by and available to many people. Retaining walls generally do not occupy significant areas of the coastal marine area to the exclusion of other users, while monitoring equipment is generally very small and often temporary. There are few permitted activities that involve occupation and those that are permitted tend to have a more significant element of public benefit, e.g. navigation aids or public and safety information signs. Although moorings in a Mooring Management Area identified through rules are provided for as a permitted activity in the Coastal Marine Zone (where a relevant bylaw is in place), these moorings are for private benefit and therefore will attract a coastal occupation charge.*

*Certain occupation rights are granted to port companies under Section 384A of the RMA. These occupation rights originate from the purchase of the assets comprised in the port-related commercial undertakings by the Port Companies from the former Harbour Boards. In Marlborough the resource consents granted under this section of the RMA relate to port*

*related commercial undertakings being carried out in the areas of Picton (excluding the area of port in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. ~~The~~ Due to the purchase of these assets by the Port Companies, the port-related commercial undertakings that have been granted coastal permits under Section 384A of the RMA ~~appears to exempt these resource consents~~ are exempted from attracting coastal occupancy charges until after 30 September 2026 (being the expiry date of those coastal permits).*

### Policy 5.10.7

**The manner in which the level of coastal occupancy charges has been determined is as follows:**

**(a) the expenditure related to the Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area has been established;**

**(b) the anticipated exemptions and waivers from coastal occupancy charges has been considered;**

**(c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and**

**(d) the appropriate charge for the differing occupations to recover costs has been determined.**

516. Some submitters support the policy.[173] One submitter considers that the charging regime is full of flaws and inequitable;[174] others query the appropriateness of basing the charges on a per square metre rate versus a per hectare rate;[175] while mussel farms are charged approximately 1 cent per square metre;[176] others consider it is unfair that the COCs for jetties, moorings and boatsheds should be linked to the management of Marlborough's coastal resources unless the charges are equitable (based on area, size of structures – particularly in relation to marine farms);[177] another considers the charging regime should be based on a fixed administration cost per structure, plus a per square metre charge divided by a factor reflecting the utility provided for the benefit of the general public;[178] one submitter considers that the marine farms should be charged on a per tonne harvested basis.[179]

**Section 42A Report**

517. The issue arises from this policy as to what is a total amount required for the sustainable management of the coastal marine area. Policy 5.10.7(a) states that the expenditure 'has been determined', which implies pre-determination in the allocation of coastal changes. MFA

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[173] Michael and Kirsten Gerard (424.12); Pinder Family Trust (578.5); the Fishing Industry Submitters (710.12); Guardians of the Sounds (752.5); Sea Shepherd New Zealand (1146.5); Marlborough Environment Centre (1193.41).
[174] Taurewa Lodge Trust (1185.4).
[175] Thomas Norton Te Awaiti Ltd (203.1).
[176] Brent Yardley (258.3).
[177] Judy and John Hellstrom (688.35).
[178] EBCS (100.8).
[179] Mt Zion Charitable Trust (515.8).

and AQNZ submit that using the phrase 'will be determined' is more transparent and reflective of future coastal occupancy charges.180

518. This amendment is agreed to by the report writer but even if this is accepted, he identifies the policy still does not state the process by which this will occur nor the frequency for determination.

519. The explanatory text to Policy 5.10.7 as notified states that the Council has decided that the allocation of costs between ratepayers and coastal occupiers should be 25% and 75% respectively, but does not state *how* the allocation of costs among the various types of coastal occupiers will be determined.

520. If this option is preferred, the report writer recommends that the 25/75 split is referenced in the policy as well as the explanatory text. He recommends that Policy 5.10.7 be amended to state that this cost will be determined in the Annual Plan process.

521. A further issue arises as to the manner in which the charge for each type of eligible coastal occupation is determined. Policy 5.10.7(d) states that the appropriate charge for the differing occupations to recover costs will be determined but also does not describe how.

522. The report writer poses several options as to how this allocation may occur:

- this decision will be based on the relative benefit that ratepayers and coastal occupiers each derive from the spend; or
- the split of the costs between ratepayers and occupiers; or
- the split of the costs between ratepayers and each type of coastal occupation; or
- the charges will be based on the types of occupation, number of occupations in each group and the characteristics of those occupations e.g. area of occupation.

523. The report writer's conclusion after traversing these options is to avoid any great level of detail of the methodology in the content of the amended provisions of the PMEP but rather that level is set via the Annual Plan.[181]

**Consideration**

524. The Panel queried how the 25/75 share of funding was arrived at. We were advised the allocation of costs is apportioned between ratepayers and all coastal occupiers. There was full community involvement in a process that began in 2007.

[180] AQNZ and MFA, Counsel Submission, paragraph 27.
[181] Section 42A Report (COC), paragraph 107.

525. Edward Culley, General Manager for Sanford, identified there is broad conditional support for a 48% contribution from the aquaculture industry. This in turn was the generally accepted ballpark figure in the 2013 Executive Finesse Report.[182] The witness also identified the costings awaiting the industry on the substantial re-consenting of the NPS, contracting NIWA scientific research such as acidification as well as meeting many of the community aspirations.

526. The 75% share is apportioned based on what types of occupation benefit from the different elements of the annual expenditure that is allocated on sustainable management terms.

527. The report writer identifies the 'default position' in the RMA with regard to the rights of public access to structures in the CMA. The default position was identified in a 2000 case in the Court of Appeal[183] which clearly sets the parameters around council occupancy charging. It does not provide blanket exemption of facilities from the charging regime for private jetties. Consent holders may instead be required to seek a waiver/exemption from the charge in accordance with the circumstances authorised in Policy 5.10.6.

528. The Court considered that 'Parliament seems to have gone out of its way to state that the default position (i.e. the position in the absence of an express provision or necessary implication) is that public use and access is permitted. The default position is demonstrably not that the public are excluded in the absence of express or implied permission.'

529. The Court stated that there are two ways in which a coastal permit may give rights of exclusion of others from use and occupancy of a structure: when the permit expressly provides for such rights of exclusion; or when the exclusion of others (or a degree of exclusion) is reasonably necessary to achieve the purpose of the permit.

530. The Panel agrees with the report writer's bottom line throughout his commentary of COCs that it is the relative (public vs private) benefit that will determine the outcome for an imposition of a COC.[184]

531. The legal submissions from the aquaculture representatives indicate that the industry is supportive of the broad thrust of the Council's proposal, and generally supportive of the general direction that the Council has taken over environmental monitoring and management.

532. The concern from the submitters is how the Council proposes to implement the charging regime with them asserting:

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[182] Executive Finesse Limited Coastal Occupancy Charges Report 2013, Discussion Paper 4 *The Future of the Marlborough Sounds,* Marlborough District Council in Report for Public Consultation on Proposed Framework to Introduce Coastal Occupation Charges (2014).
[183] *Hume v Auckland Regional Council* CA262/01 at [25].
[184] Section 42A Report (COC).

- the method of calculating the COC should be specified in the MEP and the Council's Annual Plan;
- those who pay should have a say on how the money is spent (marine farmers should have a representative on the Council to determine how the funds are spent).

533. Section 64A(3) RMA requires regional councils to 'specify' in their regional coastal plans the level of charges to be made or the manner in which the charges will be determined. Counsel submits that Policy 5.10.7's method of implementation 'describes' rather than 'specifies'.[185]

534. In view of the presumption in the provisions of s 64A(3)-(c), the Executive Finesse Limited report suggests the Annual Plan process is the appropriate method for Council to adopt. It picks up on the second provision of s 64A(3)(c) 'the *manner* (our emphasis) in which the charge shall be determined'. It recommends that 'the Council outline how the methodology charges will be determined in the Council's Coastal Plan and link this to the Council's Annual Plan where the charges will be stipulated. This would enable an annual review of charges together with consultation with the community ensuring that the charge maintains a relationship with Council's expenditure. In the event that the charge was stipulated in the PMEP then it should include an 'adjustment for inflation'.

535. The aquaculture industry seeks that the level of charges be written into the PMEP in an appendix. In the alternative, the percentage contributions of the various sectors could be detailed in a commentary.[186]

536. The Panel queried whether the 25/75 split should be in Policy 5.10.7 rather than in the explanation. The report writer acknowledges if the Panel is to retain a commitment to the 25/75 split he would recommend that it is incorporated into the wording of Policy 5.10.7 rather than relying on an explanation.

537. The report writer provided three options[187] as to the manner in which the charge is determined, assessing each option, its advantages and disadvantages. The Panel preferred Option 2b which recommends: 'The amendment to Policy 5.10.7 to state that this cost will be determined each year via the Annual Plan process.' This provides clarity as to the manner in which this step of the charging methodology will be undertaken. It also retains the ability for the Council to set this amount on an annual basis in response to changes in its work

[185] AQNZ and MFA, Counsel Submissions. See Policy 5.10.7 – Coastal occupancy charges, generally, paragraphs 27-35, 38.
[186] AQNZ (401.40), Counsel Submissions, paragraphs 33-41, 44. QCSRA, Brent Yardley, Evidence, pages 13-19.
[187] Section 42A Report (COC), Reply to Evidence. Table: Overview of Options attached. Options to amend MEP provisions, pages 5-4-5-5.

programme, priorities, and changing or emerging trends that relate to the CMA and require management by the Council. The 25/75 apportionment is referred to in Policy 5.10.7 provides specificity and certainty to the allocation of costs between ratepayers and coastal occupiers. It also ensures that the PMEP provisions reflect this key principle of the proposed charging regime.

538. The Panel was satisfied with both the analysis undertaken by the Council with the support of the experts and consider it provides the most appropriate way to proceed.[188] There were several iterations attached to the final report. This decision incorporates option B.

**Decision**

539. Policy 5.10.7 is amended as recommended:

*Policy 5.10.7 – The manner in which the level of coastal occupancy charges* ~~has been~~ will be *determined is as follows:*

*(a) the expenditure related to the Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area* ~~*has been established*~~ *will be determined on an annual basis through the Annual Plan process;*

~~*(b) the anticipated exemptions and waivers from coastal occupancy charges has been considered;*~~

~~*(c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and*~~

*(b) the annual costs required to fulfil Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area will be allocated between the beneficiaries from the sustainable management of the coastal marine area on the following basis:*

*(i) Ratepayers: 25 per cent*

*(ii) Coastal occupiers: 75 per cent*

*(c) the charges that will be issued to eligible coastal occupiers to meet the annual costs required to fulfil Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area will be based on:*

*(i) the types of occupations;*

*(ii) the characteristics of the types of occupations; and*

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[188] Section 42A Report (COC), Reply to Evidence, pages 12-17.

*(iii) the number of occupations in each group.*

*(iv) The relative benefit allocations, including expenditure on environmental science and monitoring, policy development, compliance and education.*

~~*(d) the appropriate charge for the differing occupations to recover costs has been determined.*~~

*(d) coastal occupancy charges will only be imposed upon coastal occupations that are not exempt from the charging regime on the basis of the circumstances set out in Policy 5.10.5.*

*(e) the Council will maintain records of all coastal occupiers who have sought and obtained a waiver from the base charge for their type of coastal occupation. This waiver will be reflected in the final charge that is issued to those coastal occupiers.*

540. The explanation to Policy 5.10.7 is amended as follows:

*In deciding how to set charges, the Council ~~has used~~ will use as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group.*

*… In determining who should meet the cost of sustainably managing the coastal marine area ~~environment~~, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The Council ~~has also given~~ will give consideration to ~~anticipated~~ exemptions and waivers that ~~may be~~ have been granted and the number and size of the various occupations. From this assessment, a schedule of charges ~~has been~~ will be derived and ~~is~~ set out in the Council's Annual Plan*

## Policy 5.10.8

**Any coastal occupancy charges collected will be used on the following to promote the sustainable management of the coastal marine area:**

**(a) implementation of a Coastal Monitoring Strategy;**
**(b) State of the Environment monitoring;**
**(c) research in relation to the state and workings of the natural, physical and social aspects of the coastal marine area;**
**(d) education and awareness;**
**(e) habitat and natural character restoration and enhancement;**
**(f) managing marine biosecurity threats;**
**(g) maintaining and enhancing public access; and**
**(h) formal planning in the Resource Management Act 1991 planning context and strategic planning and overview in relation to the coastal environment.**

541. A number of submitters support Policy 5.10.8. Others seek: that it should be amended in order that all monitoring results and reports are made public;[189] recognition that coastal occupiers are only one of the sectors involved in sustainably managing the coastal environment and seek an amendment which suggests 'Any coastal occupancy charges will ~~be used on~~ contribute towards the following to promote the sustainable management of the coastal marine area';[190] consider long term management plan; oversight committee;[191] location of reinvestment funds;[192] contribution to club moorings;[193] contributions from other organisations – PMNZ, forestry and fishing industries, tourist industries.[194]

**Section 42A Report**

542. The report writer acknowledges that revenue from the proposed coastal charging regime is not the sole source of funding towards fulfilling Council's role in the sustainable management of the CMA. Rather than amending the policy to this effect, it is recommended that the explanatory text is amended to identify this fact.

**Consideration**

543. The Panel is advised that other Marlborough organisations will contribute by way of rates and if they are the holders of structures, they are likely to contribute to the COC where related to the CMA.

544. Also, it is important to take account of the interests of Marlborough's tangata whenua iwi and include 'cultural' in (c) of the policy as follows:

*(c) research in relation to the state and workings of the natural, physical~~, and~~ social and cultural aspects of the coastal marine area;*

**Decision**

545. Policy 5.10.8(c) is amended as follows:

*(c) research in relation to the state and workings of the natural, physical~~, and~~ social and cultural aspects of the coastal marine area;*

546. The explanation to 5.10.8 is amended as follows:

*… The RMA requires that in implementing a coastal occupancy charging regime, any money collected must be used to promote the sustainable management of the coastal marine area.*

[189] Elie Bay Residents (697.3); Kroon, Hanneke and Jansen Joop (808.3).
[190] Marlborough Berth and Mooring Association (960.3).
[191] Brent Yardley (258.4).
[192] Sanford Limited (1140.5, .6, .7, .8, .9).
[193] Waikawa Boating Club (1233.2) and Pelorus Boating Club Incorporated (1246.2).
[194] Taurewa Lodge Trust (1185.5).

*Revenue from the coastal occupancy charging regime is not the only source of funding that is available to promote the sustainable management of the coastal marine area, which may also come from general rates. Other agencies may also spend money on the sustainable management of the coastal marine area. The policy describes those matters on which the revenue collected from imposing charges is to be used, as required by the RMA. Greater detail on these matters can be found in a number of the subsequent chapters of the MEP, including Chapter 6 - Natural Character, Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity, Chapter 9 - Public Access and Open Space, Chapter 10 - Heritage Resources, Chapter 13 - Use of the Coastal Environment and Chapter 15 - Resource Quality (Water, Air, Soil).*

*Amongst the broader considerations, the Council will be informed by community input, including from Marlborough's tangata whenua iwi, through its annual plan submission processes when making its decisions on how money collected from the charging regime will be spent.*

## Methods of Implementation

### 5.M.10 Regional Rules

547. The wording of this method went through several iterations from the notified method before the final amendment as proposed below, if accepted, approves the position advanced by Counsel for the aquaculture industry in legal submissions, that is, the MEP simply needs to 'declare' that a charge will be payable unless otherwise exempted or waived.

**Consideration**

548. The Panel accepts Counsel's submission on the suggested amendment. It removes any uncertainty around how and what should be communicated in imposing COCs.[195]

**Decision**

549. 5.M.10 is amended as follows:

*5.M.10 ~~Regional Rules~~ Imposing coastal occupation charges*

*Include provisions relating to the requirement for coastal occupation charges for port facilities where appropriate, moorings, marinas where appropriate, marine farms, jetties, wharves, boat ramps and slipways, boatsheds and other structures and utilities. Rules will also require discretionary activity applications to be made to enable an assessment of whether an exemption or waiver of any charge should be granted.*

[195] AQNZ (401.43), MFA (426.43). Counsel Submissions.

*<u>Coastal occupancy charges will be imposed on the consent holders of all eligible coastal occupations and the occupiers of permitted activity moorings in a Moorings Management Area, taking into account any exemptions or waivers from the charges that have been obtained by the consent holder.</u>*

## Policy 13.10.15

550. There were several submitters to Policy 13.10.15 who raised concerns that, in reducing the visual effects of jetties, the policy may create safety issues for jetty users. In particular, East Bay Conservation Society and John and Judy Hellstrom raised concerns with respect to (b) and (d). Their concern was that the clear preference for floating jetties and the discouragement of jetties that run parallel to the shore would make the jetties dangerous to use. George Elkington raised similar issues and also questioned the limit of 2 metres in (a) of the policy. East Bay is in the outer Sounds. The Hellstrom's live in Endeavour Inlet and George Elkington has a strong affinity with D'Urville Island, both also in the outer Sounds. All submitters raised the influence of exposed locations on the ability to use jetties safely.

### Section 42A Report

551. The report writer undertook a site visit and on viewing the coastal structures that are utilised in the Marlborough Sounds formed the view that (b) and (d) appropriately act to reduce the visual effects of jetties. She recommended the submissions be rejected on this basis.

### Consideration

552. The Panel accepted the submissions and evidence from the submitters, as all have experience of the use of jetties and adverse weather conditions in the Marlborough Sounds. Mr Denize for the East Bay Conservation Society attended the hearing and provided video and photographic evidence of the rough sea conditions that can exist in East Bay. That included photographs of a boat tied at a jetty in a heavy sea state. There is no doubt that sea conditions that can only be described as "wild" can occur in this exposed part of the Marlborough Sounds.

553. In fact, the Panel experienced those wild sea conditions itself when a very strong north-west wind blew up while undertaking a site visit, ironically in East Bay. The Panel was forced to cut short its site visit as a result.

554. The Panel found the evidence on safety concerns compelling, especially after its own experience. However, the NZCPS requires the Council to consider how adverse visual impacts of development can be avoided in sensitive areas (Policy 6) and avoid, remedy, or mitigate

adverse effects of activities on natural features and natural landscapes in the coastal environment (Policy 15).

555. The use of jetties for access purposes is common in the Marlborough Sounds and in the Panel's view it is necessary to mitigate the visual effects of jetties in order to maintain amenity values. For this reason, the policy direction was considered to be appropriate: (a) to (i) identify means by which the visual effects can be mitigated.

556. The Panel also took into account that not all parts of the Marlborough Sounds are as exposed as East Bay and other parts of the outer Sounds. In fact, in many locations the enclosed nature of bays affords protection to those using boats in adverse weather conditions. Removing (b) and (d) would remove two valid methods of mitigating visual effects in more sheltered locations.

557. However, the practicality of applying the policy direction in particularly (b) and (d) does need to take into account these very real safety concerns. On careful consideration of the above matters, the Panel believes that an adjustment to the policy is necessary to allow this to occur. The adjustment involves the insertion of "where practicable having regard to public and boat safety" at end of the statement of the policy, with a consequential removal of "where practicable" from (b). Additional explanation is also to be added to the policy to recognise the influence of exposure to adverse weather conditions to safety, especially in the outer Sounds and the main channels.

558. In conclusion, the Panel's view was that this policy was too definitive and impracticable particularly in more exposed or isolated settings.

**Decision**

559. Policy 13.10.15 is amended as follows:

*Policy 13.10.15 – Reduce the visual impact of jetties on the coastal environment, <u>where practicable having regard to public and boat safety,</u> by :*

*(a) limiting the width of jetties to two metres;*

*(b) ~~where practicable,~~ using floating jetties, which tend to have a lower profile than fixed jetties and provide easier access to the shore;*

*(c) limiting the size, colour and height of mooring piles associated with the jetty;*

*(d) discouraging the use of jetties (or parts of jetties) that run parallel to the shore, as they can cause greater visual impact than jetties perpendicular to the shore;*

(e) *avoiding the use of boatlifts alongside jetties for boat storage;*

(f) *avoiding locating lights on jetties (other than those required to facilitate access);*

(g) *encouraging new jetties, link spans and piles to be built from materials that are non-reflective or painted in non-reflective colours;*

(h) *avoiding the use of highly-coloured fenders; and*

(i) *avoiding signs on jetties other than those assisting emergency services.*

*As jetties can have an impact on visual amenity and landscape values, this policy sets out matters that can help to reduce these impacts. Decision makers should therefore have regard to these matters, including consideration of the scale of a jetty in relation to the proposed location.*

*The safety of people boarding and disembarking boats, and the safety of those boats accessing the jetties, are important considerations when implementing this policy. This is because sea conditions can be extreme in the main channels of the Marlborough Sounds and in the outer Marlborough Sounds. The exposure to extreme weather at these locations may make it inappropriate to implement some of the matters listed in this policy.*

**Light spill in the coastal environment**

560. The Port Underwood Residents Association, and Ken and Sarah Roush, submitted on the impact of light spill on the night sky in Marlborough's coastal environment. In doing so, they emphasised that Policy 13 of the NZCPS requires the preservation and protection of the natural darkness of the night sky.

561. The relief requested was twofold. Firstly, in relation to Policy 13.10.15 and 13.10.22, the submitters sought that the policies be extended to require lights that are necessary on jetties and boatsheds be fully shielded to prevent light spillage above the horizontal plane of the light source. Secondly, the submitters sought that the notified permitted activity standard for lighting in many zones[196] be extended as follows:

> *xxxx Light spill onto an adjoining residential site must not exceed 2.5 Lux spill (horizontal and vertical). All external lighting shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.*

562. Mr Roush appeared at both the Topic 11 hearing and the Topic 18 (Nuisance) hearing and spoke passionately about the importance of the night sky, the impact of light pollution, the

[196] Urban Residential 1, 2 and 3, Coastal Living, Rural Living, Port, Port Landing Area, Open Space1, 2, 3 & 4 and Coastal Marine

implications of inaction from his perspective and the practicalities of achieving the relief requested (in terms of shielding).

**Section 42A Report**

563. The report writer for Topic 11 concurred with the submitters and recommended that the relief requested for Policies 13.10.15 and 13.10.22 be accepted. Policy 13 of the NZCPS was influential in the report writer making this recommendation. They recommended that the notified (f) of both policies be extended as follows:

> *avoid locating lights on jetties (or boatsheds) other than those required to facilitate access. Where lighting is required for access, ensure that lighting is designed to minimise lightspill.*

564. The report writer for Topic 18 assessed the proposed addition to the lighting standards. He expressed concern that the requested standard would require extensive mitigation measures for each light and require rigorous enforcement. He also noted the practical issues raised by further submitters. The relief requested was not supported. Instead, the report writer suggested that the issue of protecting the night sky could be pursued through "a more holistic approach" by the Council (as opposed to responding through light standards only).

**Consideration**

565. The starting point for considering the relief requested by the submitters was the NZCPS. Like the submitters and the report writer, the Panel noted that Policy 13 specifically identifies that the natural character of the coastal environment includes the darkness of the night sky.

566. Jetties and boatsheds are normally located on or adjacent to the foreshore. Lighting in such locations could be particularly obtrusive given the considerable open space associated with the marine environment.

567. The Panel recognises that lighting is necessary and appropriate on coastal structures for reasons of public safety. However, and as Mr Roush pointed out, lighting can be shielded to reduce upwards light spill.

568. The intent of the recommended additions to the policies is supported by the Panel. The additions to the policies, however, should be more prescriptive in order to provide direction on the means of minimising light spill. For this reason, the wording sought by the submitters was favoured.

569. The Panel has considered the merits of the addition to the lighting standards sought by the submitters. For the same reasons outlined above for jetties and boatsheds, the standard is warranted in the Coastal Marine Zone due to the large areas of open space. On land, the

greatest risk of light spill exists in the Coastal Living Zone. This is because the zone is specifically created for residential purposes. The addition to the standard is therefore warranted in the Coastal Living Zone in order to give effect to Policy 13 of the NZCPS. In the Coastal Environment Zone and Rural Zone, the density of development is not considered to be sufficient to warrant a significant risk to the night sky. In urban zones (including the Port Zone and Port Landing Zone), the standard would not make a meaningful contribution to mitigating current light spill as the standard would only apply to new development in areas that already have extensive outdoor/street lighting.

**Decision**

570. Amend policies 13.10.15 and 13.10.22 as follows:

*… (f) avoiding locating lights on jetties (other than those required to facilitate access.) Where lighting is required for safe access, ensure that the lights are designed to minimise light spill and be fully shielded to prevent any light spillage above the horizontal plane of the light source.*

571. Insert a new standard as 7.2.3.x for the Coastal Living Zone, as follows:

*7.2.3.x All external lighting shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.*

572. A new standard is added to Chapter 16 Coastal Marine Zone (Volume 2) as follows.

*16.2.8 Use of external lighting*

*16.2.8.1 All external lighting on jetties and boatsheds shall be fully shielded to prevent any light spillage above the horizontal plane of the light source.*

## Fishing Interests

### Integrated management of the Marlborough environment

573. The Fishing Industry raised concerns that the PMEP failed to mention the role of the Fisheries Act 1996 in the integrated management of natural and physical resources. It requests that specific reference be made to the Fisheries Act 1996 within Chapters 2, 4, 5, 8 and 13 of the PMEP.[197]

574. The industry sets out in oral evidence the specific reasons for including a reference to the Fisheries Act 1996 within Objective 5.10 and Policy 5.10.1.[198]

[197] Fishing Industry (710.7). Speaking notes, MEP Hearing 29 April 2019: Miscellaneous Topics.
[198] Fishing Industry speaking notes, pages 1-2.

575. The report writer assesses these issues together. But first of all, we wish to provide her 'General Reasons' as background information to her recommendations.

**General reasons**

576. Under this heading the report writer identifies further the Council's role in the sustainable management of fisheries.

577. As outlined within the original Section 42A Report for Topic 13 Use of the Coastal Environment,[199] the Council's role in the sustainable management of fisheries is the management of the environment where the fish exist (water and ecosystems), together with the management of activities within the CMA that may affect this environment.

578. The report writer acknowledges in this chapter that the fisheries resource itself is managed by other non-RMA methods including those in the Fisheries Act 1996. The s 32 report for this topic[200] considers, for example, that '*under the Fisheries Act 1996, the Ministry of Primary Industries has the primary role in managing, conserving and enhancing fisheries, there are significant restrictions on the Council's ability to control outcomes for fisheries management*'.

579. The Council's role also in the integrated management of fisheries (being the natural resource) is through the management of the environment and control over activities (through Plan provisions) that may cause adverse effects on the marine environment that the fish inhabit. This in turn will contribute to maintaining and enhancing the fisheries resource.

580. The NZCPS is also identified in the report writer's general assessment as it outlines how the purpose of the Act will be achieved in respect of the Coastal Environment. Policy 4 – Integration requires '*working collaboratively with other bodies and agencies with responsibilities and functions relevant to resource management*.'

581. While Chapter 13 under Method 13.M.9 Advocacy/Support assigns to the Minister of Fisheries the task 'that both commercial and recreational fishing be further regulated within the enclosed waters of the Marlborough Sounds to enhance natural fisheries'. The anticipated result from this method 13.AER.16 indicates as an anticipated result 'Integrated management of fisheries and natural and physical resources'.

[199] Section 42A Report, Topic 13, paragraphs 364-374.
[200] Section 32: Chapter 13 – Appropriate activities, recreation, fishing, residential, shipping, Lake Grassmere (page 29).

## The Fishing Industry's concerns

**Objective 5.10 - Equitable and sustainable allocation of public space within Marlborough's coastal marine area.**

**Policy 5.10.1 – Recognition that there are no inherent rights to be able to use, develop or occupy the coastal marine area.**

### Objective 5.10

*582.* The submitter considers that the explanatory text of Objective 5.10 needs to be narrowed to:

- refer to public space and not natural and physical resources generally, or to
- identify the role of other complementary management regimes in the coastal marine area (in particular the role of MPI under the Fisheries Act 1996).

### Section 42A Report

583. In terms of Objective 5.10, the report writer notes the explanation states that allocation of public resources is within the Council's role and functions in promoting sustainable management of natural and physical resources. The explanation does not state that this is the ***only*** way of promoting sustainable management. It is but one of the Council's roles and functions.

*584.* As Objective 5.10 is focused on allocation of space in the CMA, the report writer considers it inappropriate to specifically mention the 'allocation of fisheries'. This is a role that remains outside of the functions of the Council and the RMA. The report writer recommends in the Section 42A Report that the submission is rejected.

### Consideration

585. In terms of the Fishing Industry's original submission on the allocation of public resources and the concern that the PMEP makes no specific reference to Chapters 2, 4, 5, 8 and 13, the Panel notes that under this heading the report writer refers to two other chapters which reference fishing, the fishing industry and their joint activities. The first is Chapter 13 Use of the Coastal Environment, and the second is Chapter 2 Background to the PMEP. One assesses integrated management; the other strategies and plans.

### Policy 5.10.1

586. The Fishing Industry's main concern in this submission is the failure within the PMEP to acknowledge and reference the role of the Fisheries Act 1996 in the integrated management of natural and physical resources.

587. The industry states that the RMA is not the only Act that allocates use and access to resources in the CMA and other pieces of legislation (such as the Fisheries Act) address sustainable management and therefore should be included.

**Section 42A Report**

588. The report writer responds that as highlighted within the hearing, Policy 5.10.1 and explanation refer to use, development and occupation of the CMA but these activities are limited by s 12 RMA, which requires express permission by a rule in the plan or by resource consent to undertake activities. The policy and explanation do not refer to any other activities outside the scope of s 12 that may be provided for within the CMA by other legislation.

589. As a result, the report writer confirms her Section 42A Report recommendation that this submission be rejected.[201]

**Decisions on Objective 5.10 and Policy 5.10.1**

590. The report writer recommends no change to the Topic 13 Miscellaneous report recommendations on Objective 5.10 and Policy 5.10.1, with which the Panel agrees for the reasons given.

## The importance of PMEP Chapter 2 Background: Integrated management of the Marlborough Environment

Volume Two Chapter 2 Background sets out the requirements of integrated management. It includes:

*(b) The need for cooperation and coordination between the multiple agencies that have statutory roles and responsibilities for the management of natural and physical resources.*

*(c) The effect of statutory documents prepared by the Council and others with functions under legislation relating to the management of natural and physical resources, but which is not the RMA.*[202]

591. Chapter 2 Background also acknowledges that there are other statutory agencies that have responsibilities that overlap with the RMA's principle of sustainable management. The report writer notes that in this section of the PMEP there is specific reference to MPI and several other statutory agencies who play a role in the integrated management of resources within the region.

[201] Section 42A Report, Reply to Evidence, page 23.
[202] PMEP, Chapter 2, page 2-2.

592. The PMEP clearly identifies the roles of the Council and other agencies in integrated management, but it is not specific to all agencies. The report writer in assessing the issues in Chapter 2 considers the role of strategies under the fisheries legislation should be recognised. Given the importance of fisheries to Marlborough, however, the report writer recognises that drawing attention to the role of MPI under the Fisheries Act 1996 would be beneficial within the PMEP in terms of the allocation of resources.

593. For these reasons the report writer recommends that the fifth paragraph under the heading 'Integrated management of the Marlborough environment' is amended to read:[203]

*Many agencies share responsibility for ensuring Marlborough's natural and physical resources are sustainably managed. Of particular note in Marlborough is that approximately 45% of all land is managed by the Department of Conservation (on behalf of the Crown) for conservation purposes. In addition, the Ministry of Primary Industries under the Fisheries Act 1996 has the primary role in managing, conserving and enhancing fisheries. It is therefore important that the various authorities have a common understanding of resource issues and that the responsibility for sustainable management is shared.*

## Decision

594. Under the heading 'Integrated management of the Marlborough environment' in Chapter 2 Background[204], the fifth paragraph is amended to read:

*Many agencies share responsibility for ensuring Marlborough's natural and physical resources are sustainably managed. The Council's role is to promote the sustainable management of land, water, air, soil, biodiversity and the built environment. Of particular note in Marlborough is that approximately 45 percent of all land is managed by the Department of Conservation (on behalf of the Crown) for conservation purposes. In addition, the Ministry of Primary Industries under the Fisheries Act 1996 manages, conserves and enhances fisheries. It is therefore important that the various authorities have a common understanding of resource issues and that the responsibility for various aspects of sustainable management is shared.*

## National Grid Issues – Cook Strait Submarine cables

Transpower made a number of submissions in respect of the Cook Strait submarine cables both in this Topic and the Utilities Topic. The Panel has decided the decisions on those issues are best dealt with all at the same place in the Utilities Topic.

[203] Section 42A Report, Reply to Evidence, pages 25-26.
[204] PMEP, Volume One, page 2-3.

# Proposed Marlborough Environment Plan

# Topic 12: Rural Environments

**Hearing dates:** 2 – 4 and 9 July 2018

**S42A Report Writer:** Andrew Maclennan

**Conflicts of Interest:** Commissioner Hook

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| MDC | Marlborough District Council |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| FANZ | The Fertiliser Association of New Zealand |
| FENZ | Fire and Emergency New Zealand |
| NZTA | New Zealand Transport Agency |

## Objective 14.1

**Rural environments are maintained as a resource for primary production activities, enabling these activities to continue contributing to economic wellbeing whilst ensuring the adverse effects of these activities are appropriately managed.**

1. One submitter supports the objective; however, it considers that as well as economic wellbeing, primary production is important to the social wellbeing of the district and seeks this is included within the objective.[1] Another seeks an amendment to the objective to recognise that there are activities other than primary production that rely on the rural resource and make important contributions to economic and social wellbeing.[2]

**Section 42A Report**

2. The report writer agrees in part with the above submissions, and notes that such an amendment will ensure that the objective is consistent with Chapter 4 Use of Natural Physical Resources which provides that higher order Regional Policy Statement direction.[3]

**Consideration**

3. The Panel accepts the recommendation that social wellbeing is also relevant in the context of the objective, but its importance requires reversing the order so that it reads 'contributing to social and economic wellbeing'. The social fabric creates economic wellbeing. Activities other than primary production are addressed elsewhere in this document.

**Decision**

4. Objective 14.1 is amended as follows:

*Objective 14.1 – Rural environments are maintained as a resource for primary production activities, enabling these activities to continue contributing to social and economic wellbeing whilst ensuring the adverse effects of these activities are appropriately managed.*

### Policy 14.1.4

**Manage primary production activities to ensure they are carried out sustainably through the implementation of policies and methods (including rules establishing standards for permitted activities) to address potential adverse effects on:**

**(a) the life supporting capacity of soils, water, air and ecosystems;**
**(b) natural character of rivers, wetlands and lakes;**
**(c) water quality and water availability;**
**(d) areas with landscape significance;**
**(e) areas with significant indigenous vegetation and significant habitats of indigenous fauna;**
**(f) the values of the coastal environment as set out in Issue 13A of Chapter 13 - Use of the Coastal Environment; or**

[1] Federated Farmers (425.240).
[2] Fulton Hogan (717.43).
[3] Section 42A Report, page 28.

**(g) the safe and efficient operation of the land transport network and Marlborough's airports.**

5. Fish and Game initially requested that an additional subclause is added to the policy addressing potential adverse effects on the habitat of trout and salmon.[4]

6. In evidence, Mr Wilson for Fish and Game requested that the following subclause be added to Policy 14.1.4:

   *(h) potential adverse effects on the habitat of trout and salmon.*

7. Ngāi Tahu seeks the inclusion of the following subclause in Policy 14.1.4 because primary production can have an effect on cultural values:[5]

   *the relationship of tangata whenua iwi with lands, waters, sites, wahi tapu and wahi taonga, and the ability of tangata whenua iwi to exercise kaitiakitanga.*

**Section 42A Report**

8. The report writer recommended that any potential adverse effects on the habitat of trout and salmon can be considered as part of subclause (a). No amendment is required.[6]

9. In terms of Ngāi Tahu and other iwi submitters (Te Ātiawa, Te Rūnanga o Toa Rangatira and Te Rūnanga a Rangitane o Wairau), the report writer agreed that an additional subclause should be added to Policy 14.1.4 which ensures that primary production activities address potential adverse effects on the cultural values of the rural environment. The outcome sought within Objective 14.1 that adverse effects of primary production activities are appropriately managed will be assisted through the amendment adding the subclause of the policy submitted by Ngāi Tahu.[7]

**Consideration**

10. Mr Wilson of Fish and Game identified s 7(h) RMA as the reference for his concern. That provision requires all persons exercising functions and powers under the RMA to have 'particular regard to the habitat of trout and salmon'.

11. The Panel questioned whether Policy 14.1.4 (e) 'areas of significant habitats of indigenous fauna' would be an appropriate provision under which to manage submitters' concerns in relation to the habitat of trout and salmon.

12. The report writer in response suggested an amendment to (e) as follows:

[4] Fish and Game (509.154).
[5] Ngāi Tahu (1189.99).
[6] Section 42A Report, paragraph 160.
[7] Section 42A Report, paragraph 160.

*… the habitats of trout and salmon*

13. But the Panel considers that this would mean displacing the words 'indigenous fauna' from Policy 14.1.4(e), and in the context of Policy 14.1.4 that is not appropriate. Policy 14.1.4(c) as to water quality, when coupled with the protection of significant habitat of indigenous fauna, will ensure that the issues relevant to habitats of trout and salmon are addressed. The submission of Fish and Game is rejected.

**Decision**

14. As recommended, Policy 14.1.4 is amended as follows:[8]

*Manage primary production activities to ensure they are carried out sustainably through the implementation of policies and methods (including rules establishing standards for permitted activities) ~~to~~ which address potential adverse effects on:*

*(a) the life supporting capacity of soils, water, air and ecosystems;*

*(b) the relationship of Marlborough's tangata whenua iwi with lands, waters, sites, wāhi tapu and taonga, and the ability of Marlborough's tangata whenua iwi to exercise kaitiakitanga;*

*(c)~~(b)~~ natural character of rivers, wetlands and lakes;*

*(d)~~(c)~~ water quality and water availability;*

*(e)~~(d)~~ areas with landscape significance;*

*(f)~~(e)~~ areas with significant indigenous vegetation and significant habitats of indigenous fauna;*

*(g)~~(f)~~ the values of the coastal environment as set out in Issue 13A of Chapter 13 - Use of the Coastal Environment; ~~or~~ and*

*(h)~~(g)~~ the safe and efficient operation of the land transport network and Marlborough's airports.*

**Policy 14.1.9**

**Manage the effects of primary production activities to ensure the environmental qualities and amenity values in adjoining residential zones are not unreasonably degraded, bearing in mind their location adjacent to a primary production environment.**

15. A number of submitters generally support Policy 14.1.9 and request that it is retained as notified. Others request: that existing rural businesses should not be restricted when adjoining

[8] Section 42A Report, Reply to Evidence, pages 11-12.

land uses change away from rural use;[9] that more emphasis is placed on the purpose of the Rural Zone to provide for primary production activities and ensure they are not unduly restricted;[10] that residences on the edge of residential zones adjoining the primary production environment need to expect the amenity values and character that come with a primary production area as follows:[11]

> *Give priority to and manage Manage the reverse sensitivity effects of primary production activities by to ensure ensuring the environmental qualities and amenity values in adjoining residential zones are not unreasonably degraded, bearing in mind their location adjacent to a primary production environment that new activities in neighbouring zones anticipate the amenity values and character that come with locating near a primary production area.*

16. Another seeks that the wording 'unreasonably degraded' in the policy refers to controlling activities at the interface 'to minimise potential conflict and protect amenity'. They consider this is not what the policy would achieve – 'unreasonably degraded' should therefore be replaced with 'maintenance';[12] another considers that it is the residential zones that have generally encroached on to primary production land so there needs to be the ability for primary production activities to be secure (continue).[13]

**Section 42A Report**

17. The report writer agrees in part with The Fertiliser Association of New Zealand (FANZ), Ravensdown[14] and Hort NZ. The term 'not unreasonably degraded' is vague, and replacing it with 'maintained' is a more appropriate and understandable term and also better reflects the direction set out within Objective 14.1. He also accepts that the word 'potential' adverse effects of primary production should be 'managed' as both the RMA and Objective 14.1 relate to 'managing' adverse effects, and potential adverse effects, which support the use of buffer provisions from new activities providing a more proactive direction.[15]

18. The report writer recommends Policy 14.1.9 is amended by introducing the words 'potential', 'adverse' and 'maintained' into the policy, and deleting 'not unreasonably degraded'.

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[9] K Wilson (210.10).
[10] Fonterra (1251.100).
[11] Federated Farmers (425.248).
[12] FANZ (1192.9).
[13] Hort NZ (769.44).
[14] Ravensdown (1090.15).
[15] Section 42A Report, paragraph 192.

> *Manage the <u>potential adverse</u> effects of primary production activities to ensure the environmental qualities and amenity values in adjoining residential zones are <u>maintained</u> ~~not unreasonably degraded~~, bearing in mind their location adjacent to a primary production environment.*

19. In his reply to Hort NZ's evidence that the amendments suggested in the report writer's recommendation are not strong enough to assist sustainable management of the urban-rural interface at the time of development (wording suggested)[16], and not expecting this to be addressed *within* production land, the report writer responds that the policy as amended seeks to ensure that primary production activities are undertaken in a manner that achieves s 17 RMA ('every person has a duty to avoid, remedy or mitigate any adverse effect on the environment'). He maintains the language he suggests is therefore appropriate.

20. In response to Hort NZ's further evidence that the design of any new development that adjoins the rural zone should ensure that adequate separation distances are incorporated to ensure that cross-boundary effects are managed through the design, the report writer reiterates his earlier recommendation.[17] He also disagrees with Hort NZ that new developments should be redrafted to ensure the design of any new development adjoining the rural zone needs to ensure adequate separation distances.

21. But in terms of his initial recommendation, the report writer suggests a further amendment to Policy 14.1.9 requiring deletion of the phrase 'bearing in mind' as the language is vague and open to interpretation. Instead, he recommends replacement of that phrase with 'while acknowledging' as follows:[18]

> *Manage the <u>potential adverse</u> effects of primary production activities to ensure the environmental qualities and amenity values in adjoining residential zones are <u>maintained</u> ~~not unreasonably degraded~~, ~~bearing in mind~~ <u>while acknowledging</u> their location adjacent to a primary production environment.*

**Consideration**

22. The Panel agrees the language of this policy is vague and open to interpretation. We concluded that the wording of the policy should be amended partly as recommended by the report writer in the original Section 42A Report, and partly as recommended in his reply, replacing 'bearing in mind' with 'while acknowledging' as set out in the Reply to Evidence. We do not consider it is necessary to include the word 'potential' in the recommended wording of

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[16] Hort NZ, Rachel McClung Evidence, paragraphs 13-14.
[17] Hort NZ, Lynette Wharfe Evidence, page 14.
[18] Section 42A Report, Reply to Evidence, page 13.

the explanation. Section 3 RMA as to effects includes potential effects which would include potential conflicts.

**Decision**

23. For the foregoing reasons, Policy 14.1.9 is amended as follows:

*Policy 14.1.9 - Manage the adverse effects of primary production activities to ensure the environmental qualities and amenity values in adjoining residential zones are maintained ~~not unreasonably degraded~~, ~~bearing in mind~~ while acknowledging their location adjacent to a primary production environment.*

*Activities within rural environments can generate effects that are unacceptable in residential environments, including noise, smell, dust and the utilitarian appearance of some rural buildings (compared to those within residential environments). Therefore, effects will be controlled at the interface between rural and residential zones to minimise ~~potential~~ conflicts and protect amenity. Requirements for new or expanding activities in rural environments near a zone boundary may include more effective visual screening, setbacks of dense planting and buildings and more restrictive noise levels than standards for rural environments would generally require.*

**Policy 14.4.4**

**Ensure subdivision in rural areas:**

**(a) does not lead to a pattern of land uses that will adversely affect rural character and/or amenity values; and**

**(b) creates allotments of sufficient size for rural activities to predominate in rural areas.**

24. Several submitters generally support the policy. Others request: that the policy should address the issue of rural subdivision causing reverse sensitivity issues;[19] that an amendment to the policy should ensure that subdivisions in the rural areas do not compromise their productive capability.[20]

**Section 42A Report**

25. Initially the report writer disagreed that an amendment to the policy was required. He considered the amendment recommended in Policy 14.4.3 would ensure that any potential reverse sensitivity effects are appropriately managed. And he considered that subclause (b) will ensure that allotments are of sufficient size that the productivity capability of rural areas is not affected. He recommended retaining the policy as notified.[21]

[19] Ravensdown Limited (1090.20), Lion - Beer, Spirits and Wine (NZ) Limited (908.14).
[20] New Zealand Pork Industry (998.26).
[21] Section 42A Report, paragraph 280.

26. After hearing the evidence of the other witnesses, however, the report writer reconsidered this position.

27. Carmen Taylor for Ravensdown considers that the appropriateness of subdividing land in the rural district needs to consider potential reverse sensitivity effects alongside the matters listed in both subclauses (a) and (b) of Policy 14.4.4. This is because the act of subdivision itself creates an expectation of subsequent building development without the necessity to show that future development. Allowing subdivisions in the rural environment effectively means 'the horse has bolted' so that it will be difficult to effectively address reverse sensitivity considerations in the context of Policy 14.4.3.[22]

28. The report writer identifies in his reply to evidence that he had not found any policies that manage the potential effects of reverse sensitivity within the subdivision process. He notes that when a subdivision application is processed, one of the matters to be considered is whether a new lot can site a complying dwelling. As setbacks are generally managed through setbacks within the PMEP, if a new lot is being created near to an activity that produced potential adverse effects (such as intensive farm oxidation ponds) then the subdivision application would need to take into account setback distances.

29. The report writer recommends that Policy 14.4.4 be amended by a subclause being added as follows:

    *(c) Recognises reverse sensitivity issues that may occur when sensitive activities locate near existing rural activities.*

**Consideration**

30. This policy should recognise the potential for rural subdivision to create reverse sensitivity effects.[23] We recognise that the policy, as now recommended, is one of the number of policies which seek to deliver the outcome sought by Objective 14.4 where 'reverse sensitivity effects are avoided'. Further, Policy 14.4.3 does not provide for the management or avoidance of potential reverse sensitivity effects that may arise from subdivision in the Rural Environment Zone. It should provide for matters to be considered when establishing buildings within allotments and the rural environment, including potential reverse sensitivity effects.

[22] Ravensdown, Carmen Wendy Taylor Evidence, paragraphs 2.11-2.17. Policy 14.4.3 addresses a submission that reverse sensitivity effects should be more explicitly considered in the policy through adding a new subclause (d) to the policy to ensure that setbacks are used to manage reverse sensitivity effects (Section 42A Report, page 53).
[23] Section 42A Report, Reply to Evidence, page 24.

31. We accept the recommended policy amendment but with one amendment to subclause (c) – replacement of the word 'issues' with 'effects' to better align with Objective 14.4 which provides:

    *Objective 14.4 – Rural character and amenity values are maintained and enhanced and reverse sensitivity effects are avoided.*

**Decision**

32. Policy 14.4.4 is amended as follows:

    *Policy 14.4.4 – Ensure subdivision in rural areas:*

    *(a) does not lead to a pattern of land uses that will adversely affect rural character and/or amenity values; ~~and~~*

    *(b) creates allotments of sufficient size for rural activities to predominate in rural areas; and*

    *(c) recognises reverse sensitivity effects that may occur when sensitive activities locate near existing rural activities.*

33. The explanation to Policy 14.4.4 is amended by adding the following:

    Control of subdivision is necessary to ensure rural environments can accommodate a wide range of rural activities and for these activities to be predominant in this environment. This helps to support the elements of rural character described in Policy 14.4.1. The potential for subdivision patterns to influence subsequent land use is an important consideration in determining the potential impacts on rural character and amenity. If a new residential lot is being created near to an activity that produced potential adverse effects (such as intensive farm oxidation ponds) then the subdivision application would need to take into account setback distances.

**Policy 14.4.10**

**Control the establishment of residential activity within rural environments as a means of avoiding conflict between rural and residential amenity expectations.**

34. There are a number of submitters that generally support both Policies 14.4.10 and 14.4.11, and seek that they be retained as notified. In terms of Policy 14.4.10, other submitters request: that the policy should apply to all sensitive activities and that they be added to the PMEP (list of sensitive activities provided);[24] that the policy explicitly recognise the need to avoid reverse sensitivity effects in the rural environment;[25] that the term 'control' in the policy

[24] Hort NZ (769.56).

[25] Fonterra (1251.106), Pernod Ricard (1039.91).

should be replaced with 'constrain';[26] that the policy be amended to include reference to all activities that are necessarily located in the rural environment and rely on the rural resource.[27]

**Section 42A Report**

35. The report writer considers that Hort NZ's submission seeking to include a definition of sensitive activities does not match the intent of the policy. The activities list in the proposed definition (such as 'public needs', 'correctional facilities') will not require the same residential amenity expectations that are sought to be managed by the policy, nor is the suggested amendment required in order to achieve the direction set within Objective 14.4.

36. Nor does the report writer accept that the policy needs to explicitly recognise the need to avoid reverse sensitivity effects in the rural environment, but rather that they are to be 'managed' within the Rural Zone. Policy 14.4.3 as notified provides this direction.

37. In terms of whether the word 'control' should be replaced with the word 'constrain', the latter implies there is an 'upper limit' as to what is appropriate, which is not the intent of the policy. The existing policy achieves the direction within Objectives 14.4 and 14.5 as it ensures that reverse sensitivity effects are avoided and that residential activities take place within appropriate limits and locations.

38. Fulton Hogan requests that the policy is amended to include reference to all activities that are necessarily located in the rural environment and that rely on the resource. The report writer identifies the policy is not that detailed and is not, seeking to explicitly list the types of activities that might be affected by new residential activities. The policy refers to avoiding conflict between rural and residential amenity expectations in general. The level of detail is provided for within the standards that implement the policy direction (setbacks or minimum area requirements).[28]

39. The report writer's original recommendation was for the policy to be retained as notified.

40. Pernod Ricard, through its planning witness John Kyle, in evidence suggested an amendment to Policy 14.4.10 as follows:

> *Control the establishment of residential activity within rural environments as a means of avoiding conflict between rural and residential amenity expectations <u>and managing reverse sensitivity effects on existing activities.</u>*

[26] New Zealand Pork Industry (998.28).
[27] Fulton Hogan (717.52).
[28] Section 42A Report, paragraphs 294-297.

41. Mr Kyle considers, however, that while the amendment's inclusion does not add new substance, including explicit reference to reverse sensitivity would improve the clarity of the provision and it would avoid the reader having to rely on the associated description to properly interpret the policy.

42. In his reply to evidence, the report writer agrees with Mr Kyle that the suggested amendments from Pernod Ricard do not add substance to the policy. But if the Panel wished to provide more explicit guidance given by Mr Kyle's suggested amendment, then his suggestion would improve the clarity of the provision and avoid the reader having to read the explanation to properly interpret the policy.

43. Policy 14.4.10 is therefore suggested to be amended as follows:

> *Control the establishment of residential activity within rural environments as a means of avoiding conflict between rural and residential amenity expectations and managing reverse sensitivity effects on existing activities.*

44. Mr Ensor for Fulton Hogan seeks the policy explanation to make it clear that quarrying activities are to be considered rural activities – or that a new definition of productive rural activities is included within the PMEP which includes quarrying activities. His opinion is that quarrying is a rural activity necessarily located in the rural environment because it relies on the rural resource.[29]

45. The report writer agrees that a quarry activity is a productive rural activity that should be recognised to ensure reverse sensitivity effects do not adversely affect the rural environment. He suggests that the explanation is the most appropriate way to recognise the activity and recommends the explanation is amended as follows:

> *The presence of residential activities in rural environments can make it very difficult for productive rural activities (such as primary production and quarrying activities) to continue operating effectively and efficiently, to expand or establish new sites.*

46. Ms Wharfe for Hort NZ seeks that other sensitive activities are added to the policy such as habitable buildings, educational and childcare facilities, rest homes and hospital facilities.[30] With respect to this evidence, the report writer notes that the Rural and Coastal chapters seek to manage residential dwellings through standards and Policy 14.4.10 provides support for those standards. Otherwise the facilities mentioned would be assessed against Policy 14.3.2(c). No change is his recommendation to this submission.

[29] Fulton Hogan, Tim Ensor Evidence, paragraph 22.
[30] Section 42A Report, Reply to Evidence, page 28.

**Consideration**

47. The standards control reverse sensitivity effects on existing activities so an amendment to Policy 14.4.10 is unnecessary. In terms of an amendment to the explanation, we note the phrase 'productive rural activity' implies quarrying is related to primary production activities, which it is not.

48. But the policy should explicitly recognise the need to avoid reverse sensitivity effects in the rural environment. Reference to managing reverse sensitivity effects should be amended, replacing 'managing' in the recommended wording with 'avoiding' to ensure the policy reflects Objective 14.4.

49. We agree quarrying should have its place in the rural environment but that the amendment to the explanation to Policy 14.4.10 previously recommended by the report writer should read as follows:

> *The development of pockets of residential development in rural areas can have an impact on the continued use of rural resources. The presence of residential activities in rural environments can make it very difficult for ~~productive~~ other rural activities (such as primary production and quarrying activities) to continue operating effectively and efficiently, to expand or establish new sites.*

**Decision**

50. Policy 14.4.10 is amended as follows:

*Control the establishment of residential activity within rural environments as a means of avoiding conflict between rural and residential amenity expectations and avoiding reverse sensitivity effects on existing activities.*

51. The explanation to Policy 14.4.10 is amended as follows:

*… The presence of residential activities in rural environments can make it very difficult for ~~productive~~ other rural activities (such as primary production and quarrying activities) to continue operating effectively and efficiently, to expand or establish new sites. …*

**Policy 14.4.12**

**The Omaka Valley is characterised by the following:**

**(a) low, broad ridges, parts of which have been identified as having high amenity value and are included in the mapped Wairau Dry Hills Landscape;**

**(b) limited building on ridgelines;**

**(c) open character due to a lack of tall vegetation within the valley;**

**(d) meandering watercourse patterns and topographical variation in the upper valley;**

**(e) viticulture is a dominant land use;**

**(f) with the exception of times around grape harvest, it is generally a low volume traffic environment;**

**(g) lack of through roads;**

**(h) a mix of land uses towards the lower valley where a more domesticated rural character is evident; and**

**(i) roads located close to the broad ridges, giving a contained nature to the valley.**

And;

**Policy 14.4.13**

**The Omaka Valley has been recognised as having specific amenity and rural character values that are to be maintained and enhanced as follows:**

**(a) enabling primary production activities as provided for in the underlying Rural Environment Zone;**

**(b) requiring resource consent for commercial forestry, to enable an assessment of this activity on the confined nature of the valleys in the Omaka Valley Area;**

**(c) including the ridgelines along the valleys within the Wairau Dry Hills Landscape;**

**(d) avoiding development in the form of buildings on the ridgelines surrounding the valleys;**

**(e) reducing the potential for 'industrialisation' within the Omaka Valley Area through controls on the height and scale of buildings associated with primary production activities;**

**(f) other than as provided for in Policy 14.3.1 and Policy 14.5.4, other activities not related to primary production in the Omaka Valley Area are to be avoided;**

**(g) maintaining a low volume traffic environment to maintain a peaceful and quiet environment within the Omaka Valley Area; and**

**(h) avoiding subdivision below eight hectares to help retain primary production options and a sense of openness within the Omaka Valley Area.**

52. A large number of submitters generally support Policies 14.4.12 and 14.4.13, and seek they be retained as notified. Others do not support subsection (b) of Policy 14.4.12 as they consider buildings should be enabled on ridgelines;[31] others request that an amendment is made to Policies 14.4.12 and 14.4.13 as they consider the quarry on Barracks Road is a significant part of the Omaka Valley area;[32] others request that Policy 14.4.12 be deleted as it is not drafted as a policy and does not outline the pathway to be taken to implement an objective.[33]

53. The Omaka Valley Group opposes the relief sought by Simcox Construction Limited (Simcox), seeking amendments to both Policies 14.4.12 and 14.4.13 to recognise that a quarry on Barracks Road is a significant part of the character of the area, as it considers the rewording sought is seeking to consolidate and ensure acceptance of current traffic levels passing through the valley. The group also notes that the quarry activity has short term consents only. The policy and its explanation should remain as proposed in the PMEP as the policy sets out

[31] R McLean (187.1), LA Smith and BJ Green (379.2).
[32] Simcox Construction Limited (1151.8).
[33] Ravensdown (1090.22).

the broad rural characteristics and amenity values of the Omaka Valley. The policy does not seek to acknowledge the existence or suitability of specific activities within the environment.[34]

54. Simcox is part of the aggregates industry. In 2012 the Environment Court upheld the decision to approve an application to significantly expand the annual output of the quarry at Barracks Road. This quarry is located at the head of Omaka Valley beyond the southern limit of the Omaka Valley Area depicted in Map 9 in the Omaka Valley and Wairau Plain Area overlay maps to the PMEP). The consent approved by the Environment Court enabled an increase from the current consented rate of 5,000 tonnes per annum up to an estimated 90,000 tonnes per annum.[35]

55. Policy 14.4.12(f) identifies that with the exception of times around grape harvest, Omaka Valley sustains 'generally a low volume traffic environment', and at Policy 14.4.12(g) there is 'lack of through roads'.

56. Simcox, through its counsel, provides three potential amendments for the submitter:

- Option 1 – traffic movements are recognised in Chapter 14, Policies 14.4.12 and 14.4.13, and quarrying is recognised within Policy 14.1.1, Objective 4.3 and Policies 14.4.1, 14.4.5 and 14.4.6.
- Option 2 – Mr Kyle's revision of the PMEP is undertaken which would delete Policies 14.4.12 and 14.4.13.
- Option 3 – a hybrid of the original submission deleting Policy 14.4.13(f) and the word 'avoid' is replaced with 'mitigated'.

57. Mr Kyle, called as a planning expert for Simcox, considers that the s 32 assessment of the policies identified has not adequately considered the effects of the quarry and other rural related produce traversing Barracks Road from the south meaning the overall effects of activities in the area were not properly assessed in the s 32 report and the policies, meaning that those necessary effects have to be avoided on the current policy wording. He also spent some time comparing Omaka Valley Area with other southern valley catchments which he asserted were of a similar nature in activity terms and suggested the Plan formulation and s 32 process had failed to properly assess the use of the type of policies utilised for Omaka Valley

[34] Omaka Valley Group (1005.1). Philippa Margaret Black, Emeritus Professor of Geology, University of Auckland, Evidence, paragraph 3.1.
[35] Omaka Valley Group v. MC & Simcox Construction Limited (2012) NZEnvC 237. Marlborough District Council resource consent U090353, condition 2.

Area for those catchments, which he regarded as having a superior special viticulture related amenity.

58. He also has two specific concerns in relation to two subclauses of Policy 14.4.13(f) and (g). He notes that the language in both subclauses (f) and (g) is directive and in the light of the King Salmon decision (and subsequent related decisions such as Davidson), the language of directive policy such as this is intended to be interpreted to mean what is stated, that is, 'avoid' means avoid.

59. Mr Kyle and Simcox's counsel and other witnesses were also critical of the failure of the PMEP to recognise the importance of quarrying as a vital resource for construction, roading and river protection armouring rock. As to this issue the Omaka Valley Group called expert evidence from Professor Black that acknowledged that the rock quarried at Barracks Road was particularly well suited for river protection armouring works, because of its angular hardness which lent itself well to interlocking to resist major river flows. To that extent the experts of both sides were in agreement.

60. However, Professor Black went on to make the point that the majority of the underlying rock along the southern side of the Wairau Valley comprised rock having identical or closely similar attributes. The Omaka Valley Group therefore argued that it was not necessary for rock to be taken for that purpose south of Barracks Road as it could be sourced in other localities.

61. Finally, Simcox's counsel and witnesses stressed the fact that the Environment Court had held that, subject to appropriate conditions of consent relating to traffic and related roading issues, the quarrying consent could be issued. One of the significant volunteered conditions imposed by the Environment Court was for sealing and road widening works to be carried out by Simcox on Barracks Road and there was no dispute that work had been done.

**Section 42A Report**

62. The report writer identifies that policies 14.4.12 and 14.4.13 seek to achieve the direction that the character and amenity values of the rural environment are maintained and enhanced. In the Omaka Valley part of the character of the area is that the ridgelines contain limited buildings. As such, no amendment to the policy is required.

63. In terms of the suggested deletion of Policy 14.4.12 by Ravensdown, the report writer considers that the policy provides a useful description of the rural characteristics and amenity values of the Omaka Valley Area. The writer suggests only a slight amendment to the policy to include the phrase 'Recognise that the' to ensure that the rural characteristics and amenity

values of Omaka Valley are listed within the policy and are recognised within the PMEP which helps to achieve Objective 14.4.[36]

64. The report writer identifies a number of areas where he disagrees with counsel and Mr Kyle, namely:

- That both Policies 14.4.12 (and 14.4.13) be removed.
- While the characteristics of both policies encompass a range of other characteristics listed in related policies, the Omaka Valley policies are specifically related to its specific characteristics (and sets these out).
- ‘Primary production’ does not include ‘quarrying’ but Policies 14.4.12 and 14.4.13 have been developed with the presence of the quarry and its related transport effects in existence.

65. There was evidence regarding the appropriateness and applicability of subclause (f) in Policy 14.4.12, for example, Omaka Valley sustains a generally low volume traffic environment. The report writer identifies that although a high level of amenity is anticipated within this area, it is also acceptable that there would be a certain level of rural noise and traffic movements associated with the activities in Omaka Valley. The writer acknowledges that Omaka Valley is a working rural environment and there is a range of heavy vehicle movements within the valley; he acknowledges the quarry can co-exist with the amenity sought within the policy, for the policy was provided with the quarry in mind and it is clear that there is a lack of [other] through roads as stated in Policy 14.4.12(f).[37]

**Consideration**

66. The start point of the Panel’s consideration in relation to these policies has been the Environment Court decision as it is relatively recent having issued on the last day of October 2012. In fact the Environment Court specifically provided a short term consent because it was aware the PMEP review process was already in its initial stages of formulation. The Court made findings of fact about the environment in Barracks Road which have in reality been echoed in Policy 14.4.12.

67. With one exception, on the evidence we heard there was no particular body or piece of evidence which suggested to us that the environment of the Omaka Valley Area had changed in any significant manner from that deliberated on and anticipated by the Environment Court.

[36] Section 42A Report, paragraphs 300-304.
[37] Section 42A Report, Reply to Evidence, page 33.

The only exception was that it has, if anything, improved in amenity as a result of the road-widening and sealing works carried out by Simcox under its consent.

68. In terms of some of the criticisms levelled by Mr Kyle at the s 32 analysis and the PMEP policies in identifying the Omaka Valley Area only for particular special amenity and not other similar southern valleys, the Panel considers his approach is flawed and seeks to raise issues of comparison that are out of scope and are not useful in any event. What he argues might have been of relevance if there had been a submission seeking that special status protection for those other valleys, but that has not happened. There is no such submission, and we simply have no power to consider imposing that status in the policies in respect of other valleys. What do exist in the PMEP are policies identifying a special amenity status for Omaka Valley Area. It is of no assistance whatsoever to the Panel in assessing whether those polices are accurate and appropriate in their treatment of the Omaka Valley Area, to have it argued that other valleys may have similar or greater attributes.

69. On the evidence the Panel heard, it accepts the Omaka Valley Group submissions that we should reach a similar conclusion to the Environment Court as to the special high amenity attributes of this viticultural valley with its unusual feature of being closely enclosed on either side by ridgelines and no through traffic.

70. However, the Panel was in agreement with Mr Kyle and Simcox that it is appropriate to take into account that the policies were framed against a background environment which included a certain closely restrained level of quarry produce transport sourced from south of the Omaka Valley Area during week days and during working hours. Again in the Panel's view that does not undermine the statements in the policies about this valley having no through traffic and overall enjoying a relatively low traffic volume.

71. As to the issue of quarrying being specifically recognised in the Plan as a rural related activity which must be located in rural areas, that was agreed by the Panel elsewhere in Chapter 14 as a rural related activity. But the important point to address at this stage is one of the rather significant arguments between the opposing submitters related to transport of rural related produce such as forestry and quarry products along Barracks Road. The quarrying activity has been demonstrated to be capable of occurring without undue adverse effects so long as it is very closely controlled by conditions as to hours of work and days of the week with controls on total vehicle movements in a week. That appropriateness has been recognised by the continued recognition by the Plan policies of a special amenity in the Omaka Valley with those conditions in place.

72. The Panel did not accept that too much weight could be placed on the point made by Professor Black about general availability of similar rock across the southern Wairau Valley. Quarrying activity is notoriously difficult to locate in any area because of the site specific noise, dust and traffic and general amenity impacts it can have. This particular quarry resource is also conveniently placed in terms of river protection works to the catchments where that resource is needed to be applied as armouring rock. Without having a specific proposal for an alternative source which was practically feasible the Panel does not believe it can change the PMEP to effectively shut down the opportunity for appropriate resource consents to be sought on appropriate conditions for this particular resource.

73. The issue of effects of movement of forestry product sourced from upstream to the south of the Omaka Valley Area is not so clear-cut. Harvesting of forestry south of the Wairau River does not require resource consent in the PMEP. There are a few relatively small blocks of forestry south of Barracks Road which conceivably will be logged out using Barracks Road, and one larger forestry area. The Panel endeavoured in Minute 32 and Minute 44 to MDC staff, to obtain some certainty as to assertions by Omaka Valley Group that one or more of those blocks may not be felled for carbon sink reasons, but no absolute certainty was able to be obtained by council staff.

74. The Panel has, therefore, made its consideration on the worst case scenario basis that all the forestry may be felled and logged out down Barracks Road. Even if that was the case, the Panel's view was that, while it was undeniable the effect would be adverse on the amenity of Omaka Valley Area, in the long term that would be a transitory adverse effect only. Forestry cartage from the relatively limited forests involved in different ownership, (ranging from about 47 ha to a possible total of 285 ha), would be restricted in time to a distinct single period in a 25-30 year cycle. While there can be no certainty at present as to the total time that might be involved, even if that transport was to take a year in total, that would not recur until another rotation of some 25-30 years. The conclusion the Panel reached was that such a restricted transitory adverse effect would not undermine the overall thrust of a suite of policies addressing effects considerations for the Omaka Valley Area over the life of the Plan, and the next twenty years thereafter.

75. In summary, the Panel regards this valley as lying in an unusual situation where it does have some special amenity attributes worthy of special consideration, but one nonetheless which lies in a working rural environment where transitory viticulture and other rural related transport activities will occur. It is not possible to avoid all rural related traffic effects from outside the Omaka Valley Area. Reference to Policy 14.1.3 in Policy 14.4.13 can make that

clear. However, the level of transport activity generated will never be in the volumes to be expected if the valley road was a through road.

76. For all those reasons the Panel considers that Policies 14.4.12 and 14.4.13 should remain in the PMEP, but with some limited modifications to recognise the points made above.

**Decision**

77. Policy 14.4.12 is amended as follows:

*Policy 14.4.12 – Recognise that the ~~The~~ Omaka Valley is characterised by the following:*

*(a) low, broad ridges, parts of which have been identified as having high amenity value and are included in the mapped Wairau Dry Hills Landscape;*

*(b) limited building on ridgelines;*

*(c) open character due to a lack of tall vegetation within the valley;*

*(d) meandering watercourse patterns and topographical variation in the upper valley;*

*(e) viticulture is a dominant land use;*

*~~(f) with the exception of times around grape harvest, it is generally a low volume traffic environment;~~*

*~~(g) lack of through roads;~~*

*(f) the presence of roads servicing both the Omaka Valley and rural areas to the south, with no through road to other localities;*

*~~(h)~~(g) a mix of land uses towards the lower valley where a more domesticated rural character is evident; and*

*~~(i)~~(h) roads located close to the broad ridges, giving a contained nature to the valley.*

78. That Policy 14.4.13 be amended as follows:

*Policy 14.4.13 – The Omaka Valley has been recognised as having specific amenity and rural character values that are to be maintained and enhanced as follows:*

*(a) enabling primary production activities as provided for in the underlying Rural Environment Zone;*

*(b) requiring resource consent for commercial forestry, to enable an assessment of this activity on the confined nature of the valleys in the Omaka Valley Area;*

*(c) including the ridgelines along the valleys within the Wairau Dry Hills Landscape;*

(d) *avoiding development in the form of buildings on the ridgelines surrounding the valleys;*

(e) *reducing the potential for 'industrialisation' within the Omaka Valley Area through controls on the height and scale of buildings associated with primary production activities;*

(f) *other than as provided for in Policy 14.1.3, Policy 14.3.1 and Policy 14.5.4, other activities not related to primary production in the Omaka Valley Area are to be avoided;*

(g) *~~maintaining~~ retain a low volume traffic environment to maintain a peaceful and quiet environment within the Omaka Valley Area; and*

(h) *avoiding subdivision below eight hectares to help retain primary production options and a sense of openness within the Omaka Valley Area.*

79. That the explanation to Policy 14.4.13 be amended to read

*… ~~Maintaining~~ Retaining a low volume traffic environment to maintain the peaceful and quiet environment of the Omaka Valley Area is challenging, as the Omaka Valley is a working rural environment and it is acknowledged that there are a range of heavy vehicle movements occurring within the Omaka Valley associated with primary production and extraction activities. ~~, as the predominant land use is viticulture, which for a period each vintage attracts a considerable number of truck movements~~. There are no through roads within the valley, but this in itself presents a challenge when considering land use activities at the head of the valley. The policy recognises that in general the Omaka Valley enjoys low traffic flows and that this is to be ~~maintained~~ retained.*

**Dwelling density**

**Objective 13.5**

**Residential activity takes place within appropriate locations and limits within the coastal environment.**

**Policy 13.5.5**

**Except in the case of land developed for papakāinga, residential activity on land zoned Coastal Environment will be provided for by enabling:**

**(a) one dwelling per Computer Register;**

**(b) seasonal worker accommodation; and**

**(c) homestays.**

And;

**Objective 14.5 – Residential activity takes place within appropriate locations and limits within rural environments.**

**Policy 14.5.3**

**Except in the case of land developed for papakāinga, residential activity on land zoned Rural Environment will be provided for by enabling one dwelling per Computer Register.**

And;

**Policy 14.5.5(a)**

**Maintain the character and amenity values of land zoned Rural Living by the setting of standards that reflect the following:**

**(a) predominance of residential activity by enabling one dwelling per Computer Register; …**

80. All of these policies under Objectives 13.5 and 14.5 have a consistent theme of restricting residential activity respectively in the coastal environment and rural environment to one dwelling per Computer Register so as to control potential adverse effects between residential and rural activities, including reverse sensitivities, and to retain options for rural uses in rural environments.

81. In responding to the submissions on all these policies, (except for Policy 14.5.5 (a) which presumably was an oversight) the report writer recommended an amendment to add the words 'or per 30 hectares'. This was based on the controlled activity minimum lot size for subdivision in the Rural Zone.

82. The Panel was concerned that the latter would enable a land owner with a large property to construct a significant number of houses defeating the purpose of the policy to restrict density of residential activity. This concern was heightened due to the fact that there were no controls proposed to manage the proximity of the houses to each other. In other words, the proposed amendment had the potential to result in a concentration of a large number of houses (especially in the case of larger rural properties).

83. In conclusion the suggestion by the report writer that this outcome could be sustainably achieved by use of a 30 hectare standard was regarded by the Panel as somewhat unrealistic.

**Decision**

84. The recommendation by the report writer was not accepted and the policies are retained as notified (with it being noted for the record that the recommendation in respect of Policy 14.5.5 (a) was indeed to retain the policy as notified.)

**Policy 14.5.4**

**Residential activity directly associated with primary production activity occurring on the same land, seasonal worker accommodation in remote locations and homestays, will be enabled.**

**Worker accommodation definition**

**Worker accommodation means the use of land and buildings for accommodating the short term labour requirements of a farming activity where the accommodation is provided on the property on which the farming activity occurs.**

**Residential activity definition**

**Residential activity means the use of land and dwellings for the purpose of permanent living accommodation that people will generally refer to as their house or home and address while**

**resident in Marlborough. For the avoidance of doubt, residential activity can also occur in community housing and in a holiday home.**

85. Several submitters support the policy and seek that it be retained as notified. Others request: that the policy is amended as follows: 'Residential activity directly associated with primary production activity ~~occurring on the same land~~, seasonal worker accommodation ~~in remote locations~~ and homestays, will be enabled.';[38] the defined term is 'worker accommodation' and the word 'seasonal' should be removed from the policy[39] and further, worker accommodation should not be limited to 'remote locations' as it is required throughout the district;[40] that many dairy farms employ staff who, due to the nature of the work, need to be located on the farm and this can involve a number of staff and their families;[41]

86. The Flaxbourne Settlers Association seeks clarity as to what is considered to be 'workers accommodation' and what is considered a second residential dwelling on a property. With farming styles changing a second or third farm worker is necessary. These days to encourage young people and families to work on farms, they require accommodation.

87. The Association notes that while Rule 3.1.48 permits worker accommodation in the Rural Environment Zone (except for the Worker Exclusion Zone around Blenheim), this is defined for short term accommodation only. Rule 3.1.44 permits residential activity but the relevant standards set out that only one residential unit is permitted per computer register. Unable to accommodate a permanent worker and family to live and work on the farm, this engenders uncertainty in landowners as to whether they can provide sufficient accommodation to attract the necessary workers.[42]

88. Federated Farmers consider that the definition for worker accommodation is unclear whether it refers to lodging for temporary or seasonal workers for a few days or weeks, or dwellings for permanent employees who consider this their primary place of residence. They seek an amendment to the definition as follows:[43]

> *means the use of land and buildings for accommodating the short term temporary labour requirements of a seasonal farming activity ~~where the accommodation is provided on the property on which the farming activity occurs~~.*

[38] Federated Farmers (425.270).
[39] Horticulture New Zealand (769.59).
[40] Marlborough Chamber of Commerce (961.49).
[41] Fonterra (1251.33).
[42] Flaxbourne Settlers Association (712.38).
[43] Federated Farmers (425.610).

89. Hort NZ supports the definition in part but notes that the definition is limited to land used for farming activities. There are situations where worker accommodation may be provided adjacent to a pack house facility, and this should be provided for.[44]

**Section 42A Report**

90. The report writer points out that the explanation to Policy 14.5.4 provides commentary on the rationale behind enabling worker accommodation. In his opinion this highlights that the policy and the rule seek to enable seasonal worker accommodation. As such, building an additional dwelling on a farm would not come within that definition.

91. As to the relief sought by the Flaxbourne Settlors Association, the report writer notes that an assessment of whether additional dwellings on large rural titles should be enabled within the PMEP is described elsewhere.[45]

92. In relation to the relief sought by Federated Farmers, the report writer disagrees that the addition of the word 'temporary' is required. The definition clearly states that worker accommodation seeks to provide for the short term labour requirements. The report writer identifies that the explanation to Policy 14.5.4 provides the rationale on enabling worker accommodation. It states:

> *It is also recognised that in some areas, especially in remote locations, it is necessary to provide seasonal worker accommodation. Provision must be made to house the labour force for a time period between that considered short term and permanent. The opportunity for the workforce to be accommodated in the same environment as the primary production activity needs to be considered, where it can be incorporated without undue degradation to the amenity of the rural environment and without adverse effects associated with servicing, dispersed housing patterns, reverse sensitivity and land fragmentation.*

93. The report writer considers that this explanation highlights that the policy and rule seek to enable seasonal worker accommodation. Building an additional dwelling on a farm would not be considered to be seasonal worker accommodation in accordance with the definition above.[46]

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[44] Hort NZ (769.134).
[45] Flaxbourne Settlers Association (712.38).
[46] Section 42A Report, paragraph 518.

94. As to Hort NZ's suggested amendment, Policy 5.5.4 provides clear direction that it only enables worker accommodation on the same land as the primary production activity. As a result, the report writer does not recommend Hort NZ's amendment is to be made.

**Consideration**

95. Federated Farmers essentially seeks the removal of the phrase 'on the same land' from the policy. The Panel agrees to delete 'on the same land' from the policy together with removal of 'on the property' from the notified definition of worker accommodation.

96. The rules apply to 'worker accommodation' not 'seasonal worker accommodation'. The word 'seasonal' should be deleted from the policy and the explanation.

97. There is confusion between what constitutes worker accommodation and a second residential dwelling. The Panel considers that it is appropriate to add to the definition of 'Residential Activity' by adding 'Residential activity does not include worker accommodation'. And add to the definition of 'Worker Accommodation' the phrase 'Worker accommodation does not include residential activity'.

**Decision**

98. Policy 14.5.4 is amended to read:

*Policy 14.5.4 – Residential activity directly associated with primary production activity ~~occurring on the same land~~, ~~seasonal~~ worker accommodation in remote locations and homestays, will be enabled.*

99. The explanatory statement to Policy 14.5.4 is amended to read:

… It is also recognised that in some areas, especially in remote locations, it is necessary to provide ~~seasonal~~ worker accommodation. Provision must be made to house the labour force for a time period between that considered short term and permanent. The opportunity for the workforce to be accommodated in the same environment as the primary production activity needs to be considered, where it can be incorporated without undue degradation to the amenity of the rural environment and without adverse effects associated with servicing, dispersed housing patterns, reverse sensitivity and land fragmentation.

100. The definition of 'Residential activity' is amended to read:

***Residential activity*** *means the use of land and dwellings for the purpose of permanent living accommodation that people will generally refer to as their house or home and address while resident in Marlborough. For the avoidance of doubt, residential activity can also occur in*

*community housing and in a holiday home. Residential activity does not include worker accommodation.*

101. The definition of 'Worker accommodation' is amended to read:

***Worker accommodation** means the use of land and buildings for accommodating the short term labour requirements of a farming activity where the accommodation is provided ~~on the property on which the~~ where the farming activity occurs. Worker accommodation does not include residential activity.*

**Standard 3.2.1.6.**

**A dwelling must not be sited closer than 150m to the outer bank of an oxidation pond, sewage treatment works or a site designated for such works.**

102. FANZ requests a new policy be added to the PMEP which requires that residential activities should be avoided where established in close proximity to intensive farming.[47] Egg Producers seeks a residential setback standard to be added to the PMEP.[48]

**Section 42A Report**

103. The report writer acknowledges that there is a range of activities which have the ability to create reverse sensitivity effects such as mineral extraction (mining) and intensive farming activities. Objective 14.4 requires rural character and amenity values to be maintained and enhanced while reverse sensitivity effects are to be avoided. Policy 14.4.10 states that establishing residential activities within rural environments should be controlled as a means of avoiding conflict between rural and residential activity expectations.

104. The report writer also considers a residential setback from an intensive farming activity should be provided to meet the concerns of the Egg Producers submitter, citing the fact that a residential setback would be consistent with the direction in Objective 14.4 and Policy 14.4.10. The report writer says this:

*In relation to the distance of the setback, I note that the MEP requires that dwellings are setback 150 metres from an oxidation pond, and the above submitters have sought a 200 metre setback be introduced in the MEP. I consider that it is difficult to provide rationale as to what is an appropriate setback distance, as there are [sic] a range of factors that can help to mitigate or magnify the reverse sensitivity effects such as topography, atmospheric conditions, vegetation, the scale of the activity, etc. Within the MEP, these setback distances will act as a trigger, and development within the setback area will require that the reverse sensitivity effects of a particular activity are assessed*

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[47] FANZ (1192.10).
[48] Egg Producers (696.2).

*though the consent process. Given that intensive farming and oxidation ponds are likely to have similar effects, I consider it is appropriate that the setback for both activities is 150 metres.*[49]

105. The report writer acknowledges there may be merit in providing an additional standard within the PMEP that controls reverse sensitivity and recommends as follows:

*3.2.1.6. A dwelling must not be sited closer than:*

*(a) 150m to the outer bank of an oxidation pond, sewage treatment works or a site designated for such works: or*

*(b) 150m from a legally established intensive farming activity.*

*Note: Standard 3.2.1.6(b) does not relate to areas on the site which are not used for the intensive farming activities.*

**Consideration**

106. The Panel considers residential dwellings should be avoided in close proximity to intensive farming operations. We concluded a new standard is appropriate to establish a 150 metre setback for dwellings as recommended in the Section 42A Report. There was an issue with the recommended standard in that it was not clear where the setback should be measured from. The Panel felt that it needed to provide certainty with respect to this setback and felt that the appropriate measurement should be from buildings used for intensive farming activity or associated waste storage facilities. The note is to be deleted as it was attempt to provide some certainty and with the Panel's amendment is no longer required.

**Decision**

107. The standard 3.2.1.6 is amended as follows:

*3.2.1.6. A dwelling must not be sited closer than:*

*(a) 150m to the outer bank of an oxidation pond, sewage treatment works or a site designated for such works; or*

*(b) 150m from a building or an associated waste storage facility that is used for intensive farming.*

**[New] Methods 13.M.2 and 14.M.8**

108. Fire and Emergency New Zealand (FENZ) made a submission in Topic 12 on Rural Environments that sought a new standard with a "a requirement to provide a firefighting

[49] Section 42A Report, paragraph 623.

water supply in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 and access to that water supply."

**Section 42A Report**

109. The report writer was supportive of that request in the original report[50] and in the Reply to Evidence report supported that standard also being included in the Rural Living and Coastal Living zones.

**Consideration**

110. This is just one example of many similar requests from other outside organisations for their codes, standards (either mandatory or non-mandatory as here), practice manuals or other controlling instruments to be included by specific standards requiring compliance with them. That issue was addressed in detail at 15.0 in the Introduction Chapter to the overall decision where the Panel's reasons for its preference for an information Method approach were set out.

111. One of those reasons is particularly apposite to this request by FENZ in that requiring strict compliance with the Water Supplies Code of Practice in rural areas will add significant cost to a new build. If that was to be done in response to the FENZ submission that significant added cost would be occurring with no consultation with the general public on whether the added cost to new housing is reasonable or acceptable.

112. The Panel is cognisant of the fact that the intent behind the request from FENZ is in general principle of major public benefit in avoiding the consequences of fire. Particularly in rural and coastal environments that is plainly beneficial for public safety and for the protection of property.

113. However, without there being opportunity for full public participation on whether this presently non-mandatory documentation should, by incorporation in the Plan, suddenly acquire statutory force requiring 'compliance' in a generalised manner, the Panel is of the view that attention should be at the Information level. The option of a fully consulted plan change process being followed as to a specific proposal requiring compliance with its added cost always remains open in future if that is seen as being warranted. That would enable a considered public response.

114. Accordingly the Panel decided at this stage to adopt a new Method in Chapters 13 (new 13.M.2 under Issue 13D and 14 (new 14.M.8) whereby attention is drawn to SNZ PAS 4509:2008.

[50] pp. 111-112

**Decision**

115. Insert a new method in Chapters 13 (new 13.M.2) and 14 (new 14.M.8) as follows:

<u>*XX.M.XX Information*</u>

<u>*SNZ PAS 4509:2008 is a non-mandatory standard that sets out the requirements for firefighting water supply and access, including in rural areas. In rural areas, the effectiveness of a water supply for firefighting is affected by, amongst other matters, the time and distance from a fire station, ready access to a sufficient quantity of water, and the seasonal sustainability of the water supply. Because structures remote from a fire station are significantly more at risk from fire outbreak, Fire and Emergency New Zealand recommend that sprinklers are installed in all structures (and specifically houses) sited more than a 10-minute response time from a fire station. More information on SNZ PAS 4509:2008 is available from the Fire and Emergency New Zealand website. Fire and Emergency New Zealand can also be contacted directly for advice regarding managing fire risk and the storage of water for firefighting.*</u>

## Rules

**Reverse sensitivity setbacks**

**Standard 3.2.1.12**

**For a site larger than 4000m$^2$, the following minimum setbacks must be provided:**

**(a) 8m for the front boundary;**

**(b) 8m for the rear boundary;**

**(c) 5m for a side boundary.**

116. Ms Wharfe for Hort NZ notes that a number of councils have an exemption from the definition of 'building' for artificial crop protection structures. They have done this on the basis that the structures are an integral part of primary production – the nature of which does not pose a risk to health. Standards have been included relating to the colour of the cloth so that amenity effects are managed such as proximity to boundaries and roads.

117. Hort NZ considers that the following adequate setbacks for habitable buildings are essential for managing the potential for reverse sensitivity effects.[51]

*Habitable buildings:*

*8 m for the front boundary*

*25 m for the rear boundary*

*25 m for the side boundary*

[51] Hort NZ (769.92). Section 42A Report, paragraph 599.

*All other buildings*

*8 m for the front boundary*

*5 m for the rear boundary*

*5 m for the side boundary*

118. New Zealand Pork also seeks a more generous setback. It considers that residential dwellings in the rural environment are typically activity-sensitive to the effects of rural production. It seeks a larger separation distance to be imposed on new dwellings in the rural environment to avoid or mitigate reverse sensitivity issues. It seeks the following amendments: [52]

*20m for dwellings and their accessory buildings*

*8m for all other rural buildings*

**Section 42A Report**

119. The report writer agrees that in relation to the amendments suggested by Hort NZ and New Zealand Pork, the effects associated with habitable and non-habitable buildings are different and as such, he would support a different setback requirement for the separate activities.[53]

120. As to what might be a suitable setback, the report writer notes both Hort NZ and the Pork Industry have suggested similar distances for both habitable and non-habitable buildings. He also notes that P Gilbert has suggested that the side and rear boundary setbacks should be consistent within the Rural and Coastal Environment Zones for all buildings (8 metres for front boundaries and 5 metres for rear and side boundaries).[54]

121. Mr Gilbert is concerned that the change for larger setbacks will create restrictions on previously approved building sites. The report writer notes that reverse sensitivity standards within his report sought to avoid reverse sensitivity effects from primary production. He acknowledges this reverse sensitivity effect within the Coastal Environment Zone and recommends that the Coastal Environment Zone and Rural Zone setbacks could be aligned with those suggested by Mr Gilbert.

122. The report writer is unconvinced that the definition of a building should be amended in order to exempt crop protection structures, and considers that the PMEP standards are quite permissive in relation to controlling to buildings in the rural and coastal zones. The key restrictions relate to:

[52] New Zealand Pork (998.49).
[53] Section 42A Report, paragraph 605.
[54] P Gilbert (192.9). Section 42A Report, Reply to Evidence, page 51.

- height limits – 10 metres
- setbacks for non-habitable buildings:

    (a) 8 metres for the front boundary

    (b) 5 metres for the rear boundary

    (c) 5 metres for the side boundary.

123. He considers that a 10 metre height restriction for crop protection structures is appropriate, and does not recommend that the crop protection structures are excluded from this standard.

124. In relation to the setback provisions, given the objective and policy direction of the Rural chapter is heavily focused on enabling production, he considers it is appropriate for crop protection structures to be excluded from the setback standards.[55] As can be seen from the previous decision, this issue is readily addressed by adding the exclusion '(excluding crop protection structures)' to the phrase 'All other buildings' in standard 3.2.1.12(b).

**Consideration and decision**

125. The report writer's conclusion after assessing all this information is that the setback requested by Hort NZ is the most appropriate. As the submitters seek increased setbacks for properties larger than 4000 $m^2$, the following minimum setbacks are agreed by the Panel for the Rural Environment:[56]

*3.2.1.12. For a site larger than 4000 $m^2$, the following minimum setbacks must be provided:*

~~*(a) 8 m for the front boundary;*~~

~~*(b) 8 m for the rear boundary;*~~

~~*(c) 5 m for a side boundary*~~

*Habitable buildings:*

*(a) 8m for the front boundary*

*(b) 25m for the rear boundary*

*(c) 25m for the side boundary*

*All other buildings (excluding crop protection structures):*

*(a) 8m for the front boundary*

[55] Section 42A Report, Reply to Evidence, pages 52-53.
[56] Section 42A Report, page 112.

*(b) 5m for the rear boundary*

*(c) 5m for the side boundary*

126. In respect of the Coastal Environment the Panel decided the notified setbacks did not need amendment because the nature of activities in that environment were far more benign and unlikely to give rise to reverse sensitivity outcomes.

127. This change requires consistency in the plan provisions and consideration of the definition of building in the context of this standard. The report writer recommended for this standard a definition of building as follows:

> **Building** means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, or machinery, or chattels), but excludes any structure that is no more than 2.5 m in height, and no more than $10m^2$ in gross floor area, and excludes any earth bund or stockpiled materials.

128. The Panel agrees that for this standard only, this explanatory definition is helpful and should be inserted at the foot of the new standards.

129. A further consequential change which was sought by Hort NZ was to include a new definition of crop protection structures as follows:

***Crop Protection Structures*** *means structures with material used to protect crops and/or enhance growth (excluding greenhouses and other buildings).*

130. And as a consequence, include a definition of 'greenhouse':[57]

*Greenhouses are a structure where plants are grown in a controlled environment.*

131. The Panel agreed with those suggestions and inserts those two definitions in Volume 2 Chapter 25.

**Standard 4.2.1.10 (Coastal Environment)**

**For a site larger than $4000m^2$, the following minimum setbacks must be provided:**

**(a) 8m for the front boundary;**

**(b) 8m for the rear boundary;**

**(c) 5m for a side boundary**

132. As set out above, Mr P Gilbert[58] sought that the setback for the rear boundaries for both Rural and Coastal Environment zones should be 5m. The Panel did not agree in respect of the Rural Environment, but as explained earlier, because of the more benign activities in the Coastal

[57] Hort NZ, Lynette Wharfe Evidence, page 17.
[58] (192.9)

Environment Zone reverse sensitivity effects are of a lesser consequence. The Panel agrees the rear boundary in the Coastal Environment Zone can be reduced to 5m.

**Decision**

133. The rear boundary for Coastal Environment Standard 4.2.1.10 is reduced from 8m to 5m.

**Standard 3.3.12**

134. Ernslaw One Ltd sought an amendment to the standard to incorporate safety and practicality into the standard. The submitter was concerned that a standard that required trees to be felled away from rivers, wetlands and the coastal marine area in all circumstances was not practical and could endanger people.

**Section 42A Report**

135. The report writer agreed that in certain circumstances it is not practical to fell trees away from water bodies, but did not agree with the specific wording sought by the submitter. That was on the basis that the addition sought, "…where safe and practicable to do so." involved subjective judgement. They instead took direction from the notified standards that applied to commercial forestry harvesting.[59] Those standards incorporated the ability to fell trees in accordance with industry safety practices where they were leaning over the water body. The recommendation was as follows:

*3.3.12.5 All trees must be felled away from a river (except an ephemeral river, or intermittently flowing river when not flowing), lake, Significant Wetland or the coastal marine area.*

<u>*3.3.12.5(a) Notwithstanding 3.3.12.5, where trees are leaning over a river, lake, Significant Wetland or coastal marine area, they must be felled in accordance with industry safety practices.*</u>

<u>*3.3.12.6. Except for trees felled in accordance with 3.3.12.5(a),*</u> *no tree or log must be dragged through the bed of a river (except an ephemeral river or intermittently flowing river, when not flowing), lake or Significant Wetland or through the coastal marine area.*

**Consideration**

136. The Panel agrees with the recommended wording for Standard 3.3.12.5, including the introduction of a new standard. However, the Panel considers that a consequential change is also required. Although the submission and recommendation were restricted to Standard 3.3.12.5, the same concern raised by the submitter exists for the clearance of any non-indigenous vegetation, not just that in the Rural Zone. The same change should therefore be

[59] These standards were subsequently modified as part of a process of aligning the MEP with the NESPF and now only apply to significant wetlands.

made to equivalent standards in other zones and in the General Rules (2.39.3.3, 4.3.11.5, 7.3.8.5, 13.3.19.4, 14.3.10.2, 15.3.18.2, 20.3.5.4).

### New standard

**KiwiRail setbacks – Coastal Living and Rural Living Zones**

137. In the Rural chapter, KiwiRail supports the proposed rules and seeks they are retained as notified. The company requests a setback of 5 metres for buildings adjacent to the rail corridor to ensure that all access and maintenance to buildings and structures can occur without the need to access the rail corridor. It also seeks an additional standard to be included within the PMEP that requires buildings and structures to be set back from the rail corridor. KiwiRail considers a setback of this size will ensure people's health and wellbeing is maintained through good design, and reverse sensitivity effects are avoided.[60]

138. No evidence was given under the heading 'Rural' but the issue was raised in Topic 7 Public Access and Open Space. In that chapter KiwiRail also requested a 5 metre setback for buildings adjacent to the rail corridor in respect of reverse sensitivity effects in the Open Space 1 and Open Space 3 Zones.[61]

**Section 42A Report**

139. Nevertheless, the report writer at the end of his paragraph on the issue in the Rural Environment chapter appears to favour a new rule that is consistent with the findings of the report writer in the Urban hearing. He (the Rural report writer) concluded that the definitions and wording associated with KiwiRail's setback submissions should be consistent across the PMEP. He states: '… I have recommended the additional of a new rule within Rural, Coastal, Coastal Living, and Rural Living that is consistent with the Urban Chapter recommendation'.[62]

**Consideration**

140. KiwiRail in Urban Environments, as it did in Public Access and Open Space, submits again that, for safety reasons, while the rail corridor is not publicly accessible, ensuring people's health and wellbeing means that a building or structure must not be within 5 metres of the rail corridor.

141. The report writer for Urban Environments, however, supports the general intent of this submission, but considers the setback requested is excessive for the purpose stated. A 5 metre setback would impose a large restriction on the use of a person's property, and seems disproportionate for achieving the desired outcome - sufficient space for property owners to

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[60] KiwiRail (873.120 and .125).
[61] KiwiRail (873.167 and .170).
[62] Section 42A Report, paragraph 606.

be able to construct and maintain their buildings without having to go into the rail corridor. In the report writer's opinion a 1.5 metre setback would be sufficient to allow space for people to work on buildings, including space to erect scaffolding (which is typically 850 mm wide).

142. The report writer is also concerned that the words 'any structure' would require a fence to be set back into a property, effectively nullifying use of a significant portion of the land (for example, 100 $m^3$ out of a 600 $m^3$ allotment). He suggests excluding fences from the setback providing the palings or main fence elements can be replaced within the owner's property.[63]

143. As a consequential amendment it would assist in the interpretation of the proposed rule if 'rail corridor' is defined with the term proposed to be used in all the topics identified. The report writer indicates the 'rail corridor' consists of the Main North Line.[64]

144. The Panel found the report writer's assessment of the difficulties associated with a 5 metre rail corridor in Urban Environments to be a valuable analysis and credible in the circumstances outlined. Buildings and structures should be set back from the rail corridor so that people do not need to access the corridor to maintain their structures but it does not need to be as wide as 5m.

145. We identified that a new standard should be included in Rules 3.2.1, 4.2.1, 7.2.1 and 8.2.1 to establish a setback from the rail corridor as suggested in the Section 42A Report for Rural Environments, but with a 1.5 metre setback as opposed to the requested 5 metres.

**Decision**

146. Insert a new standard in Rural Environment, Coastal Environment, Coastal Living, and Rural Living zones, as follows:

> *x.2.x. A building or structure must not be within 1.5m of the legal boundary with the rail corridor of the Main North Line except for a fence up to 2m in height.*

## Controlled Activities

### Rules 3.4.2, and 4.4.2

**Sale of farm produce from a rural selling place**

147. One submitter supports the controlled activity standard that requires the sale of farm produce must not be from a place served by vehicular access from a State Highway. NZTA is also concerned by development that both directly accesses the State Highway and those that are

[63] Section 42A Report (Urban Environments), paragraph 199.
[64] Section 42A Report (Urban Environments), paragraph 200.

accessed via roads that lead to the State Highway (because of potential safety issues at intersections from increased traffic).[65]

148. Counsel for Pernod Ricard seeks that Standard 3.4.2.3 be deleted as, while this rule would not apply to wineries (which would require discretionary activity consent), it would for example apply to the sale of grape juice from vineyard premises. Therefore, there cannot be any rationale for the activity to be restricted if the grapes were sourced from a different vineyard.

**Section 42A Report**

149. The report writer considers the standards associated with this rule limit rural selling places to reasonably small-scale activities, which are unlikely to lead to significant vehicle movements. He is of the view that the additional standard is overly restrictive, given the existing limitations on scale. However, he also acknowledges that ensuring the safety of the transport network is also important and that a more appropriate relief would be to leave the standards as proposed and add an additional matter of control related to the safety of the access. This would allow the processing officer the ability to assess the safety of the access during the consent process based on the merits of the application.[66]

150. The suggested restriction seeks to manage the scale of the activity on the site. The standard was developed to be able to control small fruit stalls operating with an honesty box. The report writer considers it is difficult to capture activities such as small fruit stalls without capturing larger commercial activities, and recommended an amendment accordingly.[67] If this standard was not included, these activities would be considered a commercial activity and require a discretionary activity.

151. As the report writer suggests, a limit could be placed on the size of the retail. He recommends that farm produce offered or displayed for sale be contained within an area of less than 10 $m^2$.

**Consideration**

152. For the reasons recommended, the Panel agrees to the structure being contained within an area of less than 10 $m^2$. But we do not delete the restriction on the produce being grown on land, owned or leased by the seller of the produce as recommended, that is, the farm produce offered or displayed for sale must be grown on a farming unit owned or leased by the seller of the produce and must be contained within an area of less than 10 $m^2$.

**Decision**

153. As recommended, Rules 3.4.2.3 and 4.4.2.3 are amended as follows:

[65] NZTA (1002.186, .188).
[66] Section 42A Report, page 114.
[67] Section 42A Report, Reply to Evidence, page 66.

*The farm produce offered or displayed for sale must be:*

*(a) grown on a farming unit owned or leased by the seller of the produce; and*

*(b) contained within a structure with an area of less than 10 $m^2$.*

**New definition – Primary Production**

154. MFA and AQNZ seek a new definition of 'Primary Production' which reads as follows:[68]

> *Primary Production: means all forms of agriculture, horticulture, silviculture and aquaculture, whether on land or on sea, and includes the processing, preparation for market and sale of those products.*

**Section 42A Report**

155. The report writer considers that 'primary production' is a term with a widely understood definition. Initially he did not support an amended definition. In reply, the report writer reconsidered that decision as it would provide clarity in the PMEP. However, he would caution around the inclusion of the words 'processing, preparation for market and sale of those products', as these include a wide range of activities beyond that of primary production activity particularly in relation to processing.

156. He referred to Hort NZ's reference to the draft planning standards definition of primary production activity and provided its context as follows:[69]

> *Primary production:*
>
> *a. means any agricultural, pastoral, horticultural, forestry or aquaculture activities for the purpose of commercial gain or exchange; and*
>
> *b. includes any land and auxiliary buildings used for the production of the products that result from the listed activities; but*
>
> *c. does not include processing of those products*

*He considered that viticulture should also be added to this definition.*[70]

**Decision**

157. As a result of the many submissions and evidence on the content of primary production, the Panel has developed its own definition to reflect Marlborough's primary production activities and processes as follows:

*Primary Production means:*

[68] MFA (426.237) and AQNZ (401.241)
[69] Hort NZ, Lynette Wharfe Evidence, page 2, paragraph 2.6.
[70] Section 42A Report, Reply to Evidence, page 75.

(a) *any agricultural, pastoral, viticultural, horticultural, apicultural, forestry or aquacultural activities undertaken for commercial purposes; and*

(b) *includes use of the land and buildings ancillary to the listed activities; but*

(c) *does not include processing products from the listed activities beyond cutting, cleaning, chilling, freezing, grading, packaging and storage of vegetative matter; and*

(d) *does not include the processing of wood products.*

158. A consequential change is required to the explanation to Policy 14.1.1 which lists primary productive land uses undertaken in Marlborough rural environments to include '*apicultural and horticultural'* activities in the first sentence.

**New definition – Quarrying and mineral extraction**

159. Fulton Hogan seeks a new definition for 'Quarrying' be added to the Plan which reads as follows:[71]

*means the use of land, buildings and plant for the purpose of extraction of natural sand, gravel, clay, silt and rock and the associated processing, storage, sale and transportation of those same materials and quarry site rehabilitation. It may include:*

a. *earthworks associated with the removal and storage of over-burden;*

b. *extraction of natural sand, gravel, clay, silt and rock materials by excavation or blasting;*

c. *processing of aggregate materials by screening, crushing, washing and/or mixing them together;*

d. *the addition of additives such as clay, lime, cement and recycled/recovered aggregate to extracted materials;*

e. *workshops required for the repair of equipment used on the same property;*

f. *site management offices;*

g. *car parking;*

h. *landscaping;*

i. *quarry site rehabilitation and any associated clean-filling.*

160. Forest and Bird support the consideration of small scale mineral extraction as a discretionary activity. But the organization considers that quarrying and large scale mineral extraction

[71] Fulton Hogan (717.80).

should not be anticipated activities in the coastal environment of Marlborough and would be more appropriate as non-complying activity or prohibited.[72]

**Section 42A Report**

161. The report writer supports the definition as it adds clarity as to what is captured by the rule. He notes nevertheless that any new quarry or mineral extraction will require a resource consent as a discretionary activity, and through this process all elements of quarrying activity will be assessed – stockpiling, processing, landscaping, site rehabilitation. As an all-encompassing definition, the new definition meets with the writer's approval. It is also similar to the one in the Christchurch District Plan.

162. In terms of Forest and Bird's concerns, the report writer observes:

- It is appropriate that quarrying and mineral extraction requires a resource consent in order to ensure the adverse effects associated with the activity are adequately mitigated.
- A fully discretionary activity is appropriate as there are a wide range of potential adverse effects that can be created through the quarrying and mineral extraction process.
- Through the consent process, the objectives and policies of the specific zones (Rural Environment and Coastal Environment Zones) will provide direction on the appropriateness of an activity in its setting.[73]

163. The additional policy the report writer recommends in the Rural chapter ensures that quarrying activities are located in appropriate locations. In the Coastal Environment Zone there is a much more restrictive objective and policy.

**Consideration**

164. The Panel accepts that a definition of quarrying is required to provide certainty as to the activities regulated via Rule 3.6.6. However, as mining is defined by statute (Section 2 of the Crown Minerals Act 1991), it is considered that the activities of quarrying and mining should be separated. This is consistent with the original submission made by Fulton Hogan who sought a definition of quarrying only. Given the distinction between activities a separate definition for mining is also required in Chapter 25. This has been sourced from the Crown Minerals Act.

[72] Forest and Bird (715.416).
[73] Section 42A Report, paragraph 660.

165. The practical effect of the separation of quarrying and mining in definition has no effect on the status of the two activities as Rule 3.6.6 already regulates them as separate activities.

166. As a consequential change, however, we have replaced 'mineral extraction' in Rules 3.6.6 and 4.6.6.

**Decision**

167. Insert a definition of 'Quarrying' in Chapter 25 as follows:

*means the use of land, buildings and plant for the purpose of extraction of natural sand, gravel, clay, silt and rock and the associated processing, storage, sale and transportation of those same materials and quarry site rehabilitation. It may include:*

*(a) earthworks associated with the removal and storage of over-burden;*

*(b) extraction of natural sand, gravel, clay, silt and rock materials by excavation or blasting;*

*(c) processing of aggregate materials by screening, crushing, washing and/or mixing them together;*

*(d) the addition of additives such as clay, lime, cement and recycled/recovered aggregate to extracted materials;*

*(e) workshops required for the repair of equipment used on the same property;*

*(f) site management offices;*

*(g) landscaping;*

*(h) quarry site rehabilitation and any associated clean-filling.*

168. Rules 3.6.6 and 4.6.6 are amended as follows:

3.6.6 Quarrying and ~~mineral extraction~~ <u>mining</u>.

169. A new definition is added as follows:

*Mining as defined in Section 2 of the Crown Minerals Act 1991.*

**New Policy**

170. Fulton Hogan Limited sought a new policy to be added to the PMEP to manage quarrying activity in the rural environment [74]

*Enable the efficient use and development of rural environments for quarrying, while managing effects on: (a) the life supporting capacity of soils, water, air and ecosystems; (b) natural*

[74] (717.48)

*character of rivers, wetlands and lakes; (c) water quality and water availability; (d) areas with landscape significance; (e) areas with significant indigenous vegetation and significant habitats of indigenous fauna; (f) the values of the coastal environment as set out in Issue 13A of Chapter 13 - Use of the Coastal Environment; or (g) the safe and efficient operation of the land transport network and Marlborough's airports.*

**Section 42A Report**

171. The report writer recommended that a policy for managing the location of quarrying activity be added to the Plan as follows:

> *Ensure that quarrying activities are located in appropriate locations by managing effects on:*
>
> *(a) the life supporting capacity of soils, water, air and ecosystems;*
>
> *(b) natural character of rivers, wetlands and lakes;*
>
> *(c) water quality and water availability;*
>
> *(d) areas with landscape significance;*
>
> *(e) areas with significant indigenous vegetation and significant habitats of indigenous fauna;*
>
> *(f) the safe and efficient operation of the land transport network and Marlborough's airports; and*
>
> *(g) the character and amenity of the rural environment (including: noise, dust, visual, and amenity effects).*

172. The report writer placed a different emphasis on the policy so that it focussed on ensuring quarries are located in appropriate parts of the rural environment (as opposed to enabling quarries as sought by the submitter). He did so on the basis that enabling quarries is not primary production and therefore does not fit the policy framework that flows from Objective 14.1.

**Consideration**

173. Although quarrying is not considered to be primary production (refer to decision above), quarrying is reliant on the rural resource and a rural location. The Panel believes that it is appropriate to include a policy to manage quarrying activity separate to primary production.

174. The Panel believes that a quarry located in an inappropriate location could give rise to adverse effects on the surrounding environment. The focus of the policy therefore should be on

ensuring that quarrying activities are located in appropriate locations. We agree with the report writer that this approach is consistent with Objective 14.3.

175. The Panel has considered the recommended policy and agrees that it provides appropriate direction for the management of quarries. The matters listed in the recommended policy are considered to be relevant in determining the appropriateness of the location with two exceptions. Firstly, there are adverse effects that should be added to (g) being 'traffic' and 'vibration' because these matters could similarly adversely affect the character and amenity of the rural environment. Secondly, it is also important that consideration is given to the potential adverse effects of quarrying activity on Marlborough's tangata whenua iwi. These matters should be added to the policy.

176. The Panel considered that there are other activities that require a rural location that are not by definition primary production and that the recommended policy would be constructively applied to determine the appropriateness of location in the rural environment. For this reason, the Panel has decided to extend the policy to such activities. This approach is consistent with Objective 14.3.

**Decision**

177. Insert a new policy 14.3.X as follows:

*Ensure that quarrying and other activities requiring a rural location are located in appropriate locations by managing effects on:*

*(a) the life supporting capacity of soils, water, air and ecosystems;*

*(b) natural character of rivers, wetlands and lakes;*

*(c) water quality and water availability;*

*(d) areas with landscape significance;*

*(e) areas with significant indigenous vegetation and significant habitats of indigenous fauna;*

*(f) the safe and efficient operation of the land transport network and Marlborough's airports;*

*(g) the character and amenity of the rural environment (including: noise, dust, visual, traffic, vibration and amenity effects); and*

(h) the relationship of Marlborough's tangata whenua iwi with lands, waters, sites, wāhi tapu and wāhi taonga, and the ability of Marlborough's tangata whenua iwi to exercise kaitiakitanga.

**Woodlot forestry harvesting**

178. The definition of Woodlot forestry harvesting' in the PMEP is as follows:

*Woodlot forestry harvesting means the felling of trees for the purposes of Woodlot Forestry, and includes excavation and/or filling to prepare the land for harvesting, de-limbing, trimming and cutting to length of felled trees and recovery of windfall and other fallen trees.*

179. T Marshall sought an exclusion to the above definition to enable use of trees for domestic purposes.

**Section 42A Report and consideration**

180. The Section 42A Report and Reply to Evidence addressed the PMEP provisions managing woodlot forestry (Topic 12) (Rural Environments as it relates to woodlot forestry). This report was circulated to submitters on 31 May 2018 and the hearing was held in July 2018. The reply contained one recommendation for a change in those provisions. This related to Mr Marshall's request. The Panel agreed that the exclusion was appropriate and should include the thinning and felling of trees.

**Other matters**

181. At the hearing for Topic 12 the report writer identified that it may necessary to revisit his recommendations for woodlot forestry after an alignment exercise to remove rules duplicating or conflicting with the NESPF after the hearing on Forestry (Topic 22) had taken place. The Panel requested that this review should proceed when the timing was appropriate as there may be the need to consider changes to the woodlot provisions for reasons of consistency.[75]

182. On 1 May 2018, the NESPF came into effect.

183. In November 2018 the Council adopted an alignment exercise with the PMEP undertaken to comply with s 44A RMA (that is, to remove rules duplicating or conflicting with the NESPF).

184. The hearing of the Forestry topic (Topic 22), which included plantation forestry, followed in December 2018.

[75] Supplementary Report, paragraph 15.

185. The NESPF alignment does not affect or apply to the woodlot provisions of the PMEP. By definition, woodlot forestry is not covered by the NES. Some of the standards for woodlot forestry, however, are the same or similar to those that apply to plantation forestry.

186. This review was documented in the report writer's Supplementary Report dated 21 March 2019, which was heard in April 2019.

**Consideration**

187. The Panel has considered the recommendations contained in the Supplementary Report along with the evidence heard on the topic.

188. We agreed to the recommendations for changes to the woodlot provisions contained in the Supplementary Report and the single recommendation for change in the original Section 42A Report and Reply to Evidence (Rural Topic 12) with a minor amendment – the inclusion of the word 'or' in the second to last line of the text to provide a logical alternative in the thinning or felling of trees.

**Decision**

189. The definition of 'Woodlot forestry harvesting' is amended as follows:

*means the felling of trees for the purposes of Woodlot Forestry, and includes excavation and/or filling to prepare the land for harvesting, de-limbing, trimming and cutting to length of felled trees and recovery of windfall and other fallen trees, but does not include thinning or felling of trees that are to be used for domestic purposes on the same property the trees were grown.*[76]

**Definition – Rural Industry**

**3.6.7. Rural industry.**

**Rural industry means an industry, constructional engineers and roading and cartage contractors workshops or yards where either:**

**(a) 75% of the total business is with the rural sector and/or coastal marine area;**

**(b) The nature of the industry is such that it is inappropriately located within an urban or industrial zone.**

190. Rural industry is listed in Rule 3.6.7 as a discretionary activity in the Rural Zone in the notified Plan. The definition of 'rural industry' as above was criticised in the Horticulture NZ submission because the notified definition:

*"… should specifically include processing, packing and storage of primary products."*

191. Horticulture NZ in evidence suggested a definition which combined two definitions from the Draft National Planning Standards. The first was of 'rural industry' to read as follows:

[76] Section 42A Report, Reply to Evidence, page 83.

> *Means an industrial activity where the principal function supports primary production or aquaculture activities.*

with the second definition being a definition of 'industrial activity' as follows:

> *Means an activity for the primary purpose of:*
>
> *a) manufacturing, fabricating, processing, packing, storing, maintaining or repairing goods; or*
>
> *b) research laboratories used for scientific, industrial or medical research; or*
>
> *c) yard based storage distribution and logistics activities; or*
>
> *d) any training facilities for any of the above activities.*

**Section 42A Report**

192. The Reply to Evidence was succinct in paraphrasing the Horticulture NZ s suggestion that the:

> *… definition is much more restrictive than the proposed definition within the MEP, as the proposed MEP definition does not require the activity to be linked to primary production and the definition includes activities that are inappropriately located within an urban or industrial zone. I consider that the wider definition is supported by Policy 14.3.2 of the MEP as it provides for activities that are not related to primary production within the rural environment where there is a functional need for the activity to be located within a rural zone.*

193. As a consequence the report recommended the definition of 'rural industry' was retained as notified.

**Consideration**

194. While the Panel agreed with the rationale of the Reply to Evidence, it did note that there was no definition of 'industry' to rely upon in applying this definition. It would therefore be helpful to amend the 'rural industry' definition slightly. That could be done in a way which added more guidance as to the type of ancillary processing activities which might be regarded as being appropriately located in a rural zone.

**Decision**

195. The rural industry definition is amended as follows:

*means an ~~industry~~ <u>industrial process</u>, constructional engineers and roading and cartage contractors workshops or yards where either: …*

# Proposed Marlborough Environment Plan

# Topic 13: Resource Quality (Water)

**Hearing dates:** 8 – 10 October 2018

**S42A Report Writer:** Rachel Anderson, Peter Hamill and Peter Davidson

**Conflicts of Interest:** None

**Interim decision:** Yes

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

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## List of Abbreviations

| | |
|---|---|
| GPA | Groundwater Protection Area |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| NPSFM | National Policy Statement for Freshwater Management |
| PMEP | Proposed Marlborough Environment Plant |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| AWUG | Awatere Water Users Group |
| BRIL | Blind River Irrigation Limited |
| DOC | Department of Conservation |
| MFIA | Marlborough Forest Industry Association Incorporated |
| Ngāti Kuia | Te Rūnanga O Ngāti Kuia |
| Ngāi Tahu | Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu |
| Ngāti Toa | Te Rūnanga o Toa Rangatira |
| Oil Companies | Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited |
| PMNZ | Port Marlborough New Zealand Limited |
| Te Ātiawa | Te Atiawa o Te Waka-a-Maui |

## Resource Quality – Water

### Issue 15A

**The discharge of contaminants to water can adversely affect the life supporting capacity and the community's use of Marlborough's coastal waters, rivers, lakes, wetlands and aquifers.**

1. Federated Farmers' submission seeks the removal of notified Issue 15A and a new issue to be worded as follows:[1]

    *Meeting the needs of Marlborough's urban and rural economy whilst ensuring activities do not have adverse effects on water values and uses.*

2. Federated Farmers also sought several other amendments, chief of which is to delete the entire last paragraph of the explanation and replace it as follows:

    *~~The good state of water quality in Marlborough's coastal waters, rivers, lakes, wetlands and aquifers makes them more vulnerable to point source and non-point source discharges. Any deterioration in water quality would have dramatic implications for Marlborough's social, economic and cultural wellbeing, as good water quality is essential for a wide range of consumptive and non-consumptive uses. A reduction in water quality could also adversely affect freshwater and marine habitats. The main threats to water quality in Marlborough are described below.~~ Urban and rural activities contribute to the social, economic and cultural well-being of people. Inappropriate land use and development can detract from the values and uses of water, including marine habitats. The MEP seeks to provide an enabling framework for development while prioritising and progressively reducing the adverse effects of discharges to water.*

3. The submitter considers the view expressed in this paragraph is that Issue 15A is a generalisation which is why it should be removed.

4. Nelson Forests Ltd seeks an amendment to the second sentence of the first paragraph of the explanation to read:[2]

    *~~Any deterioration~~ <u>Deterioration</u> in water quality would have dramatic implications for Marlborough's social, economic and cultural wellbeing, as good water quality is essential for a wide range of consumptive and non-consumptive uses.*

5. The submitter considers that the text of the issue overstates the effect of contaminants and that some short-term adverse effects on water quality are inevitable in response to national events (such as storms) and may be necessary for the use of resources.

---

[1] Federated Farmers (425.273).
[2] Nelson Forests Ltd (990.230).

6. MFIA and Nelson Forests Limited also seek an amendment to the first sentence of the explanation of Natural Processes under Issue 15A as follows:

> *In the context of the above, it is also important to note that natural processes ~~may~~ influence water quality;*

And the second paragraph is amended to read:

> *~~Occasionally, n~~Natural processes will result in sediment reaching both fresh and coastal water, particularly during rainfall events. This affects the clarity and turbidity of water and the resulting ~~dirty~~ discoloured waters can have an impact on freshwater and marine life.*[3]

7. The submitters are of the opinion that natural processes result in sediment reaching water and that the explanation downplays the significance of this.

**Section 42A Report**

8. The report writers consider that natural processes will not *always* result in sediment reaching water so they do not agree with the definitive nature of the submitters' views. While it could be argued that this situation may occur occasionally, it is not appropriate to amend the explanation to state it will always occur. Nor is there any discussion in submissions as to why change from 'dirty' to 'discoloured' is sought so this has not been considered further.

9. The report writers acknowledge that towards the end of the explanation, rainfall events do have an impact on water quality, but the issue is about discharge of contaminants caused by humans. If human activity that has had short term effects on water quality is provided for to enable resource use, then presumably this would be done in a manner that did not have unacceptable effects on water quality, causing deterioration (progressive decline). In the report writers' opinion, the amendments sought are unnecessary.[4]

10. Of overall concern to the report writers in this area of discussion is the significant change in focus of the parties, given the fact that this part of the PMEP is specifically about water quality and the discharge of contaminants. They do not agree with the amendments sought.

11. On further consideration the report writers commented that while they did not disagree that 'dirty' can have negative connotations, and that the word 'discoloured' may be used in its place, they were not of the opinion that the words 'dirty' and 'discoloured' mean the same thing and therefore are interchangeable.

[3] MFIA (962.84) and Nelson Forests Limited (990.231).
[4] Nelson Forests Limited (990.230).

**Consideration**

12. The Panel considered that the use of the word 'dirty' had negative connotations under the heading 'Natural processes'. We concluded that it is more appropriate to replace the word 'dirty' with 'sediment laden' in the second paragraph of the explanation.

**Decision**

13. The explanatory statement to Issue 5A, under the heading 'Natural processes' is to read:

*… This affects the clarity and turbidity of water and the resulting ~~dirty~~ <u>sediment laden</u> waters can have an impact on freshwater and marine life. …*

## Natural and human use values

### Objective 15.1a

**Maintain and where necessary enhance water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters, so that:**

**(a) the mauri of wai is protected;**

**(b) water quality at beaches is suitable for contact recreation;**

**(c) people can use the coast, rivers, lakes and wetlands for food gathering, cultural, commercial and other purposes;**

**(d) groundwater quality is suitable for drinking;**

**(e) the quality of surface water utilised for community drinking water supply remains suitable for drinking after existing treatment; and**

**(f) coastal waters support healthy ecosystems.**

14. Ngāi Tahu seeks the addition of a reference to the importance of water as a taonga to connect back to Chapter 3 Marlborough's Tangata Whenua Iwi, but did not provide specific wording.[5]

15. Tanya Stevens in evidence explicitly laid out the values of Ngāi Tahu in relation to water as set out in the various planning documents it has already put in place.[6] The witness identifies that from that body of evidence wai is taonga, that is, essential for life. From her perspective, the submission (water is taonga) is why it is so important to 'draw through' to the water chapter the themes and issues raised in Chapter 3 – the chapter relating to specific issues. Otherwise Ms Stevens considers that it is really difficult for plan users to understand how Chapter 3 and concepts like water are treasured. In her view, without that integration, the implementation of Chapter 3 can become difficult to the extent that it becomes a 'tick box' exercise.[7]

16. The text provided in evidence, however, considers that the following should be added to the explanation:

[5] Ngāi Tahu (1189.101).
[6] Ngāi Tahu, Tanya Stevens Evidence, paragraph 6.
[7] Ngāi Tahu, Tanya Stevens Evidence, paragraph 100.

> *The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM …*

**Section 42A Report**

17. The report writers are comfortable with the recommended additional wording provided, but recommend that it be added to Objective 15.1a rather than Objective 15.1b so that the first paragraph of the explanation to Objective 15.1a reads:[8]

> *Marlborough's coastal waters, rivers, lakes, wetlands and aquifers contain a diverse range of natural and human use values and are used extensively by the community. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. The existing water …*

**Consideration**

18. The Panel agrees with the report writers' recommendation for the reasons given.

**Decision**

19. Amend the first paragraph of the explanation to Objective 15.1a to read as follows:

*Marlborough's coastal waters, rivers, lakes, wetlands and aquifers contain a diverse range of natural and human use values and are used extensively by the community. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. The existing water quality in the majority of our waterbodies is sufficient to support these values, but it is important that no degradation of water quality is allowed to occur…*

## Objective 15.1b

**Maintain or enhance freshwater water quality in each Freshwater Management Unit so that the annual median nitrate concentration is <1 milligram nitrate-nitrogen per litre and the annual 96$^{th}$ percentile concentration is <1.5 milligrams nitrate-nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.**

20. The Ngāi Tahu submission supports Objective 15.1b.[9] The evidence suggests that as water is of such importance to Ngāi Tahu, the explanation is amended to reflect and assist the plan user and link the objective to the issue it relates to, as follows:

> *The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM …*[10]

[8] Section 42A Report, Reply to Evidence, page 16. Ngāi Tahu, Tanya Stevens Evidence, paragraphs 49-50 (relating to Objective 15.1b).
[9] Ngāi Tahu (1189.101).
[10] Ngāi Tahu, Tanya Stevens Evidence, paragraph 49.

**Section 42A Report**

21. Initially without detailed evidence, the report writers were of the opinion that as the objective is linked to the NPSFM in such a particular way, if such reference was to be made, it would be appropriate to add it to Objective 15.1a, especially given that Objective 15.1a refers to 'the mauri of wai is protected'.[11]

**Consideration**

22. The Panel notes that the Section 42A Report, in addition to recommending rejection of Ngāi Tahu's submission, stated that the rejection was 'subject to reconsideration of the relief sought'.

23. The first line of the explanation to Objective 15.1b refers to 'ecosystem health as a compulsory national value of freshwater'. The insertion sought by Ngāi Tahu identifies freshwater as taonga to all of Marlborough's tangata whenua iwi. Given that significance which the Panel accepts it is appropriate to add as follows:

> *The NPSM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM …*

**Decision**

24. The explanation to Objective 15.1b is amended as follows:

*The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM for rivers, nitrate concentrations are determined to be an attribute of ecosystem health...*

## Objective 15.1c

**Maintain freshwater water quality in each Freshwater Management Unit so that the annual median ammonia concentration is < 0.03 milligrams ammoniacal nitrogen per litre and the annual maximum concentration is < 0.05 milligrams ammoniacal nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.**

25. The Ngāi Tahu submission[12] supports Objective 15.1c and, as for Objective 15.1.b, in evidence suggests that the explanation is amended to reflect the taonga status of freshwater for Ngāi Tahu as follows:

> *The NPSM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Ammonia concentrations are determined …*

[11] Section 42A Report, paragraph 140.
[12] Ngāi Tahu (1189.102), Tanya Stevens Evidence, paragraph 51.

**Section 42A Report**

26. The report writers, as they did with reference to Objective 15.1b, recommended that given the nature of this objective, linked as it is into the NPSFM in such a technical way, it may be more appropriate to add it to Objective 15.1a which states as a reference 'the mauri of the wai is protected'.[13]

27. It is recommended that the Ngāi Tahu submission is rejected, again subject to reconsideration of the relief sought relative to the writer's comments in the assessment of the point.[14]

**Consideration**

28. The holistic approach of Marlborough tangata whenua iwi to freshwater quality should again be recorded in the objective. The need to sustain the ecosystem health of freshwater complements the compulsory national value as measured in the Council's State of the Environment monitoring programme.

**Decision**

29. The explanation to Objective 15.1c is amended as follows:

*The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Ammonia concentrations are determined to be an attribute of ecosystem health under the NPSFM for rivers...*

## Objective 15.1e

**Maintain or enhance freshwater water quality in waterbodies valued for primary contact recreation so that the 95th percentile *E. coli* level is < 540 per 100 ml, as measured by the Council's State of the Environment monitoring programme.**

30. The Fertiliser Association seeks to amend the objective so that it reads as follows:[15]

> *Maintain or enhance the quality of freshwater water quality in waterbodies [sic] ~~valued for primary contact recreation~~ where the following attribute state is currently met: ~~so that~~ the 95th percentile E. coli level is >260 to ≤540 ~~<540~~ per 100 ml, as measured by the Council's State of the Environment monitoring programme.*

**Section 42A Report**

31. Under the PMEP each FMU has an attribute state for secondary contact recreation (15.1d) and specific waterbodies can have attribute states for primary contact recreation (15.1e). The report writers identified Objective 15.1d was developed relative to all FMUs to implement the NPSFM, but Objective 15.1e was predominantly developed in relation to specific waterbodies

[13] Section 42A Report, paragraph 158.
[14] Section 42A Report, paragraph 165.
[15] Fertiliser Association (1192.19).

to reflect the community's desire for water quality that would support primary contact recreation.

32. The report writers consider there is nothing in the submission to explain the requested change from '<540' per 100 ml to '>260 to ≤540' or why the reference to primary contact recreation is sought to be removed. The provisions of the PMEP reflect the NPSFM at the time of drafting. If recent changes with regard to swimability lead to changes being required, the report writers consider this should be done through a future process.

33. It is recommended that the Fertiliser Association's submission is accepted in part if the Panel was of a view that the deletion from the first paragraph of the explanation to the objective is either within the scope of the submitter's submission, or could be considered a minor amendment, then the following deletion from the paragraph is recommended:

> ~~*The FMUs relevant to this objective are In Freshwater Management Unit – Map 5.*[16]~~

**Consideration**

34. Objective 15.1d reads as follows:

> *Maintain or enhance freshwater water quality in each Freshwater Management Unit so that the annual median E. coli level is <260 per 100 ml, as measured by the Council's State of the Environment monitoring programme.*

35. The Panel's assessment of both Objectives 15.1d and 15.1e is that there is a contradiction between the intent of the two objectives. We consider there is scope to remove the reference to Map 5 in the explanation to Objective 15.1e for Objective 15.1d requires freshwater quality in all FMUs to meet the annual median E. coli level of <260 per 100 ml and that Objective 15.1e provides for water quality in waterbodies valued for primary contact recreation so that the 95th E. coli level is <540 per 100 ml. The Fertiliser Association rightly sees this as a contradiction. At the time the PMEP was drafted and notified, secondary contact recreation was a compulsory value under the NPSFM but primary contact recreation was not.

36. The report writers' opinion is that the explanation to the objective could benefit from the deletion of one sentence that could be contributing to the Fertiliser Association's view of there being a contradiction, and we agree with that. The last sentence of the first paragraph reads:

> *'The FMUs relevant to this objective are in Freshwater Management Unit – Map 5.'*

[16] Section 42A Report, paragraph 193.

37. This sentence has been copied over from the explanations to Objectives 15.1b-d in error. Those provisions relate to FMUs, Objective 15.1e does not. The fact that the relevant part of the explanation to Objective 15.1e is an error provides the way for the Panel to delete the erroneous sentence.[17]

**Decision**

38. The reference to Map 5 is deleted from the explanation to Objective 15.1e as follows:

*… The numeric attribute states for B are specified in Objective 15.1e. ~~The FMUs relevant to this objective are in Freshwater Management Unit – Map 5.~~*

## Policy 15.1.1

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

**…**

**(d) Wetlands: protection of aquatic ecosystems and the potential for food gathering.**

39. Numerous submissions to this subsection of Policy 15.1.1 request: amendments to the wording such as qualifying the word 'wetlands' as 'Significant wetlands', and substitution of the word 'protection' with the word 'management';[18] an amendment to the policy/explanation to recognise that food gathering will not always be appropriate in all wetlands;[19] an amendment to the wording as follows: *(d) Wetlands: protection of ~~aquatic~~ <u>wetland</u> ecosystems and the potential for food gathering* – this would better reflect the diverse nature of wetlands.[20]

**Section 42A Report**

40. The report writers agree in part with PMNZ as throughout the PMEP policies and rules have focused on 'significant wetlands'. These have been emphasised to provide certainty to landowners as to what area of their property is a wetland with significant values when assessed against the 'significant' criteria in Appendix 3. Therefore, it would be appropriate to amend the policy so that it aligns with other wetland provisions.[21]

41. In terms of the relief sought by Messrs Hickman and Mehlhopt and the use of the word 'potential' in the criteria reflecting community expectations that food gathering should always be undertaken safely in wetlands, this assumption is not a realistic expectation for all wetlands, especially in times of low flow and drought. The report writers support the submission of PMNZ to the extent that Policy 15.1.1(d) should apply only to 'significant

[17] Section 42A Report, paragraph 186.
[18] PMNZ (433.83).
[19] J Hickman (455.56) and G Mehlhopt (456.56).
[20] Fish and Game (509.172 - part).
[21] Section 42A Report, paragraph 203.

wetlands' for this reference and as a consequence would mean that the text 'potential for food gathering' would be confined to significant wetlands only.

42. In terms of these submitters and also for DOC and Fish and Game, the report writers consider that the explanation to the policy assists plan users with the understanding of the word 'potential' in its context:

- Food gathering is not a realistic expectation for all wetlands particularly in times of low flow and drought – wetlands need to be managed for appropriate purposes.
- The policy in no way signals that food will always be able to be gathered – just that if it is able to be gathered, it will be done safely.

43. In terms of Fish and Game's submission, the report writers consider this amendment may be supported for the reasons given in the submission. The following amended wording better reflects the diverse nature of wetlands: *(d) Wetlands: protection of ~~aquatic~~ wetland ecosystems and the potential for food gathering.*

**Consideration**

44. Policy 15.1.1(d) should refer to 'Significant' wetlands for the reasons recommended by the report writers.[22] However, the word 'aquatic' ecosystems should be deleted and replaced with 'wetland' ecosystems as a broader, more relative term given the values of wetlands signalled in PMEP Appendix 3.

**Decision**

45. Policy 15.1.1(d) is amended as follows:

*(d) Significant w~~W~~etlands: protection of ~~aquatic~~ significant wetland ecosystems and the potential for food gathering.*

### Policy 15.1.2

**Apply water quality classifications (and water quality standards) to all surface water, groundwater and coastal water resources, which reflect:**

**(a) the management purposes specified in Policy 15.1.1; and**

**(b) other uses and values supported by the waterbody or coastal waters; or**

**(c) where water quality has already been degraded, the uses and values that are to be restored.**

46. Ngāi Tahu seeks an amendment to subsection (b) as follows: *(b) other uses and values, including Tangata Whenua Iwi values, supported by the waterbody or coastal waters; or …* .[23]

[22] Section 42A Report, paragraphs 203, 218.

[23] Ngāi Tahu (1189.104).

47. The submitter is of the view that it is appropriate and in accordance with ss 6(e), 7 and 8 RMA to specifically highlight within this policy that water quality standards should be set so that tangata whenua iwi values are appropriately reflected.

**Section 42A Report**

48. The report writers are of the opinion that cultural values are already provided for in subsection (a) of the policy, given its link back to Policy 15.1.1 which specifically references management for cultural purposes in (a) and (b), and the management for food gathering in (a) and (d), and where that does not cover all iwi values, preference would be given for those to be specifically referenced in Appendix 5 (and therefore referred to in subsection (b) of Policy 15.1.2 as notified.

49. It is recommended that Ngāi Tahu's submission is rejected as the matters raised are either covered in Policy 15.1.1(a) or they are (should be) picked up through values in Appendix 5 and therefore covered by Policy 15.1.1(b).[24]

**Consideration**

50. The Panel considers that 'waterbodies and coastal water values' have particular significance for Marlborough's tangata whenua iwi, and the reference should be included in Policy 15.1.2(b). It is also unknown at this point in time whether these values may be specifically identified by iwi for inclusion in Appendix 5 Schedule 1.[25]

**Decision**

51. The following amendment is made to Policy 15.1.2(b):

*(b) other uses and values, including the values of Marlborough's tangata whenua iwi, supported by the waterbody or coastal waters; or …*

## Appendix 5 Schedule 1 – Waikawa Stream

52. Te Ātiawa lodged a submission seeking the insertion of cultural water quality indicators in Appendix 5 Schedule 1. The submission contained no further information and initially was recommended to be rejected by the report writers.[26] In evidence, however, Te Ātiawa clarified its position by seeking a C classification (C for cultural practices) for the following water resource units (WRUs): Kaituna, Rai, Tuamarina, Small Coastal Complex, Small Sounds Streams, Waitohi and Wakamarina. This series of rivers was eventually amended to seek the same classification but limited to the Waitohi River and Waikawa Stream.

[24] Section 42A Report, paragraph 235.
[25] Section 42A Report, paragraph 243: Appendix 5 is headed 'Water Resource Unit Values and Water Quality Classification Standards', and includes Schedule 1 – Water Resource Unit Values and Schedule 2 – Water Quality Classification Standards.
[26] Te Ātiawa (1186.221).

53. In a further submission, Te Ātiawa sought the addition of cultural and aesthetic values and the 'C' and 'A' classifications to WRU (Small Sounds Streams) in relation to the Waikawa Stream.[27] In evidence, the submitter accepts the addition of 'C' to WRU 57 in relation to the Waikawa Stream. The report writers made no change to their further recommendations in response.

54. In a third submission Te Ātiawa no longer sought actual indicators to be added but that a placeholder be included to signal the intention to add them at a later time to affirm Council's intention to work collaboratively with iwi to develop cultural indicators.[28]

**Section 42A Report**

55. The report writers accepted the submitter's concerns and amended their original recommendation from the Section 42A Report as follows:[29]

> *In relation to WRU59 (Waitohi) in Schedule 1, in the column headed 'Water Quality Classifications' make the following addition 'AE, FS, C (Waikawa Stream)'.*

56. The report writers considered the placeholder approach was less than ideal and unnecessary as the relief sought is specifically provided for in the existing Method 3.M.5 in Chapter 3 Marlborough's Tangata Whenua Iwi.

**Consideration**

57. In the course of deliberations, a technical aspect of the recommendations in the Section 42A Report prompted the Panel to seek further guidance from its co-authors relating to a possible outcome for Te Ātiawa in Appendix 5 as to the Waikawa Stream.

58. In deciding whether to grant the relief sought, the Panel considered whether a better outcome may be to define the Waikawa Stream catchment as a separate WRU on the Water Resource Unit Map in Volume 4. Waikawa Stream would then be able to have its separate stream values identified rather than being combined with other Small Sounds Streams but recording a particular different value ascribed for Te Ātiawa.

59. The guidance the Panel sought from the report writers is that, if that course was the one decided, what other values should be identified for the Waikawa Stream in addition to the 'C' for cultural values?[30]

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[27] Te Ātiawa (1186.222).
[28] Te Ātiawa (1186.223).
[29] Section 42A Report, Reply to Evidence, page 40.
[30] Minute 41, Section 42A Report, paragraph 30.

60. The report writers responded that, if the Panel agreed, it would be a better outcome if the Waikawa Stream was identified as its own WRU on the Water Resource Unit Map in Volume 4. In their opinion the following note would be appropriate to be included:

| No | Water Resource Unit | Values | Water Quality Classifications |
|---|---|---|---|
| x | Waikawa | **Fish Habitat**<br>Banded kokopu, koaro, bluegill bully, redfin bully, common bully, inanga, shortfin eel and longfin eel habitat.<br><br>**Riparian Habitat**<br>Intact indigenous forest in upper catchment. | AE, FS, C |

61. The Panel reflected that the attributes identified by the report writers better reinforced the cultural values recognition sought by Te Ātiawa. Both the indigenous fish species listed by the report writers, together with the fact that the forest in the upper catchment is intact, emphasise the stream's value to iwi as a place of cultural significance.

62. The term 'Water Resources Unit' is very neutral, implying the Waikawa Stream is a general resource along with many others, whereas the approach suggested gives it a particular cultural distinction.

**Decision**

63. The decision is to insert a 'C' classification for cultural purposes in relation to the Waitohi River (WRU59)

64. Create a new WRU in Appendix 5 for the Waikawa Stream as identified by the report writers, as shown above.

65. As a consequential change, insert a new a map for the Waikawa Stream catchment on the map of Water Resource Units.

## Appendix 1 Schedule 1 – Lake Argyle

66. Trustpower lodged a submission seeking that the WRU 13 (Branch, including Lake Argyle) be removed.[31] The submitter considers that Lake Argyle is an out of river, artificial storage reservoir, which is fed by a canal as part of a hydro electric scheme. And further, that Lake Argyle does not provide all of the values listed in the schedule.

[31] Trustpower (1201.156).

**Section 42A Report**

67. The report writers agree with the amendment sought for the reasons outlined in the submission. But the report writers also suggested a consequential change that 'water skiing' and 'model boating' are deleted from the recreation values for the Branch River as they are values specific to Lake Argyle.

68. The report writers recommend that the water quality classification for WRU 13 in Schedule 1 of Appendix 5 is amended as follows:

*Branch ~~(including Lake Argyle)~~*

69. The writers also recommend the following amendments to recreation values for the Branch River:

*~~Waterskiing, f~~Fishing ~~and model boating~~*[32]

**Consideration**

70. The Panel agrees in part with the report writers' recommendations to remove the reference to Lake Argyle as it is an out of river artificial storage reservoir.

71. A consequential change is to include specific reference in WRU 13 for Lake Argyle only, as set out in the Section 42A Report. However, it is important to retain reference to 'water skiing' and 'model boating' for the recreational values of Lake Argyle as this is a public interest issue and was not submitted on due to the fact that taking these values away is out of scope. The Panel also notes that Lake Argyle is an important trout fishery and this value should be recognised in the appendix as well.

**Decision**

72. Amend WRU 13 (Branch River) as follows:

| No. | Water Resource Unit | Values | Water Quality Classifications |
|---|---|---|---|
| 13 | Branch ~~(including Lake Argyle)~~ | **Fish Habitat**<br>Alpine galaxias, dwarf galaxias, koaro, northern flathead galaxias, upland bully, longfin and shortfin eel habitat. Brown and rainbow trout habitat. Brown trout spawning.<br>**Bird Habitat**<br>Black-fronted tern feeding habitat. Shag and waterfowl habitat.<br>**Riparian Habitat**<br>Intact indigenous forest in upper catchment. | AE, FS, F |

[32] Section 42A Report, paragraph 303.

| | | | |
|---|---|---|---|
| | | **Recreation**<br>Highly valued trout fishery. Back country experience. ~~Waterskiing, fishing and model boating~~<br>**Natural Character**<br>Very high (Leatham River and Branch River upstream of weir).<br>**Hydro Electric Generation** | |
| | Lake Argyle only | **Recreation**<br>Highly valued trout fishery. Waterskiing, and model boating. | CR, F |

## Cumulative contaminant limits

### Policy 15.1.3

**To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having regard to the management purposes established by Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.**

73. Ngāi Tahu seeks the policy be replaced with the following:[33]

> *In consultation with Tangata Whenua Iwi, establish cumulative contaminant limits by 2024 having regard to the management purposes established by Policy 15.1.1.*

74. Ngāi Tahu considers that consideration of cumulative effects is consistent with the ethic of ki uta ki tai waterbodies but the current wording of the policy could be interpreted to imply a presumption that waterbodies serve a network-type purpose in receiving contaminants. This is inconsistent with the NPSFM and the values set out in Chapter 3, specifically Objectives 3.1, 3.2, 3.3 and 3.5. Ngāi Tahu's amendments, however, seek to remove that ambiguity and specifically seek that consultation with iwi is undertaken as part of this work to ensure that cumulative contaminant limits are consistent with iwi values and use of waters.

**Section 42A Report**

75. The report writers were unconvinced that the submitter's interpretation was inconsistent with the NPSFM as in Marlborough which has good quality water (due in no small part to previously setting cumulative limits on contaminants in discharge to water).

76. The National Objectives Framework in the NPSFM sets out the future expectations for setting limits to implement the NPS, which includes 'discussion with communities, including tangata whenua'. The Iwi Working Group meanwhile is an established entity with which the Council works in policy matters related to the PMEP, and the limits could also be added to the PMEP through a formal process under the RMA.

[33] Ngāi Tahu (1189.105).

77. The report writers consider all these processes involved in establishing limits will provide an opportunity to consider how they interact with other plan provisions, Chapter 3, Volume 1 and national directives.[34]

78. Ngāi Tahu's initial submission was rejected as the report writers as noted above do not necessarily agree with the submitter's opinion that the policy is inconsistent with the NPSFM and do not see the policy limiting consultation with iwi as this will occur under the NPSFM.

79. Ngāi Tahu's evidence amended subsequently is as follows:[35]

> *Establish limits by 2024, in consultation with Tangata Whenua, that avoid or mitigate the effects of cumulative contamination on freshwater bodies and ~~To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having~~ have regard to the management purposes ~~established by~~ of Policy 15.1.1 ~~in order to establish cumulative contaminant limits by 2024~~.*

**Consideration and decision**

80. The submitter seeks to change the emphasis in the policy from investigations to setting limits. The Panel considered in the light of these submissions and the recommendations in the reports that the issue may be resolved by adding a new sentence to the explanation to Policy 15.1.3 after the first sentence of paragraph 4 as follows:

*This policy establishes a commitment to commence collecting and analysing resource use and environmental data required to establish cumulative contaminant limits. The collection and analysis will include identifying the significance of taonga to Marlborough's tangata whenua iwi and use of water by landowners and the remainder of the community. The use of limits could constrain the land uses that could occur in a catchment (existing and potential) or at least the way in which those land uses are managed. For these reasons, care needs to be exercised in establishing cumulative contaminant limits in respect of water quality. It is also important that the limits reflect the management purposes established by Policy 15.1.1, otherwise Objectives 15.1a to 15.1e will not be achieved. The cumulative limits will be added to the MEP by plan change or upon review.*

[34] Section 42A Report, paragraph 322.
[35] Section 42A Report, Reply to Evidence, page 45.

## Standard 2.17.3.5 *[sic]*

**2.17.3.5** [sic][36] **The discharge must not contain stormwater from an area where a hazardous substance is stored unless:**

**(a) the hazardous substance cannot enter the stormwater;**

**(b) there is an interceptor system in place to collect any hazardous contaminant or diverted contaminated stormwater to a trade waste system.**

81. The Oil Companies submitted on the above standard which applies to the discharge of stormwater to water. In essence the submitter sought an exemption to the standard where the discharge is from a Petroleum Industry Site that meets the design requirements of the Ministry for the Environment Environmental Guidelines for Water Discharges from Petroleum Industry Sites.

**Section 42A Report**

82. The report writers agreed with the intent of the relief requested but considered that there needed to be more specificity provided. Their preference was to include the treatment standard contained in the Ministry for the Environment Guidelines in the standard, i.e., hydrocarbons must not exceed 15mg/l. In evidence, the Oil Companies modified the nature of the exemption in response to this recommendation, as follows:

*The discharge must not contain stormwater from an area where a hazardous substance is stored unless:*

*(a) the hazardous substance cannot enter the stormwater* <u>*system*</u>*; or*

*(b)* <u>*there is an interceptor system in place to ensure that total petroleum hydrocarbons entering the stormwater system must not exceed 15mg/l; or*</u>

*(c) there is an interceptor system in place to collect any hazardous contaminant or diverted contaminated stormwater to a trade waste system.*

83. The report writers adapted this wording in their Right of Reply. This would see an exemption included in (a) of 2.17.3.5, as follows:

*(a) The hazardous substance cannot enter the stormwater.* <u>*This does not apply to petroleum hydrocarbons where the total petroleum hydrocarbon concentration does not exceed 15mg/l.*</u>

[36] There was a numbering error in the standards in 2.17.3 highlighted by NZTA in their submission. The relevant standard should therefore be 2.17.3.9. This numbering error will be remedied as an outcome of the decision.

**Consideration**

84. Except for the way in which the exemption is incorporated into 2.17.3.5, the submitter and the report writer are in agreement. The Panel favours the evidence of the submitter simply because 15mg/l of hydrocarbon in the stormwater would still represent a hazardous substance being present in the stormwater (albeit meeting the guideline value). Interceptor systems are put in pace to reduce the presence of hydrocarbons in stormwater, so it is more logical for the standard of 15mg/l to be added to (b). The submitters wording establishes three clear options: hydrocarbons should not enter the stormwater; or should be diverted to trade waste; or, if discharged to water, should meet the guideline value following treatment.

85. In hearing the Oil Companies and other submitters[37] on either Rule 2.16.3 and Standard 2.17.3, it was clear to the Panel that there is still confusion over the status of stormwater inputs into the Council's reticulated stormwater network.

86. The Panel's view is that the discrete inputs into the reticulated networks are not discharges to water controlled by Section 15 of the RMA. That discharge occurs at outfall into the surrounding receiving environment, typically a river or the coastal marine area.

87. In considering this issue, the Panel noted the Wairau/Awatere Resource Management Plan contains a note after the rules regulating the discharge of stormwater to water, as follows:

    *Note:*

    *The rule above regulates stormwater discharges at the point of entry into the environment. Managing inputs into the Council's stormwater infrastructure is still a function of the Council, but under other legislation. For this reason, this Plan does not regulate individual stormwater inputs into the infrastructure. However, the Council can exercise its enforcement powers when contaminants (as opposed to stormwater) are discharged into the stormwater infrastructure and subsequently contaminate a water body.*

88. Given the confusion over this very issue evident during the hearing, The Panel's view is that the Plan would also benefit by the inclusion of this note so that it sits with the rules controlling stormwater discharges to water.

**Decision**

89. Amend Standard 2.17.3.5 [sic][38] as follows:

[37] Mr David Wilson provided considerable evidence to the Panel on the stormwater provisions of the Plan.

*The discharge must not contain stormwater from an area where a hazardous substance is stored unless:*

*(a) the hazardous substance cannot enter the stormwater system; or*

*(b) there is an interceptor system in place to ensure that total petroleum hydrocarbons entering the stormwater system must not exceed 15mg/l; or*

*(c) there is an interceptor system in place to collect any hazardous contaminant or diverted contaminated stormwater to a trade waste system."*

90. Insert the following note after Standard 2.17.3 and Rule 2.18.1.

*Note:*

*The standards above regulate stormwater discharges at the point of entry into the environment. Managing inputs into the Council's stormwater infrastructure is still a function of the Council, but under other legislation. For this reason, this Plan does not regulate individual stormwater inputs into the infrastructure. However, the Council can exercise its enforcement powers when contaminants (as opposed to stormwater) are discharged into the stormwater infrastructure and subsequently contaminate a water body.*

## Excavation rules

### Standards 5.3.10.6 and 6.3.3.5

**There must be no excavation in excess of 10 $m^3$ within a Groundwater Protection Area.**

91. Several submitters request: the ability to undertake excavation in excess of 10 $m^3$ and if underground water is struck, compaction is undertaken to reduce leaching – they state that excavations in excess of 10 $m^3$ but not intercepting groundwater would not lead to adverse effects on the Groundwater Protection Area (GPA); it is implied that the relief sought is for the standard to be deleted so there is no volumetric limit in a GPA;[39] the removal of the standard (without giving reasons);[40] amendments to both Standards 5.3.10.6 and 6.3.3.5 on the grounds that the notified wording of those standards may act as an unnecessary constraint to residential development which can involve the scraping of the ground surface to construct a foundation, which is not anticipated to risk groundwater contamination;[41] an exclusion to

[38] There was a numbering error in the standards in 2.17.3 highlighted by NZTA in their submission. The relevant standard should therefore be 2.17.3.9. This numbering error will be remedied as an outcome of the decision.
[39] P Wilhelmus and Ormond Aquaculture Limited (1035.3) and J Timms (475.6).
[40] Federated Farmers (425.547).
[41] MDC (91.241, .242).

Standard 5.3.10.6 providing for excavation for the purpose of constructing a domestic swimming pool, or alternatively that the limit is increased from 10 $m^3$ to 30 $m^3$ or 40 $m^3$.[42]

**Section 42A Report**

92. Peter Davidson for MDC, on behalf of the report writers, provided advice as follows:

- The water quality and chemistry of Mill Stream at Wairau Valley is affected by contaminants from both diffuse and point sources. Mill Stream gains flow through the base of its channel from groundwater and brings with it diffuse contaminants generated over large areas of land upstream in the catchment as well as tributary flow from riparian margins.
- Exposing the groundwater table provides a rapid flow-path for land surface pollutants to contaminate groundwater.
- Excavations expose the water table and limiting the excavated volume to what is reasonable for individual landowners is prudent where an aquifer is used for rural drinking water and there is a risk to human health, specially a municipal water supply where a large population could be affected.
- Of particular concern are pollutants that won't be treated at the Wairau Valley municipal supply wellfield.[43]

93. MDC submitted a suggested amendment which was accepted by the report writers who recommended that the amendments sought by MDC would not adversely affect water quality in community drinking water supplies within the Urban Residential 1, 2 and 3 Zones that are protected by GPAs.

94. In terms of the Aquanort Pools and R Post submissions, that are unintentionally caught up in this submission, the wording in the notified plan of a volume of 10 $m^3$ is mentioned, as is capturing any activity (with the exception of building foundations) that will excavate in excess of that volume. The submitters have not provided any evidence that the excavations of 30 $m^3$ or 40 $m^3$ within a GPA would not adversely impact on community water supplies. Without the evidence to counter the argument that 10 $m^3$ is a safe limit, the report writers are unable to support the submission.[44]

[42] Aquanort Pools (1254.1) and R Post (1255.1).
[43] Section 42A Report, paragraph 741.
[44] Section 42A Report, paragraph 744, 748.

**Consideration**

95. The existing standards may act as an unnecessary constraint to residential development with a low risk of groundwater contamination.

96. The report writers accept MDC's submission on the grounds that the amendments would not adversely affect water quality in community water supplies within the identified residential zones protected by GPAs.

97. The Panel, however, is satisfied that pool owners should be included in the standard. We note the report writers consider that those affected residents have been unfairly caught up in the exclusion. Pool excavations are a legitimate residential building use and need to be further amended within the standard. The inclusion of an exemption for the construction of swimming pools is required. A pool structure is generally made from an inert impermeable material and the Panel considered the risk to groundwater to be minor. Moreover, there is an inbuilt limitation in the Urban Residential 1, 2 and 3 zones in the Plan of $50m^3$ excavation.

98. Although not originally sought by the submitter, the exemption should equally apply to the equivalent standard in the Rural Zone for the same reasons as set out above.

**Decision**

99. Standards 3.3.14.5, 5.3.10.6 and 6.3.3.5 are amended as follows:

*There must be no excavation in excess of $10m^3$ within a Groundwater Protection Area, unless the excavation is to establish a foundation for a building or a swimming pool permitted in this zone.*

## Methods

### Method 15.M.18

**Liaison**

*Work with established rural industry groups to develop and implement sustainable land management programmes. The initial focus will be on viticulture, pastoral farming (especially dairy and intensive beef farming), arable farming and forestry, but may be expanded to other rural activities if the need arises.*

*Rural land uses upstream of or adjacent to rivers that have degraded water quality and rural land uses in groundwater protection areas are a priority for sustainable land management programmes.*

*Work with landowners and community groups to establish and enhance riparian margins and improve water quality.*

100. Several submitters request the following additions to the method: *Work with water user groups and other agencies to develop riverbed activity guidelines*;[45] the inclusion of iwi within the liaison framework and amend the existing text of the method to read *Work with landowners, iwi and community groups to establish and enhance riparian margins and improve water quality*;[46] amend the method by inserting a sentence into the method as follows: *Engage with water user groups when determining the need for research, the design and implementation of research projects.*[47]

**Section 42A Report**

101. The report writers are supportive of community involvement in the development of riverbed activity guidelines as documents of this nature are useful when there is potential conflict between resource users. There is a preference for limiting the development of guidelines to a purpose so as not to establish an expectation that the guidelines will be developed for all rivers as they may not be necessary everywhere. The report writers also touched upon the many parties who may be appropriate to be involved in developing the guidelines for riverbed activities and their additions to the method should include them.[48]

102. With respect to AWUG's submission, there is nothing in the report writers' opinion that explains the addition or its context. Presumably given who the AWUG represent – a water user group involved with the Awatere River interested in research and design – this is not something that should be entrenched in the PMEP, in the opinion of the report writers. In the PMEP already there is a method in Chapter 5 Allocation of Public Resources providing the purpose of water user groups is to assist the Council in managing resources.[49]

103. The recommendation of the report writers is to support the submission in part of those user groups identified at the outset of their analysis.

**Consideration**

104. We accept the community's desire for management or guidelines for riverbed activities and we also accept that iwi should be involved in the process of establishing and enhancing riparian margins, given their especial cultural and historical affiliations we have heard of throughout this planning process.

105. We therefore accept both the report writers' recommendations in this matter.

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[45] Villa Maria (1218.69), Accolade (457.77), BRIL (462.32), AWUG (548.89), Wine Marlborough (431.76) and Pernod Ricard (1039.99).
[46] Te Ātiawa (1186.91).
[47] AWUG (548.89).
[48] Section 42A Report, paragraph 811.
[49] Section 42A Report, paragraph 813.

**Decision**

106. The following sentence is added to the end of Method 15.M.18:

*Work with resource users, community groups, agencies and Marlborough's tangata whenua iwi to develop riverbed activity guidelines where potential conflict between river users is identified.*

107. A further amendment to the existing text of the method is as follows:

*Work with landowners, Marlborough's tangata whenua iwi and community groups to establish and enhance riparian margins and improve water quality.*

## Method 15.M.21

**Information**

Provide information, including guidelines, to landowners, resource users and the public:

- to generally promote awareness of water quality issues; and
- to encourage the adoption of appropriate land management practices to minimise non-point source discharges.

Although the focus of this method will be on rural resource users, the information will also be applicable to residential situations (in both rural and urban environments).

Provide information on the benefits of retiring and planting riparian margins. This will include information on the appropriate width of riparian margins and suitable plant species, taking into account the variation in the nature of waterbodies/coastal waters and the adjoining rural land uses. Information on options for formally protecting retired riparian margins can also be provided.

108. Several submitters seek that the first paragraph of Method 15.M.21 is amended as follows:[50]

*Method 15.M.21 Information*

*Provide information, including guidelines, to landowners, resource users and the public:*

- *to generally promote awareness of water quality issues; and*
- *to encourage the adoption of appropriate land management practices to minimise any adverse effects of non-point source discharges. This includes promoting industry Codes of Practice and industry guidelines and encouraging the adoption of Agreed Good Management Practices. (Industry Agreed Good Management Practices, Sept 2015 have been developed and documented by the Primary industry sector groups in conjunction with Canterbury Regional Council.)*

*Although the focus of this method …*

and on that basis the deletion of Method 15.M.24 is also required.

[50] Ravensdown Limited (1090.48) and the Fertiliser Association (1192.38).

109. The submitters are of the opinion that the method should be providing information and increased awareness, supporting the adoption of appropriate land management practices to minimise any adverse effects of non-point discharges. This includes support for following Industry Agreed Good Management Practices.

**Section 42A Report**

110. The report writers disagree with the submitters' amendments and are of the opinion that it is not the role of Council to promote any particular industry product. Under Method 15.M.24 the Council advocates for industry groups to be involved.

**Consideration**

111. The Panel agrees with the report writers that the method is solely about the provision of information. However, that information can include industry developed information if it assists with achieving the objective of minimising the adverse effects of point-source discharges. For this reason, the Panel is comfortable, to an extent, with the addition sought and as set out on paragraph 820 of the Section 42A Report. The Council has the discretion to determine whether that industry information is relevant and accurate for the circumstances. In other words, the Council can decide whether to share the information with others.

112. However, the Panel does agree with the report writers that the method should not reference a specific document. The document cited in the submission and sought to be included in the method was developed in Canterbury. The Panel has received no further evidence on the nature of those agreed good management practices, the process used to develop them or their relevance in a Marlborough context. In these circumstances, it would be inappropriate for the Panel to include the last sentence of the relief requested.

113. On assessing what the method provides and whether changes should be made to Method 15.M.21 as set out in the submitters' requests, we consider that the last three sentences of the second bullet point should be deleted from the submitters' request but the first suggested amendments provide positive information to reinforce the intent of the method. The Panel sees value in retaining 15.M.24 as it advocates for the preparation and adoption of codes of practice and other guidelines

**Decision**

114. Method 15.M.21 is amended as follows:

*Method 15.M.21 Information*

*Provide information, including guidelines, to landowners, resource users and the public:*

- *to generally promote awareness of water quality issues; and*

- *to encourage the adoption of appropriate land management practices to minimise <u>any adverse effects of</u> non-point source discharges. <u>This includes promoting industry Codes of Practice and industry guidelines and encouraging the adoption of Agreed Good Management Practices.</u>*

*Although the focus of this method will be on rural resource users, the information will also be applicable to residential situations (in both rural and urban environments). …*

### Method 15.M.25

115. The report writer recommended the addition of a new method to 15.M.25 as follows:

> *Water Quality Management Plans and/or Nutrient Management Plans prepared and provided in accordance with this method may be contained within or form part of Farm Environment Plans prepared as a farm specific tool to identify on-farm environment risks and the methods and/or programme for managing those risks.*

116. The report writer also recommended two new definitions for Water Quality Management Plans and Nutrient Management Plans.

117. The Panel has adopted the recommendation with respect to the method. However, the Panel does not consider the definitions sought by the submitter and recommended by the report writer are necessary. There are already detailed descriptions of both types of plan in the method and these are considered to be adequate. The definitions recommended will not assist in the implementation of the methods.

## General rules

### [New] Permitted Activity

118. NZTA seeks the addition of a new permitted activity and associated standard either in the Transportation chapter or a new section applying to unzoned land, of which roads would form part.[51] The requested wording is as follows:

> *Earthworks within the legal road and associated sediment discharge to water or to land where it may enter water.*
>
> *Earthworks shall not, after the zone of reasonable mixing, result in any of the following effects in receiving waters:*
>
> *(i) the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or*

[51] 1002.144

*(ii) any conspicuous change in colour or visual clarity, or any emission of objectionable odour, or*

*(iii) the rendering of fresh water unsuitable for consumption by animals, or*

*(iv) any significant adverse effect on aquatic life.*

**Section 42A Report**

119. The report writers recommended the standards are included in Chapter 2, under 2.31 and 2.32 respectively, as they provide additional protections against water quality degradation in the road reserve. However, to provide consistency with other provisions in the PMEP, the report writer suggested amendments to the wording as follows:[52]

*Excavation and filling within the legal road.*

*Excavation and filling must not, after reasonable mixing, result in any of the following effects in receiving waters:*

*(i) the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or*

*(ii) any conspicuous change in colour or visual clarity, or*

*(iii) any emission of objectionable odour, or*

*(iv) the rendering of fresh water unsuitable for consumption by animals, or*

*(v) any significant adverse effect on aquatic life.*

**Consideration**

120. The Panel agreed with the content of the report writers' suggestion and as a result confirmed the inclusion of the wording in the Plan. There was no submission seeking a similar amendment in relation to the rail corridor so that the granting of the relief sought by NZTA results in an anomaly between the road and rail corridor activities. However, as KiwiRail is a requiring authority it has substantial activity rights. Consideration was also given to the placement of these rules.

121. The submitter sought that excavation and filling be provided for as a permitted activity in the road corridor. These are land use activities controlled under Section 9 of the RMA. As notified, Rules 2.21, 2.22 and 2.23 control the discharge of contaminants to air only.

122. In the Topic 14 decision, the Panel considered requests to convert this section of general rules into rules managing the discharge of contaminants to land in the road and rail corridor and to

[52] Section 42A Report, pages 136 and 137

convert the existing Rule 2.21.1 into a discharge to land rule. There were also requests to add additional activities to the notified permitted activity rule section (2.21) in Topics 13 - Air Quality, 14, 15 and 18 to enable other discharges to land or to air.

123. The Panel was in agreement with the above requests for the reasons set out in those topic decisions. However, these decisions present somewhat of a structural conundrum in the context of NZTA's request to enable excavation and filling in the road corridor. This is because these activities, unlike all of the other requests identified above, are not discharges of contaminants into the environment controlled by Section 15 of the RMA.

124. Fortunately, there is a relatively straight forward solution to this conundrum. The solution involves the expansion of this section of the general rules so that it applies to any activity in the road and rail corridor. This can be achieved by simply changing the heading on page 2-28 to "Activities in the Road and Rail Corridor". The permitted activity rules and standards agreed to via the various topic decisions can then be inserted into 2.21 and 2.22.

125. There is a consequential change required to allow this structure to operate effectively and that is a corresponding expansion of the discretionary activity rules so that:

(a) Non-compliance with the relevant standards for any of the permitted activity rules triggers a discretionary activity resource consent; and

(b) Activities not provided for in the road and rail corridor by way of Rule 2.21 trigger discretionary activity resource consent.[53]

**Decision**

126. Amend the heading on page 2-28 as follows:

~~*Discharges to Air*~~ *Activities in the Road and Rail Corridor*

127. A new permitted activity to be added to 2.21 as follows:

*2.21.x Excavation and filling within the legal road by the Road Controlling Authority*

128. A new standard to be inserted at 2.22 as follows:

2.22.x *Excavation and filling within the legal road by the Road Controlling Authority*

*2.22.x.1 Excavation and filling must not, after reasonable mixing, result in any of the following effects in receiving waters:*

[53] Notwithstanding that many land use activities undertaken by NZTA or KiwiRail are likely to be enabled by designations in Appendix 14 of this Plan.

(i) *the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or*

(ii) *any conspicuous change in colour or visual clarity, or*

(iii) *any emission of objectionable odour, or*

(iv) *the rendering of fresh water unsuitable for consumption by animals, or*

(v) *any significant adverse effect on aquatic life.*

129. Insert a new Discretionary Activity Rule as 2.23 as follows:

*Any use of land not provided for as a permitted activity.*

## Munsell Scale

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.

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.

### Section 42A Report

132. Given the considerable opposition to the use of the Munsell Scale, the report writers 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;…".*~~

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:

*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.*

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:

*[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~~:*

~~*(a) hue must not be changed by more than 10 points on the Munsell scale.*~~

~~*(b) 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.*~~

~~*(c) the change in reflectance must be <50%*~~

143. The water quality classifications for AE and FS in Appendix 5, Schedule 2 are amended as follows:

| Colour or visual clarity | ~~- Hue must not be changed by more than 10 points on the Munsell scale.~~<br>- The natural colour or clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the site of a land disturbance operation.<br>- The change in reflectance must be <50%.<br>- Measurements are to be made immediately upstream of the discharge and below the discharge after reasonable mixing. | AE, FS |
|---|---|---|

144. The water quality classifications for A in Appendix 5, Schedule 2 are amended as follows:

| Colour or visual clarity | Measurements are to be made immediately upstream of the discharge and below the discharge after reasonable mixing.<br>~~- Hue must not be changed by more than 5 points on the Munsell scale.~~<br>- Turbidity must be no greater than 1.5 Nephelometric Turbidity Units. | A |
|---|---|---|

145. The definition of “Munsell Scale” in Chapter 25 is deleted.

### Minor amendments to report writer recommendations

146. There were several instances where the Panel adopted the recommendation of the report writer but made a very minor change to the text recommended for the relevant provision. These are listed below:

**Discharge of Tracer Dye**
**Standard 2.17.9.1**

147. The report writer[54] recommended that the standard be added to as follows:

*The discharge must be conducted by the Marlborough District Council or by another party if in relation to regionally significant infrastructure.*

148. The Paned preferred the use of *'or by the operator of regionally significant infrastructure*'. To provide certainty as to who could undertake the discharge.

**Preparation of stormwater management plans**
**Method 15.M.9**

149. The report writer recommended that the following sentence be inserted into the method[55]:

*The preparation of these Plans will include consultation and discussion with Tangata Whenua iwi.*

150. Reflecting other decisions, the Panel has inserted 'Marlborough's' prior to 'tangata whenua iwi'. It has also chosen to delete 'and discussion' as meaningful dialogue is implicit within the term 'consultation'.

[54] (See page 93 of Right of Reply)
[55] Right of Reply, page 117

# Proposed Marlborough Environment Plan

## Topic 13: Resource Quality – Water (Stock Crossing)

**Hearing dates:** 8 – 10 October 2018

**S42A Report Writer:** Rachel Anderson

**Conflicts of Interest:** None

**Interim decision:** None

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

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## Resource Quality (Water) – Stock Crossing

### Policy 15.1.23

**Avoid the discharge of animal effluent to fresh waterbodies and stock disturbance of river beds to the extent necessary to meet the management purposes established by Policy 15.1.1, by:**

**(a) preventing the direct discharge of collected animal effluent to water; and**

**(b) avoiding the access of intensively farmed stock to rivers.**

1. Federated Farmers seeks amendments to the policy as follows:[1]

   *~~Avoid~~ Reduce the discharge of animal effluent to fresh waterbodies and stock disturbance of river beds to the extent necessary to meet the management purposes established by Policy 15.1.1, Policy 15.1.5 and Policy 15.1.6 by:*

   *(a) assessing causes of elevated E. coli levels and identifying the most appropriate and cost-effective solutions for restricting stock access; and*

   *(~~a~~)(b) preventing the direct discharge of collected animal effluent to water; and*

   *(~~b~~)(c) ~~avoiding~~ managing the access of intensively farmed stock to rivers to support achievement of Policy 15.1.5, and Policy 15.1.6.*

2. It also seeks amendments to the second and third paragraphs of the explanation to the policy as follows:[2]

   *Stock can also access rivers when grazing riparian margins. While grazing of riparian margins is at times an important management tool, when on a continued basis ~~In such circumstances, it is likely that~~ there ~~will~~ may be a discharge of animal effluent to water and the river bed ~~will~~ may be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality. The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. ~~Intensively farmed stock such as dairy cattle, pigs, or cattle or deer grazed on irrigated pasture or breakfed on winter crops create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively.~~ This policy seeks to understand the cause of elevated E. coli level and identify the most appropriate and cost effective solutions for restricting access in catchments where there is an identified problem. This work will be completed through the Catchment Enhancement Plans, working collaboratively with landowners, industry, the community and Council to explore options.*

---

[1] Federated Farmers (425.298).

[2] Ibid.

*Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, or where rainfall events can cause ephemeral rivers to flow, and in situations where the costs of fencing and designing stock crossings are prohibitive for limited use, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require ~~compliance with any relevant water quality standard set for the affected waterbody~~ that good management practice is followed to manage adverse effects on colour and visual clarity.*

3. In terms of the amendments to the second and third paragraphs of the explanation, the submitter is of the opinion that this policy should focus on assessing the causes of elevated *E. coli* levels and identifying the most appropriate cost effective solutions where there is an identified problem. This is best implemented through Catchment Enhancement Plans that work with landowners, industry, community and Council for joint benefits.

4. Federated Farmers also seeks two new methods as follows:[3]

- *The assessment of causes of elevated E. coli levels and identification of the most appropriate and cost-effective solutions for restricting stock access.*
- *Work with landowners and industry to implement good management practice around stock access to waterways, through Catchment Enhancement Groups, based on a better understanding of the causes and solutions.*

5. Fonterra seeks an amendment to the policy as follows:[4]

*~~Avoid~~ Manage the discharge of animal effluent to fresh waterbodies and stock disturbance of river beds to the extent necessary to meet the management purposes established by Policy 15.1.1, by:*

*(a) preventing the direct discharge of collected animal effluent to water; and*

*(b) ~~avoiding~~ managing the access of intensively farmed stock to rivers; and*

*(c) managing the crossing of intensively farmed stock across rivers.*

6. The submitter considers there are large tracts of productive land in Marlborough that stock cannot access without crossing the bed of a river – these blocks are often used for winter grazing stock which requires accessing a bed of a river only a couple of times a year. Given the

[3] Ibid.
[4] Fonterra (1251.46).

wide form of the rivers, stock crossings may not be viable to bridge or culvert, leaving this land inaccessible – 'stock access' should be managed separately from 'stock crossings'.

7. NZ Deer Farmers supports deer exclusion from waterbodies where this is a cost-effective approach and exclusion would be justified by the degree of risk from the farming operation - preventing access of deer to rivers requires permanent deer fencing. As such, the submitter does not consider the proposed date of 9 June 2022 a well-considered time frame – 10 years would be a reasonable time frame to ensure that all intensively farmed livestock access to rivers and wetlands is avoided. The submitter seeks an amendment of the policy as follows:[5]

   *(b) avoiding the access of intensively farmed stock to rivers, unless the access is for the purposes of actively moving the farmed stock across the river.*

8. Other submitters seek: to ensure that all intensively farmed livestock access to rivers and wetlands is avoided;[6] to give effect to Policy 21 NZCPS;[7] and amendments to Policy 15.1.23(b) are suggested as follows:[8]

   *(b) avoiding the access of intensively farmed stock to rivers, except in the following circumstances:*

   - *Where the crossing is necessary for stock safety reasons or*
   - *The farm is already established prior to 9 June 2016 and crossing is necessary to farm operation; and*
   - *There are practical difficulties in constructing bridges or culverts; and*
   - *The crossing is over an ephemeral waterbody.*

9. And to the last paragraph of the explanation as follows:[9]

   *Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, or where intense rainfall events can cause ephemeral waterbodies to flow, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require ~~compliance with any relevant water quality standard set for the affected waterbody~~ good practices to be followed in order to avoid adverse effects on water quality.*

[5] NZ Deer Farmers (991.2).
[6] Fish and Game (509.190).
[7] EDS (698.103).
[8] Dairy NZ (676.77).
[9] Ibid.

**Section 42A Report**

10. In terms of Federated Farmers' submission, the report writers concluded:

- that reference be made to the importance of assessing elevated *E. coli* levels and adopting the most cost-effective solutions where there is a problem;
- that the solution is best addressed through Catchment Enhancement Plans with all interested parties and Council for joint benefit;
- these are matters already addressed through Policies 15.1.5 and 15.1.6 and Method 15.M.5;
- Policy 15.1.23 also seeks to prevent new adverse effects on water quality.

11. As to Federated Farmers being unable to support the prohibited status for access of intensively farmed livestock to rivers, the report writers consider it is important that any policies to manage stock access adequately reflect the size and scale of the problem, and this Policy 15.1.23(a) and (b) seeks to achieve.

12. In response to Fonterra's submission, the report writers consider the impact of these particular types of stock (intensively farmed stock) needs to be avoided, and there is nothing in the submission to demonstrate that those activities (discharge of animal effluent and stock disturbance) will ***not*** adversely affect water quality. With regard to managing stock 'access' separately from stock 'crossings', the rules refer to 'entering onto the bed' and 'passing across the bed' as separate activities - the policy covers both by using the word 'access' in (b).[10]

13. The daily crossing of waterways by dairy cows is a very different issue from avoiding all access by intensively farmed stock to waterways. The report writers support the Council's approach of prohibiting intensively farmed livestock from entering onto or passing across a riverbed. Allowing intensively farmed livestock to enter or pass across a riverbed is an activity that would not comply with water quality standards.[11] But in terms of having to shift livestock across waterways in case of flood, fire and other emergencies, the report writers do not consider Council is going to prosecute farmers on these occasions.[12]

14. In terms of the NZ Deer Farmers' concerns, the report writers do not accept an amendment to clause (b) as it would enable an activity that would have a significant adverse effect on water quality, for example, the crossing of 400 dairy cows across the Wairau River twice a day (as one farmer sought to do). The content of the reasons in the submission are specific to deer

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[10] Section 42A Report, paragraph 43.
[11] Section 42A Report, paragraph 40.
[12] Section 42A Report, paragraph 55.

and, in the report writers' opinion, they are appropriately dealt with in the rules and definitions, although there is a reference to deer in the explanation that may need to be reconsidered.[13]

15. In terms of Fish and Game's submission which seeks to ensure that access by all intensively farmed livestock (including all lowland cattle) to rivers, lakes and wetlands is avoided, short of fencing which would be very expensive, the Council decided that non-regulatory approaches such as the Significant Natural Areas programme was the best approach to the issue, and this has been set out in the chapter on indigenous biodiversity.[14]

16. The report writers pointed out the exclusion of stock from Significant Wetlands was a matter considered carefully during the consultation process and the outcome was that it was a step too far. The wetlands that remain are there only because the current farming regime has allowed them to not be destroyed, so with identification of the Significant Wetlands in the PMEP and non-regulatory management provisions around them, the view was that that landowner management would allow them to continue to exist without the need for total stock exclusion.[15]

17. The EDS submission, with its concern for coastal waterbodies, could be introduced as 'coastal waters' as 'waterbodies' refers only to fresh water, but only if further information is produced at the hearing, as the submitter provided no adequate information to support the submission. Meanwhile, the report writers pointed out there are no areas identified in the coastal environment included in the PMEP with degraded water quality as the result of the discharge of animal effluent. The report writers do not share EDS's view that the Plan needs to be amended to give effect to Policy 21 NZCPS because they do not consider the water quality of the coastal environment has so deteriorated.[16]

18. The report refers to the fact that Dairy NZ considers that 96% of the waterways on New Zealand dairy farms are now excluded from dairy cattle but there are still practical difficulties of fencing stock out of waterbodies, as captured by the third paragraph of the explanation. In the company's opinion, there should therefore be more explicit allowance for crossings due to the large number of ephemeral rivers on some established farms as well as intense rainfall

[13] Section 42A Report, paragraph 45.
[14] Section 42A Report, paragraph 49.
[15] Ibid.
[16] Section 42A Report, paragraph 52.

events. Good practices should be followed in these instances to avoid adverse effects on water quality.[17]

19. The Section 42A Report also identifies that multiple submissions questioned the policy's intent, including as to whether stock access was a point source or non-point source discharge. The report writers are of the opinion that Policy 15.1.23 should be separated into two policies. The overall content will remain the same, but the split would see a policy as it relates to the activities under (a) remain as Policy 15.1.23 and stay in its current location, but a policy as it relates to the activities under (b) would become a new policy and be inserted into the section of Chapter 15 headed 'Management of non-point discharges'.

20. This new policy would more accurately reflect the Council's view that discharges directly from animals are a non-point source discharge that is an effect of a land use activity, that is, stock entering on to or passing across the bed of a river.

21. It is also proposed that paragraph one of the explanation would remain with the revised Policy 15.1.23, and paragraphs two and three of the explanation would be associated with the new policy. The report writers consider that as this is a reorganisation and no content is changed, it can be achieved as a minor amendment and is within scope.

**Consideration**

22. The Panel agrees with the report writers that:

- It is not appropriate to amend provisions across the PMEP to provide for all types of emergencies for existing farms – it would not assist in remediating degraded water quality or preventing new degradation to provide an exception for all existing farms.
- There are practical difficulties in constructing individual bridges and culverts to always prevent stock access.
- With regard to amendments to the policy and explanation regarding ephemeral waterbodies, there is already an exception for entering on to or passing over a riverbed for livestock if there is no water flowing in the river. This would apply to both ephemeral and intermittently flowing rivers.
- The amendment of Dairy NZ's reference to 'good practices' is also not supported as the report writers consider it does not reflect the approach taken in the Permitted Activity

[17] Section 42A Report, paragraph 54.

rules nor would it provide plan users or the Council with certainty about the requirements for compliance with the applicable rule.[18]

23. In assessing the two (new) policies suggested by the report writers, we note that the change provides policy support for the proposed rules on stock access. We consider too that lakes and wetlands should be added to the new proposed policy for stock access, which was agreed to by the report writers in their Reply to Evidence.[19] We conclude that as the report writers have recommended, the policy may be addressed as set out below. Note that the new policy set out in the decision is based on the wording of the notified 15.1.23.There are also implications for changes to the definition of 'intensively farmed livestock' which re to be addressed later in this decision.

**Decision**

24. Policy 15.1.23 is separated into two policies and amendments made, as follows:

*Policy 15.1.23 – Avoid the discharge of animal effluent to fresh waterbodies ~~and stock disturbance of river beds~~ to the extent necessary to meet the management purposes established by Policy 15.1.1, by preventing the direct discharge of collected animal effluent to water.*

~~*(a) preventing the direct discharge of collected animal effluent to water; and*~~

~~*(b) avoiding the access of intensively farmed stock to rivers.*~~

*Animal effluent can be discharged directly into rivers and wetlands through ~~either~~ the point source discharge of collected animal effluent (e.g. farm dairy effluent) ~~or through stock access~~ to waterbodies. At the date of notification of the MEP, there were no authorised discharges of animal effluent into water. This policy seeks to avoid the significant risk posed to surface water quality by discharges of collected animal effluent. This will be implemented through a prohibited activity rule.*

~~*Stock can also access rivers when grazing riparian margins. In such circumstances, it is likely that there will be a discharge of animal effluent to water and the river bed will be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality. The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. Intensively farmed stock such as dairy cattle, pigs, or cattle or deer grazed on irrigated pasture or breakfed on*~~

[18] Section 42A Report, paragraph 55.
[19] Section 42A Report, Reply to Evidence, pages 7-8.

~~*winter crops create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively.*~~

~~*Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require compliance with any relevant water quality standard set for the affected waterbody.*~~

25. And a new policy be added in the 'Management of non-point source discharges' section in Chapter 15:[20]

*[R]*

*Policy 15.1.35 - Avoid stock disturbance of river beds, lakes and Significant Wetlands and the associated discharge of animal effluent to those water bodies to the extent necessary to meet the management purposes established by Policy 15.1.1 by avoiding the access of intensively farmed stock to rivers, lakes and Significant Wetlands.*

*Stock tend to access rivers, lakes and wetlands when grazing riparian margins. In such circumstances, it is likely that there will be a discharge of animal effluent to water and the river or lake bed, or wetland, will be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality.*

*The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. Intensively farmed stock create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively.*

*Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require compliance with any relevant water quality standard set for the affected waterbody.*

## Prohibited Activity Rules 2.11.4, 3.7.4 and 4.7.4

**From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river.**

[20] Section 42A Report, Reply to Evidence, page 7.

26. The EDS submission on Rule 2.11.4 seeks that its operation be brought forward because stock will not be excluded until then from the active bed and riparian areas of main-stem rivers or other ephemeral rivers where they are important habitat or breeding areas or important to the hydrological functions of the waterbody.[21]

27. DOC seeks amendments to all three rules as follows:[22]

> *From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, or to enter water in lakes or Significant Wetlands.*

28. The Marlborough Environment Centre seeks a similar addition to the provision although it frames it as new Prohibited Activities in the Rural and Coastal Environment Zones.[23]

29. Dairy NZ seeks the following amendments to Rule 3.7.4:[24]

> *From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, except in the following circumstances:*
>
> - *where the crossing is necessary for stock safety reasons; or*
> - *the farm is already established prior to 9 June 2016 and crossing is necessary to farm operation; and*
> - *there are practical difficulties in constructing bridges or culverts; and*
> - *the crossing is over an ephemeral waterbody.*

30. Dairy NZ supports stock exclusion from waterways but there are practical difficulties of fencing stock out of waterbodies. Some explicit allowance for crossings due to the high amount of ephemeral rivers on some established farms should be made and good practices should be followed in this instance to avoid adverse effects, as well as an allowance for effects of intense rainfall events.[25]

31. D and C Robbins, M Robb and G Robb seek that the status of the activity is changed from Prohibited to Discretionary as they consider that accidents or incidents can happen and livestock can get through fences and gates. This should not warrant a conviction.[26]

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[21] EDS (698.115).
[22] DOC (479.177, .179, .214 and .237).
[23] MEC (1193.126 and .127).
[24] Dairy NZ (676.124).
[25] Section 42A Report, paragraph 122.
[26] D and C Robbins (640.22, .45 and .57), M Robb (935.22, .45 and .57), G Robb (738.26, .45 and .57).

32. K Register seeks the removal of Rules 2.11.4 and 3.7.4 in their entirety – without crossing the river at three points on their farm, they cannot access parts of the farm, as the cattle are moved to these paddocks through the river then remain in their paddocks some months before necessitating another move across a waterbody.[27] The submitter experiences several water restrictions in summer and is unable to water stock because undergrounding a waterpipe 2 kilometres through three river crossings is not possible. Obtaining a Discretionary Activity would not change matters as the farm would be unable to meet water quality standards.

33. Other submitters echoed these concerns in similar vein with others seeking amendments to 'intensively farmed livestock'.[28]

34. In relation to the three rules, Beef and Lamb seek that the status of this activity is changed from Prohibited to Discretionary. In some of Beef and Lamb's submissions, some of the prohibited activities used within the PMEP appear as unnecessarily restrictive. The submission argued that Non-Complying or Discretionary status would provide the same environmental benefits while allowing for exceptions if they were required.[29]

35. The S MacKenzie submissions in relation to Rules 2.11.4 and 3.7.4 seek that the status of this activity is changed from Prohibited to Controlled, as this change would allow for infrequent crossings in appropriate circumstances.[30]

36. Fonterra's submissions seek the removal of Rules 2.11.4, 3.7.4 and 4.7.4 in their entirety. While the submitter supports the exclusion of stock from waterbodies, it is concerned about the potential for the rules to impose impractical expectations on fencing of water courses that are merely flow paths across paddocks that have no characteristics or values of a watercourse outside of heavy rain events.[31]

37. Another option identified by the submitter is to direct the rule to exclude stock from active stream beds, and this will require a new definition of 'active bed of a river'. The submitter proposes that the meaning be as follows:

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[27] K Register (147.1 and 3).
[28] G Barnett (1258.3, .4, .7, .8), S and S Leov (326.4, .5), H Thomson (119.1), K Loe (454.67, .77, .121, .122), Flaxbourne Settlers Association (712.15, .16, .19, .20), C Bowron (88.6, .11, .16, .18 ), Hall Family Farms (141.12, .13), ME Taylor Ltd (472.24, .25), Landcorp (294.2, .3), Mt Zion (515.20, .19).
[29] Beef and Lamb (459.4, 459.5, .6, .37, .38 and .39)
[30] S MacKenzie (1124.14 and .18).
[31] Fonterra (1251.63, .67 and .71).

*Means the bed of a river (including any modified river) or artificial watercourse or that is permanently or intermittently flowing and where the bed is predominantly unvegetated and comprises sand, gravel, boulders or similar material.*

38. Fonterra also identifies that there is privately owned land in Marlborough that can only be accessed by crossing a river and that the rules proposed prevent the option of allowing such crossings, even where the effects are less than significant. It seeks provision for periodic stock crossings as a Restricted Discretionary Activity. This will enable controls to be assigned to ensure the effect of the crossing is not significant.

**Section 42A Report**

39. All submissions were recommended to be rejected for the reasons given. We note that the prohibition of stock crossing remains in force from 2022, the delay of which allows for upgrades of water systems and future-proofing productive measures if necessary. Further amendment of the term ‘intensively farmed livestock’ may also assist (see below). The prohibition on emergency situations is not likely to be enforced, given the report writers’ recommendations.[32]

40. The report writers’ initial recommendation was to make no changes to Rules 2.11.4, 3.7.4 and 4.7.4.

41. In the Reply to Evidence the report writers’ recommendations did not change in response to the evidence of Federated Farmers, Fish and Game, Flaxbourne Settlers Association, Marlborough Environment Centre (verbal evidence), S MacKenzie, Landcorp, Hall Family Farms, H Thomson, EDS, Beef and Lamb, while D and C Robbins and G Robb provided no evidence and did not attend the hearing.

42. In response to Forest and Bird,[33] the report writers noted that while the preference for shorter time frames for the introduction of the 2022 prohibition is supported, it was noted by the submitter that the prohibition is fast approaching and that may now be considered reasonable.

43. With regard to DOC’s submissions, the recommendation of the report writers was that as the Council’s approach to wetlands was purposeful and the result of a consultative process, and the submitter provided no information to counter the Council’s approach, therefore the submission was recommended to be rejected.

[32] See for example Section 42A Report, paragraphs 41, 60, 73, 121.
[33] Forest and Bird, D Martin Evidence, paragraph 16.

44. With regard to lakes, the report writers consider there may be some benefit to lakes from full stock exclusion but it is a significant change in the rules and with a potentially associated significant cost. As the submitter did not provide any supporting information for the change, the report writers did not recommend lakes are added to the rules unless there was sufficient evidence to do so.

45. In their Reply to Evidence the report writers critiqued the various evidential matters identified from some of the submitters. They acknowledged they were confused by the evidence of Federated Farmers[34] which sought the removal of the Prohibited Activity rules from the PMEP, but also sought to adopt with amendments the relief originally sought by Dairy NZ as follows:

> *From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, except in the following circumstances:*
>
> - *Where the crossing is necessary for stock safety reasons;*
> - *There are practical difficulties in constructing bridges or culverts; and*
> - *The crossing is over an ephemeral waterbody.*

46. The report writers did not support Dairy NZ's submission point which was called in aid by Federated Farmers. Dairy NZ had sought an amendment to Rule 3.7.4 as follows: [35]

> *From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, except in the following circumstances:*
>
> - *where the crossing is necessary for stock safety reasons; or*
> - *the farm is already established prior to 9 June 2016 and crossing is necessary to farm operation; and*
> - *there are practical difficulties in constructing bridges or culverts; and*
> - *the crossing is over an ephemeral waterbody.*

47. The report writers had earlier recommended rejection of Dairy NZ's submission 'as it is not necessary or appropriate to amend provisions across the PMEP to provide for all types of emergencies; it would not assist in remediating degraded water quality or preventing new degradation to provide and exception for all existing farms and situations where there are practical difficulties in constructing bridges or culverts, and there is already an exception for

[34] Federated Farmers (425.76, .619 and .702).
[35] Dairy NZ (676.124).

entering onto or passing across a riverbed for livestock if there is no water flowing in the river that is sufficiently enabling.

48. The submitter conceded at the hearing, following questioning from Commissioner Faulkner, that the relief sought by Dairy NZ was not appropriate in the context of a rule about ***entering onto*** the bed as all the amendments related to ***crossing over*** the bed.[36]

49. Overall, it was the report writers' conclusion that if the exceptions to the exclusion of stock from riverbeds are allowed, the notified provisions would become essentially redundant and the protections for water quality they seek to provide would be lost'.[37]

50. The report writers, however, reconsidered their view of DOC's submission that lakes and Significant Wetlands are added to the Prohibited Activity rules.[38] On the basis that if sheep are not to be included in the definition of 'intensively farmed livestock' (except where breakfed), they recommended that Significant Wetlands and lake beds may be added to the rules in the Rural and Coastal Environment Zones, but only lake beds be added to the General Rules as the relevant section as activities relating to wetlands are not regulated through the general rules. These rules relating to wetlands, which are identified on the zone maps, appear in the relevant zone provisions.[39]

**Consideration**

51. The Panel reassessed the report writers' recommended rejection of DOC's (and MEC's[40]) submission points which stated that Council's approach to wetlands was 'purposeful' and the result of a consultative process (with the submitter DOC originally providing no information to counter the Council's approach). The report writers had previously acknowledged there may be some benefit to lakes if stock are excluded fully, but there would be a significant change in the rules as a result, with potentially significant associated costs.[41]

52. We note that the report writers had earlier acknowledged in addressing DOC's submission that 'Marlborough does not have many lakes'[42]and given that reality, expensive fencing may not be an issue, provided native plant screening as another screening method may be available.

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[36] Section 42A Report, Reply to Evidence, page 20.
[37] Section 42A Report, paragraph 142.
[38] DOC (479.177, .179, .214 and .237).
[39] Section 42A Report, paragraph 117 and Reply to Evidence, page 21.
[40] MEC (1193.126 and .127).
[41] Section 42A Report, paragraph 137.
[42] Section 42A Report, paragraph 49.

53. As lakes and Significant Wetlands both require protection from the effects of stock access because of the adverse effects on water quality and sediment effects from the disturbance to the beds the Prohibited Activity rules should apply. Accordingly, we adopt the report writers' recommendation to include Significant Wetlands and lake beds in Rules 3.7.4 and 4.7.4 and include lakes in Rule 2.11.4, as set out in the Reply to Evidence.

54. As to Fonterra's request to introduce a new definition of an 'active bed of a river', the Panel was not persuaded that that was necessary and agreed with the report writer that it could result in ambiguity.

**Decision**

55. Rule 2.11.4 is amended as follows:

*From 9 June 2022, permitting intensively farmed livestock to enter onto* <u>*the bed of a lake or*</u> *the bed of a river when there is water flowing in the river.*

56. Rules 3.7.4 and 4.7.4 are amended as follows:

*From 9 June 2022, permitting intensively farmed livestock to enter* <u>*onto the bed of a lake, into a Significant Wetland, or*</u> *onto the bed of a river when there is water flowing in the river.*

### Prohibited Activity Rules 2.11.5, 3.7.5 and 4.7.5

**From 9 June 2022, permitting intensively farmed livestock to pass across the bed of a river when there is water flowing in the river.**

57. Most of the submissions on Rules 2.11.5, 3.7.5 and 4.7.5 are exactly the same as submissions on Rules 2.11.4, 3.7.4 and 4.7.4 so, for efficiency, they have been referenced in the section above on Rules 2.11.4, 3.7.4 and 4.7.4, and not repeated again here. The submissions below are the ones lodged that were different but from the same submitters on Rules 2.11.4, 3.7.4 and 4.7.4, or from submitters who did not lodge submissions on Rules 2.11.5, 3.7.5 and 4.7.5.

58. NZ Deer Farmers lodged submissions on 2.11.4, 3.7.4 and 4.7.4 but its submissions lodged under Rules 2.11.5, 3.7.5 and 4.7.5 are different.[43] It seeks the removal of the rules relating to their submissions in their entirety. This approach is taken on the grounds that where livestock need to be shifted from one paddock to another and this requires crossing a waterbody, the level of risk is much lower, particularly for deer. Under the water quality guidelines for *Escherichia coli* and Dissolved Reactive Phosphorus,[44] the submitters submitted that a mob of 400 deer took only 3 minutes to cross the Waimea Stream in Southland. This exercise caused the water quality guidelines to be exceeded but over the course of the day, as suspended

[43] NZ Deer Farmers (991.6, .7 and .8).
[44] Australian and New Zealand Guidelines for Fresh and Marine Water Quality - October 2000.

sediment and ammonium nitrogen did not exceed the guidelines, the increase was negligible.[45]

59. NZ Deer Farmers asserted that where deer were not excluded from waterways, the activity had a transient environmental impact on water quality. The submitter identified that deer farming does not rely on frequent (daily) stock movements along dedicated routes. Stock movement tends to be actively managed for the purposes of feeding (movement between paddocks) or annual or infrequent movements to the deer shed (for example, for velveting, Tb testing if required, pregnancy scanning, sorting stock for slaughter). In these cases, deer move quickly through waterways (typically at set crossing points).[46]

60. With regard to the removal of rules 2.11.5, 3.7.5 and 4.7.5, the submitter is of the opinion that this matter needs to be addressed in relation to the definition of 'intensively farmed livestock'.

**Section 42A Report**

61. The report writers agree the matters raised by NZ Deer Farmers are best dealt with in relation to the definition of 'intensively farmed livestock'.[47]

62. The other submissions, from S Tripe, Beef and Lamb and P Bown[48] are recommended to be rejected for the following reasons:

- The submitter S Tripe has not provided any evidence to support his assertions that his activity minimal impact or his inference that there is no difference between farming beef cattle and farming dairy cattle. It would not be appropriate for Rule 2.11.5 to be removed from the PMEP as that would not give effect to the higher provisions of the PMEP, national directions relating to freshwater quality nor the relevant provisions of the RMA.

- The definition for 'intensively farmed livestock' provides for the differences between beef and dairy cattle, and Beef and Lamb's statement that these Prohibited Activity rules will provide no environmental benefit is not substantiated by any evidence. The relief sought by P Bown would not give effect to the higher provisions of the PMEP,

[45] Section 42A Report, paragraph 156.
[46] Ibid.
[47] Section 42A Report, paragraph 160.
[48] S Tripe (132.1), Beef and Lamb (459.40, .41 and .42), P Bown (299.1).

national directions relating to freshwater quality nor the RMA, and it is not appropriate to amend any provisions in the PMEP to provide for emergency situations.[49]

63. The evidence provided by Federated Farmers, Forest and Bird, Fish and Game and many others named in the Reply to Evidence provided no reason for change to recommendations originally set out in the Section 42A Report.[50] DOC's evidence was the same as earlier provided for rules 2.11.4, 3.7.4 and 4.7.4.

64. In the amended Reply to Evidence the report writers again reconsidered their evidence and again included lakes and Significant Wetlands for the Rural and Coastal Environment Zones in the Prohibited Activity rules as a result of DOC's evidence.

**Consideration and decision**

65. Rules 3.7.5 and 4.7.5 are amended as follows:[51]

*From 9 June 2022, permitting intensively farmed livestock to pass across the bed of a lake, a Significant Wetland or the bed of a river when there is water flowing in the river.*

66. Rule 2.11.5 is amended as follows:[52]

*From 9 June 2022, permitting intensively farmed livestock to pass across the bed of a lake or the bed of a river when there is water flowing in the river.*

## Standards 2.9.9.1, 3.3.21.1 and 4.3.20.1

**The entering onto or passing across the bed of a river of livestock must not involve intensively farmed livestock if there is water flowing in the river.**

67. The submissions to these rules were similar to the earlier DOC submissions where the submitter sought the addition of lakes and wetlands but also the coastal marine area to be included for the exclusion of intensively farmed livestock in 3.3.21.1 and 4.3.20.1.

68. In submissions, Forest and Bird seeks to reword the standards for clarity, and to add lake, wetlands and coastal marine area to the standards. The report writers recommended rejection of all submissions, including Forest and Bird, for not providing information in support, or identifying the reasons for broadening of the provisions.[53]

[49] Section 42A Report, paragraphs 160-163.
[50] Section 42A Report, Reply to Evidence, page 26.
[51] Section 42A Report, Reply to Evidence, page 25.
[52] Section 42A Report, Reply to Evidence, page 26.
[53] Section 42A Report, paragraph 245.

69. Forest and Bird in evidence again sought the addition of lakes and wetlands and any part of the coastal marine area to standards 3.3.21.1 and 4.3.20.1.[54] The submitter also seeks the retention of Standard 2.9.9.1 as notified.

**Section 42A Report**

70. The report writers identify the submitter did not seek the addition of wetlands, lakes and CMA to the Prohibited Activity rules that apply to intensively farmed livestock, so on that basis, if the amendments sought by Forest and Bird were granted, then non-compliance with the relevant standards with regard to wetlands, lakes and coastal marine areas would be a Discretionary Activity.

71. The rules these standards are associated with, however, enable stock access to rivers only, they do not enable stock access to wetlands, lakes or the CMA. And, there are no other Permitted Activities in the PMEP that do. Therefore, under the default rules 2.10.2 (lake), 3.6.11 and 4.6.12 (wetlands), and 16.6.7 (coastal marine area), stock access to lakes, wetlands and coastal marine areas is a Discretionary Activity.

72. On this basis, the ultimate relief sought by the submitters is already provided for in the PMEP, in fact the PMEP goes further and does not permit ***any*** stock access to a lake, wetland or coastal marine area.[55]

73. The Panel also notes that stock access to wetlands through or on land zoned Open Space 3 has not been addressed by the submitter or the report writer. However, the need for controls on stock access on land zoned Open Space 3 was addressed in Topic 7 (see later in this decision). It is appropriate there is a consistent approach to managing stock access regardless of tenure/management. For this reason, the Panel has made a consequential change to also include a discretionary activity rule in Chapter 19 of Volume 2.

**Consideration and decision**

74. The relief sought is ultimately already provided for through the default Discretionary Activity provisions. Notwithstanding the implicit legal position by virtue of the cascade of rules, the very fact of this submission being made, leads the Panel to conclude the explicit rules should be included in the Plan for clarity.

75. In Topic 7 the report writer recommended the addition of a new permitted activity rule and associated standards to regulate stock access to rivers in Open Space 3 Zone. The Panel has adopted that recommendation. As a consequence of considering the matter above, it is clear

[54] Forest and Bird (715.394 and .436).
[55] Section 42A Report, Reply to Evidence, page 32.

to the Panel that an equivalent discretionary activity rule is also warranted for the Open Space 3 Zone for consistent management and to manage the potential adverse effects on water quality.

76. A new Discretionary Activity rule is inserted under heading 2.10as follows:

*[R]*

*2.10.3 Livestock entering onto or passing across the bed of a lake.*

77. A new Discretionary Activity is inserted as 3.6.13, 4.6.14 and 19.4.2 as follows:

[R]

Lives*tock entering into or passing across a Significant Wetland.*

78. A new Discretionary Activity rule is inserted under heading 16.6 as follows:

[C]

16.6.12 Lives*tock entering into the coastal marine area.*

## Open Space 3

79. In Topic 7, the request made by the Council to add livestock access provisions in the Open Space 3 Zone was considered. The decision on this submission point is addressed in this decision for completeness.

**Section 42A Report**

80. The report writer recommended a permitted activity rule and corresponding standards regulating livestock access to rivers flowing through land zoned Open Space 3.

**Consideration**

81. On reference to the zoning maps in Volume 4 it is common for public land adjacent to rivers[56] to be zoned Open Space 3. These areas can be extensive in a South Marlborough context running along many of the larger river systems. And typically the land bordering the Open Space 3 is farmland. It is therefore reasonable to assume that stock could access rivers via land zoned Open Space 3. The recommendation of the report writer is therefore appropriate in order to ensure a consistent approach to managing the effect of stock access to rivers.

**Decision**

82. Insert a new Permitted Activity rule:

[R]

3.1.21. Livestock entering onto, or passing across, the bed of a river.

[56] Crown land administered by LINZ or DOC or land administered by the Council

*3.3.21. Livestock entering onto, or passing across, the bed of a river.*

*3.3.21.1. The entering onto or passing across the bed of a river of stock must not involve intensively farmed livestock if there is water flowing in the river.*

*3.3.21.2. After reasonable mixing, the entering onto or passing across the bed of a river by livestock must not cause any conspicuous change in the colour or natural clarity of a flowing river due to sediment or sediment laden discharge originating from the activity site.*

*3.3.21.3. After reasonable mixing, the entering onto or passing across the bed of a river by livestock must not result in the water quality of the river exceeding the following:*

*(a) 2mg/l carbonaceous $BOD_5$;*

*(b) 260 Escherichia coli (E. coli)/100ml*

## Definitions

### Intensively farmed livestock

83. The definition of 'Intensively farmed livestock' in the notified plan is as follows:

> ***Intensively farmed livestock** means:*
>
> *(a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops;*
>
> *(b) dairy cattle;*
>
> *(c) farmed pigs.*

84. There have been many submissions received on this definition and the content of this definition is significant as it determines what for some is the difference between a Permitted and a Prohibited Activity.[57]

85. Two submissions support the definition and seek its retention as notified.[58]

#### Section 42A Report

86. While the report writers have individually assessed the submissions on the definition of 'intensively farmed livestock', given the divergent views on the matter, a summary seems appropriate, along with their overall view on the definition. No single submission sought

[57] S and R Adams (321.4), BRIL (462.41), Willowgrove Dairies Ltd (1237.5), Middlehurst Station Ltd (970.24), Beef and Lamb (459.68), Federated Farmers (425.404), G Barnett (1258.1), Flaxbourne Settlers Association (712.21), S MacKenzie (1124.20), NZ Deer Farmers (991.1), V and D Wadsworth (201.4), J Stevens (256.1 and .3), K Loe (454.64), Fonterra (1251.91), Fish and Game (509.4), J Hickman (455.68), G Mehlhopt (459.68), Landcorp (294.1), B and C Leov submissions (340.1, .2 and .3).

[58] Wilhelmus/Ormond (1035.2) and Forest and Bird (715.424).

specific relief that the report writers recommend should be accepted as a result of submissions.

87. The submissions on '(a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops' seek the following:

- removal of (a) entirely;
- removal of 'grazed on irrigated land or';
- removal of 'deer; and
- an exclusion in (a) for short-term breakfeeding.

88. The submissions on '(b) dairy cattle' seek the following:

- amend to read '(b) dairy cattle located on milking platforms';
- amend to read '(b) lactating dairy cattle; and
- amend to read '(b) dairy cattle (excluding adult cattle).

89. There are no submissions seeking change or removal of '(c) farmed pigs' from the definition.

90. Other submissions sought the following changes:

- essentially remove the definition as the provisions should apply to all stock;
- add all stock except low density sheep;
- add sheep;
- add lowland beef cattle.

91. After assessing the submissions, the report writers did not provide a firm recommendation on what the definition for 'intensively farmed livestock' should be at the time of writing the Section 42A Report. However, the following views were expressed at the outset of the Reply to Evidence when the definition of 'intensively farmed livestock' was again addressed:

- The general consensus seems to be that (a) as it relates to breakfeeding for beef cattle should remain and the writers agree with this.
- With regard to deer, the writers are of a view that in higher densities and where wallowing may occur there are concerns that need to be addressed, but perhaps there are alternatives to the current provision in (a).

- The writers do not agree with the removal of the term 'grazed on irrigated land' unless it is replaced by some alternative method of capturing higher density stock numbers.
- With regard to (b), the writers do not agree with adding 'lactating' or excluding adult dairy cattle. The writers may be open to relating (b) to a milking platform, if dairy cattle that are off the milking platform are still picked up where in higher densities.
- The report writers do not agree with the provisions applying to all stock, however consider that there may be some merit in including sheep in some manner and potentially all beef cattle (not just on irrigated land) in lowland areas.[59]

92. Multiple submitters presented on the relative effect on water quality of different livestock managed under different circumstances. In the Reply to Evidence post hearing summary, the report writers provided the following:[60]

- *No specific recommendation was given in the s42a, however after hearing the evidence we offer the following –*

  *(a) is amended to remove deer on irrigated land;*

  *(a) is amended to separate out the break fed component, which remains applicable to beef and deer for winter feeding but also has sheep added for breakfeeding at any time;*

  *The remainder of (a) is either retained as beef grazed on irrigated land but 'irrigated land' is defined, or 'on irrigated land' is replaced with beef grazed on 'lowland areas' and lowland areas are mapped in the MEP;*

  *(b) is retained as notified;*

  *(c) is amended to add waterfowl.*

- *With all the above taken into account, the amended definition for Intensively Farmed Livestock would be –*

  *means:*

  *(a) cattle grazed on irrigated land [defined] OR cattle grazed on lowland areas [mapped];*

  *(b) dairy cattle;*

  *(c) farmed pigs, and waterfowl;*

[59] Section 42A Report, paragraphs 92, 95-99.
[60] Section 42A Report, Reply to Evidence, pages 16-17.

*(d) cattle and deer contained for breakfeeding of winter feed crops;*

*(e) sheep contained for breakfeeding.*

- *Changes to other provisions to reflect the above –*

  *A new Discretionary Activity in Chapters 2 (riverbed rules), 3 and 4 – Deer entering onto, or passing across, the bed of a river.*

  *Amend Standards 2.9.9.1, 3.3.21.1 and 4.3.20.1 as follows – The entering onto or passing across the bed of a river ~~of~~ bystock must not involve intensively farmed livestock or deer if there is water flowing in the river.*

**Consideration**

93. After considering the recommended options provided by the report writers, (which inter alia involved suggestions of considering a definition of 'irrigated land' or use of 'lowland areas' with those being mapped in the MEP), the Panel concluded those were not workable outcomes for a definition to be used in a prohibited status activity rule. Such rules require clear unambiguous language so that farmers have clear direction as to what they are prohibited from doing with their stock, and are not placed at risk through ambiguity.

94. The Panel is concerned that if it now attempted such a definition of 'irrigated land', or attempted to map 'lowland areas', (which at this late stage could only be done at a broad scale), each of those alternatives could result in ambiguity or uncertainty when applied in the field in particular situations or particular locations.

95. Furthermore, no suggested wording has been provided for a definition of 'irrigated land', and no indicative mapping of 'lowland areas' has been provided in the original s.42A report or the notified Plan upon which submitters could have responded.

96. The final point in those recommended options for consideration which the Panel does not accept relates to the suggested inclusion of 'waterfowl'. The Panel did not receive any detailed evidence as to that activity sufficient to warrant trying to analyse its effects, or the practical workability of fencing of waterfowl out of waterbodies, so it decided not to include them in the definition.

97. The Panel concluded, however, that parts of the suggested changes by the report writers required further consideration as to each type of stock involved:

    *Beef cattle, deer and sheep – recommended to be included but only if being breakfed*

    *Dairy cattle – recommended to be included at any time*

*Farmed Pigs – recommended to be included at any time*

98. It is timely at this stage to once again set out the notified version of the definition in the Plan which was:

***Intensively farmed livestock** means:*

*(a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops;*

*(b) dairy cattle;*

*(c) farmed pigs.*

99. The final recommended version in the Reply to Evidence, therefore, no longer retains reference to breakfeeding on 'winter feed crops'. We accept that the key point is that it is the activity of 'containing' stock for 'breakfeeding' which causes the intensification of stock at a particular location. It is that intensification of beef cattle, deer or sheep, which increases the adverse effects on water quality if stock have access to water bodies, as compared to extensive grazing of those classes of stock. So we accept that change because the actual nature of the breakfeed crop is not the determining factor.

100. Two further minor drafting matters need attention. The recommended version in error has transposed the 'breakfeeding' to a location at the front of the definition –

*(a) breakfeeding of cattle, deer or sheep;*

101. The definition is one of stock, not breakfeeding, so the Panel has reverted to the notified wording which correctly addresses the type of stock being 'contained for breakfeeding'. The final point to be made is that the word 'farmed' is unnecessary before 'pigs', as the phrase 'intensively farmed livestock' already has that word 'farmed' in it.

**Decision**

102. The definition for 'Intensively Farmed Livestock' is amended as follows:

***Intensively farmed livestock** means:*

~~*(a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops;*~~

*(a) ~~breakfeeding of~~ cattle, deer or sheep which are contained for breakfeeding;*

*(b) dairy cattle;*

*(c) ~~farmed~~ pigs.*

# Proposed Marlborough Environment Plan

## Topic 13: Resource Quality (Air)

**Hearing dates:** 12 – 14 November 2018

**S42A Report Writer:** David Jackson

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| AAQG | Ambient Air Quality Guidelines |
| PMEP | Proposed Marlborough Environment Plan |
| LUC | Land Use Capability |
| MDC | Marlborough District Council |
| MfE | Ministry for the Environment |
| MOH | Ministry of Health |
| NES | National Environmental Standards |
| NESAQ | National Environmental Standards for Air Quality |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| BRRA | Blenheim Residents and Ratepayers Assoc |
| FENZ | Fire and Emergency New Zealand |
| Hort NZ | Horticulture New Zealand |
| NMDHB | Nelson Marlborough District Health Board |
| NZDF | New Zealand Defence Force |
| NZTA | New Zealand Transport Agency |

# Resource Quality - Air

## Method 15.M.28 Incentives

**Consideration will be given to assisting landowners to replace open fires and older style enclosed burning appliances and to make energy efficient improvements. This may require approaches to central government and the Energy Efficiency and Conservation Authority for greater financial assistance with offering incentives.**

1. Method 15.M.28 provides that the Council will consider assisting landowners to replace open fires and older woodburners and to make energy efficient improvements.

2. Two submitters are concerned about the impact of the fire and burner bans in Blenheim on low and/or middle income households and financial support for that transition.[1] Another submitter supports the provision in part. She says there is talk of incentives but nothing concrete. She is concerned that seniors will end up sitting in the cold rather than using electricity, and that low income families will not be able to afford electric heating if their fires are non-compliant. She also wants education on the alternatives offered.[2]

3. Submitter Woodburners Unite, a community group, opposes the method. It considers that the Council could work to incentivise people to replace older burners using a number of strategies, such as changing to a heat pump. They seek the following be added to the method:

   *Other incentives could include allowing costs to be applied to rates or providing subsidies and/or waiver of permits or free expert advice on best options to suit their dwelling.*

**Section 42A Report**

4. The report writer identifies that the Council has a financial assistance scheme in place for approved 'clean' home installation (NES compliant woodburners, pellet burners, heat pumps or flued gas heaters). This provides the homeowner with the means to install a new heating appliance at no upfront cost by a targeted rates scheme. Payments back would be over a nine year period, with interest as a targeted rate on the affected property.

5. In the report writer's opinion these schemes meet the requirement to provide assistance to homeowners having to change their heating (including by installing or upgrading insulation). Nonetheless since the schemes exist, the report writer considers that the wording in 15.M.28 could be changed from 'Consideration will be given to assisting landowners' to reflect the actual situation, such as 'The Council will provide assistance to landowners …'.

---

[1] Woodburners Unite (1239.5), Blenheim Residents and Ratepayers Assoc (BRRA) (573.1) (submitting on Objective 15.2).

[2] Jessica Bagge (227.3).

6. The report writer considers the amended wording would resolve the uncertainty around financial assistance that concerned Ms Bagge. The Woodburners Unite proposal is already in process - captured in the more general wording of Method 15.M.28. Additional wording is therefore not needed, nor is further change in the wording required.

7. Nevertheless, to provide more assurance to homeowners and for the reasons given, the amended wording is recommended as follows:

> *~~Consideration will be given to assisting~~ Council will provide assistance to landowners to replace open fires and older style enclosed burning appliances and to make energy efficient improvements. This may require approaches to central government and the Energy Efficiency and Conservation Authority for greater financial assistance with offering incentives.*

**Consideration**

8. Submitters are concerned about the impact of prohibitions such as banning fires on low and middle income householders and seek financial assistance from the Council.

9. The Panel considered that it is appropriate for the Council to assess methods to assist landowners in replacing open fires[3].

**Decision**

10. Method 15.M.28 is amended as follows:

> *~~Consideration will be given to assisting~~ Council will consider methods to assist landowners ~~to replace~~ in replacing open fires and older style enclosed burning appliances and to make energy efficient improvements. This may require approaches to central government and the Energy Efficiency and Conservation Authority for ~~greater~~ financial assistance with offering incentives.*

## Policy 15.2.2

**Phase out small scale solid fuel burning appliances older than 15 years of age within the Blenheim airshed.**

*This policy recognises that the efficiency of solid fuel burning appliances decreases with time and ceases to be efficient after 15 years. Modelling has shown that the NESAQ will be achieved by 2016 if, in conjunction with the prohibition on open fires and outdoor burning of rubbish, older style enclosed burning appliances are replaced at the end of their 15 year life. This policy seeks to ensure that this phase out occurs by encouraging people to either replace existing solid fuel burning appliances with modern and compliant solid fuel burning appliances or install other clean forms of heating (e.g.*

[3] Gary Jones (467.1), BRRA (573.1).

*electric). The Council retains records of the installation of fuel burning appliances and the priority for action will be those solid fuel burning appliances installed prior to 2001 (i.e. 15 years prior to 2016).*

*Measures included in Chapter 18 - Energy in promoting and encouraging energy efficient dwellings, including passive heating, will also assist in this regard.*

11. One submitter supports the policy and one opposes it. NMDHB supports the policy in part (and associated Rules 5.5.5 and 12.5.3), noting that the explanation to the policy identifies that the NESAQ will be able to be met in 2016 if older enclosed burners are replaced (in conjunction with the prohibition on open fires and outdoor burning). But the date needs to be revised, given that Rule 12.5.3 does not prohibit the use of older woodburners until mid-2017.[4]

12. The Chamber of Commerce supports the policy in part while urging the Council to provide incentives to make it affordable for homeowners to make the transition to cleaner heating through rates relief and provision of heating appliances at low cost.[5]

13. Lisa Collinson also supports the policy in part. She is concerned about the impact on superannuates and wants the policy to be amended as follows: *Phase out small scale solid fuel burning appliances ~~older than 15 years of age~~ <u>as they need replacing</u> within the Blenheim Airshed.* She also implies subsiding the cost of changing heating, or providing interest-free loans that can be repaid when a property is sold.[6]

14. Allister Leach opposes the policy.[7] He believes this provision would create too great a financial burden on most residents with wood burners older than 15 years old. He would like to see this provision revised to allow such log burners to be used until they need replacing as being faulty and then required to be replaced with a compliant low emission log burner and would like to see Council educating the public on the correct use of log burners, such as the use and sale of dry wood. He too is concerned about the impact on older or low-income people who might end up not using any form of heating, to the detriment of their health. This is why he seeks the deletion of the policy and of Rule 5.3.19.1.[8]

**Section 42A Report**

15. The report writer supports the requested change to the explanation, as phasing out of non-compliant facilities 'by 2017' would be more accurate. The open fire phase-out and outdoor

[4] NMDHB (280.30).
[5] Chamber of Commerce (961.77).
[6] Lisa Collinson (444.1).
[7] Allister Leach (135.2).
[8] Section 42A Report, paragraph 188.

burning ban had effect from the start of winter 2016 (9 June) but, as a submitter notes, the ban on older burners would not occur until the beginning of the following winter, so the full impact on emissions would not occur until 2017.

16. The report writer does not support the wording change to the policy as sought by Ms Collinson. This change would have burners replaced just by natural attrition, when they either wore out or the homeowner decided to replace them. Modelling demonstrated that without a mandatory phase-out date of 15 years after installation, $PM_{10}$ concentrations would not fall enough to meet the NESAQ.

17. The report writer points out that the Council-targeted rates schemes to assist with burner replacement and insulation, while not interest-free, provide for improvements without any upfront cost to the homeowner and with only modest repayments over nine years or sooner in some cases if the house is sold. Even with the best operation, older burners do not have the necessary design features to achieve emissions low enough to deliver ambient air quality in compliance with the NESAQ.[9]

18. The report writer observes that the NESAQ regulates standards for woodburners on properties less than 2 hectares in area. However, this policy is aimed at multi-fuel appliances which are not subject to the NESAQ, requiring them to meet similar standards. New appliances include multi-fuel burners that replace other fires and burners, so no change to the policy is needed. The explanation also makes it clear that the policy does not apply just to the early phase-outs under the plan.[10]

19. The report writer initially recommended that Policy 15.2.2 be retained as notified, providing the second sentence of the explanation to the policy is amended as follows:

> *Modelling has shown that the NESAQ will be achieved by ~~2016~~ 2017.*

20. Woodburners Unite, at the outset, had sought the deletion of the prohibition Rule 5.5.5 which is the rule that implements Policy 15.2.2.[11] The group sought that the ban on the use of burners 'older than 15 years' should be removed for otherwise there would be significant economic and social costs involved. The group is also concerned about the health implications of the proposed prohibition and, like other submitters, is concerned with the impact of the

[9] Section 42A Report, paragraphs 187, 189.
[10] Section 42A Report, paragraph 194.
[11] Woodburners Unite (1239.3). Rule 5.5.5 unamended refers: From 9 June 2017 the discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance (except a pellet burner) that has been installed for more than 15 years.

rules relating to fuel-burning appliances throughout the Urban Environment 1 and 2 Zones and also the Blenheim Air Shed.

21. As a result of the Woodburners Unite submission on Rule 5.5.5, the report writer, in addressing other prohibited activity rules, together with the various permitted activity standards, recommended various further policy and rule changes. One of the further changes he suggested was to Policy 15.2.2 as a consequence of his suggested changes, so there would be no mismatch between that policy and the amended new rules or standards.

**Consideration**

22. The Panel concluded it was important to clarify the prohibition of woodburning facilities aged 15 years and older within the Blenheim Airshed, as set out in Policy 15.2.2. We agreed there would be significant economic and social costs if the policy and rules did not change. We find there is scope within the submissions by Woodburners Unite and Allister Leach (135.2) to do this.

23. The report writer provided a further amendment to the policy, which the Panel accepts, as follows:

> *Policy 15.2.2 - Phase out <u>within Blenheim</u> small scale solid fuel burning appliances older than 15 years of age <u>that do not comply with the efficiency and emissions standards in the Plan</u> ~~within Blenheim~~.*
>
> *This policy recognises that ~~the efficiency of~~ <u>older</u> solid fuel burning appliances ~~decreases with time and ceases to be efficient~~ <u>have higher particulate emissions than more modern burners that comply with the standards in NESAQ and this Plan</u> ~~after 15 years~~. Modelling has shown that the NESAQ will be achieved by ~~2016~~ <u>2017</u> if, in conjunction with the prohibition on open fires and outdoor burning of rubbish, older style enclosed burning appliances are replaced at the end of their 15 year life. This policy seeks to ensure that this phase out occurs by encouraging people to either replace existing solid fuel burning appliances with modern and compliant solid fuel burning appliances or install other clean forms of heating (e.g. electric). The Council retains records of the installation of fuel burning appliances and the priority for action will be those solid fuel burning appliances installed prior to 2001 (i.e. 15 years prior to ~~2016~~ <u>2017</u>).*
>
> *Measures included in Chapter 18 - Energy in promoting and encouraging energy efficient dwellings, including passive heating, will also assist in this regard.*

24. The Panel considers that to be absolutely precise as to the location to which this policy relates, the words 'within the Blenheim Airshed' be reinstated from the report writer's further

amended draft, as sought by Woodburners Unite, to the end of the policy as originally identified in the notified version of the PMEP.

25. The report writer also recommends that the Panel consider including (for the sake of clarity of his amended rule and standards where a lot hinges on the age of the burner) a definition of 'installed'. He was concerned that the relevant date at which replacement is needed and prohibition could be uncertain. Consequently, the change of focus in Policy 15.2.2 and the standards and rules need to identify the meaning of 'install'. A draft of the definition of 'installed' was offered.[12] This is further addressed at the end of this topic decision.

**Decision**

26. As a consequence to the change in Rule 5.5.5 the policy also requires amendment so there is not a mismatch with the rule. Policy 15.2.2 is amended as follows:

*15.2.2 Phase out small scale solid fuel burning appliances older than 15 years of age that do not comply with the efficiency and emissions standards in the Plan within the Blenheim Airshed.*

27. The explanation to Policy 15.2.2 is amended as follows:[13]

*This policy recognises that ~~the efficiency of~~ older solid fuel burning appliances ~~decreases with time and ceases to be efficient~~ have higher particulate emissions than more modern burners that comply with the standards in NESAQ and this Plan ~~after 15 years~~. Modelling has shown that the NESAQ will be achieved by ~~2016~~ 2017 if, in conjunction with the prohibition on open fires and outdoor burning of rubbish, older style enclosed burning appliances are replaced at the end of their 15 year life. This policy seeks to ensure that this phase out occurs by encouraging people to either replace existing solid fuel burning appliances with modern and compliant solid fuel burning appliances or install other clean forms of heating (e.g. electric). The Council retains records of the installation of fuel burning appliances and the priority for action will be those solid fuel burning appliances installed prior to 2001.*

## Rule 5.5.5

**From 9 June 2017 the discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance (except a pellet burner) that has been installed for more than 15 years.**

**And**

## Rule 5.1.26

[12] Section 42A Report, Memorandum – questions relating to officer's reply to evidence, Appendix 1, paragraphs 3-4, 9 April 2019.

[13] Ibid.

**Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that is up to 15 years of age (except an enclosed pellet burner), or an enclosed pellet burner of any age installed prior to 9 June 2016.**

28. A number of submitters request: the ban date changed from 2017 to 2020;[14] the rule be deleted – woodburners should be permitted until they need replacing and wetback fireplaces should be exempt from any restrictions as they heat water as well as the house, reducing power consumption;[15] after 15 years the efficacy and safety of the installed burner could be certified by an accredited installer on a yearly basis;[16] opposition to the outright banning of burners older than 15 years;[17] a longer phase-in (5-7 years) for the replacement of burners installed prior to 2000 and the lifespan of post-2000 burners extended to 20-25 years.[18]

**Section 42A Report**

29. In the Reply to Evidence, the following recommendations were made by the report writer:

> *Prohibited Rule 5.5.5 - From 9 June 2017 the discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005) that has been installed for more than 15 years.*

30. Other rule changes to remove the restriction on the use of PMEP-compliant woodburners and pellet burners, following on from the changes to Rule 5.5.5:

> *Permitted activity rule 5.1.25 - Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that at 9 June 2016 was ~~is~~ 15 years of age or older (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).*
>
> *Permitted activity rule 5.1.26 - Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that was installed prior to 9 June 2016 and that is up to 15 years of age (except an enclosed pellet burner, or an enclosed woodburner installed after 1 September 2005) ~~or an enclosed pellet burner of any age installed prior to 9 June 2016.~~*
>
> *Permitted activity rule 5.1.26A - Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed after 1 September 2005.*

[14] Tim Newsham (1173.3).
[15] Woodburners Unite (1239.3).
[16] Peter Gilbert (1017.10).
[17] Jessica Bagge (227.4).
[18] Wayne Gander (191.1).

*Permitted standard 5.3.19 - Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that at 9 June 2016 was ~~is~~ 15 years of age or older (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005).*

*5.3.19.1 The continued use of the specified appliance is only permitted until 9 June 2017.*

*5.3.19.2 The appliance must burn only fuels approved for use in the appliance.*

*5.3.20 Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that was installed prior to 9 June 2016 and that is up to 15 years of age (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005), ~~or an enclosed pellet burner of any age installed prior to 9 June 2016~~.*

*5.3.20.1 The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.*

*5.3.20.2 The appliance must only burn fuels approved for use in the appliance.*

*5.3.20A Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed between 2 September 2005 and 9 June 2016.*

*5.3.20A.1 The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.*

*5.3.20A.2 The appliance must only burn fuels approved for use in the appliance.*

**Consideration**

31. The Panel queried the report writer's changes to the permitted activity rules and standards, including the addition of the wording 'was installed prior to 9 June 2016', seeking the relevance of those words in terms of the application of the words and the implications of not including the addition.[19]

32. The response from the report writer identified that the Plan as notified has a rule structure (for example, 5.1.26/5.3.20 and 5.1.27/5.3.21) that differentiates between appliances installed before the PMEP was notified and after. While the phrase 'was installed prior to 2016' complicates the rules (as recommended in the report writer's evidence Appendix 1), he

[19] Minute 58 of the Panel. .

believes removing the phrase could lead to unintended consequences and uncertainty in rule interpretation.[20]

33. The report writer concluded that separating the NES-compliant woodburners (and pellet fires) from other non-compliant burners for amendment within the permitted rules and standards was becoming complicated to read, so he split out the two and created a new permitted activity rule and standards labelled 'A' for existing pellet burners.[21]

34. Removing the words 'installed prior to 9 June 2016' in Rule 5.1.26A (and related Standard 5.3.20A) in the report writer's opinion would affect its operation and introduce uncertainty to the rules. Removing the words would mean that all pellet burners, including new ones being installed, would not have to meet the emissions and efficiency standards. The report writer's recommendation is that Rule 5.1.26A remains as amended above for the reasons given.

35. After considering the report writer's responses to this and other rules and standards, the Panel decided:

- to add woodburners installed after the words 1 September 2005 to the exemptions in the existing rules/standards as set out in Appendix 1 to the Reply to Evidence;
- to add a new permitted activities rule to permit discharges from enclosed pellet burners installed prior to 9 June 2016 or enclosed burners installed after 1 September 2005 as set out in Appendix 1 to the Reply to Evidence (recommended 5.1.26A, 6.1.17A, 9.1.17A, 10.1.15, 21.1.26A);
- to add standards for a new permitted activity as set out in Appendix 1 to the Reply to Evidence (recommended 5.3.20A, 6.3.11A, 9.3.11A, 10.3.11A, 12.3.15A);
- to remove the words 'was installed prior to 9 June 2016' from the recommended wording for 5.1.26, 6.1.17, 10.1.15, 12.1.26, 5.3.20, 6.3.11, 9.3.11, 10.3.11, 12.3.15 only (that is, do not remove from recommended new permitted activity rule to pellet burners, discussed in greater detail in response to Minute 58 as set out above).

36. The report writer identified out that the words 'installed prior to 9 June 2016 could be removed but explained:

> *If in the future a multi-fuel (coal or wood) appliance was created that met the MEP Appendix 8 emissions and efficiency standards (there are currently no such appliances that do) then under the revised rule, such a MEP compliant multi-fuel burner would have*

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[20] Memorandum to the Panel, response from the report writer, paragraph 3.
[21] Section 42A Report, Reply to Evidence, page 43.

*to be replaced after 15 years. However, it is very unlikely that such an appliance will ever pass the MEP Appendix 8 requirements so very unlikely the 15-year phase out would affect any future multi-fuelled burners, and if it did, it would most likely only be a handful of burners. Multi-fuelled burners could not be included in the exception (along with 'woodburners installed after 1 September 2005' as multi-fuel burners at that time, and since, have not been MEP emission compliant and therefore they do need to be replaced after 15 years and not exempted, unlike the compliant woodburners and pellet fires).*[22]

**Decision**

37. Prohibited Activity Rule 5.5.5 is amended as follows:

*5.5.5 - From 9 June 2017 the discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance (except an enclosed pellet burner or an enclosed woodburner installed after 1 September 2005) that has been installed for more than 15 years.*

38. Permitted activity rules 5.1.26, is amended as follows:

*Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in a small scale solid fuel burning appliance that is up to 15 years of age (except an enclosed pellet burner, or an enclosed woodburner installed after 1 September 2005) ~~pellet burner of any age installed prior to 9 June 2016~~.*

39. Identical consequential amendments are made to rules 6.1.17, 9.1.17, 10.1.15, 12.1.26 and 5.3.20, 6.3.11, 9.3.11, 10.3.11 and 12.3.15.

40. New permitted activity rules, to permit discharges from enclosed pellet burners installed prior to 9 June 2016 or enclosed woodburners installed after 2005, are inserted under 5.1.x, 6.1.x, 9.1.x, 10.1.x and 12.1.x as follows:

*Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed after 1 September 2005.*

41. Add new permitted activity standards under 5.3, and 6.3, 9.3, 10.3, 12.3 as follows:

*Discharge of contaminants to air within the Blenheim Airshed from the burning of solid fuel in an enclosed pellet burner installed prior to 9 June 2016, or an enclosed woodburner installed between 2 September 2005 and 9 June 2016.*

[22] Section 42A Report, Reply to Evidence, Memorandum in response to Minute 58, 9 April 2019, page 2.

*x.x.x.1 The appliance must comply with the stack requirements of Appendix 8 – Schedule 2.*

*x.x.x.2 The appliance must only burn fuels approved for use in the appliance.*

## Rule 12.5.3

**From 9 June 2017 the discharge of contaminants into air within the Blenheim Airshed from the burning of solid fuel in an enclosed wood, coal or other burner (except a pellet burner) that has been installed for more than 15 years.**

42. One submitter opposes the rule as it is concerned it would require the replacement of industrial plant (an industrial boiler) after it was 15 years old, even if it were still compliant in terms of emissions further noting that. If the rule is intended to apply to domestic heating, it should say so.[23]

**Section 42A Report**

43. The report writer considers the wording of the rule is confusing as to whether it applies to domestic-scale appliances, or to industrial size ones. It should use the same terminology as Rule 12.3.14, which is the related permitted activity standard that limits use of such fires beyond 9 June 2017. The prohibited rule should refer to 'small scale solid fuel burning appliances', as that is a clear defined term in the Plan, and the term is used elsewhere in similar or related rules. There is a need to refocus the rule on to small scale fuel burning appliances. If the wording is amended as recommended, the rule is consistent with similar rules in other zones.[24]

**Consideration**

44. The Panel accepts the recommendation of the report writer as provided. Changes need to be made consistent with (amended) Rule 5.5.5. In relation to that rule, the addition of the words 'woodburner installed after 1 September 2005' provides the exemption in the rule. The word 'enclosed' is also to be added to 'pellet burner' as a consequential change to Rule 5.5.5.

**Decision**

45. Prohibited Rule 12.5.3 is amended as follows:[25]

*12.5.3 From 9 June 2017 the discharge of contaminants into air within the Blenheim Airshed from the burning of solid fuel in ~~an enclosed wood, coal or other burner~~ a small scale solid fuel burning appliance (except an enclosed ~~a~~ pellet burner or an enclosed woodburner installed after 1 September 2005) that has been installed for more than 15 years.*

## Permitted Activity Rules – Fire Training, Fireworks and Film Special Effects

46. There is a permitted rule in several zones in the PMEP which read:

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[23] Timberlink (460.13).
[24] Section 42A Report, paragraph 282.
[25] Section 42A Report, paragraph 282, Reply to Evidence, page 11.

*Discharge of contaminants to air arising from the burning of materials for any of the following purposes:*

*(a) training people to put out fires;*

*(b) creating special smoke and fire effects for the purposes of producing films;*

*(c) fireworks display or other temporary event involving the use of fireworks.*

47. The permitted activity standard relating to the rule in most zones is:

*X.3.XX Discharge of contaminants to air arising from the burning of materials for any of the following purposes:*

*(a) training people to put out fires;*

*(b) creating special smoke and fire effects for the purposes of producing films;*

*(c) fireworks display or other temporary event involving the use of fireworks.*

*X.3.X.1 The Council must be notified at least 5 working days prior to the burning activity commencing.*

*X.3.X.2 Any discharges for purposes of training people to put out fires must take place under the control of the NZ Fire Service or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities.*

48. NZDF undertakes firefighting training at various locations in the district and requests the discharges to air associated with the training should be enabled in the district rules. It supports in part the permitted activity standards relating to firefighting activity and seeks:

- To undertake firefighting training at various locations in the district and request that it is provided for as a permitted activity with appropriate standards and named zones, that the wording in the standards wherever it appears in the Plan be amended to: *Any discharges for purposes of training people to put out fires must take place under the control of the NZ Fire Service, <u>the New Zealand Defence Force</u> or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities*.[26]
- In addition, for Rule 23.1.20 and Standard 23.3.7 in the Airport Zone, the submitter requests the ability to undertake controlled outdoor burning or deflagration of unwanted public or military ammunitions, munitions and pyrotechnics at Base

[26] NZDF (992.58, .59, .62, .63, .64, .70, .71).

Woodbourne. It is submitted this system is the safest practical option for disposing this unwanted material. The system is also sought as a permitted activity. It seeks the insertion of a new clause as follows: '(d) controlled outdoor burning or deflagration of unwanted public and military ammunitions, munitions and pyrotechnics undertaken by the NZ Defence Force.'[27]

**Section 42A Report**

49. The report writer supports the inclusion of the words 'New Zealand Defence Force' in the fire training standards throughout the Plan as this will remove any ambiguity from whether the existing words 'any other nationally recognised agency' includes the NZDF or not.

50. In terms of addressing a new clause to allow combustion of unwanted ammunition, munitions and pyrotechnics, this may be addressed in other relevant legislation as the report writer does not have enough information to make the required recommendation.[28]

**Consideration**

51. The report writer recommends and the Panel agrees the following wording should be added 'the New Zealand Defence Force' where the amended permitted activity standard appears in the Rural Environment, Coastal Environment, Urban Residential 1 and 2, Rural Living, Industrial 1 and 2, Port, Marina, Coastal Marine, Open Space 3 and Airport Zones, and that the same additional wording should appear if this permitted activity standard is added to any other zones as part of decisions on submissions:[29]

52. The Panel noted that the NZ Fire Service is also referred to in the standard, and there is a need to replace this in the standards (and elsewhere in the PMEP) where this occurs, with the title to the new legislation Fire and Emergency New Zealand (FENZ).

**Decision**

53. The following amendment is made in the permitted activity standard in the Rural Environment, Urban Residential 1 and 2, Rural Living and Open Space 3 Zones identified for the reasons given:[30]

*X.3.X.3 - Any discharges for purposes of training people to put out fires must take place under the control of ~~the NZ Fire Service,~~ Fire and Emergency New Zealand, the New Zealand Defence Force or any other nationally recognised agency authorised to undertake firefighting research or firefighting activities.*

[27] NZDF (992.70 and .71).
[28] Section 42A Report, paragraph 346.
[29] See new rules and standards set out in Section 42A Report, pages 66-69.
[30] Section 42A Report, paragraph 389.

54. The above amendment also applies to the Coastal Environment, Industrial 1 and 2, Port, Marina, Coastal Marine and Airport zones.

### Issue 15E

**The discharge of contaminants into air that reduce the amenity of the surrounding area or create an undue risk to human health.**

55. Three submitters oppose the issue. One of these submitters is concerned about the lack of smoke ($PM_{10}$) monitoring in the Picton waterfront *'where for the last 30 years ferries have belched black grey smoke at least four times a day as they start their polluting diesel engines'*. His inferred relief is to commence air quality monitoring in Picton.[31]

56. Two submitters support the issue in part, addressing undue risks to human health. They consider the concept of 'reasonableness' should be applied to amenity so that the chapter is based on sound evidence and RMA obligations, not merely the concerns of disgruntled residents.[32] They submit that rural production activities have the potential to generate adverse effects beyond the site which must be acknowledged as being part of the rural environment. If reasonableness is applied in these circumstances, adverse effects should be avoided, remedied or mitigated. Federated Farmers and the Gerards seek that Issue 15E be amended as follows:

    *Issue 15E The discharge of contaminants into air that ~~reduce the amenity of the surrounding area or~~ create an undue risk to human health.*

    They also seek a new paragraph to be added to the explanatory text as follows:

    *At times primary production activities will generate effects such as noise, odour and dust - residents living in the rural environment should therefore reasonably expect times when amenity values may be modified by such effects.*

57. Another submitter opposes the issue but does not say why.[33] The company representative seeks a new objective and policies relating to the requirements of the rural sector:

    *Objective 15.X The operational requirements of rural activities are recognised and provided for.*

    *Policy 15.3.X Recognise that rural air quality is generally a result of dust and odours, and other emissions generated by rural production activities.*

[31] Tony Mortiboy (43.2).
[32] Federated Farmers (425.310) and Michael and Kristen Gerard (424.129).
[33] NZ Pork Industry Board (998.37 and .38).

*Policy 15.3.X Require adequate separation distance between rural land use which discharges dust and odour to air and activities that are sensitive to adverse effects of dust and odour discharges.*

**Section 42A Report**

58. The report writer indicates that rural amenity differs from residential amenity, with the expectations of both being different. He does not support removing amenity from Issue 15E as it then relates to the risk to human health. That risk creates a very high threshold – air discharges can be annoying but are below the threshold of when they are dangerous or noxious. The issue needs to recognise this, especially as it applies to a range of zones including residential. Also, it is well established that rural amenity is dependent on context and expectations and will include dust and odour to a reasonable extent.

59. The report writer supports the NZ Pork Industry submissions relating to the realities of rural living, supported by Federated Farmers and the Gerards, but would support an addition to the explanation under Issue 15E. But that issue applies across the entire district and not just rural land.

60. But he did not support adding a further objective or policies, considering the recommended change to the issue explanation will adequately recognise rural concerns. He considers it is inappropriate and unnecessary to elevate air (reverse sensitivity) discharge and discharge issues above the wider treatment of adverse impacts and reverse sensitivity (already addressed elsewhere in the Plan) for all activities and effects.[34]

61. Lynette Wharfe for Hort NZ in evidence pointed out that it is not just the 'expectations of amenity values' that differ, but the actual nature of the background receiving environment (for example, whether it is an industrial environmental or residential). This witness requested that the recommended wording in the explanation is amended as follows: '*Also <u>the background receiving environment and</u> the expectation of amenity values will differ in different areas*'.[35]

62. In his reply, the report writer gave close attention to Hort NZ's further submission to Federated Farmers and NZ Pork Industry, approving Hort NZ's further amended wording identifying the significance of the background environment.

**Consideration**

[34] Section 42A Report, paragraph 416.
[35] Hort NZ, Lynette Wharfe Evidence, paragraph 4.11.

63. The Panel accepts the recommendation in the Reply to Evidence and in part to accept Ms Wharfe's suggestions subject to a change to the phrase 'to be expected' to 'experience' because what is being explained is a statement of actual reality, as compared to future expectations.

**Decision**

64. As now recommended, a new paragraph is added after the last paragraph of the explanatory text under Issue 15E as follows:[36]

*Also, the background receiving environment and experience of amenity values will differ in different areas. For example, primary production activities can generate effects such as noise, odour and dust, so that even with appropriate management of effects, the amenity values experienced by residents living in the rural environment will be different to that within a residential zone.*

## Policy 15.3.2

**Require all discharges to comply with the ambient air quality standards established by the National Environmental Standard for Air Quality.**

65. The policies explanatory text reads:

> *The NESAQ sets ambient air quality standards that apply to both airsheds and open air. The standards include threshold concentrations for carbon monoxide, nitrogen dioxide, ozone, PM10 and sulphur dioxide, and specify the number of exceedances allowed (if any) within a certain timeframe. All discharges are required to comply with the ambient air quality standards in order to protect the health and wellbeing of people in close proximity to any proposed discharge. This policy will be implemented through the assessment of discharge permit applications, the imposition of resource consent conditions and the establishment of permitted activity rule standards.*

66. Two submitters oppose the policy and consider it to be inconsistent with the NESAQ as it confuses the ambient air quality standards in the NESAQ with assessment criteria for individual discharges. It also fails to recognise other important air quality criteria such as the Ambient Air Quality Guidelines (AAQG).

67. Fonterra as an alternative requests that the policy should seek to manage the adverse effects on human health of the discharge, including cumulative effects. The company proposed the existing policy be replaced with:[37]

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[36] Section 42A Report, Reply to Evidence, page 17.
[37] Fonterra (1251.111).

> *Manage the discharge of contaminants to air so that adverse effects on human health, including cumulative adverse effects, are avoided, and all other adverse effects are remedied or mitigated.*

68. NZDF opposes the policy. It submits that the policy confuses the ambient air quality in the NESAQ with assessment criteria for individual discharges. Policy 15.3.2 should be deleted, or amended to make it clear that the ambient air quality standards in the NESAQ are not to be used as assessment criteria for individual discharges.[38]

69. Tim Newsham supports the policy in part although his requests are unclear. He appears to be requesting the implementation of rules which reflect scientific basis toward dealing with the health aspects of air quality controls and regional responsibility for creating rules which reflect our quality of life expectations.[39] His submission did not seek specific relief.

**Section 42A Report**

70. The purpose of the NESAQ (and ambient air quality guidelines) is not to protect people close to the discharge, as stated in the explanation to the policy, but to protect ambient air quality in general across the wider airshed. There are also certain regulations in the NESAQ that prevent a council from approving applications for discharges of $PM_{10}$, carbon monoxide, oxides of nitrogen and volatile organic compounds if the discharge would cause concentrations in the airshed in breach of the relevant NES standard (under circumstances defined in the NESAQ).[40]

71. The report writer initially agreed the policy's focus should be on managing discharges to air to achieve certain outcomes. He considers a reference to NESAQ is appropriate while at the same time supporting also the inclusion of a reference to the MfE/MOH Ambient Air Quality Guidelines (which cover both human and ecosystem health) suggested by NZDF. He includes both in his initial recommended changes to the policy, as they are key national targets for ambient air quality. Policy 15.3.2 is not a rule so the values of AAQG are not absolute but have the status appropriate for use in the PMEP.

72. The report writer initially recommended that Policy 15.3.2 is amended as follows:[41]

> *Policy 15.3.2 – ~~Require all~~ Manage discharges to air ~~to comply with the~~ so that ambient air quality is consistent with ~~standards established by~~ the National Environmental Standard for Air Quality and the Ambient Air Quality Guidelines.*

[38] NZDF (992.21). Section 42A Report, paragraph 439.
[39] Tim Newsham (1173.5).
[40] Section 42A Report, paragraph 440.
[41] Section 42A Report, paragraphs 447-448.

73. And as a consequential amendment, the explanation to Policy 15.3.2 was recommended to be amended as follows:

> *The NESAQ sets ambient air quality standards that apply to both airsheds and open air. The standards include threshold concentrations for carbon monoxide, nitrogen dioxide, ozone, $PM_{10}$ and sulphur dioxide, and specify the number of exceedances allowed (if any) within a certain timeframe. The Ambient Air Quality Guidelines (Ministry for the Environment) cover these and additional contaminants, and, unlike the NESAQ, address ecosystem health as well as human health. The Standards and Guidelines are not intended as assessment criteria for individual discharges, but larger discharges applying for consent will need to show their activity does not cause a breach of the NESAQ (or the ambient air quality guidelines where relevant). ~~All discharges are required to comply with the ambient air quality standards in order to protect the health and wellbeing of people in close proximity to any proposed discharge.~~ This policy will be implemented through the assessment of discharge permit applications, the imposition of resource consent conditions and the establishment of permitted activity rule standards.*

**Consideration**

74. The Panel took notice that the Council is obliged to comply with the NESAQ and give effect to it, for the NESAQ has the force of a regulation under ss 43 to 44A RMA. Section 44A(7) states that '*Every local authority and consent authority must observe national environmental standards*'. Section 44A(8) states that '*Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so'*. Also, when preparing a regional plan, a council is obliged to do so '*in accordance with … any regulations*' (s 66(1)(f)).[42]

75. In evidence, Lynette Wharfe for Hort NZ submitted that the Ambient Air Quality Guidelines were not developed through a statutory process and are only that – guidelines. Therefore, their inclusion as a threshold requirement in the policy is inappropriate.[43]

76. The report writer changed his initial recommendation to a consequential amendment in response to Ms Wharfe's evidence. He considered that his initial wording in the explanation to the policy could be amended to better match the policy and to remove any suggestion of a

[42] Section 42A Report, paragraph 444.
[43] Hort NZ, Lynette Wharfe Evidence, paragraph 6.11. Section 42A Report, Reply to Evidence, pages 20-21.

rule-like threshold.[44] He also recommends changing the wording slightly to resolve a grammatical issue in the recommended amended text – 'discharges' instead of 'dischargers'.

77. Policy 15.3.2 should give prominence to NESAQ which is a rule as opposed to a guideline, and the Panel considers the reference to Ambient Air Quality Guidelines should be removed from the statement to the policy, and be included instead in the explanation to focus on managing discharges to air. We also decided that it would be appropriate to include a new method to suggest where the AAQG might be used.

**Decision**

78. Policy 15.3.2 is amended as follows:

*15.3.2 ~~Require all~~ Manage discharges to air ~~to comply with the~~ so that ambient air quality is consistent with ~~standards established by~~ the National Environmental Standard for Air Quality.*

79. As a consequential amendment, the explanation to Policy 15.3.2 is amended as follows:

*The NESAQ sets ambient air quality standards that apply to both airsheds and open air. The standards include threshold concentrations for carbon monoxide, nitrogen dioxide, ozone, $PM_{10}$ and sulphur dioxide, and specify the number of exceedances allowed (if any) within a certain timeframe. The Ambient Air Quality Guidelines (Ministry for the Environment) cover these and additional contaminants, and, unlike the NESAQ, address ecosystem health as well as human health. The Standards and Guidelines are not intended as assessment criteria for individual discharges, but those applying for discharge permits will need to show whether the activity would be likely to cause a breach of the NESAQ (or the ambient air quality guidelines where relevant). ~~All discharges are required to comply with the ambient air quality standards in order to protect the health and wellbeing of people in close proximity to any proposed discharge.~~ This policy will be implemented through the assessment of discharge permit applications, the imposition of resource consent conditions, ~~and~~ the establishment of permitted activity rule standards, and Method 15.M.X Discharges to air.*

80. A new method is to be inserted as follows:

*Method 15.M.X Discharges to air*

*Where relevant and appropriate, use the Ambient Air Quality Guidelines to assess the adverse effects of proposed discharges to air.*

## Policy 15.3.4

[44] Section 42A Report, Reply to Evidence, citing NESAQ, pages 20-21.

**Manage the use of agrichemicals to avoid spraydrift. The boundary of the property on which the application of agrichemical occurs is the point at which management applies, as follows:**

**(a) any agrichemical should not move, either directly or indirectly, beyond the property boundary of the site(s) where it is or has been applied; and**

**(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a).**

81. It was drawn to the Panel's attention that Air Quality in Volume 1 PMEP Policy 15.3.4 relates only to land, not air, while Volume 2 Rules relates to Multiple Zone Standards which require applications to be carried out in accordance with NZS 8409 Agricultural Chemicals sections 5.3, 5.5 and 5.34 which require an applicator to 'minimise' spray drift instead of 'avoiding' spray drift as in Policy 15.3.4.

**Consideration**

82. The questions the Panel considered were:

- Does this create conflict between the provisions in the NZS 8409:2004 and the plan provisions with respect to the receiving environment?
- Is there an inconsistency with respect to the performance standard?

83. The first bullet point question is addressed in the Panel's decision in Discharge to Land under the heading Discharge to Air.

84. The potential confusion with respect to the receiving environment raised by submitters arises because most agrichemicals are sprayed into the air with the intent that it settles as droplets onto vegetation. It is clear that the intended receiving environment is therefore land. The potential for spray drift occurs only as a result of inappropriate application methods and practices such as applying agrichemicals in windy conditions. However, the Panel considers that the confusion can be resolved by replicating the policy in Chapter 16 and by additional explanation to the policy that reflects the situation described above.

85. We referred to the definition of 'minimise' in the New Zealand Concise Oxford Dictionary[45] which identifies the word as 'the smallest possible amount'.

86. Most parties to the policy, while acknowledging that some spray drift was unavoidable when dealing with agrichemicals and fertilisers, need to employ best practice, recognising that complete internalisation of effects within a property is not always possible.

87. In our view, the word 'minimise' informs the policy, prompting users to use best practice to avoid/remedy the difficulties with spray drift. 'Minimise' is the strongest term to use in the context of such a high level policy.

[45] 4th Edition.

**Decision**

88. Amend Policy 15.3.4(b) as follows:

*…(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a) by minimising any such spray drift.*

89. Amend the explanation to Policy 15.3.4 as follows:

*The use of agrichemicals is an important management tool, especially in rural environments where they contribute to the control of animal and plant pests and help to minimise crop diseases. Use of agrichemicals in the environment is controlled under the Hazardous Substances and New Organisms Act 1996. Each agrichemical must be approved for use by the Environmental Protection Authority. The Authority can also impose specific controls on the application of agrichemicals to ensure safe use. The policy signals that the Council's role in controlling the ~~discharge~~ application of ~~contaminants~~ agrichemicals ~~to air is restricted~~ is to ensure~~ing~~ that there are no off-site adverse effects. The application of agrichemicals onto crops or unwanted vegetation typically involves spraying the agrichemical into air and subsequent settlement of the droplets onto the vegetation. The Plan regulates the application (involving discharge) of agrichemicals as a discharge to land as that is the intended receiving environment. However, the potential for spraydrift occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions). The property boundary is therefore established as the point to which management is applied, as agrichemicals have the potential to cause health effects and other unintended consequences once they move beyond the boundary of the property on which they are being used. ~~Spraydrift usually occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions).~~ The Council will rely on agrichemical users applying best practice and exercising reasonable care to avoid spraydrift beyond their property boundary.*

90. Insert a new policy in Chapter 16 as follows:

*[R]*

*Policy 16.3.x – Manage the use of agrichemicals to avoid spraydrift. The boundary of the property on which the application of agrichemical occurs is the point at which management applies, as follows:*

*(a) any agrichemical should not move, either directly or indirectly, beyond the property boundary of the site(s) where it is or has been applied; and*

*(b) agrichemical users will be required to utilise best practice and exercise reasonable care to achieve (a) by minimising any such spray drift.*

*The use of agrichemicals is an important management tool, especially in rural environments where they contribute to the control of animal and plant pests and help to minimise crop diseases. Use of agrichemicals in the environment is controlled under the Hazardous Substances and New Organisms Act 1996. Each agrichemical must be approved for use by the Environmental Protection Authority. The Authority can also impose specific controls on the application of agrichemicals to ensure safe use. The policy signals that the Council's role in controlling the application of agrichemicals is to ensure that there are no off-site adverse effects. The application of agrichemicals onto crops or unwanted vegetation typically involves spraying the agrichemical into air and subsequent settlement of the droplets onto the vegetation. The Plan regulates the application (involving discharge) of agrichemicals as a discharge to land as that is the intended receiving environment. However, the potential for spraydrift occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions). The property boundary is therefore established as the point to which management is applied, as agrichemicals have the potential to cause health effects and other unintended consequences once they move beyond the boundary of the property on which they are being used. The Council will rely on agrichemical users applying best practice and exercising reasonable care to avoid spraydrift beyond their property boundary.*

### Standard 3.3.37

**Discharge of contaminants to air from burning for the purposes of vegetation clearance.**

### Standard 3.3.37.1

**Burning must not be carried out on Class 7e or Class 8 land when the Fire Weather Index Parameters (as notified by the Rural Fire Authority for the burn area, pursuant to the Forest and Rural Fires Act 1977) for the burn are:**

**(a) drought code – 200 or higher,**

**(b) build up index – 40 or higher.**

91. One submitter opposes the rule references to the Rural Fire Authority. Federated Farmers requests: the standard is not clear for a plan user as to what is Class 7e or Class 8 land, who determines it, and where this can be found.[46] There is a plethora of burning rules (and this seems to either contradict them or be irrelevant) – the rule should be deleted (a similar

[46] Federated Farmers (425.608 and .609).

submission is made on the identical Rule 19.1.12 (Standard 19.3.10) in the Open Space 3 Zone).[47]

**Section 42A Report**

92. The report writer identifies the same rule has been used for many years in the MSRMP and he is not aware of the rule being problematic. The rule, however, could be better expressed. The class of land in the rule relates to the Land Use Capability (LUC) system. This is a well-established land assessment methodology used throughout New Zealand to determine suitability and vulnerability of lands and soils as well as its long-term capability.[48]

93. The report writer seeks to amend the standard as follows:

> *Discharge of contaminants to air from burning for the purposes of vegetation clearance.*
>
> *3.3.37.1 Burning must not be carried out on Land Use Capability Class 7e or Class 8 land, as shown as the 'LUC' category on the New Zealand Land Resource Inventory database, when the Fire Weather Index Parameters (as notified by the Rural Fire Authority for the burn area, pursuant to the Forest and Rural Fires Act 1977) for the burn are:*
>
> *(a) drought code – 200 or higher,*
>
> *(b) build up index – 40 or higher.*

**Consideration**

94. The standards lack certainty due to use of Class 7e or Class 8 land. The Panel accepts the reference to the LUC system and the NZLRI database as set out in the original Section 42A Report but also notes the references to the 'Forests and Rural Fires Act 1977' and the 'Rural Fire Authority' should now be 'Fire and Emergency New Zealand Act 2017' and 'Fire and Emergency New Zealand'.

**Decision**

95. Standard 3.3.37.1, 4.3.36.1 and Standard 19.3.10.1 are amended to read:

*Burning must not be carried out on Land Use Capability Class 7e or Class 8 land, as shown as the 'LUC' category on the New Zealand Land Resource Inventory database, when the Fire Weather Index Parameters (as notified by the Rural Fire Authority for the burn area, pursuant to the ~~Forest and Rural Fires Act 1977~~ Fire and Emergency New Zealand Act 2017) for the burn are:*

[47] Federated Farmers (425.742).
[48] Section 42A Report, paragraph 591.

*(a) drought code – 200 or higher, or*

*(b) build up index – 40 or higher.*

### Discretionary Activity Rule 21.4.4

**Any discharge of contaminants into or onto land, or to air, not provided for as a Permitted Activity or limited as a Prohibited Activity.**

96. Rule 21.4.4 enables only the Council to seek a resource consent (see Chapter 21 heading) as the paragraph immediately following the Chapter 21 heading states '*Unless explicitly specified, these rules apply to river control and drainage works only carried out by the Marlborough District Council exercising its functions under [river control legislation*]'.

97. One submitter seeks the rule be retained as notified. The MDC identifies that there is no discretionary activity rule that enables a third party to apply for resource consent for the discharge of contaminants into or on to land, or to air in the Floodway Zone.[49]

98. MDC seeks that Rule 21.4.4 be amended as follows: 'Any discharge of contaminants into or onto land, or to air, <u>by any person,</u> not provided for as a Permitted Activity or limited as a Prohibited Activity.'

**Section 42A Report**

99. The report writer agrees there is a difficulty with the discretionary rule not allowing persons other than MDC to apply for a discharge permit under 21.4.4. Certain rules in the Floodway Zone provide for persons other than the MDC to undertake permitted activities, for example, 21.1.16, 21.1.17 and 21.3.16. The addition of the words 'any person', would allow persons other than the MDC to apply for a discharge permit under 21.4.4.

100. The report writer also notes that Prohibited Rule 21.5.1 prohibits the burning of certain materials. As currently worded, this rule applies only to MDC. An application by others for resource consents cannot be made for this activity either. This, in the opinion of the report writer, is likely a drafting oversight. As a consequential amendment to the relief sought, the report writer recommends that the words 'by any person' be added to the introductory sentence to the rule to bring it into line with the proposed revision to 21.4.[50]

**Consideration**

101. Because Rule 21.4.4 only relates to the Council and the relief sought to expand that to include any person a new rule would be required. The Panel preferred the proposed wording from

[49] MDC (91.119).
[50] Section 42A Report, page 674.

the Section 42A Report on Topic 9 Natural Hazards 'Discharge of industrial process waste to stormwater by any person'[51] and adapted the wording to suit Prohibited Rule 12.5.1.

**Decision**

102. After consideration, the Panel retains 21.4.4 as notified and accepts that as recommended for the reasons given, Rule 21.4 is amended by adding a new rule as follows:[52]

*21.4.5 Any activity provided for as a Permitted Activity undertaken by any person other than Marlborough District Council.*

103. The following consequential amendment is made to Prohibited Rule 21.5.1:[53]

*21.5.1 Discharge of contaminants to air by any person arising from the burning of any of the following materials:*

## Rule 13.1.37

**Discharge of contaminants to air from combustion within a stationary internal combustion engine (i.e. internal combustion).**

104. One submitter seeks the rule to cover vehicles with internal combustion engines that are moving, such as trains, ferries and support and other vehicles.[54]

105. NZDF is concerned that the rule could capture emissions from aircraft engines, particularly when they are removed for maintenance and testing.[55]

**Section 42A Report**

106. The report writer recommends that an addition could be made to the definition of 'internal combustion' on page 25-11 (PMEP Definitions) to avoid the potential for ambiguity, as follows:[56]

***Internal combustion*** *means a method of energy generation in which combustion takes place in a controlled chamber or chambers inside an engine to generate mechanical energy. A stationary internal combustion engine is one that is fixed in place or to the device to which it provides power, but which does not provide propulsion to the device. An engine in a usually mobile vehicle which is being tested during repair or maintenance whether in the vehicle or temporarily removed from it is not a stationary internal combustion engine for the purposes of this Plan.*

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[51] Section 42A Report (Topic 9 Natural Hazards), paragraphs 420-424.
[52] Section 42A Report, paragraph 672. This amendment was adapted from the Section 42A Report on Topic 9 National Hazards (Paul Whyte), paragraphs 420-424.
[53] Section 42A Report, paragraph 676.
[54] KiwiRail (873.157).
[55] NZDF (992.85).
[56] Section 42A Report, paragraph 722.

**Consideration**

107. After hearing the evidence the Panel considers that instead of extending the amended definition of 'internal combustion' as set out in the Section 42A Report, there should be a new definition of 'stationary internal combustion' because the report writer's amendment could unnecessarily capture emissions from aircraft engines. The Panel used the recommended additional sentence to form the definition amending the start to include the words '*Stationary internal combustions means an engine that is fixed*'.

**Decision**

108. Rule 13.1.37 is retained as notified and a new definition 'stationary internal combustion' is inserted as follows:

***Stationary internal combustion*** *means an engine that is fixed in place or to the device to which it provides power, but which does not provide propulsion to the device. An engine in a usually mobile vehicle which is being tested during repair or maintenance whether in the vehicle or temporarily removed from it is not a stationary internal combustion engine for the purposes of this Plan.*

## New Permitted Activity Rule - Discharges to air from cars, trucks on the road and rail network

109. Several submitters seek a new rule to deal with discharges to air from mobile sources such as motor vehicles and trains.[57]

110. KiwiRail submits that the discretionary activity rules at 2.23.2 identify that any discharge to air not provided for as a permitted activity requires consent. This rule means that trains, cars, trucks on the road and rail network require a discharge to air consent for each operation. Even so, the Council already controls the discharge to air from internal combustion engines in the Port Zones. The submitter wants the permitted activity rule to cover moving vehicles with internal combustion engines such as trains cars, trucks on the road and rail network.

111. Submitters on Rule 10.3.10 are concerned about restrictions on their ability to run a steam train through Blenheim at special events or parades.[58] This issue is similar to that raised by KiwiRail.

112. NZTA opposes the General Rules in Volume Two, Chapter 2, and like KiwiRail is concerned about the lack of provision for discharges from mobiles sources such as vehicles using the

[57] KiwiRail (873.98 and .157), NZTA (1002.149).
[58] John and Pam Harvey (430.9).

road. They seek a permitted rule, not subject to standards – 'Discharge of contaminants from a mobile source'.[59]

**Section 42A Report**

113. The report writer considers the issue of mobile sources is significant:

- Any train, aircraft, boat (other than in the coastal marine area), motor vehicle, lawnmower or motorised equipment would need a resource consent to operate.
- This is a problem not only for roads and the rail corridor identified in the planning maps but also for trains, vehicles and vessels operating outside of the identified roads and rail corridors (for example, trucks and cars within zoned land, earthmoving equipment on a farm, or aircraft on an airfield).
- Steam trains and traction engines (external combustion driven) also need to be accommodated, including the recreational railway beside the Taylor River which is not within the defined rail corridor.
- The wording of the rule proposed by NZTA ('Discharge of contaminants from a mobile source') would be open to misinterpretation if read by users without a definition of 'mobile source'. Without changing the rule it would be helpful to mention vehicles in the new rule to provide clarity.[60]
- A General Rule is recommended to be introduced that applies in all locations – rail corridor, roads, all zones.
- A new definition of 'mobile source' is recommended with some minor changes which would support the proposed new rule (it was recommended in the Waste and Discharge chapter).
- A new permitted activity rule for the discharge of contaminants to air from the burning of fuel in a motor vehicle or train as follows:

  *2.21.X Discharge of contaminants to air from the burning of fuel in a motor vehicle, train, aircraft or other mobile source.*

  And that it states:

  *This rule applies to roads and rail corridors identified on the zoning maps, and within all zones.*

[59] NZTA (1002.149).
[60] Section 42A Report, paragraphs 772-774.

114. NZTA supports the definition and wording of the rule proposed in the Section 42A Report. But the company is concerned that this 'applies to roads and rail corridors identified in the zoning maps and within all zones'. NZTA considers that mobile sources on water may not be permitted – these are neither road nor rail. The suggested amendment is as follows:[61] *This rule applies to all land and water bodies within the region, irrespective of zoning*.

**Consideration**

115. The scope for relief is limited by the submission that are restricted to the discharge of contaminants to air from mobile sources in or on the road and rail corridors. The report writer's recommendations sought to expand the rule to include aircraft and other mobile sources within all zones but that is beyond the scope of the submission. The Panel accepts the recommendations but with reference to aircraft and other mobile sources within all zones deleted.

116. The Panel notes that the decision on a NZTA submission in the Topic 13 – Water Quality expands the scope of Rule 2.21 and 2.23 and therefore also the activities provided for in the road and rail corridor. The rule(s) accepted by the Panel above are to integrate into that new structure by being inserted into Rule 2.21 which lists (a now expanded range of) permitted activities in the road and rail corridor.

**Decision**

117. As further recommended, a new rule be added to the General Rules of Volume Two as follows:

*2.21.X Discharge of contaminants to air from the burning of fuel in a motor vehicle or train.*

## New rule – Emergency electricity generation

118. The proposed rule is to 'facilitate discharge of contaminants to air from internal combustion engines during disruption to the power network together with exclusions within the zone rules where necessary'.[62]

119. Z Energy, Mobil and BP support in part the General Rules for discharges to air.[63] But they do not recognise the need for emergency generators to be used during disruption to the power network. They argue that service stations provide a strategic function in the region's emergency plan with the fuel stored at service stations providing emergency power generation. It is essential to be able to use the fuel source in an emergency for extended

[61] Section 42A Report, Reply to Evidence, page 37.
[62] Section 42A Report, paragraph 781.
[63] Z Energy, Mobil and BP (1004.38).

periods of time (beyond the 5 hour restriction in zone rules). A new permitted activity rule is required to facilitate the use with exclusions within the zone rules where necessary.

120. Trustpower also supports in part the permitted activity rules in order to allow for the use of small-scale diesel-fuelled generators during maintenance activities, emergencies, weather, accidents or other unforeseen activities.[64] The company operates such devices at its hydroelectric plants to enable the operation of spillway gates and other essential components of the infrastructure during emergencies to prevent flooding and/or infrastructure damage. Trustpower seeks a new permitted activity rule as follows:

> *Discharge of contaminants to air from the combustion of diesel to provide back-up power generation when an electricity connection is disrupted or unavailable.*
>
> *i) The maximum generating capacity of the combustion equipment is less than 1 MW; and*
>
> *ii) The discharge shall not cause noxious, dangerous, offensive or objectionable odour, particulate or smoke beyond the boundary of the property.*

and 'any similar or consequential amendments to the MEP that stem from the submission and relief sought'.

121. NZDF also sought an exemption for discharges to air for emergency electricity generation.[65]

**Section 42A Report**

122. After traversing the existing limitations on discharges from stationary internal combustion engines (hospitals, airports) which have a standard restricting usage to a maximum of 5 hours' usages and the kW capacity of engines, the report writer considered that it is appropriate to provide for people's health and safety through a general rule providing for emergency electricity generation in the event of a power outage.

123. In an emergency involving an extended electricity outage, the zone rules can be too restrictive. The report writer considered ss 330 and 330B RMA could not be used in such circumstances.

124. The report writer therefore recommends that, as proposed under Matter 15 (Permitted Activities – Stationary Internal Combustion Engines), a cross reference to this new rule is

[64] Trustpower (1201.143 and .144).
[65] NZDF (992.84).

inserted along with the clarification that the zone rules do apply to emergency electricity generation.[66]

125. The evidence of GBC Winstone, through its air consultant, provides support for the new permitted activity rule relating to the need to limit the permitted activity by stating a maximum allowable size for diesel-powered generators of 1 MW. As written, this restriction would not exist for generators powered by other fuels.[67]

126. The report writer identifies that the 1 MW cap was part of the relief sought by Trustpower[68] as the specification of diesel fuel. He favours retaining the 1 MW limit as that is a large generator and should meet most requirements. He supports removing the reference in 2.22.Y to diesel fuel so that it would apply to internal combustion engines fuelled by petrol or gas.

**Consideration**

127. The rules should recognise the need to provide for emergency generation to be used during a disruption to the power network. We agree with the report writer's recommendation but have deleted 'This rule applies to road and rail corridors identified on the zoning maps and within all zones' as there is no zoning that applies to this General Rule. We also agreed that the word 'diesel' should be deleted and replaced with 'fuel', and that the new rule under a heading 'Emergency Electricity Generation' be inserted at the conclusion of the General Rules, as opposed to amending 2.21.

**Decision**

128. For the reasons recommended, a new Permitted Activity Rule is inserted at the end of the General Rules, as follows:

*[R]*

*Emergency Electricity Generation*

*2.X.1 Discharge of contaminants to air from combustion of fuel within an internal combustion engine used to provide back-up power generation when an electricity connection is disrupted or unavailable.*

129. Insert new standards as follows

*2.X.1 Discharge of contaminants to air from the combustion of fuel within an internal combustion engine used to provide back-up power generation when an electricity connection is disrupted or unavailable.*

[66] Section 42A Report, paragraph 786.
[67] GBC Winstone (749.5). Andrew Curtis, Evidence, paragraph 424.
[68] Trustpower (1201.143 and .144).

*2.45.Y.1 The maximum generating capacity of the combustion equipment is less than 1 MW; and*

*2.45.Y.2 The discharge shall not cause noxious, dangerous, offensive or objectionable odour, particulate or smoke as detected at or beyond the legal boundary of the area of land on which the discharge is occurring.*

130. Insert a new Discretionary Activity Rule as follows:

*[R]*

*The discharge of contaminants from combustion of fuel within an internal combustion engine used to provide back-up power generation when an electricity connection is disrupted or unavailable that does not meet the applicable permitted activity standards.*

## New rule and associated standards – water blasting and dry abrasive blasting in the road and rail corridors

131. Trustpower seeks the insertion of a new rule in Chapter 3 to allow for the following as a permitted activity: *Discharge of contaminants to air from water blasting and from dry abrasive blasting*, and new permitted activity standards (wording provided i-viii) and 'any similar or consequential amendments to the PMEP that stem from the submission and relief sought'.[69]

132. Trustpower submitting on the Rural Zone supports in part the permitted activity rules including a new rule for abrasive blasting in the Rural Zone. The activity is allowed in Industrial and Port Zones. The company considers that requiring resource consent for abrasive blasting in rural areas would not achieve any better environmental outcomes than could be achieved by standards on a permitted activity rule. The company identifies to that abrasive blasting is a common maintenance activity for infrastructure (such as penstocks at hydro dams), and can be managed in such a way that any potential effects on the environment can be suitably avoided or mitigated. It points out that other regional plans provide for abrasive blasting as a permitted activity region-wide, including the Regional Air Quality Plan for Taranaki, the Canterbury Air Regional Plan and the Proposed Natural Resources Plan for the Wellington Region.[70]

### Section 42A Report

133. The report writer advised that the Canterbury Air Regional Plan provides for outdoor abrasive blasting subject to conditions as does the Taranaki Plan that is not quite as enabling as suggested. The Taranaki Plan provides for wet abrasive blasting subject to conditions including

[69] Trustpower (1201.145 and .146).
[70] Section 42A Report, paragraph 791.

no disposition of contaminants can occur within 10 metres of any waterbody, while dry abrasive blasting outdoors is a controlled activity.[71]

134. The report writer advises he is generally supportive of a blasting rule similar to other zones being provided in the road and rail corridors (General Rules) and in the Rural Zones as sought by Trustpower which are rules to provide for wet and dry abrasive blasting in the Rural Zone.

135. Nevertheless, the report writer also recommends that with the number of structures in the rural area over rivers and streams, an additional standard to prevent contaminants entering water is required.

136. The report writer recommends that a new activity rule for abrasive blasting and water blasting in the road and rail corridors associated with road and bridge maintenance be added to Volume Two General Rules as follows:[72]

*Standard 2.1.Z. The discharge of contaminants into air from abrasive blasting and water blasting, including and [sic] any associated discharge onto land.*

*Permitted activity standards specific to this activity:*

*2.3.Z.1. Any sand or other material used for abrasive blasting must contain less than 5% free silica on a dry weight basis.*

*2.3.Z.2. Any discharge of particulate matter must not be offensive or objectionable as detected at or beyond the legal boundary of the area of land on which the activity is occurring.*

*2.3.Z.3. Any abrasive media not in use must be kept covered and protected from erosion.*

*2.3.Z.4. All material that is discharged to land from the blasting must be collected and removed from the site to the extent practicable after blasting has been completed. The material must be disposed of to a facility that has authorisation to accept the contaminants in the material.*

*2.3.Z.5. There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.*

[71] Section 42A Report, paragraph 793.
[72] Section 42A Report, paragraph 795. PMEP Volume Two General Rules 2-28.

*2.3.Z.6. The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.*

*2.3.Z.6.[sic]For dry abrasive blasting all items must be blasted within an abrasive blasting enclosure and the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.*

137. A new permitted activity rule be added to Chapter 3, Volume 2, Use of the Rural Environment as follows:

*3.1.X The discharge of contaminants into air from water blasting and dry abrasive blasting.*

138. Permitted activity standards specific to this activity:

*3.3.X The discharge of contaminants into air from water blasting and dry abrasive blasting.*

*3.3.X.1 There must be no discharge of water spray, dust or other contaminant beyond the boundary of the property.*

*3.3.X.2 Where the discharge occurs from public land there must be no discharge of water spray, dust or other contaminant beyond 50m from the discharge point or beyond the boundary of the public land, whichever is the lesser.*

*3.3.X.3 There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.*

*3.3.X.4 The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.*

*3.3.X.5 Where abrasive blasting is undertaken inside an enclosed booth, the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.*

*3.3.X.6 Dry abrasive blasting outside an enclosed booth shall only be undertaken when it is impractical to remove or dismantle or transport a fixed object or structure to be cleaned in a booth.*

*3.3.X.7 For dry abrasive blasting the free silica content of a representative sample of the blast material must be less than 5% by weight.*[73]

**Consideration and decision**

139. The Panel adopted the recommendation of the report writer but noted an inconsistency in his recommendations with respect to the rule to be inserted in the General Rules and the rule to be inserted thin the Rural Zone rules. To achieve consistency the Panel has decided to use the collective term 'water blasting and dry abrasive blasting. A new permitted activity standard for water blasting and dry abrasive blasting in the road and rail corridor associated with road and bridge maintenance is added to Volume Two General Rule. By adding the rule to section 2.21 of the General Rules the note recommended for inclusion with the rules is not required as the rules in this section only apply to the road and rail corridor.

140. The Panel notes that the decision on a NZTA submission in the Topic 13 – Water Quality expands the scope of Rule 2.21 and 2.23 and therefore also the activities provided for in the road and rail corridor. The rule(s) accepted by the Panel above are to integrate into that new structure by being inserted into Rule 2.21 which lists (a now expanded range of) permitted activities in the road and rail corridor.

141. A new rule is inserted as follows:

*2.21.x. Discharge of contaminants into air from water blasting and dry abrasive blasting, including any associated discharge onto land.*

*Permitted activity standards specific to this activity:*

*2.22.x.1. Any sand or other material used for abrasive blasting must contain less than 5% free silica on a dry weight basis.*

*2.22.x.2. Any discharge of particulate matter must not be offensive or objectionable as detected at or beyond the legal boundary of the area of land on which the activity is occurring.*

*2.22.x.3. Any abrasive media not in use must be kept covered and protected from erosion.*

*2.22.x.4. All material that is discharged to land from the blasting must be collected and removed from the site to the extent practicable after blasting has been completed. The material must be disposed of to a facility that has authorisation to accept the contaminants in the material.*

[73] Section 42A Report, paragraph 797.

*2.22.x.5. There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.*

*2.22.x.6. The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.*

*2.22.x.7. For dry abrasive blasting all items must be blasted within an abrasive blasting enclosure and the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.*

142. A new permitted activity standard is added to Chapter 3, Volume 2, Use of the Rural Environment as follows:

*3.1.X The discharge of contaminants into air from water blasting and dry abrasive blasting.*

*Permitted activity standards specific to this activity:*

*3.3.X The discharge of contaminants into air from water blasting and dry abrasive blasting.*

*3.3.X.1 There must be no discharge of water spray, dust or other contaminant beyond the boundary of the property.*

*3.3.X.2 Where the discharge occurs from public land there must be no discharge of water spray, dust or other contaminant beyond 50 metres from the discharge point or beyond the boundary of the public land, whichever is the lesser.*

*3.3.X.3 There must not be any deposition of contaminants from the activity into or within 10 metres of a waterbody or the coastal marine area.*

*3.3.X.4 The surface to be blasted must not contain lead, zinc, arsenic, chromium, copper, mercury, asbestos, tributyl tin, thorium-based compounds, and other heavy metals including anti foul paint containing these substances.*

*3.3.X.5 Where dry abrasive blasting is undertaken inside an enclosed booth, the discharge must be via a filtered extraction system that removes at least 95% of particulate matter from the discharge.*

*3.3.X.6 Dry abrasive blasting outside an enclosed booth shall only be undertaken when it is impractical to remove or dismantle or transport a fixed object or structure to be cleaned in a booth.*

*3.3.X.7 For dry abrasive blasting the free silica content of a representative sample of the blast material must be less than 5% by weight.*

### New rule – Open burning

143. NZDF opposes the Airport Zone rules. It says open burning is provided for as a permitted activity in other zones including the Rural Zone, Urban Residential 1 and 2 Zones, and the Open Space Zone (and others) where arguably the amenity is higher and the discharge would likely have a greater effect.[74]

144. The submitter also considers that it may wish to undertake burning of green waste within the Airport zoned area of Base Woodbourne and it is appropriate that this is provided for as a new permitted activity rule with appropriate standards in Chapter 23. The suggested wording is as follows:

    *Permitted activity: Discharge of contaminants to air arising from burning in the open.*

    *Standards: - Only material generated on the same property or a property under the same ownership can be burned.*

**Section 42A Report**

145. The report writer identifies that the three airports covered by the Airport Zone (Blenheim, Picton and Omaka) are all outside the Blenheim Airshed, so impacts on $PM_{10}$ levels within Blenheim are not a critical concern – although Omaka is just outside the urban area.

146. The writer considers it is appropriate for the Airport Zone to have an outdoor burning rule, with the expectation that the operators of the site would manage effects on the safe operation of the airport.

147. As the airports are surrounded by land zoned Rural, the report writer considers a rule similar to that zone would be appropriate for the Airport Zone. The key standard in the Rural Zone is that proposed by NZDF: *Only material generated on the same property or a property under the same ownership can be burned*.

148. The report writer recommends a new permitted activity rule be added to the Airport Zone as follows:

    *23.1.X Discharge of contaminants to air arising from burning in the open.*

149. And that a new specific permitted activity standard be added, as follows

    *23.3.X Discharge of contaminants to air arising from burning in the open.*

[74] NZDF (992.91).

*23.3.X.1 Only material generated on the same property can be burned.*

**Consideration**

150. The Panel accepts that NZDF should have the opportunity to burn waste in the open as a permitted activity on the basis that it is enabled in other zones. But we do not agree that the phrase 'or property under the same ownership' is appropriate for the standard as recommended by the report writer as the submission opens up burning of material generated not only within the Airport zoned area but also within other properties so long as they are in the same ownership.

**Decision**

151. As recommended, a new permitted activity rule is added to the Airport Zone as follows:

*23.1.X Discharge of contaminants to air arising from burning in the open.*

152. And a new specific permitted activity standard is added as follows:

*23.3.X Discharge of contaminants to air arising from burning in the open.*

*23.3.X.1 Only material generated on the same property can be burned.*

## New rule – Discharge from petroleum products

153. Z Energy, Mobil and BP support the Plan in part but they request a new rule be inserted to provide for discharges to air associated with the storage and use of petroleum products, including vapour ventilation and displacement, and emergency power generation as permitted activities. They provided the rule they wish to be added (with a default to discretionary activity status where the activity standards are not met) as follows:[75]

*Discharge to Air - All Zones*

*These activities apply within all zones*

*2.## The following activities shall be permitted without resource consent where they comply with the applicable standards in 2.##*

And;

*2.## Permitted Activities*

*2.##.1 The discharge of contaminants including odour into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.*

*2.##.2 Discharge of contaminants to air from combustion within a stationary internal combustion engine to provide emergency power generation.*

[75] Z Energy, Mobile and BP (1004.31 and .56).

*2.## Standards that apply to specific permitted activities*

*2.##.1 Discharge of contaminants including odour into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.*

*2.##.1.1The discharge does not cause a noxious or dangerous effect beyond the legal boundary of the area of land on which the permitted activity is occurring.*

*2.##.2 Discharge of contaminants to air from combustion within a stationary internal combustion engine to provide emergency power generation when:*

*a) the electricity network is disrupted through weather, accidents, or any unforeseen circumstances, or*

*b) the person operating the equipment is undertaking necessary maintenance or testing of the device, or*

*c) the electricity connection is not available*

And;

*2.## Discretionary Activities*

*Application must be made for a Discretionary Activity for the following:*

*2.##.1 Any activity provided for as a Permitted Activity that does not meet the applicable standards.*

*2.##.2. Any discharge to air not provided for as a Permitted Activity.*

**Section 42A Report**

154. The report writer recommends a new rule to provide for discharge to air associated with emergency electricity generation. While there is a permitted activity rule providing for 'Discharge for the purposes of ventilation or vapour displacement' in the Industrial, Port, Lake Grassmere Salt Works, and the Airport zones, other zones lack such a rule.

155. For some other zones there is a potential problem – there is no rule to allow for vapour displacement. Most farms and rural activities will have storage on site as will the Marina and Open Space 4 Zone (ski fields). Residential sites too will sometimes have oil-fired central heating, and hospitals and other institutions will have fuel tanks – at least for running emergency generators.[76]

[76] Section 42A Report, paragraphs 813-814.

156. The report writer recommends it is appropriate to include a permitted activity rule similar to that sought in each zone as otherwise the activity technically requires resource consent. He recommends that a new permitted activity rule is inserted under 'X.1 Permitted Activities' in the Rural Environment Zone, Coastal Environment Zone, Urban 1, 2 and 3 Zones, Coastal Living Zone, Rural Living Zone, Business 1, 2 and 3 Zones, Port Landing Area Zone, Marina Zone, Open Space 1, 2, 3 and 4 Zones, Floodway Zone, as follows:

    *The discharge of contaminants into air from the storage or transfer of petroleum products, including vapour ventilation and displacement.*

157. And it is recommended that a new standard applying to all permitted activities be inserted, as follows:

    *Odour must not be objectionable or offensive, as detected at or beyond the legal boundary of the area of land on which the permitted activity is occurring.*

158. And a new General Rule is recommended as follows:

    *This rule applies to only roads and rail corridors identified on the zoning maps, and within all zones.*

**Consideration**

159. The Panel agrees with the recommendations of the report writer with respect to providing a permitted activity. In addressing these matters, the Panel considered that a new permitted activity rule should be added to 2.21 would be more appropriate to enable the discharges to air associated with the storage and use of petroleum products in the road and rail corridor. It is more appropriate to use the odour standard in Topic 18 Nuisance Section 42A Report instead of that in the Section 42A Report.[77]

160. The Panel agrees with the recommended point of assessment at the boundary that considers the issue is whether the objectionable or offensive odour is causing an adverse effect. It therefore preferred that wording as follows:[78]

    *There shall be no objectionable or offensive odours to the extent that it causes an adverse effect at or beyond the boundary of the site.*

161. The Panel notes that the decision on a NZTA submission in the Topic 13 – Water Quality expands the scope of Rule 2.21 and 2.23 and therefore also the activities provided for in the road and rail corridor. The rule(s) accepted by the Panel above are to integrate into that new

[77] Section 42A Report, paragraph 818.
[78] Section 42A Report (Topic 18 Nuisance Effects), paragraph 58.

structure by being inserted into Rule 2.21 which lists (a now expanded range of) permitted activities in the road and rail corridor.

**Decision**

162. The standard for odour throughout the PMEP are amended as follows:

*There must be no ~~The odour must not be~~ objectionable or offensive odours to the extent that it causes an adverse effect ~~as detected~~ at or beyond the legal boundary of the site. ~~area of land on which the permitted activity is occurring.~~*

*Note: For the purpose of this performance standard, an offensive or objectionable odour is that odour which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the "FIDOL" factors must be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the "site" comprises all that land owned or controlled by the entity undertaking the activity causing the odour.*

## New definition – Installed

163. The report writer identifies that a new definition of 'installed' is required as a result of the Panel's Minute 58 to support amended rules as a result of the Woodburners Unite submission.

**Consideration and decision**

164. The Panel accepts the report writer's recommendations, with a few minor amendments, and a new definition is inserted as follows:

*Installed, and resultant age of, a small-scale solid fuel burning appliance means any one of the following:*

*a) the date on which a building permit for the appliance or related work was issued under the Local Government Act 1974, or*

*b) the date on which a building consent for the appliance or related work was issued under the Building Act 1991 (or where a building consent was lodged prior to the date of notification of this Plan, the date of lodging of the consent), or*

*c) a date of installation for the appliance or related work contained in an unauthorised building work report that has been accepted in writing by the Consents Department of the Marlborough District Council, or*

*d) a date of installation or appliance age authenticated by the Consents Department of the Marlborough District Council, based on:*

*i) a valuation report or sale and purchase agreement showing the small-scale solid fuel burning appliance as a chattel at a specified date, or*

*ii) the original invoice for the installation of the small-scale solid fuel burning appliance, or*

*iii) a copy of the installer's office record for the installation of the small-scale solid fuel burning appliance (certified by a Justice of the Peace), or*

*iv) a report from Council building inspector or suitably qualified person approved by the Council as to the age of the appliance.*

# Proposed Marlborough Environment Plan

# Topic 14: Waste and Discharges to Land

**Hearing dates:** 10 – 12 September 2018

**S42A Report Writer:** Adele Dawson/Matthew McCallum-Clark

**Conflicts of Interest:** None

**Interim decision:** None

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

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## National Environmental Standards for Sources of Human Drinking Water

**Technical Nature of Change**

1. The National Environmental Standards for Sources of Human Drinking Water (NESHDW) came into effect on 20 June 2008 and set requirements for protecting sources of human drinking water from becoming contaminated. The NESHDW requires regional councils to ensure that effects of activities on drinking water sources are considered in decisions on resource consents and regional plans. Specifically to:

   - decline discharge or water permits that are likely to result in community drinking water becoming unsafe for human consumption following existing treatment;
   - be satisfied that permitted activities in regional plans will not result in community drinking water supplies being unsafe for human consumption following existing treatment; and
   - place conditions on relevant resource consents that require notification of drinking water suppliers if significant unintended events occur (e.g. spills) that may adversely affect sources of human drinking water.[1]

**Section 42A Report**

2. The Section 42A Report identifies that the NESHDW is directly relevant to Topic 14 as permitted activity rules are included in the PMEP for activities that have the potential to affect community drinking water supplies.

3. The report writer considers from his review of the waste and discharge to land rules in the PMEP, amendments are necessary to several rules to ensure the Plan gives effect to the NES, specifically that the permitted activity rules should not result in community drinking water supplies being unsafe for human consumption.

4. While Volume 4 of the PMEP provides all zoning maps and includes the Groundwater Protection Areas overlays, these identify protection zones around community supplier bores where activities are restricted via the permitted activity rules. While these overlays include several discharge activities there are other discharges to land currently not restricted by permitted activity standards. They need to be addressed to meet the requirements of the NES. NESHDW requires regional councils to protect sources of human drinking water. The Council must be satisfied that permitted activity rules will not result in community drinking water supplies being unsafe for human consumption following existing treatment. There are other

[1] NESHDW Clause 10 and Clause 14

permitted activity discharges that can occur in groundwater protection areas creating a risk to the drinking water supply.[2]

**A suggested permitted activity standard**

5. The following permitted activity standard is currently included in some PMEP rules: *The (activity) must not occur within a Groundwater Protection Area.*[3]

6. The report writer recommends this permitted activity standard should be included along with others for the following activities:
   - Application of compost or solid agricultural waste;[4]
   - Making compost or silage or storing agricultural solid waste;[5]
   - Storage of compost;[6]
   - Discharge of agricultural liquid waste;[7]
   - Discharge of dairy farm effluent;[8] and
   - Disposal of offal or a carcass.[9]

7. No submissions sought this relief. But given that the standards/conditions had not specifically been requested in a submission, and given their technical nature, the Panel sought clarity as to its authority to include these provisions.[10] The Panel also sought clarification of paragraph 52 of the Section 42A Report.

8. The report writer in response identified:
   - The Section 42A Report identifies that the drinking water NES now gives a general ability to include these provisions.
   - Clause 10 NESHDW sets out the requirement to protect drinking water supplies, primarily through restricting changes in areas that may affect drinking supplies; the additional conditions do recommend this and fit within the existing drinking water framework of the PMEP.

[2] Section 42A Report, paragraph 19.
[3] Section 42A Report, paragraph 51.
[4] Rules: 3.3.25, 4.3.24, 19.3.18
[5] Rules: 3.3.33, 4.3.32, 19.3.22
[6] Rules: 3.3.34, 4.3.33, 19.3.23
[7] Rules: 3.3.26, 4.3.25, 19.3.19
[8] Rules: 3.3.28, 4.3.27
[9] Rules: 3.3.32, 4.3.31, 19.3.21
[10] Section 42A Report, Reply to Evidence, page 1.

- Clause 14 NESHDW identifies that the regional council is not required to amend an existing rule in the plan that does not comply with regulation 10 until the earlier of a plan change or variation that relates to the existing rule is introduced.

9. As part of the clarification of paragraph 52, the report writer also amended his recommendation as follows:

   *I recommend this permitted activity standard should be added to ~~the following rules include the following permitted activity standard restricting the activity from within a Groundwater Protection Area~~:*

   - *application of compost or solid agricultural waste;*[11]
   - *making compost or silage or storing agricultural solid waste;*[12]
   - *storage of compost;*[13]
   - *discharge of agricultural liquid waste;*[14]
   - *discharge of dairy farm effluent;*[15] *and*
   - *disposal of offal or a carcass.*[16]

10. It is the opinion of the report writer that adequate protection from the activities identified is missing from the PMEP although the framework is there to provide for a new standard for permitted activity rules if the Panel agrees there is scope for the recommendations to provide for this.

**Consideration**

11. The Panel agrees because of the critical importance of protecting groundwater for drinking water purposes. There are eight community water supplies that are currently protected by groundwater overlays. Clauses 10 and 14 of NESHDW give clear authority to achieve this protection, as follows:[17]

    *10 Limitations on permitted activity rules for activities upstream of abstraction points*

    *(1) A regional council must not include a rule or amend a rule in its regional plan to allow a permitted activity, under section 9, 13, 14, or 15 of the Act, upstream of*

[11] Rules: 3.3.25, 4.3.24, 19.3.18.
[12] Rules: 3.3.33, 4.3.32, 19.3.22.
[13] Rules: 3.3.34, 4.3.33, 19.3.23.
[14] Rules: 3.3.26, 4.3.25, 19.3.19.
[15] Rules: 3.3.28, 4.3.27.
[16] Rules: 3.3.32, 4.3.31, 19.3.21.
[17] Section 42A Report, Reply to Evidence, page 1.

*an abstraction point where the drinking water concerned meets the health quality criteria unless satisfied that the activity is not likely to—*

*(a) introduce or increase the concentration of any determinands in the drinking water so that, after existing treatment, it no longer meets the health quality criteria; or*

*(b) introduce or increase the concentration of any aesthetic determinands in the drinking water so that, after existing treatment, it contains aesthetic determinands at values exceeding the guideline values.*

*…*

*14 Regional council not required to immediately amend rules in plan*

*A regional council is not required to amend an existing rule in a plan that does not comply with regulation 10 until the earlier of the following:*

*(a) a scheduled review of the plan; or*

*(b) a plan change or variation that relates to the existing rule is introduced.*

**Decision**

12. Include the following as permitted activity rules for the listed activities as follows:[18]

<u>*The (activity) must not occur within a Groundwater Protection Area.*</u>

Activities:

- *application of compost or solid agricultural waste;*
- *making compost or silage or storing agricultural solid waste;*
- *storage of compost;*
- *discharge of agricultural liquid waste;*
- *discharge of dairy farm effluent; and*
- *disposal of offal or a carcass.*

[18] Section 42A Report, pages 16-17. Reply to Evidence, page 1.

## Application of chemicals

### Rule 19.3.15

**Application of an agrichemical into or onto land.**

13. The most relevant agrichemical application rules refer to three permitted activity standards to which submissions are related as follows:

- The agrichemical must be approved for use under the Hazardous Substances and New Organisms Act 1996.[19]
- The application must be undertaken in accordance with the most recent product label. All spills of agrichemicals must be notified to the Council immediately.[20]
- The application must be carried out in accordance with Agricultural Compounds and Plant Protection Products – Management of Agrichemicals Act 1997 (NZS 8409) with Sections 5.3 and 5.5.

14. DOC as one of the four submitters to one of the three standards is concerned with Rule 19.3.15 noting that in Open Space 3 Zone, the Department utilises products that are not created for that purpose for controlling weeds and therefore would not comply with the standard requiring the application of agrichemicals in accordance with product labels. The Department considers that NZS 8409:2004 does not require compliance with product label instructions and that these are not an indication of a threshold for an adverse environmental effect. DOC seeks wording changes so that the word 'discharge' is used rather than 'application' as follows:[21]

> *The agrichemical must be approved for use under the Hazardous Substances and New Organisms Act 1996 <u>and the discharge is in accordance with all the conditions of the approval</u>.*

**Section 42A Report**

15. The report writer provides an introduction to the subject of agrichemicals in the PMEP as follows:[22]

> *All zone chapters contain a permitted activity rule and standards for the application of agrichemicals into or onto land except The Port Zone, Port Landing Area Zone, Marina*

[19] Permitted activity standards: 3.3.22.1, 4.3.21.1, 5.3.13.1, 6.3.8.1, 7.3.11.1, 8.3.12.1, 9.3.6.1, 10.3.6.1, 11.3.5.1, 12.3.21.1, 17.3.7.1, 18.3.8.1, 19.3.15.1, 21.3.15.2, 23.3.4.1.
[20] Permitted activity standards: 3.3.22.4, 4.3.21.3, 5.3.13.2, 6.3.8.2, 7.3.11.2, 8.3.12.2, 9.3.6.2, 10.3.6.2, 11.3.5.2, 12.3.21.2, 17.3.7.4, 18.3.8.4, 19.3.15.4, 21.3.15.1, 23.3.4.3.
[21] DOC (479.253, .254). Tim Ensor, Evidence, paragraphs 6.2-6.3.
[22] Section 42A Report, Reply to Evidence, page 5.

*Zone, Coastal Marine Zone, Open Space 4 Zone and Lake Grassmere Saltworks Zone where the discharge of agrichemicals requires a discretionary activity consent.*

*The Chapter 2 General Rules also include rules for the discharge of agrichemicals to air, but these rules only apply to roads and railway corridors identified on the zoning maps. Submitters have raised this as an issue, and there is clear overlap with the air chapter of the MEP.*

*If one or more of the permitted activity standards are unable to be met, the application of agrichemicals is classified as a discretionary activity. The permitted activity standards are largely the same in all zones, although there are no restrictions on the method of application in the Rural, Coastal Environment, Open Space 1, Open Space 2, Floodway and Airport Zone.*

16. The report writer considers use of the word 'discharge' is consistent with Resource Management (Exemption) Regulations 2017 (vertebrate toxic agents). At the time the PMEP was drafted, consultation with the farming community identified that for activities such as applying fertiliser, lime or agrichemicals, the word 'application' was more easily understood than 'discharge'. As this is a formal document with legal effect, use of the word 'discharge' is recorded so the report writer recommends to change all uses of 'application' in the rules and associated standards to 'discharge'.

**Consideration**

17. The Panel reconsidered this recommended decision from a plan user's perspective and decided that there is utility in retaining the word 'application'. The decision was also made to include the words ('involving a discharge') after 'application' in the relevant rules and standards.

**Decision**

18. Add to the multiple relevant rules and standards the words '*application <u>involving a discharge</u>*'.

## Issue 16A

**Large quantities of solid waste are generated in Marlborough.**

19. The final paragraph of the explanatory text for Issue 16A reads:

*Waste management in the Marlborough Sounds and in isolated parts of South Marlborough presents a considerable challenge. Providing opportunities to minimise solid waste and offering a collection and disposal service for residual solid waste to those who reside or holiday in more remote locations (in many cases, without road access) is difficult, due to the cost and practicality of providing these services. Solid*

*waste is also generated on the considerable number of boats using the Marlborough Sounds. Some people have responded to these challenges of isolation by disposing of their solid waste on-site, especially where the waste is generated on farms (e.g. rubbish and offal pits). There is also the risk of illegal dumping of solid waste on river reserves and roadsides. Illegal dumping has significant environmental implications and can result in the contamination of land and water resources (creating a public health hazard) and the potential for the spread of plant pests from green waste. It is also unsightly in areas that are usually visually appealing.*

20. There were two submissions on Issue 16A. One submitter supports the issue but raises a concern about illegal dumping of solid waste on private land.[23] Another submitter opposes Issue 16A and seeks clear policies and methods to address the problem of illegal dumping of solid waste on both public and private land.[24]

**Section 42A Report**

21. Initially, the report writer considered that both submitters' requests are inappropriate to address via amendments to the issue as both seek policies and methods to address their concerns.[25] Further consideration of whether the current provisions or if new policies and methods are required, is identified elsewhere in the Section 42A Report. No change was recommended.

22. In the Reply to Evidence, the report writer reconsidered that the issue could potentially be expanded to address private as well as public land, but overall, including RMA – linked methods, the relief sought is unlikely to change illegal dumping. For the Litter Act 1979, the Nuisance Bylaw 2017 and Waste Bylaw 2017 are the existing, and more appropriate legislative mechanisms to address the issue. Of note, s 15 of the Litter Act states:[26]

    *Every person commits an offence and is liable on conviction, in the case of an individual, to a fine not exceeding $5,000 or, in the case of a body corporate, to a fine not exceeding $20,000, who deposits any litter or, having deposited any litter, leaves it—*

    *(a) in or on a public place; or*

    *(b) in or on private land without the consent of its occupier*

23. The report writer recommends no change from the Section 42A Report.

[23] MFIA (962.108).
[24] NFL (990.252).
[25] Section 42A Report, paragraph 73.
[26] Section 42A Report, Reply to Evidence.

**Consideration**

24. The Panel concluded there must be some redress to the illegal dumping of solid waste on private land which we heard in evidence could be difficult to monitor particularly in remote forest areas. In our opinion, this redress requires an amendment to the fifth sentence of the explanation to Issue 16A so that it is not specific to land tenure only.

**Decision**

25. The fifth sentence of the last paragraph of the explanation to Issue 16A is amended to read:

*… There is also the risk of illegal dumping ~~of solid waste on river reserves and roadsides~~. Illegal dumping has significant environmental implications and can result in the contamination of land and water resources (creating a public health hazard) and the potential for the spread of plant pests from green waste. It is also unsightly in areas that are usually visually appealing.*

## Introduction

26. The report writer recommends Chapter 16, Volume 1, is headed as follows:

*16. Waste <u>and discharges to land</u>*

27. NZDF oppose provisions in Chapter 16 as it provides for discharges of waste to land but the definition of waste in the PMEP excludes stormwater, which NZDF considers is confusing. Additionally, the provisions of Chapter 15 appear to focus the policy relevant to stormwater on the preference for discharges to land but this does not appear to flow through into the PMEP rules. NZDF seek amendments to the provision to improve clarity and direction in relation to stormwater discharges district wide, including to land. No permitted activity standards have been suggested.[27]

28. The report writer agrees with NZDF that there is a lack of certainty in the PMEP as to the approach to managing stormwater discharges and that this needs to be clarified.

29. It is the report writer's understanding that in the PMEP it is intended to manage those stormwater discharges to land that contain contaminants via resource consents, as there are no permitted activity rules or standards. The report writer understands that this does not include roof discharges to land or small-scale hardstand areas where the discharge does not contain any contaminants. This is because s 15 RMA restricts discharges of contaminants to land only and not discharge of water to land. He also understands that in urban areas, the majority of stormwater discharges are conveyed to reticulated stormwater networks which discharge to water. This is addressed by separate PMEP provisions

[27] NZDF (992.16).

30. To address the concerns raised by NZDF, the report writer considers that it would be appropriate to include an explanatory note in the introduction of the chapter to specify how stormwater contaminant discharges to land are managed. He also recommends that the Chapter 16 title, Issue 16B, Objective 16.3 and Method 16.M.16 are amended to incorporate reference to stormwater contaminant discharges. In his view, the changes as recommended below provide certainty as to the approach to stormwater management and provide direction to plan users as to how stormwater contaminant discharges should be managed. He does not consider any amendments to the policies are required, as policies 16.3.3 and 16.3.4 provide sufficient direction in relation to stormwater discharge permits. He also does not consider that any additional rules are necessary based on this approach.

**Consideration**

31. As there is uncertainty regarding the treatment of stormwater discharge to land, the Panel agreed to resolve this uncertainty by inserting a new paragraph into the Introduction. The Panel also agreed with the report writer's recommendation to add the words 'and discharge to land' to the heading and this is amended accordingly.

**Decision**

32. The chapter heading is amended to read:

*16. Waste and discharges to land*

33. The Introduction is amended as follows:[28]

*… The Council exercises waste management functions under multiple pieces of legislation.*

*In Marlborough the majority of stormwater in urban areas is discharged to water via the reticulated stormwater network.*

*Where this network is unavailable potential effects on water could be significant. Where it can be demonstrated that filtration of contaminants may be provided safely by soils, stormwater could be discharged to land. Stormwater from industrial and commercial land uses will likely contain contaminants requiring treatment prior to discharge. Without management, stormwater discharges containing contaminants may cause environmental effects such as localised contamination of water resources or nuisance problems such as exacerbating flooding.*

*The focus of this chapter of the Marlborough Environment Plan (MEP) is to set a framework for addressing Marlborough's significant waste management and discharge to land issues under*

[28] NZDF (992.16).

*the Resource Management Act 1991 (RMA). In addition to waste minimisation, the chapter focusses on the way in which the Council exercises its function of controlling the discharge of contaminants into the environment.*

34. Insert 'and discharge to land' into third paragraph of Introduction as follows:[29]

*The focus of this chapter of the Marlborough Environment Plan (MEP) is to set a framework for addressing Marlborough's significant waste management* <u>*and discharge to land*</u> *issues under the Resource Management Act 1991 (RMA). In addition to waste minimisation, the chapter focusses on the way in which the Council exercises its function of controlling the discharge of contaminants into the environment.*

### Policy 16.3.3

**Approve discharge permit applications to discharge contaminants onto or into land where:**

**(a) the discharge is within the ability of the land to treat and/or contain contaminants present in the liquid waste, taking into account:**

- **(i) the rate of discharge (including variability in the rate of discharge);**
- **(ii) the nature and concentration of contaminants within the liquid waste;**
- **(iii) the hydraulic properties of the soil within the land application area and any relevant physical, chemical or biological soil properties;**
- **(iv) any other discharge of contaminants to the same land or to land in close proximity to the discharge;**

**(b) the discharge does not adversely affect the drinking water quality of groundwater adjacent to or down gradient of the discharge, either alone or in combination with any other discharge;**

**(c) the land application area is located as far as practicable from any surface waterbody or coastal water;**

**(d) it is inappropriate (due to the potential impact on the performance of treatment plants and associated infrastructure) or impracticable to discharge the liquid waste into reticulated sewerage system;**

**(e) the discharge will not initiate instability or make existing instability worse; and**

**(f) the treatment unit and land application area are accessible for servicing.**

35. Several submitters request: it is not clear whether the provision applied to farm dairy effluent or to domestic wastewater and that if it applies to both, it is too broad – include the words 'where relevant' so that only matters of relevance are assessed in applications – further Policies 16.3.3 and 16.3.4 could be combined;[30] an amendment to sub-clause (c) is required to improve clarity as follows: *(c) The land application area is located ~~is located as far as practicable from any surface waterbody or coastal water;~~ and the land application system is*

[29] NZDF (992.16).
[30] Federated Farmers (425.333).

*managed, such that the discharge of wastewater directly or via overland flow to a surface waterbody or coastal water is avoided.*[31]

36. Another submitter notes that sub-clause (b) imposes a very high barrier as it refers to any adverse effect on drinking water regardless of whether the quality of water would continue to meet drinking water standards – it is appropriate to refer to 'best practicable option as an assessment option. Fonterra therefore seeks the following amendments:[32]

    *Approve discharge permit applications to discharge contaminants onto or <u>into land where they demonstrate best practicable option</u> and where: …*

    *(b) <u>Where groundwater is suitable for drinking</u>, the discharge does not adversely affect the drinking water quality of groundwater adjacent to or down gradient of the discharge, either alone or in combination with any other discharge; …*

**Section 42A Report**

37. In terms of Federated Farmers submission, the report writer agrees that the policy should be amended to require consideration of only those matters relevant to the particular discharge subject to the resource consent application. Further, Policy 16.3.3 is more related to the location of the system rather than its design, which is addressed in Policy 16.3.4. Each of these policies serves a different purpose and they should remain separate.

38. With respect to Constellation Brands, the report writer agrees that the current wording of Policy 16.3.3(c) is unclear as to what is meant by '*the land application area is located as far as practicable from any surface waterbody or coastal water*'. It also does not clearly link with Objective 16.3 which seeks to avoid the discharge of contaminants to a waterbody. This is important rather than ensuring the system is located as far as possible from a waterbody or coastal water.[33] In these terms the report writer agrees with the submitter that there should be an amendment to sub-clause (c) as follows:

    *(c) the land application area is located ~~as far as practicable from~~ <u>and managed so that the discharge of contaminants directly, or via overland flow, to</u> any surface waterbody or coastal water <u>is avoided</u>.*

39. In terms of Fonterra's requests, the report writer refers to Objective 16.3 that will be achieved by implementing the term 'best practicable option' as a minimum requirement to ensure an appropriate level of wastewater treatment. This term could also be useful guidance to include

[31] Constellation Brands (631.50).
[32] Fonterra (1251.53, 1251.116).
[33] Section 42A Report, paragraphs 187, 189, 191-192, 193.

in Policy 16.3.3 as to what a discharge option needs to achieve. It would allow wider consideration of financial implications and current technological limitations alongside the nature of the discharge and sensitivity of the receiving environment.

40. The report writer's recommendation is to include a new sub-clause requiring a consideration of whether an application demonstrates, as a minimum, the best practicable option is utilised.

**Consideration**

41. We agree that discharge applications should be able to be approved where an applicant demonstrates the best practicable option is applied.

42. The report writer provides the following recommendations which the Panel accepts for the reasons given including the statutory guidance provided in s 52 RMA as follows:

> **Best practicable option, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to –**
>
> **(a) The nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and**
>
> **(b) The financial implications, and the effects on the environment, of that option when compared with other options; and**
>
> **(c) The current state of technical knowledge and the likelihood that the option can be successfully applied**

43. 'Best practicable option' has too many matters of interpretation and discretion built in to allow it to be used as a black and white test in every case. The question of weight accorded each provision depends on the particular case. An evaluation of the best method should take account of all of the factors mentioned in the section's provisions. What is reasonable in each case will be a question of fact and degree. A new (g) to reference the best practicable option should be added to the policy.[34] But the words 'at a minimum …' should be deleted from the report writer's recommended wording for new paragraph (g) because that defeats the evaluation exercise that the best practicable option provides.

**Decision**

44. Amend Policy 16.3.3 as follows:

*Policy 16.3.3 – Approve discharge permit applications to discharge contaminants onto or into land where* <u>*as relevant to the discharge*</u>*:*

*(a) the discharge is within the ability of the land to treat and/or contain contaminants present in the liquid waste, taking into account:*

*(i) the rate of discharge (including variability in the rate of discharge);*

[34] Fonterra (1251.53, 1251.116).

*(ii) the nature and concentration of contaminants within the liquid waste;*

*(iii) the hydraulic properties of the soil within the land application area and any relevant physical, chemical or biological soil properties;*

*(iv) any other discharge of contaminants to the same land or to land in close proximity to the discharge;*

*(b) the discharge does not adversely affect the drinking water quality of groundwater adjacent to or down gradient of the discharge, either alone or in combination with any other discharge;*

*(c) the land application area is located ~~as far as practicable from~~ and managed such that the discharge of contaminants directly, or via overland flow to any surface waterbody or coastal water is avoided.*

*(d) it is inappropriate (due to the potential impact on the performance of treatment plants and associated infrastructure) or impracticable to discharge the liquid waste into a reticulated sewerage system;*

*(e) the discharge will not initiate instability or make existing instability worse; ~~and~~*

*(f) the treatment unit and land application area are accessible for servicing; and*

*(g) the application demonstrates that the best practicable option is utilised.*

## Policy 16.3.5

**When considering discharge permit applications to discharge contaminants onto or into land, have regard to the cultural values of Marlborough's tangata whenua iwi.**

45. Federated Farmers support the intent of the policy but request that the currently worded provision is burdensome due to its covering of all cultural values and they prefer:[35] *When considering discharge permit applications to discharge contaminants onto or into land, have regard to sites of spiritual and/or cultural significance ~~the cultural values~~ of Marlborough's tangata whenua iwi.*

46. Te Ātiawa support the policy but state the consideration of cultural values should be referred to as 'have particular regard to; or 'recognise and provide for' rather than 'have regard to'.[36] As currently stated it does not provide a strong enough direction.

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[35] Federated Farmers (425.335).
[36] Te Atiawa (1186.94).

**Section 42A Report**

47. The report writer in response makes several observations:

- The consideration of cultural values in the consent process is more than assessing the potential impact on culturally significant sites.
- The wording of Policy 16.3.5 may not reflect the statutory requirements under Part 2 (s 6 and 7) RMA which the report writer identified. At this time the information necessary to identify sites and include them in the PMEP is not yet available.
- The most relevant provision in the Plan is Objective 3.5 which includes the wording 'Resource management decision making processes that give 'particular consideration' to the cultural and spiritual values of Marlborough's tangata whenua iwi.
- As a result, it is necessary to revise the wording of Policy 16.3.5 to reflect a higher level of consideration of cultural values when assessing discharge permit applications. The term 'have regard to' means that some consideration of cultural values may be undertaken while assessing an application, but those values can be easily dismissed and not given suitable weight.
- On the other hand the terminology 'give particular consideration' directs plan users to consider cultural values where they are relevant but does not impose a mandatory requirement to provide for those values.
- The request from Te Ātiawa to amend the policy to 'recognise and provide' for those cultural values is not appropriate because currently those values are not all able to be recognised or provided for. 'Give particular consideration' is the more appropriate term'.[37]

**Consideration**

48. We do not agree in the context of waste discharge that 'give particular consideration' to cultural values is strong enough. The values may be considered but without any input from iwi, equally these values are misrepresented if not properly informed, and then cast aside. 'Recognise and provide for' is stronger, implying shared information and a positive outcome.

*49.* Our conclusion is to replace 'have regard to' with 'recognise and provide for' as more practical terminology in the context of 'best practicable option' *a) the sensitivity of the receiving environment to the adverse effects on tangata whenua iwi.*

[37] Section 42A Report, paragraphs 206-214.

**Decision**

50. Policy 16.3.5 is amended as follows:[38]

*When considering discharge permit applications to discharge contaminants onto or into land~~,~~ ~~have regard to~~ recognise and provide for the cultural values of Marlborough's tangata whenua iwi.*

## Discharge of Human Effluent

### 16.M.20 Warrant of Fitness

51. Matter 10 addresses the discharge of human effluent via on-site systems and long-drop toilets. All zone chapters contain a permitted activity rule and permitted activity standards for the discharge of human effluent into or onto land except the Business 1 Zone, Business 3 Zone, Industrial 1 and 2 Zone, Port Zone, Port Landing Area Zone, Maine Zone, Coastal Marine Zone, Open Space 4 Zone, and Floodway Zone.

52. Method 16.M.20 states as follows:

> *Develop and implement, within five years of the MEP becoming operative, a Warrant of Fitness scheme for existing on-site wastewater management systems not authorised by resource consent in the Marlborough Sounds and in Groundwater Protection Areas. This scheme will require an initial inspection of the adequacy and effectiveness of existing on-site wastewater management systems and subsequent re-inspections every five years. The inspections will include an assessment of the capacity and integrity of the treatment unit (e.g. septic tank) and an assessment of the condition of the means of distribution and land application area(s).*

53. Four submissions were received in respect of 16.M.20 requesting: that the PMEP provides for onsite wastewater management system properties that cannot meet the requirements without requiring further upgrades, provided the systems are working within their initial design capabilities.[39]

54. In evidence, Mr Curr of the Okiwi Bay Ratepayers Association seeks removal of restrictions on existing disposal systems of human effluent, including from the warrant of fitness (WOF) test, with Okiwi Bay's preference towards a community reticulated system. Mr Curr is particularly concerned that individual ratepayers will be required to upgrade their own systems at a cost that is not dissimilar to a community-based system. This he considers is inefficient.

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[38] Section 42A Report, paragraph 237.
[39] Okiwi Bay Ratepayers Association Inc (269.1).

55. QCSRA oppose the method and state that regular desludging would be accepted but seek that the method includes an option for MDC to discuss the approach with affected communities and allow seven years for design.[40] Federated Farmers also oppose this method and question how achievable it would be for MDC to inspect all on-site domestic wastewater systems as all components are generally buried. The submitter also questions the scientific basis for MDC targeting on-site wastewater systems as it does not believe farmers are a significant contributor to poor water quality outcomes, especially in extensive rural settings. Federated Farmers seek the method is deleted from the PMEP.[41]

**Section 42A Report**

56. The Section 42A Report generally recommends greater emphasis on guidance in AS/NZS 1547:2012 Standard and recommends provisions for long-drop toilets in additional zones. Otherwise the notified provisions of the PMEP are generally recommended to be retained as notified.

57. In response to the submission from the Okiwi Bay Ratepayers Association, the report writer considers that it cannot be determined at this point whether on-site wastewater systems in Okiwi Bay would fail, as the WOF system is yet to be developed. He also disagrees that existing systems should be able to continue to discharge without upgrades if operating within their original design capabilities. For most old systems, their 'original design capabilities' are unlikely to be recorded or retained by landowners. These older systems could be causing unacceptable adverse effects if operating within their original design, and in such circumstances the report writer considers it is appropriate that these systems are upgraded or replaced. This aligns with Policy 16.3.1 and Objective 16.3. The method therefore does not require an amendment.[42]

58. In terms of Federated Farmers' concerns, the report writer considers it is possible for inspections of existing on-site wastewater systems to be undertaken. He identifies that MDC has received 191 complaints about domestic wastewater systems over the previous 10 years, indicating that there is a possible issue with the effective functioning of these systems. Evidence presented by AQNZ and MFA about monitoring undertaken in the Marlborough Sounds as part of mandatory water quality monitoring for food safety, raises concerns about discharges from poorly designed and operating septic tanks affecting coastal water quality.[43]

[40] QCSRA (504.74).
[41] Federated Farmers (425.339).
[42] Section 42A Report, paragraph 246.
[43] MFA and AQNZ, Alan Ross Campbell, Evidence.

The report writer recommends greater emphasis on the guidance provided for in the AS/NZS 1547:2012 Standard and adding provision for long drop toilets in additional zones.

59. As a result the report writer's general recommendation is that the notified PMEP provisions are to be supported.

**Consideration**

60. The report writer in his Reply to Evidence, raised the question of scope relating to some of the issues raised by Mr Curr who is particularly concerned that individual ratepayers will be required to upgrade their systems at a cost that is not dissimilar to a community-based system. The submitter considers the cost to individual ratepayers of upgrading is inefficient and a treatment system and reticulation should be progressed.

61. We consider where there are problems in Okiwi Bay with existing on-site wastewater systems the emphasis should be on a reticulated community scheme.

62. The report writer makes the point, which we share, that a treatment plant and reticulation are likely to be the preferred outcome, and potentially failing systems ought to be subject to monitoring and upgrade in the meantime.[44] With this approach in mind we have made several amendments to Method 16.M.20 that relate to an alternative to the Warrant of Fitness scheme which may be more acceptable to residents.

**Decision**

63. Amend Method 16.M.20 as follows:

*~~Develop and implement, within~~ Within five years of the MEP becoming operative, <u>develop either implementation of</u> a Warrant of Fitness scheme for existing on-site wastewater management systems not authorised by resource consent in the Marlborough Sounds and in Groundwater Protection Areas <u>or commence the development of a reticulated community scheme</u>. ~~This~~ <u>The Warrant of Fitness</u> scheme will require an initial inspection of the adequacy and effectiveness of existing on-site wastewater management systems and subsequent re-inspections every five years. The inspections will include an assessment of the capacity and integrity of the treatment unit (e.g. septic tank) and an assessment of the condition of the means of distribution and land application area(s).*

[44] Section 42A Report, Reply to Evidence, page 16.

64. As a consequential amendment, the first indicator for 16.AER.4 is amended to read:

*A warrant of fitness scheme is established and operated for all on-site wastewater management systems* *<u>or a reticulated wastewater system is developed to address cumulative adverse effects of on-site wastewater management systems in a particular location.</u>*

## Anticipated Environmental Results

### 16.AER.3

**There are no significant adverse effects on receiving environments as a result of the discharge of liquid wastes to land.**

65. The indicators for monitoring effectiveness are:

*The annual median values of the following soil parameters for soils within land application areas routinely monitored will fall within target ranges, as defined by Landcare Research (Landcare Research, 2003):*

*(a) soil pH;*

*(b) SAR ratio*

*There is no major non-compliance with permitted activity rules or discharge permit conditions for dairy shed effluent and winery wastewater discharges in any year.*

*The rate of minor non-compliance for dairy shed effluent and winery wastewater discharges will not exceed 15 percent in any milking season or vintage in any year.*[45]

66. MDC seeks an amendment to the second indicator to better reflect the anticipated result by amending the second to last paragraph to include *'… discharges <u>that cause significant adverse effects</u> in any year'*.[46]

**Section 42A Report**

67. The report writer considers that the relief requested by MDC, that there is no major non-compliance with permitted activity rules or discharge permit conditions causing significant adverse effects, is not appropriate as it is a very difficult threshold to identify and determine. It should be more appropriate to specify there are no major new compliances that cause 'more than minor' effect as this is a higher threshold for severity of effects. The report writer recommends that the monitoring effectiveness indicator is amended to specify there are no major non-compliances resulting in more than minor effects.

[45] Section 42A Report, paragraphs 250-251.
[46] MDC (91.135).

68. It is further recommended that a consequential change should be made to the anticipated result 16.AER.3 to specify there are 'no more than minor adverse effects' rather than 'significant adverse effects' as it is a simpler assessment to make.[47]

**Consideration**

69. The Panel considered that the recommended text should be reworded to better reflect the AER so that the emphasis is on 'there are no effects that are more than minor on...' with the recommended text amended accordingly.

70. The Panel also noted that the third indicator was not sufficiently clear with respect to the '15 percent' and considers that a cl 16 amendment to include the phrase 'of operations' should be inserted after '15 percent'. This addition does not amend the intent of the AER.

**Decision**

71. 16.AER.3 is amended as follows:[48]

*There are no ~~significant~~ adverse effects <u>that are more than minor</u> on receiving environments as a result of the discharge of liquid wastes to land.*

72. Reword the second indicator so that the emphasis is on effects not being more than minor, as follows:[49]

*There is no major non-compliance with permitted activity rules or discharge permit conditions for dairy shed effluent and winery wastewater discharges <u>that cause adverse effects that are more than minor</u> in any year.*

73. Amend the third indicator as follows:

*The rate of minor non-compliance for dairy shed effluent and winery wastewater discharges will not exceed 15 percent <u>of operations</u> in any milking season or vintage in any year.*

[47] Section 42A Report, paragraphs 252-256.
[48] MDC (91.135) consequential amendment.
[49] Section 42A Report, paragraph 256.

## Discharge to Air

### 2.21 Permitted Activities

### 2.21.1 Application of an agrichemical

### 2.22 Standards that apply

### 2.22.1 Application of an agrichemical

### 2.23 Discretionary Activities

74. DOC submitted in opposition to Rules 2.21.1 and 2.22.1 seeking their deletion as they should be combined with the discharge to land rules in each of the relevant zones. DOC have also submitted that the Open Space 3 Zone rule should be amended to include the application of an agrichemical to air. No reasons were given why these two rules should be combined. [50]

75. DOC have also proposed a new permitted activity rule for 19.3.15: *Any spray drift resulting from the discharge is contained within the boundary of the property.*

76. Trustpower seeks a rule be expanded to allow for the aerial application of agrichemicals in the Rural Environment Zone.[51] It seeks the permitted activity rule and the addition of new permitted activity standards to address the potential effects of aerial applications through Standards 3.1.22, 3.2.22 and 3.2.66:

    *3.1.22 and 3.2.22: Application of an agrichemical into or onto land<u>, or application of an agrichemical by air onto land.</u>*

    *<u>3.3.22.6. The agrichemical must not pass beyond the legal boundary of the area of land on which the agrichemical is being applied.</u>*

77. Transpower submits on Rules 2.21 and 2.23 and requests they are extended to apply to agrichemicals associated with the National Grid.[52] The company considers that because the National Grid is a nationally significant infrastructure that shares the same liner characteristics as the road and rail corridor, the Section 32 Report does not provide clear rationale for confining these provisions to the rail and road corridor. But an amended approach would better give effect to the National Policy Statement on Electricity Transmission for the ongoing operation and maintenance of the National Grid.[53]

78. NZTA submits in respect of Rules 2.21.1 and 2.22.1 also seeking that the phrasing of the rules is amended to include the associated discharge of contaminants to air and onto land 'in

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[50] DOC (479.184, 479.185).
[51] Trustpower (1201.139, 1201.140).
[52] Transpower (1198.53, .54).
[53] Section 42A Report, paragraph 336.

circumstances where the contaminants may result in entering water'. The proposed rules do not include the associated discharge to land and there are no other rules which would apply to the road corridor.[54]

**Section 42A Report**

79. In response to NZTA, it is the report writer's understanding that:

- The intention of Chapter 2 General Rules is to authorise the discharge to land of agrichemicals in the road and rail corridors which are not zoned in the planning maps.
- As the structure of the PMEP is to list all rules relevant to each zone in a single chapter, there is no place for rules related to the road and rail designations.
- Three general rules are included to permit the application of agrichemicals for weed management in the transport corridors.
- The reference to specify the rules under the heading 'Discharges to Air', which is evident in the use of the term 'application' in the permitted activity rule instead of 'discharge', appears to be in error.
- The recommendation to the heading in Chapter 2 is to amend the wording to state: 'Discharge to land within the road and rail corridors' to make it explicit. It is the application to land that is authorised.
- An amendment is also necessary to Rule 2.23.2 to change the reference from 'any discharge to air …' to 'any discharge to land within the road and rail corridors …'.
- It is not necessary to therefore amend the zone-specific rules to reference any discharges to air.[55]

80. With respect to Transpower's request to extend the rules to the National Grid, the report writer considers this amendment is inappropriate as the location of the National Grid infrastructure will be either within the road or rail corridor or a specified zone. The intent of the Chapter 2 rules is to address an issue with the zoning where the road and rail corridor do not have an associated chapter. Therefore weed management undertaken in association with the National Grid can be a permitted activity under either the zone-based rules or the general rules, depending on which apply.[56]

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[54] NZTA (1002.146, .47).
[55] Section 42A Report, paragraph 337.
[56] Section 42A Report, paragraph 338.

**Consideration**

81. Given that the reference to 'Discharge to air' in 2.21 to 2.23 is in error, the rules do not specify 'Discharge to land' for the reasons given and the fact for Transpower that the National Grid infrastructure will either be in the road or rail corridor or a specified zone, amendment is unnecessary - because weed management is a permitted activity.

82. The Panel accepts the report writer's recommendation that this section of rules should be amended to regulate discharges to land.

83. The Panel is amenable to changing Rule 2.21.1 and Standard 2.22.1 to provisions regulating the discharge of agrichemicals to land for the reasons set out above. It has also agreed to add other discharges to land to 2.21 via the Topic 15 and 18 decisions.

84. Technically, the Panel cannot accept NZTA's request to convert this section of general rules to a section managing the discharge of contaminants to land only. This is because another request by the same submitter to provide for land uses (namely excavation and filling) in the road corridor in Topic 13 – Water Quality was considered and accepted. This has necessitated an expansion to the activities managed in this section of rules (2.21, 2.22 and 2.23). In spite of the technical rejection of the relief requested, the Panel's view is that the decision in Topic 13 – Water Quality achieves the outcome sought by NZTA. That is the structure of 2.21, 2.22 and 2.23 enables a broader range of permitted activities that would reasonably be expected (subject to standards) to be undertaken by NZTA or KiwiRail in the road and rail corridor respectively.

**Decision**

85. The heading in Chapter 2 General Rules is amended as follows:

*Activities within the road and rail corridors ~~Air~~*

86. Rule 2.32.2 is amended as follows:[57]

*Any discharge to land within the road and rail corridors ~~air~~ not provided for as a Permitted Activity.*

## References to HSNO and NZS Standard

87. Many of the agrichemical application rules refer to three permitted activity standards:

- The agrichemical must be approved for use under the Hazardous Substances and New Organisms Act 1996.

[57] Section 42A Report, paragraphs 355, 356.

- The application must be undertaken in accordance with the most recent product label. All spills of agrichemicals must be notified to the Council immediately.
- The application must be carried out in accordance with sections 5.3 and 5.5 of NZS 8409:2004 Safe Use of Agricultural Compounds and Plant Protection Products – Management of Agrichemicals (NZS 8409).

88. Submitters request that the rule for agrichemical discharges to land be deleted as it is already provided for under HSNO.

89. Specifically, several submitters submit that as agrichemicals are already regulated by HSNO and the NZS 8409:2004 standard, the rule should be deleted.[58] MDC also requests that the permitted activity standard is deleted as it unnecessarily restricts the products that may be applied to land to those activities approved by use under HSNO and this was not intended.[59]

**Section 42A Report**

90. The report writer accepts the submissions from MDC, Federated Farmers and S Parkes for the following reasons:

- Not all agrichemicals may be classified as hazardous.
- This status will prevent less harmful products from being applied as a permitted activity.
- If the product is used under HSNO the user is required to abide by any conditions under the HSNO management regime.
- Removing the standards better aligns with the policies of the PMEP, especially Policy 15.5.1 which states:

  *Primarily rely on regulations promulgated under the Hazardous Substances and New Organisms Act 1996 to ensure hazardous substances are used, stored and transported in an appropriate manner.*
- HSNO provides minimum controls for the use, storage, transportation and disposal of all hazardous substances throughout New Zealand, and MDC is able to impose additional or more stringent controls.
- MDC is satisfied with the requirements imposed under HSNO with two exceptions: the use and storage of hazardous substances in groundwater protection areas and on river beds, due to the vulnerability of the aquifers and rivers to contamination; and the

[58] Federated Farmers (425.490, .566, .669, .774) and S Parkes (339.13).
[59] MDC (91.48, .49, .50, .51, .53, .54, .55, .56, .57, .58, .59, .60, .61, .62, .124).

discharge of hazardous waste to land or water. As neither of these exceptions apply, the report writer recommends it is appropriate to delete these standards.[60]

91. In terms of the permitted activity standard that has been included in the application of agrichemical rules in accordance with the context of sections 5.3 and 5.5 of NZS8409:2004, the report writer does not recommend its deletion. The standards are not legally binding on their own, but their implementation does assist in meeting HSNO regulations and their retention in the permitted activity will ensure that the potential adverse effects of their use are appropriately managed.

**Consideration**

92. The Panel considered whether there was an inconsistency between Policy 15.3.4 (discharge to air) and the listed standards (for the discharge to land); and whether there was a conflict between the intent of a policy of avoidance of spray drift and the standards which required best practicable option to minimise spray drift via NZS 8409:2004 (this was specifically raised by Hort NZ in evidence). The Panel's conclusion is that there is not an inconsistency and there is no conflict. It is appropriate to have a policy seeking to avoid spray drift beyond the boundary of the property on which it is being used due to the potential for adverse effects on neighbouring properties, especially if there are sensitive activities in close proximity. The Plan seeks to achieve the objective through the application of best practice methods as set out in NZS8409:2004. There is no inconsistency between a policy having that intent of avoidance of spray drift and a practical method of achieving that. Adherence to NZS8409:2004 should result in agrichemicals being applied in circumstances that avoid spray drift from occurring beyond the boundary of the property.

93. However, they agreed that any perception of inconsistency could be addressed through addition of commentary to the explanation clarifying the basis on which the application of agrichemicals is regulated under the Plan.

**Decision**

94. The explanation to Policy 15.3.4 as amended as follows:

*"… The policy signals that the Council's role in controlling the ~~discharge~~ application of ~~contaminants~~ agrichemicals ~~to air is restricted~~ is to ensure that there are no off-site adverse effects. The application of agrichemicals onto crops or unwanted vegetation typically involves spraying the agrichemical into air and subsequent settlement of the droplets onto the vegetation. The Plan regulates the application (involving discharge) of agrichemicals as a*

[60] Section 42A Report, paragraphs 315-316.

*discharge to land that is the intended receiving environment. However, the potential for spraydrift occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions).* The property boundary is therefore established as the point to which management is applied, as agrichemicals have the potential to cause health effects and other unintended consequences once they move beyond the boundary of the property on which they are being used. ~~Spraydrift usually occurs as a result of inappropriate application methods and practices (e.g. applying agrichemicals in windy conditions).~~ The Council will rely on agrichemical users applying best practice and exercising reasonable care to avoid spraydrift beyond their property boundary…"

95. Delete the permitted activity standard from all rules which states:

*~~The agrichemical must be approved for use under the Hazardous Substances and New Organisms Act 1996.~~*

## Fertiliser storage and application methods

### Standard 3.3.23

**Application of fertiliser or lime into or onto land**

### Standard 3.3.23.6

**All reasonable care must be exercised with the application so as to ensure that the fertiliser or lime must not pass beyond the legal boundary of the area of land on which the fertiliser or lime is being applied**

96. Federated Farmers seek an amendment to the permitted activity condition requiring all reasonable care to avoid spreading fertiliser or lime beyond the boundary. The suggested change requested is:[61]

*All ~~reasonable care must be exercised with the application so as to ensure that the fertiliser or lime must not pass beyond the legal boundary of the area of land on which the fertiliser or lime is being applied~~ practical measures are taken to minimise fertiliser drift beyond the target area.*

97. Dairy NZ also submit that the requirement to take all reasonable care to ensure fertiliser does not pass beyond the legal boundary is uncertain and consider that lime is difficult to control in any spreading conditions.[62] S Parkes seeks the deletion of the permitted activity standard on the grounds it is reliant on wind conditions which cannot be controlled.[63]

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[61] Federated Farmers (425.572, 425.807, 425.836).
[62] Dairy NZ (676.96).
[63] S Parkes (339.7).

98. Federated Farmers also seek the removal of lime from the rules as lime is not included in the actual text of the conditions and nor does it reflect an effects-based rule; they are unsure why lime is captured at all.[64]

**Section 42A Report**

99. The report writer agrees with the submitters that the permitted activity standard requiring all 'reasonable care' to be taken when applying fertiliser or lime, may be considered uncertain. Applying lime particularly can be difficult to prevent some deposition beyond the boundary.

100. Under the RMA definition, lime may be considered a contaminant but with low environmental risks compared with fertiliser.

101. Given the greater risks of applying fertiliser, the report writer recommends that the permitted activity standard is reworded to remove the term 'all reasonable care', and to clearly state fertiliser 'shall not be applied in a manner that results in a discharge beyond the boundary of the site'.

102. Nevertheless, due to the lower environmental risks of applying lime, a new standard should be included to specify that all reasonable care must be exercised to ensure lime must not pass beyond the boundary of the site.

**Consideration**

103. The term 'reasonable care' in relation to fertilisers should be replaced by a requirement to ensure no passing of fertiliser beyond the legal boundary. In the Panel's opinion it is difficult to control lime in *any* spreading conditions so it should be removed from the absolute standard.

104. We concluded it is appropriate to remove the requirement for 'reasonable care' in relation to fertiliser to provide greater certainty and differentiate between fertiliser and lime. To achieve the required result considered by the Panel, the standard needs strengthening with the deletion of the words 'all reasonable care'. The Panel agrees with the report writer's suggestion that a new standard be included requiring all reasonable care must be exercised to ensure lime does not pass beyond the boundary.

**Decision**

105. The permitted activity standard in rules 3.3.23.6, 4.3.22.5, 17.3.8.6, 18.3.9.6, 19.3.17.6, 23.3.5.5 are amended as follows:[65]

[64] Federated Farmers (425.567, 425.746).
[65] Section 42A Report, paragraph 426.

*x.x.x.x ~~All reasonable care must be exercised with the~~ The application of fertiliser must not result in ~~so as to ensure that the~~ fertiliser ~~or lime must not~~ passing beyond the legal boundary of the area of land on which the fertiliser ~~or lime~~ is being applied.*

106. A new permitted activity standard is inserted as follows:

*x.x.x.x All reasonable care must be exercised with the application of lime so as to ensure that the lime does not pass beyond the legal boundary of the area of land on which the lime is being applied.*

**New definition of fertiliser**

107. Ravensdown have sought the inclusion of a definition of fertiliser based on the industry accepted definition. The company seek the following wording:[66]

*Any substance (whether in solid or liquid form) that is described as or held out to be for, or suitable for sustaining or increasing the growth, productivity or quality of plants or animals through the application of the following essential nutrients to plants or soils; nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chloride, sodium as major nutrients, or manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, selenium as minor nutrients of ~~or~~ fertiliser additives, and includes non-nutrient attributes of materials used in fertiliser, but does not include substances that are plant growth regulators that modify physiological functions of plants.*

108. Hort NZ sought similarly with its focus on fertiliser which includes a number of components that are not necessarily essential nutrients. In the submitters' opinion, the PMEP has to be clear as to what is meant by the definition of fertiliser as follows:[67]

*A substance or biological compound or mix of substances or biological compounds that is described as, or held out to be for, or suitable for, sustaining or increasing the growth, productivity, or quality of plants or, indirectly, animals through the application to plants or soil of:*

*(i) essential nutrients; and*

*(ii) fertiliser additives; and*

*(iii) non-nutrient attributes of the materials used in fertiliser.*

[66] Ravensdown (1090.123).
[67] Horticulture NZ (769.125).

**Section 42A Report**

109. The report writer agrees a definition would be a useful addition to the PMEP as it is not clear what products should be classified as fertiliser. In his opinion the application of fertiliser or lime rules are intended to address products that maintain the nutrient status of the soil and therefore soil productivity, but these may have an impact on water quality.

110. In the report writer's opinion Ravensdown's definition is seen as the most acceptable. When considering the types of products that may be defined as fertiliser, the permitted activity standards should be relevant to soil, liquid forms of fertiliser and products that utilise manure which also contain nitrogen, phosphorus and potassium that aid in plant growth but may impact groundwater or surface water quality.

111. The definition is more extensive than the draft National Planning Standards but in the report writer's opinion better describes the nature of fertiliser. To the contrary Hort NZ's definition read in the context of the PMEP provisions, if applied excessively or incorrectly, could result in adverse effects on soil health and water quality.

112. At the time of the hearing, the report writer identified that consultation around the National Planning Standards was occurring. But due to the uncertainty at that time about the outcome the report writer suggested that Ravensdown's definition is accepted as the more comprehensive as it is the one which is largely recommended.

**Consideration**

113. The Panel agreed with the report writer's recommended wording, with the exception of the typographical error identified by Ravensdown – the word 'of' before fertiliser additives is to be amended to read 'or' fertiliser additives.

**Decision**

114. Include a definition of fertiliser as follows:

***Fertiliser*** *Any substance (whether in solid or liquid form) that is described as or held out to be for, or suitable for sustaining or increasing the growth, productivity or quality of plants or animals through the application of the following essential nutrients to plants or soils; nitrogen, phosphorus, potassium, sulphur, magnesium, calcium, chloride, sodium as major nutrients, or manganese, iron, zinc, copper, boron, cobalt, molybdenum, iodine, selenium as minor nutrients or fertiliser additives, and includes non-nutrient attributes of materials used in fertiliser, but does not include substances that are plant growth regulators that modify physiological functions of plants. For the purposes of the Plan, fertiliser excludes compost.*

## Standards 3.3 and 4.3

### Standards that apply to specific permitted activities

## Standards 3.3.28.5 and 4.3.27.4

### Ponding must not be detectable beyond 24 hours after the discharge

115. This issue relates to the permitted activity status that manages soil conditions and potential run-off as a result of the discharge of dairy effluent.

116. MEC opposes both the standards that ponding must not be detectable beyond 24 hours after discharge.[68] MEC considers that ponding should not be part of best practice effluent disposal to land. The Dairy NZ website states that it is essential to prevent ponding and run-off and to avoid applying effluent to saturated soils.[69]

117. The definition of ponding in the PMEP is:

> *means the formation of pools of surface liquid, other than liquid momentarily present on the surface at the commencement of the absorption process.*

118. MEC opposes permitted activity standards that specify no discharge shall occur when soil moisture exceeds field capacity; ponding must not be detectable beyond 24 hours after discharge; and the discharge must not result in anaerobic soil conditions.

119. The Dairy NZ Farm Dairy Effluent Design Standards and Code of Practice states that the application intensity of effluent must not exceed the expected infiltration rate of the soil or there should be no run-off of effluent and that there is a soil moisture deficit equal to or greater than the applied depth.

**Section 42A Report**

120. In the report writer's opinion, any effluent that is applied to land that results in the formation of pools of liquid on the land surface poses a risk of run-off into nearby waterways or properties and could affect groundwater sources. Due to the risks of ponding and the industry direction to prevent ponding, the report writer recommends that the permitted activity standard is amended to not permit any ponding.

**Consideration**

121. The Panel accepts the stricter recommended amendment to standards 3.3.28.5 and 4.3.27.4, removing 24 hours from the standard. A consequential change to Standards 3.3.26.5 and 4.3.25.4 to make the equivalent change to other standards is also required.

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[68] MEC (1193.83, .84, .85, .87, .88, .89).
[69] Section 42A Report, paragraph 571.

**Decision**

122. The permitted activity standard in all relevant rules relating to the ponding of effluent is amended as follows:[70]

*The discharge must not result in the ponding of effluent.* ~~Ponding must not be detectable beyond 24 hours after the discharge.~~

## Storage and discharge design and methodology

### Standards 3.3.28.9 and 4.3.27.8

**For a new dairy farm established after 9 June 2016 the storage system must be sealed with an impermeable material certified by a recognised professional**

123. The permitted activity standards refer to a 'recognised professional' in the following standards:

- *4.3.27.7: For a new dairy farm established after 9 June 2016, there must be an on-site storage system with a minimum of 3 months storage or, if less than 3 months, the storage capacity must be certified by a recognised professional as being sufficient to allow for discharges to be deferred so that standards 3.3.28.4, 3.3.28.5 and 3.3.28.6 are not breached. The certification must be provided to the Council prior to effluent entering the storage system; and*
- *3.3.28.9 and 4.3.27.8: For a new dairy farm established after 9 June 2016, the storage system must be sealed with an impermeable material certified by a recognised professional.*

124. Submitters have raised a question as to who is a recognised professional, especially for existing systems. They variously seek: clarification as to who is a recognised professional and that MDC will certify storage prior to it being built;[71] acknowledgement that the term 'recognised professional' is unhelpful – the storage structure certification process should be overseen by a Chartered Professional Engineer (CPEng) as this will require work to be approved, checked or signed off;[72]members of IPENZ are bound by a code of ethics to take reasonable steps to safeguard health and safety and the environment and promptly report adverse consequences;[73] new structures should be designed and constructed in accordance with the IPENZ Practice Note 21 Farm Dairy Effluent Pond Design and Construction;[74] a

[70] Section 42A Report, paragraph 593.
[71] Hall Family Farms (141.3).
[72] Opus (1006.1).
[73] IPENZ (274.2, .3).
[74] Opus (1006.1, 1006.3, 1006.4, 1006.5).

recognised professional should have completed the Massey University effluent system design and management course, or is an accredited effluent design company, or is a certified effluent warrant of fitness assessor;[75] replace references to certification by a recognised professional to certification by Council, with the former only having to complete a pond storage calculation, and the PMEP to include a definition of recognised professional.[76]

125. Several submitters raised concerns regarding the time frame for existing dairy effluent discharges to comply with the permitted activity standards specifying the storage volume, sealing of effluent storage and to comply with setbacks. Permitted activity standards 3.3.28.11 and 4.3.27.10 require compliance by 9 June 2019. Extending the date will provide more time for upgrading infrastructure necessary and ensure there is certainty regarding the rule. It is submitted that the date should be three years after the plan became operative.[77]

**Section 42A Report**

126. Submissions have been received on the term 'recognised professional' in the context of dairy effluent system design and construction – the PMEP defines 'recognised professional' as meaning '*a suitably qualified and experienced person in their field*'.[78]

127. In terms of who might qualify as a recognised professional, given the importance of the role in certifying effluent systems, the report writer considers that while a CPEng certified professional engineer would provide a high level of assurance that effluent systems would be designed and constructed appropriately, there may be issues with the availability of a CPEng in Marlborough. An alternative may be dairy farmers be provided with an accreditation programme in accordance with Farm Dairy Effluent Design Standards and Code of Practice.

128. The Section 42A Report recommends continuing the rule addressing the discharge of dairy effluent, with more flexibility to assess storage volumes and more certainty with respect to reducing leakage; in particular, the recommended change is to specify who is able to certify the design of the pond.[79]

129. The report writer's response otherwise ranged over a number of issues:[80]

[75] Fonterra (1251.83, .84).
[76] Dairy NZ (676.104, .105, .149, .150).
[77] H Collins (397.8), Federated Farmers (425.585, 425.682), Dairy NZ (676.109, 676.154) and Fonterra (1251.87, 1251.88).
[78] Section 42A Report, paragraph 563.
[79] Section 42A Report, Reply to Evidence, page 14.
[80] Section 42A Report, paragraphs 543-546.

- Dairy farm effluent discharges are currently permitted under the MSRMP: s 20A RMA does not require a new consent until after the rule becomes operative in accordance with s 86F RMA.
- Agreement that there is uncertainty regarding permitted activity requirements prior to the plan becoming operative and new facilities will require a reasonable level of investment.
- A three year time frame from the rule becoming operative is inappropriate for upgrading infrastructure – 24 months is more appropriate as this significantly reduces the length of time where a system may be operating in a manner that could result in adverse impacts. This best achieves Objective 16.3: *'The discharge of liquid wastes onto or into land is managed in a way that avoids adverse effects on water and soil quality, land and water ecosystems, slope stability and cultural and amenity values.'*
- The discharge rules are amended to require existing dairy farms to meet permitted activity standards requiring three months of effluent storage, the sealing of the storage system with an impermeable material, and to comply with setbacks from waterbodies, property boundaries or being within a flood hazard area within 24 months of a plan becoming operative.

130. In relation to effluent storage requirements, Federated Farmers, Dairy NZ and Opus have suggested that the permitted activity standards include a requirement to undertake a pond drop test as a means of demonstrating a pond is not excessively leaking.[81] While the current standards require the storage system must be sealed with an impermeable material,[82] all three submitters state that no material is truly impermeable and that by requiring a pond drop test, acceptable leakage rates can be set and assessed.[83]

131. The report writer identifies that pond drop tests are required elsewhere in New Zealand with minimum leakage rates set in other regional plans. This is commonly completed for clay lined ponds which are most at risk of leakage when compared to concrete or those synthetically lined.[84]

132. The current permitted activity standard requires that a recognised professional must certify that the storage system is lined with an impermeable material, the definition of which does

[81] Section 42A Report, paragraph 557.
[82] Rules 3.3.28 and 4.3.27.
[83] Federated Farmers (425.583), Dairy NZ (676.106, 676.151) and Opus (1006.5).
[84] Section 42A Report, paragraph 558.

not include clay but does include concrete or synthetic material. The recognised professional is recommended to be farm dairy effluent system design accredited.[85]

133. Opus raised a concern regarding the potential for concrete and synthetically lined ponds to leak following construction as joins expand and crack or damage to the liner occurs during maintenance.[86]

134. The report writer recognises this problem believing the permitted activity standards are unclear whether the storage system is only required to be certified as having an impermeable liner at the time of construction, or if there is an ongoing requirement for the system to be lined with an impermeable material. Upon concluding that an amendment to the permitted activity standard is necessary to remedy the issue by providing for it on an ongoing basis, the report writer recommended two directly related amendments:

- Amend the permitted activity standard in all relevant rules relating to the required effluent storage volumes as follows:[87]

  *x.x.x.x For a new dairy farm established after 9 June 2016, there must be an on-site storage system with a minimum of 3 months storage or, if less than 3 months, the storage capacity must be certified by a recognised professional <u>who holds a farm dairy effluent design accreditation or is a Chartered Professional Engineer</u> as being sufficient to allow for discharges to be deferred so that standards x.3.x.x, x.3.x.x and x.3.x.x are not breached. The certification must be provided to the Council prior to effluent entering the storage system <u>and the certified storage volume must be maintained at all times.</u>*

- Amend the permitted activity standard in all relevant rules relating to the required effluent storage volumes as follows:

  *x.x.x.x For a new dairy farm established after 9 June 2016, the storage system must <u>at all times</u> be sealed with an impermeable material certified by a recognised professional <u>who holds a farm dairy effluent design accreditation or is a Chartered Professional Engineer at the time of construction and upon request by Council</u>.*

**Greater specificity sought:**

135. In the evidence provided at the hearing, Opus[88] sought greater specificity as to the requirement for certification of the entire effluent system.

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[85] Section 42A Report, paragraph 559.
[86] Section 42A Report, paragraph 561.
[87] Section 42A Report, Reply to Evidence, page 15.
[88] Opus (1006.5).

136. The report writer considers that Mr Metcalfe of Opus raises a valid issue with potential confusion as to exactly what is being certified, the criteria for certification, and the need for the whole system to be considered. Certification of the whole effluent system is suitable when a complete new system is being installed. However, when a system is being upgraded, re-consented or otherwise altered, there can be a reluctance to certify parts of the system as being "as new", as the relevant professional has not had any involvement with design or installation of those parts.

137. The report writer identified Dairy NZ provide a range of guidance for design and management of effluent systems. Critical to this is the avoidance of leakage. The PMEP requires certification for storage volumes if these are less than three months, and also certification of the lining material. Mr Metcalfe identified the need to generally certify that the system is sound and not leaking, and this is a key element of the Dairy NZ guidance. The rule requiring certification if the storage volume is less than three months is considered satisfactory. However, an alternative simplified wording for the rule relating to the impermeability of the liner is recommended.[89]

**Consideration**

138. The report writer extensively detailed issues arising from submissions relating to the requirement for certification of the entire effluent system. This has involved several iterations within the reporting process. Because the Panel has been part of the assessments of material, we are satisfied that the outcome encompasses the whole of the detail necessary to pinpoint the issues. We concluded, however, that the word 'soundness' in the proposed amendment should be changed to 'integrity' to better reflect the state of the whole of the system.

**Decision**

139. Rules 3.3.28.9 and 4.3.27 are amended to read:

*For a new dairy farm established after 9 June 2016, the <u>effluent collection and</u> storage system must <u>at all times</u> be sealed <u>to prevent leakage</u> with an impermeable material <u>and the integrity of the system and impermeable material to prevent leakage is</u> certified <u>at the time of construction and upon request by Council</u> by a recognised professional <u>who holds a farm dairy effluent design accreditation or is a Chartered Professional Engineer</u>.*

[89] Opus, Metcalfe Evidence, paragraph 7. Section 42A Report, Reply to Evidence, page 15.

## Definitions of wastewater

140. MDC submitted on the definition of wastewater, requesting that the definition provide greater clarity and alignment with the wording of the rules relating to the discharge of human effluent and seeking the following amendments:[90]

> ~~***Wastewater***~~ ***Human effluent*** *in relation to on-site wastewater management systems, means* ~~*wastewater*~~ *human effluent originating from household or personal activities including toilets, urinals, kitchens, bathrooms (including shower, washbasins, bath, spa bath but not spa) and laundries. Includes such wastewater flows from facilities serving staff, employees, residents, students, guests in institutional, commercial and industrial establishments, but excludes commercial and industrial wastes, large scale laundry activities and any stormwater flows*

141. Other submitters seek: clarification as to whether this applies to a long-drop and point source discharge, for example, on a farm;[91] recognition that there are no permitted activity rules in the Coastal Environment Zone for discharges from long-drop toilets which can be useful in remote locations such as hut sites, woolsheds, stockyards; the rule in the Open Space 3 Zone should also be included in the Coastal Environment Zone.[92]

- East Bay Conservation Society (EBCS) considers that appropriately sited long-drops are the most environmentally sustainable method to deal with small volumes of human effluent on large properties and also sought clarification whether the rule applies to the long-drop toilets in the Coastal Environment Zone;[93] another submitter seeks clarification whether Rule 7.5.4 applies to effluent as it is understood that soak pits are only used to discharge grey water;[94] Rule 22.1.11 should cover grey water as well as effluent[95] - this submission is supported by Federated Farmers (reframed) as this request improves clarity.[96]

142. Fonterra submitted in opposition to definitions of wastewater and have sought it is to refer only to broad categories, with the definition replaced with the following wording:[97]

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[90] MDC (91.116).
[91] G Barnett (1258.12).
[92] M and K Gerard (424.166).
[93] EBCS (100.27).
[94] QCSRA (504.84).
[95] Dominion Salt Limited (355.9).
[96] Federated Farmers (425.683).
[97] Fonterra (1251.160).

*means liquid (and liquids containing solids) waste from domestic, industrial, commercial premises including (but not limited to) toilet wastes, silage, industrial and trade wastes and gross solids.*

**Section 42A Report**

143. As to whether the scope of the rule covers 'wastewater' and 'grey water', the report writer identifies that the permitted activity rule is referred to as the discharge of human effluent via an on-site wastewater management system, the definition identifying that it serves a residential dwelling or other facility that generates domestic wastewater. 'Human effluent' is recommended to be defined as part of the current definition of wastewater because it originates from domestic sources including bathrooms, kitchens and laundries. It is therefore clear that 'human effluent' is intended to cover both black water and grey water.

144. In terms of those submitters seeking clarification on existing provisions relating to long-drop toilets or the necessity to include permitted activity rules for long-drop toilets in the Coastal Environment Zone, based on the current wording of the rules the discharge of contaminants through a long-drop toilet would not be permitted. This is because a long-drop does not consist of a treatment unit and land application area. The long-drop may, however, be considered as a soak pit which is defined in the PMEP as 'an unfilled hole or hole backfilled with media that creates a concentrated point of discharge and allows the rapid movement of wastewater to depth.'[98] This definition allows a 'concentrated point of discharge' but not 'the rapid movement of water to depth'.[99]

145. The report writer agrees with the submitters that because there is no special rule provided, it would be inappropriate to prohibit this type of discharge in remote areas where effects can easily be minimised. He therefore recommended an additional rule be included in the Coastal Environment Zone to permit the discharge of effluent to land via long-drops. It is further suggested the same reasoning apply to the Rural Environment Zone but has no submitters addressing this issue, but if the Panel considers this could be a consequential change, then the report writer would recommend that same rule be inserted to that zone.

146. In discussing the discharge of effluent through a long-drop in the Coastal Environment Zone, the report writer considered the rule in the Open Space Zone would be suitable with some amendments including existing permitted activity standards.[100]

[98] QCSRA (504.84).
[99] Section 42A Report, paragraphs 623-626.
[100] Section 42A Report, paragraphs 627-628.

**Consideration**

147. The use of wastewater does not align with the rules which refer to human effluent.

148. The Panel considered that there is no scope to insert new rules into the Coastal Environment Zone and the Rural Environment Zone as sought by M and K Gerard and EBCS as the issue relates to the *definition* of wastewater.

149. It is therefore necessary to adjust the definition so that it applies to human effluent, replacing 'wastewater' with the definition text 'human-induced effluent'.

**Decision**

150. For the reasons recommended by the report writer, we accept that the definition of wastewater is amended as follows:

*~~**Wastewater**~~ <u>**Human induced-effluent**</u> in relation to on-site wastewater management systems, means ~~wastewater~~ <u>human-induced effluent</u> originating from household or personal activities including toilets, urinals, kitchens, bathrooms (including shower, washbasins, bath, spa bath but not spa) and laundries. Includes such wastewater flows from facilities serving staff, employees, residents, students, guests in institutional, commercial and industrial establishments, but excludes commercial and industrial wastes, large scale laundry activities and any stormwater flows*

## Disposal of offal

151. An offal pit is defined in the PMEP as:

> *means a hole excavated on a rural property to be used on an ongoing basis for the purpose of disposing of offal or dead animals generated on that property.*

152. The Rural Environment Zone, Coastal Environment Zone and Open Space 3 Zone include permitted activity rules and standards relating to the discharge of farm rubbish. In all other zones, the discharge of farm rubbish requires a resource consent as a discretionary activity. If one or more of the permitted activity standards are unable to be met, the discharge of farm rubbish is classified as a discretionary activity.

153. In the Rural Environment Zone and Open Space 3 Zone, the permitted activity standards require:

> *Only biodegradable material (except offal or a carcass) to be disposed of; …*

154. P Kemp submits that offal and biodegradable farm waste should be able to be disposed of in the same pit as it is ineffective to require separate pits.[101] Offal and carcasses are biodegradable and should be able to be disposed of via the permitted activity rule.[102]

**Section 42A Report**

155. The report writer agrees with the submitter that it is ineffective and impractical to restrict the disposal of offal and carcasses in farm rubbish pits. 'Offal and carcasses are biodegradable and can be disposed of as a permitted activity. There is no restriction on the separation distances between farm rubbish pits and offal pits and there is no obvious reason why they must be separated based on the S32 Report.' He considers the potential effects of allowing farm rubbish pits and offal pits to be combined will be no different if they were side by side. He does however 'consider if offal is permitted to be disposed of in a farm rubbish pit, a new permitted activity standard regarding the separation to groundwater should be included to require farm rubbish pits to be installed above the highest groundwater level. This is consistent with the requirements of the disposal of offal rules and ensures that microbial contaminants can be removed through unsaturated soil prior to any liquid entering groundwater thereby reducing potential contamination of groundwater.'

**Decision**

156. Amend the permitted activity standard in all relevant rules relating to the restriction of disposal of offal or carcasses as follows:[103]

*x.x.x.1 Only biodegradable material (except offal or a carcass from intensive farming) ~~must~~ may be disposed of to a farm rubbish pit.*

## Storage facility construction and design

### Standards 3.3.33.5, 4.3.32.3 and 19.3.22.5

**There must be no runoff of leachate from the pit, stack or stockpile.**

157. Six submissions, all inter-related, seek changes to leachate reaching water bodies.

158. These submissions seek: an amendment to require the sealing of the bottom of any pit, stack or agricultural waste stockpile to prevent leaching in order to protect water quality;[104] an acknowledgement that farmers are aware that covering stacks is best practice and it is unnecessary to require this in the rule;[105] an acknowledgement that the standards of the Rural Environment Zone rule are inadequate to prevent leachate entering surface water – a new

[101] P Kemp (189.3).
[102] Middlehurst Station Ltd (970.18).
[103] Permitted Activity Standards: 3.3.31.1, 4.3.30.1, 19.3.20.1.
[104] Fish and Game (509.321).
[105] H Collins (397.9).

standard is sought with requires any pit, stack or stockpile to be bunded together with a volume limit on stacks;[106] an acknowledgement that covering by an impermeable material of pits and stacks is not necessary when not in use. It is not practical to require farmers to constantly cover and uncover a silage stack.

159. When a silage pit is not in use it is covered with plastic specifically designed for this purpose to keep silage tightly packed – delete the standard; or standards should focus on leachate into a waterbody and seek an amendment to reflect this;[107] that the standard is not able to be efficiently and effectively implemented and should read as follows:[108] *Visible run-off of leachate from the pit, stack or stockpile must be intercepted before reaching a waterway*; it is difficult to prove a or disprove whether any leachate is being discharged from below a silage stack – the submitter seeks an amendment to state: *There must be no runoff of visible leachate from leaving the pit, stack or stockpile area*.[109]

**Section 42A Report**

160. In terms of the submitter seeking bunding to prevent leachate surface water run-off, the report writer considers this unnecessary as the permitted activity standard already requires pits or stacks to be covered when not in use, the prevention of runoff from pit, stack or stockpile, and the prevention of surface run-off entering the pit, stack or stockpile. The requirement for bunding therefore does not address any potential effect that is already not being managed by existing standards. Any leachate that is produced will be treated naturally by insitu soils and the permitted activity standards on separation distances to bores and surface water bodies will protect water quality.[110]

161. With regards to the practicality of the standard, although covering silage pits is common practice, covering pits to prevent the ingress of rain is a critical measure to avoid significant leachate production and it also prevents material spoilage. Silage specifically has to be packed tightly and covered to avoid reduced quality or rotting. Therefore when a silage pit is not in use it is most likely to be covered. Plain reading of the phrase ‘when not in use’ is clear but to avoid any confusion, the report writer recommends the permitted activity standard to read:

*the pit or stack must be completely covered by an impermeable material when the pit or stack is not being accessed to add or remove compost or silage ~~when not in use.~~*

[106] MEC (1193.106, 1193.100, 1193.101, 1193.102, 1193.103, 1193.105, 1193.104).
[107] Federated Farmers (425.605, 425.812, 425.843).
[108] Dairy NZ (676.122, 676.165).
[109] Fonterra (1251.89).
[110] Section 42A Report, paragraphs 747, 749.

**Consideration**

162. The Panel considered that Fonterra's submission is the most persuasive. The standards should focus on leachate reaching water bodies. This must be the intent of the policy.

**Decision**

163. Standards 3.3.33.5, 4.3.32.3 and 19.3.22.5 are amended as follows:[111]

*There must be no runoff or infiltration of leachate into groundwater from the pit, stack or stockpile.*

## Definition of pit

164. 'Pit' is defined as:

> *in relation to the making of compost or silage, means a pit dug below ground or into the side of a hill. For the purpose of this definition, no excavation of the land is to be undertaken.*

165. S Parkes requests the definition is clarified in relation to the phrase "No excavation of land is to be undertaken".[112] Federated Farmers submit the definition should be deleted as it is poorly worded and lacking clarity because it is contradictory. It states 'the pit is dug', but then states 'no excavation of land is to be undertaken'.[113]

**Section 42A Report**

166. The report writer believes that the inclusion of the sentence regarding excavation is an attempt to clarify that any excavation necessary to construct a pit is not addressed by the making of compost on silage rules.

167. The construction of a pit would require some excavation and whether that excavation is permitted must be assessed under the excavation and filling rules. The report writer recommends that the definition is amended to ensure this is sufficiently clear.[114]

**Consideration**

168. The Panel agrees the definition lacks clarity and there is a contradiction in that the pit must be 'dug' but the standards require no excavation.

169. The report writer provides a definition by including the phrase 'means a pit dug below ground' but this does not resolve the issue. The Panel concluded the word 'dug' should be deleted with the remainder of the standard to remain as recommended by the report writer.

---

[111] Section 42A Report, paragraph 760.
[112] S Parkes (339.21).
[113] Federated Farmers (425.418).
[114] Section 42A Report, paragraphs 828-829.

**Decision**

170. The definition of 'pit' is amended as follows:

***Pit*** *in relation to the making of compost or silage, means a pit ~~dug~~ below ground or into the side of a hill. For the purpose of this definition, this does not include any excavation necessary to create the pit~~. no excavation of the land is to be undertaken~~.*

## Definition of stormwater

171. 'Stormwater' is defined as:

> *means rainfall that runs off land, or structures including roading networks in a diffuse manner for which no specific drainage channels or pipes have been constructed.*

172. NZTA seek to clarify the intent of the definition. Omit the reference to 'which may contain dissolved and entrained contaminants' from the recommended wording as the presence of contaminants changes the nature of the discharge.[115]

173. Federated Farmers submit that the definition of stormwater should be amended to exclude farm drains and land drainage canals and associated structures. The farmers consider that the current definition risks encompassing run-off over land and from farm drains; over which a landowner has no control. The submitter seeks the following definition:[116]

> *means rainfall that ~~runs off land~~ is collected from impervious surfaces and directed into ~~for which~~ specific drainage channels or pipes which have been constructed for this purpose.*

174. NZTA submit in opposition to the definition of stormwater because it does not specifically include contaminants that may be dissolved or entrained in the run-off which may result in both the stormwater and contaminant discharge rules applying to stormwater discharged from the road network. NZTA state the definition will also not capture run-off that flows to adjacent land by sheet flow as it is not collected in specific infrastructure. NZTA seek the definition is replaced as follows:[117]

> *rainfall runoff from land, including constructed impervious areas such as roads, pavement, roofs and urban areas which may contain dissolved or entrained contaminants, and which is diverted and discharged to land and water*

[115] NZTA (1002.261).
[116] Federated Farmers (425.424).
[117] NZTA (1002.261).

**Section 42A Report**

175. The report writer does not agree with the amendments sought by Federated Farmers as not all stormwater is directed into drainage channels, pipes or secondary flow paths.

176. Instead the report writer agrees with NZTA that the current PMEP definition does not capture the contaminants that are within stormwater - and situations where drainage channels or pipes are not used to manage the discharge. In the MSRMP two definitions for stormwater are provided, one which defines non-point source stormwater and the other that defines point-source stormwater which is defined as follows:

> *means rainfall that runs off land, or structures including roading networks in a diffuse manner for which no specific drainage channels or pipes have been constructed.*

177. The report writer identifies that the term 'stormwater' is used throughout the PMEP in a number of provisions where the issue of interpretation has not been raised. As the proposed definition from the NZTA incorporates the MSRMP definition of non-point source stormwater discharge, the report writer concluded that no issues arise from that definition in the interpretation of its relevant policies, methods and rules. In his view the definition adequately captures the source of stormwater, its characteristics (potentially containing contaminants) and how stormwater is influenced by human action (diverted/discharged). He recommends the definition of stormwater is amended as requested by NZTA.[118]

**Consideration**

178. Another particular aspect where the Panel formed a different view than that recommended by the report writer in his Reply to Evidence, related to the relief sought by those who submitted it was necessary for a rule to be provided to enable discharge of stormwater to land. The wording proposed, and recommended, closely aligned with the proposed permitted activity rule for discharges of stormwater to water.

179. Ravensdown in particular made submissions strongly to that effect, and in his Reply to Evidence the report writer recommended a particular wording for a possible rule. By contrast, the original Section 42A Report had relied on s 15 RMA as providing a rationale for rejecting the requested rule on the basis it was unnecessary.

180. The Panel have formed the view that the original Section 42A Report advice should be followed. The provisions of s 15 and s 2 RMA when read closely together, place an emphasis on the presence of contaminants and the effect of those contaminants. The consequence of the two sections, in our view, means a rule in a plan is not required for discharges of

[118] Section 42A Report, paragraph 853.

stormwater to land, unless the stormwater contains contaminants to an extent which will change the quality of the receiving land, or the stormwater containing the contaminants may enter other water.

181. It is worth stating s 15 is a provision which controls discharges of contaminants – not stormwater per se.

182. In terms of s 15 discharges of contaminants to land are treated in a very different manner than direct discharges to water. The latter are directly controlled, regardless of the level of contaminant – see the second part of s.15 (I)(a).

> ***15 Discharge of contaminants into environment***
>
> ***(1) No person may discharge any—***
>
> ***(a) contaminant or water into water; or***
>
> ***(b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or***
>
> ***(c) contaminant from any industrial or trade premises into air; or***
>
> ***(d) contaminant from any industrial or trade premises onto or into land—***
>
> ***unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.***

183. By contrast discharges of contaminants to land are only controlled where the contaminant is present 'in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water".

184. Moreover, the definition of 'contaminant' itself further limits the application of s.15 in respect of discharges to land. s 2 (b) RMA defines contaminants as follows:

> ***contaminant includes any substance (including gases, odorous compounds, liquids, combination with the same, similar, or other substances, energy, or heat—***
>
> ***(a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or***
>
> ***(b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged***

*185.* As can be seen, in respect of discharges to land, to qualify as a contaminant as defined in the RMA a substance must be of a nature that it "*changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged."*

186. The Panel's view is that the provisions of s.15(1)(b) when combined with the s.2 (b) definition of 'contaminant' are not intended to capture discharges of water to land, even if that stormwater contains some level of contaminant, if those discharges have so little effect that

they do not change *"the physical, chemical, or biological condition of the land".* In short, the discharge of stormwater to land in circumstances where the effects are *de minimis* to the condition of the land itself, are not caught by s 15.

187. Section 15(1)(b) makes it plain such discharges of contaminants to land are only restricted where they may result in the contaminant "*entering water*". So, if the rate of, or manner of, discharge to land occurs in a way which does not lead to the stormwater entering other water, then again s.15 does not restrict the discharge of the stormwater to land.

188. No rule is therefore needed to enable the discharge of stormwater to land in circumstances where s 15 is not engaged.

189. (The Panel notes that Ravensdown holds a resource consent U161090 for a 20 year term, which authorises it to discharge to land through an irrigation system stormwater which is described in the application as 'liquid waste'. The consent described the stormwater as containing '*the nutrient contaminants arising from the site to existing landscaping'.* That outcome accords with the conclusions the Panel has reached above.)

190. The definition as notified does not recognise that contaminants become entrained in stormwater. The definition does not capture stormwater that runs onto land via sheet flow and is not collected in infrastructure.

191. As recommended the intent of the definition is amended as identified by NZTA and the report writer, but with the exclusion of the reference 'which may contain dissolved or entrained contaminants' from the recommended wording, as the process of contaminants changes the nature of the discharge.

**Decision**

192. The definition of 'stormwater' is amended as follows:

***Stormwater*** *means rainfall ~~that runs off~~ run-off from land, including contaminated impervious areas such as roads, pavements, and urban areas is diverted and discharged to land and water ~~and for which specific drainage channels or pipes have been constructed..~~*

## Soil Sensitive Areas Overlay

### Method 15.M.40

193. The PMEP refers to the Soil Sensitive Areas in a number of policies and rules as a means to manage potential effects of discharges and land use activities on water quality or slope stability.[119]

194. The Soil Sensitive Areas (SSA) Overlay is included in Volume 4 of the PMEP and identifies three types of sensitive or vulnerable soils, loess soils, soils with impeded drainage and soils that are free-draining.

195. A number of submissions were received on the accuracy of the SSA Overlays. A number of other submissions related to the SSA mapping in relation to specific permitted standards.

196. A report by MDC's soil scientist identifies the limitations of the SSA Overlays. This report also acknowledges the difficulties in rectifying the definitions at this point in time due to a lack of data information.[120]

**Overlays**

197. The Oil Companies requested that the impeded soils category be removed from the Business zones of Blenheim. They state that the overlay to this zone is not relevant as there are no rules within the Business zones that relate to overlay.[121]

198. NZ Forest Products consider that the impeded soils shown on the SSA in Opihi and Whangataura Bays appear far more extensive than the actual impaired soils in the area; the company requests that the overlay is amended to accurately identify the extent of the impeded soil or delete the area from the overlay.[122]

199. Hall Family Farms Ltd consider that the mapping of impeded soils on their property do not fit the characterisation of the property and the area should be removed from the overlay.[123]

200. Davidson Group Ltd identify that there are large areas in the Wairau Valley of river gravels which are also free draining and which should be part of the overlay. Either these soils are

---

[119] Policies: 11.1.9, 15.4.6, 16.2.4, 16.2.5. Rules for excavation, filing of land with clean fill, application of an agrichemical, application of fertiliser or lime, discharge of agricultural liquid waste, discharge of dairy farm effluent, discharge of swimming or spa pool water, discharge of human effluent, disposal of offal or a carcass, making compost or silage or stockpiling agricultural waste, storage of compost not in a pit or stack.

[120] Matthew Oliver, Soil Scientist Land Management for MDC. See Soil Sensitive Areas Report Appendix 1, Section 42A Report.

[121] Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited (1004.109, 1004.110, 1004.111, 1004.112)

[122] NZ Forest Products (995.47).

[123] Hall Family Farms Ltd (141.7).

removed from the plan or the overlay be extended to include all areas that are free draining.[124]

201. MEC support the overlay and consider management of discharges within free draining soils is important for minimising risks of microbial contamination. The organisation request that the overlay is extended to include free draining river bed soils including berms, soils in close proximity to estuaries, inlets and Rarangi as a Soil Sensitive Area.[125]

202. V and D Wadsworth are concerned with the scale of the mapping which results in errors in many areas and make it difficult to apply at a property scale. They also consider the rules relating to Soil Sensitive Areas are restrictive and not appropriate due to the fact their property only includes a small area of loess sensitive soils. The overlay should be reviewed and ground truthed – and/or landowners should be included in the mapping process around the loess soils.[126]

203. Levide Capital Ltd submit that the SSA Overlay identify its property as loess soils but consider this is not accurate based on on-site investigations. The company requests that the Soil Sensitive Overlay is amended to remove areas of their property not meeting the criteria set down for the overlay.[127]

204. D Sim opposes the SSA Overlay in respect of the Sim property as it triggers a number of consents required for different activities; an alternative management regime should be established consisting of a Sustainable Agriculture Management Programme that incorporates a central body to accurately monitor the effects on the environment and recommends changes in management practices.[128]

**Mapping**

205. M and H Neame oppose Soil Sensitive Areas mapping in the lower Awatere Valley as the mapping is too broad while the implications of the mapping means that they would be unable to plant fodder crops, run lower stock numbers and be unable to diversify into viticulture. The mapping should be more precisely defined.[129]

[124] Davidson Group Ltd (172.7).
[125] MEC (1193.108).
[126] V and D Wadsworth (201.1).
[127] Levide Capital Limited (907.33).
[128] D Sim (161.1, 161.2).
[129] M and H Neame (330.1).

206. E and A Ryan also oppose the mapping of loess soils as it is too broad and they seek that the mapping be removed until it is ground truthed.[130]

207. Federated Farmers state that the increased risks associated with the Soil Sensitive Areas should be addressed through non-regulatory methods as good management of soils is better and more cost effectively addressed through educational practices. Federated Farmers seek that the Soil Sensitive Areas and associated provisions are removed from the PMEP.[131]

208. Villa Maria seek an additional method is included in the PMEP to outline an ongoing commitment of MDC to further refining the Soil Sensitive Areas and their boundaries.[132]

209. Several vineyard owners and wineries including Longfield Farm Ltd, Delegat and Blind River, also agree the scale of the current mapping of the Soil Sensitive Areas is too extensive and the PMEP should include as a method the ongoing commitment of Council to the further refining of the Soil Sensitive Areas and boundaries.[133]

**Section 42A Report**

210. The Section 42A Report recognises the deficiencies of the broad scale mapping of the Soil Sensitive Areas relying on the information in Appendix 1 of a Technical Report from Matthew Oliver, Environmental Scientist for MDC.[134]

211. At the request of the Panel, during the hearing at the right of reply, Mr Oliver, undertook to review the loess soil overlay as set out in Figure 4 of the Supplementary Report. The results of his review are set out in the report 'Revised Soil Sensitive Areas Loess Overlay'.

212. This technical report:

- Identifies that many submitters raise the accuracy of SSA Overlay maps including loess soils and their risk of erosion which may increase the environmental risk of land disposal of liquid wastes.
- Identifies that for all SSA overlay polygons depicting the soil sensitive areas for the overlays and maps were used from the Fundamental Soils Layer (FSL) survey.[135]

[130] E and A Ryan (347.1).
[131] Federated Farmers (425.787).
[132] Villa Maria (1218.83).
[133] Longfield Farm Limited (909.84), Delegat (473.75), Blind River (462.43).
[134] Section 42A Supplementary Report, Reply to Evidence, page 18.
[135] FSL was created from a combination of the National Soils Database and the National Land Resource Inventory resulting in the first digital record of the soils of Marlborough. Edition 2 1998 updated in more recent survey information such as the 2005 Wairau Plans soil survey.

- Minimal ground truthing was performed at the time the polygons were created and were drawn many years before more recent research was available for several areas of Marlborough. If the polygons were drawn incorrectly, then these errors have been transferred to the SSA overlays and are not drawn to the scale most landowners would consider useful.
- Mr Oliver will undertake a polygon review process in the upcoming 6-12 months to refine the accuracy of the SSA Overlays which will include:
    - Confirming the scientific basis of the individual SSAs.
    - Comparing the current polygons to other sources of soil information.
    - Completing a desktop refinement exercise using LiDAR and GIS data where available to better refine polygon boundaries.
    - Use limited ground truthing to verify desktop exercise.
    - Presenting the revised polygons to Council for approval.

**Consideration**

213. Matthew Oliver's report identified the limitations of the accuracy of the Soil Sensitive Overlays identifying their drawbacks. The report also acknowledges the difficulties in rectifying the deficiencies at this point in time due to lack of resources to complete the data and information (LiDAR was not wholly available to map the areas in question – ground truthing is expensive and very time consuming). Mr Oliver sets out a potential review process into the overlay mapping to rectify the situation in his report.[136] The report writer incorporates the conclusion of Mr Oliver in his Reply to evidence, recognising that the LiDAR data enabled refining of the maps in the area where it is presently available. This process he recommends can be re-run in updated maps provided that it removes slopes less than 7.5 degrees, does not add any land that is not within the notified layer, and removes slope aspects that are unlikely to have loess soils.[137]

214. The report writer recommends the SSA Overlay is retained as notified and permitted activity standards that refer to the overlay are maintained and will ensure the achievement of Objectives 15.4 and 16.3 and Policies 15.4.6 and 16.3.2.

215. It would be useful for the PMEP to recognise Mr Oliver's work for the Council through the introduction of a new method and as suggested by a number of submitters. This could be

[136] Section 42A Report, Appendix 1, page 26.
[137] Reply to Evidence, pages 17-18.

inserted into the soil quality provisions of Chapter 15 to define the SSA Overlay and to commit to further refinement of overlays.

216. As a consequential effect of this change, it is recommended a new indicator for 15.AER.9 be introduced.

217. We note that Mr Oliver recommended a review of this whole issue in his report while the report writer incorporated a review into the same method with which we agree. The Panel also considers that the method should be added to Method 15.M.40.

218. The addition to Method 15.M.40 and the revised 15.AER.9 confirm the Council's commitment to address the mapping and overlay of Soil Sensitive Areas and that it will be completed. As identified by the report writer the soils of Marlborough are too potentially valuable to lose.

**Decision**

219. An addition is inserted to the end of Method 15.M.40 as follows: [138]

*The Council will promote the use of the Visual Soil Assessment tool to enable resource users to monitor soil quality on their own properties.*

*Identification Soils that are most susceptible to erosion or increase the vulnerability of groundwater or surface water to the adverse effects of discharges to land will be identified on the planning maps in Volume 4 of the MEP as Soil Sensitive Areas. A Soil Sensitive Area is an area of soil where certain activities may have a high risk of environmental harm, human health risks or property damage. Three different soils are categorised within the Soil Sensitive Area Overlay as follows:*

- *Soil Sensitive Area-Free draining soils: the free draining soils are considered high risk because they are located over an underlying shallow, unconfined aquifer and therefore discharges onto these soils could result in groundwater contamination.*
- *Soil Sensitive Area-Impeded soils: soils that are considered high risk because of the potential for movement of liquid waste across the soil surface which can convey waste from land to surface water.*
- *Soil Sensitive Area-Loess soils: soils that are considered high risk because of their potential for tunnel-gully erosion.*

[138] Hall Family Farms (141.7), NZ Forest Products (995.47); V and D Wadsworth (201.1); Levide Capital Limited (907.33); M and H Neame (330.1); E and A Ryan (347.1); Villa Maria (1218.83), Longfield Farm Limited (909.84); Delegat (473.75); Blind River (462.43).

*The Council will undertake further investigations of vulnerable soils to refine the accuracy of the Soil Sensitive Areas Overlay mapping by taking into account published literature on Marlborough soils and the risks of different activities on specific soil types, site specific soil information and LiDAR mapping.*

220. As a consequential effect of this change, introduce a new indicator to 15.AER.9 as follows:

*A review of the accuracy of the Soil Sensitive Overlays is completed.*

**Revised Soil Sensitive Overlays – loess soil**

221. Individual submitters asked for their properties to be removed from the overlays or for the soils on the properties to be ground truthed.

222. Mr Oliver indicated he would be happy to perform such visits should the Panel require it but he would point out that this is both potentially time consuming and that the amount of possible inaccuracies in the overlays are such that ground truthing single properties will not contribute a great deal to the overall accuracy of the overlays. Ideally, ground truthing should be carried out as part of the review process for greatest accuracy and integration soil types across properties.

223. Alternatively Mr Oliver suggested a desktop methodology could be applied in relation to the locality in which the Wadsworth property is situated to illustrate the effects of the application of that methodology by way of comparison to figures 1 to 3 of the original report. The Panel requested that be done on all properties affected by the loessial overlay which are covered by existing LiDAR data.

224. The witness then addressed a number of these submissions rejecting one,[139] recommending another be investigated,[140] and yet another noting verbally that its request requires further explanation and has 6-12 months work.[141]

225. Mr Oliver's Reply to Evidence responded to the requests made at the hearing by the Panel for illustrative mapping of his recommended methodology. LiDAR data was first used to create the slope map layer – land less than 7.5° slope. [142] LiDAR data was also used to reassess the slope aspect. His reply illustrated through Figures 1-4 those effects. . Figure 1: shows the current loess overlay map for the Wadsworth property zoned in red. Figure 2: illustrates the same property with areas less than 7.5 degrees slope removed. Figure 3: depicts the same

[139] Oil Companies (1004.109 & 1004.111 & 1004.112)
[140] New Zealand Forest Products Holdings Limited (995.47).
[141] Hall Family Farms Ltd (141.7). See Figures 5, 6, 7, pages 18-19 Appendix 1.
[142] Section 42A Report, Appendix 1, paragraph 52.

property with slopes facing northwest to southeast which can be expected to have loess deposits. Figure 4: depicts the outcome of the application of the methodology showing greatly diminished areas of loess soils.

**Consideration**

226. The Panel accepted Mr Oliver's methodology as giving more precise results. As LiDAR coverage is extended the Panel considers it would be beneficial for that methodology to be applied to all of the areas where loessial soils are identified for subsequent plan change processes.

227. The Panel agreed that the Soil Sensitive Areas overlay relative to loessial soils in the Plan on Mr V and Mrs D Wadsworth's property and all other locations depicted in Figure 4 of the Reply to Evidence is to be amended to accord with Figure 4.

**Decision**

228. The Soil Sensitive Areas overlay is amended to reflect Figure 4 of the Reply to Evidence, as follows:

# Proposed Marlborough Environment Plan

# Topic 15: Transportation and Signage

**Hearing dates:** 21 – 23 May 2018

**S42A Report Writer:** Paul Whyte

**Conflicts of Interest:** Commissioners Shenfield and Hook

**Interim decision:** None

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

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**List of Abbreviations**

| | |
|---|---|
| GRP Act | Government Roading Powers Act 1989 |
| LAR | Limited Access Road |
| MDC | Marlborough District Council |
| ONRC | One Network Road Classification |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| RPS | Regional Policy Statement |
| S42A Report | Section 42A Report |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| Aero Club | Marlborough Aero Club Incorporated |
| Bike Walk | Bike Walk Marlborough Trust |
| FENZ | Fire and Emergency New Zealand |
| NZTA | New Zealand Transport Agency |
| PMNZ | Port Marlborough New Zealand Limited |
| Oil Companies | Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui Trust |

# Air Transportation

## New rule – Subdivision

### Omaka Airfield

1. The Marlborough Aero Club Incorporated (the Aero Club) made submissions on Planning Maps 18, 19, 24 and 25 in which it submits that the 'Runway Protection Area's' shown on the respective maps should be shaped differently with an amended plan attached to its submission, given that noise effects will be experienced over a broad area. A 'noise contour plan' is attached which demonstrates a much broader area than the existing runway protection areas and the existing planning maps.[1]

2. The contour proposed is one of the options put forward in a 2015 report considered by the MDC (the Zomac Report). Evidence clarified the Aero Club considers a new rule should be inserted requiring noise sensitive activities within a 'Noise Control Boundary' to be prohibited unless specifically addressed elsewhere. This is opposed by Colonial Vineyards Limited (Colonial).[2]

3. A subdivision rule is also sought to include a no complaints covenant covered for Omaka Landing. The Aero Club also requests that visitor and caretaker accommodation which is a permitted activity in the Airport Zone (Rule 23.1.12) should only be when the airfield operator consents.

4. The Section 42A Report gives the background to the submissions including: the existence of Rules 3.7.13 and 23.5.3 (which relate to Omaka Airport and Picton (Koromiko Airport)) in the Rural and Airport Zones which are used for noise control.

5. The request for a new rule requires the creation of new titles within the Air Noise Boundary, including Colonial land and the MDC subdivision at Taylor Pass, to trigger a requirement for covenants in future resource consent decisions.

**Legal submissions and evidence**

6. Legal submissions and evidence of the hearing clarified what the Aero Club is actually seeking. These include:

    - An Outer Control Boundary included as a trigger to notate that properties within an area affected by noise from Omaka Airport are put on the LIMs.
    - Subdivision rules to include a 'no complaints' covenant for Omaka Landing as set out in Appendix G, 11.1.3 of the WARMP.

[1] Noise Contour Plan of submitter, Section 42A Report, paragraph 237 – 239.
[2] Section 42A Report Chapter 17, paragraph 239.

- Residential development in the Airport Zone only allowed if the Aero Club gives permission. (The Aero Club does not own all the land zoned Airport.)

**Section 42A Report**

7. The report writer does not recommend a noise contour plan because:

8. There is still no certainty on boundaries as data from aircraft movements has not yet been collected.[3] Two relevant reports commissioned indicate that the data identified is less than the standard in the Aero Club evidence.[4]

9. The Environment Court in an earlier plan change hearing did not see the need to impose controls in the short term. There is a significant difference between the Noise Contour Plan suggested and that adopted by the Environment Court.

10. The Council chose not to include the Zomac Plan in Court proceedings.

11. The Taylor River development is almost complete in terms of subdivision consents.

12. A 'no complaints' covenant is in the WARMP (Appendix G.11.1.3) and so it is appropriate it is carried over into the PMEP.

13. Residential development (visitor accommodation and caretakers accommodation) is limited because it must be ancillary to airport operations. The request effectively amounts to a veto over the use of the land.[5]

14. The report writer confirms there is still no certainty on boundaries particularly as data from aircraft movements has not been collected (in the standard attached to Mr Sinclair's evidence).[6]

**Consideration**

15. The Environment Court refused to impose noise contours of 55dB Ldn for 2038 because of insufficient evidence of the future use of the Omaka Airfield. The only mitigation desirable for noise was the 'no complaints covenant' volunteered by the proponents of the plan change to enable residential development on Colonial land.

16. Due to the uncertainty on what basis the noise contour plan provided by the submitter was made, and the lack of discussion with the MDC and Colonial and other difficulties identified, the report writer recommends rejecting this submission.

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[3] Elm Associates Report pages 3-4, Hegley Report 3.1 pages 4-5.
[4] Marlborough Aero Club, J Sinclair Evidence pages 4-5.
[5] Section 42A Report Reply to Evidence, page 7.
[6] Section 42A Report, Reply to Evidence, page 7.

17. Two methods, 17.M.2 District rules, and 17.M.5 Noise Management Plan, currently provide mention of Airport Zone rules and a proposed development of a Noise Management Plan are to be included in the PMEP to which there have been no objections.

18. At the time submissions were heard there was no certainty on boundaries as data had not been collected from aircraft movements, the MDC chose not to include a Zomac plan in the PMEP, the Taylor River development project is almost complete in terms of subdivision and the appropriate no complaints covenant in the WARMP (Appendix G.11.1.3) is carried over to the PMEP.

19. The legal submissions from the Aero Club and the evidence from the submitter clarified what it was proposing, namely that the outer control boundary, included as a trigger to notate that properties within an area affected by noise from the Omaka aerodrome, is put on LIMs. The subdivision rule is to include a no complaints covenant for Omaka Landing.

20. In terms of residential development in the Airport Zone this is only allowed if the Aero Club gives permission, but the Aero Club does not own all the land. Any such request effectively amounts to a veto over the use of land which does not appear to be a RMA reason for inclusion, a view the Panel endorses.[7]

21. Development of Omaka Landing is now well progressed and the parent allotments identified in the WARMP are actively in the course of subdivision. The no complaints covenant is worded to apply to the land in the original allotments.

**Decision**

22. The Panel adopts the following no complaints covenant as recommended by the report writer[8].

23. A new rule in Volume 2 Subdivision chapter as follows:

[D]

*Omaka Landing*

*24.1.19*

*Subdivision to create any new allotment on land previously held in Lot 2 DP 350626 and Lot 1 DP 11019 shall include a legal instrument registered on each title which restricts owners and subsequent owners and occupiers from making, lodging, being party to, financing or contributing to the cost of any complaint, submission, application, proceeding or appeal either*

[7] Section 42A Report, Reply to Evidence page 8.
[8] Section 42A Report pages 7-8.

*pursuant to the Resource Management Act 1991 or otherwise) designed or intended to limit, prohibit or restrict the continuation or recommencement of the following activities:*

(a) *Aviation activities, aviation events and associated ground operations at Omaka aerodrome;*

(b) *Activities and events at the Omaka Aviation Heritage Centre.*

## Rule 23.1.2.

**Airport operations, including a freight or passenger facility**

24. FENZ opposes the rules to the extent that emergency service facilities are not a permitted activity in the Airport Zone and request that the activity is either a permitted or controlled activity.

**Section 42A Report**

25. The report writer considers that as the Airport Zone is quite specific relating to aviation activities in three locations only (Koromiko, Omaka and Woodbourne) which are not centrally located, it is not clear whether there is a need for, or likelihood of, these facilities being required in these locations. If the operators identify a need for these facilities, there is benefit in providing a more enabling framework. The report writer assumes that aviation activities and airport operations (permitted in the zone) would provide for firefighting services associated with the airports.[9]

**Consideration and decision**

26. The Panel considers that firefighting should be provided for in the Airport Zone as a permitted activity. Even if it may be assumed that firefighting equipment may be available at airfields it would be limited for a large event. The implications of not having it identified as such in such sensitive locations require the following amendment of the rule:

*23.1.2 Airport operations, including a freight, ~~or~~ passenger facility or firefighting facility.*

[9] Section 42A Report, pages 42-44.

## Land Transportation

### Issue 17D

**Land use, water and subdivision activities can have adverse effects on the sustainable use of the land transport network.**

27. NZTA considers the issue does not give clear direction in regard to the need for a planned and sequential approach to development.[10] Poor integrated planning could lead to undesirable impacts. This suggests an amended wording is required.

28. The Panel supports the submitter to extend Issue 17D, but recommends removing the suggested reference to 'region' in order to emphasise the district and ensure consistency with the remainder of the PMEP content.

29. In consideration of Issue 17D, the Panel considered it was necessary to set out in the explanation to the policy what the term 'planned function' meant in practice.

**Decision**

30. Issue 17D heading is amended as follows:

*Land use, water and subdivision activities can have adverse effects on the sustainable ~~use~~ management and planned function of the land transport network and how this network supports the district.*[11]

31. Issue 17D explanatory text is amended to set out what a planned function means, as follows:

*… for example from Port Underwood to Picton or Elaine Bay to State Highway 6.*

*Each road contributes to a network that functions as an integrated system for moving people and goods around and through Marlborough. Adverse effects of activities on the efficiency, effectiveness and integrity of individual roads therefore has the potential to lead to cumulative effects on the planned function of the land transport network. This includes reductions in the ability to use the roads safely. Any diminished ability to use the land transport network will have implications for the social and economic wellbeing, and safety, of the community.*

*It is also important to recognise that the Council has a statutory function under the RMA …*

### Objective 17.4, proposed new policies and overlays

**Conflict in providing for subdivision, use or development activities and with use of the land transport network is minimised.**

32. NZTA sought explicit wording changes for a variety of sensitivity reasons, particularly to reflect Objective 2 of the Transport Agency's reverse sensitivity guide and to reflect the hierarchy of

[10] NZTA (1002.89, 1002.101)
[11] NZTA (1002.90): Section 42A Report pages 11-12, Reply to Evidence pages 1-2.

addressing effects in the RMA (being to avoid, remedy and mitigate). NZTA recommends that Objective 17.4 is amended as follows:

> *Conflict between new and altered land use and subdivision activities and the land transport network is avoided, remedied or mitigated.'*[12]

33. NZTA also proposed two new policies as follows:

> *Ensure noise sensitive activities are set back a sufficient distance from land transport network boundaries to avoid, remedy and mitigate effects.*
>
> *Allow noise sensitive activities to be located near land transport networks only where they do not compromise or limit the existing or planned function of the land transport network.*

34. As a method to give effect to those policies, NZTA sought either overlay maps or rules.

**Section 42A Report**

35. NZTA, in evidence, queried why their proposed two new policies identified in Appendix 1 of the Section 42A Report were not discussed and further queried where noise sensitivity effects are addressed.[13] The new objective and policies were described by NZTA as follows:

> *A new RPS and regional objective and/or policy that will ensure an integrated planning approach is taken to managing the effects of growth and development on transport infrastructure.*[14]

36. The report writer responds under the heading 'Issue 17D'[15] and identifies that they are referred to specifically in the Section 42A Report in which their content was considered to be covered already. Specifically, he considered the existing provisions are generally considered to provide an integrated approach to managing the effects of activities on transport infrastructure as especially referred to in his S42A Report under Issue 17D (including Objective 17.4 and Policies 17.4.1–6).[16] A noise sensitivity effects buffer is addressed in Topic 18 Nuisance Effects (Noise).[17]

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[12] Section 42A Report, paragraph 65.
[13] NZTA K Searle Evidence, paragraph 38. NZTA Objective 2 Transport Agency's Resource Sensitivity Guide. September 2015 Version 1.0).
[14] NZTA (1002.89)
[15] Reply to Evidence, page 1
[16] Section 42A Report, paragraphs 57, 62.
[17] Section 42A Report, Reply to Evidence, page 1, and the Panel.

**Consideration**

37. The Panel considered the objective should be amended to include reference to 'and subdivision' as accepted in the Reply to Evidence and to also insert 'use of the' before 'land transport network'.

38. The Panel also consider it is necessary that the explanation acknowledges safety as an important part of the operation of the land transport network and therefore needs to be addressed as part of avoiding, remedying or mitigating effects on the land transport network.

39. As to the overlay buffer request the Panel considers that Marlborough has a relatively low traffic flow incidence. Given that and consideration of NZTA's website as to buffers the Panel was not satisfied that the request sought was necessary. NZTA did not provide a sufficient evidence base warranting the need for the level of complexity involved in the creation of buffer and effects overlays and the associated rules that would need to be devised to give those effect.

**Decision**

40. Objective 17.4 is amended for the reasons given as follows:

    *Conflict ~~in providing for subdivision, use or development activities and with~~ between new and altered land use and subdivision activities and ~~with~~ use of the land transport network is avoided, remedied or mitigated ~~is minimised~~.*

41. The explanation to objective 17.4 is amended as follows:

    *As the land transport network has been identified as a significant resource, it is important that it is able to function without being adversely affected by subdivision, use or development activities. The objective aims to ensure that any conflict arising from these uses is minimised in terms of the impacts on the land transport network. If this is achieved, people and the community will retain the ability to use the roads to move people and goods around and through Marlborough efficiently and safely.*

42. The Panel rejected the request for buffer and effect overlays.

## 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.**

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]

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]

**Consideration**

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.

**Decision**

46. Policy 17.6.1 and its explanation is amended as follows:

*Policy 17.6.1 - Maintain amenity values in rural and urban areas by:*

*(a) encouraging the use of ~~national~~ state highways and arterial routes by high volumes of through traffic and heavy vehicles; and*

*(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.*

*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*

[18] Federated Farmers (425.340), Clintondale Trust (484.50), K & S Roush (845.7), Nelson Forests Ltd (990.225) and Port Underwood (1042.9).
[19] Section 42A Report, paragraphs 137-140.

*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* *<u>where no alternative route or method of transport exists.</u>*

## Methods of Implementation

### A new method for identification of Limited Access Roads

47. NZTA requests a method for identification of Limited Access Roads (LAR) as a Method of Implementation, and an indication on planning maps to signal NZTA's approval is required for new access points.[20]

48. The report writer expresses concern that these roads would change over time and would not provide an accurate expression of the roading network over the life of the plan, and an alternative is suggested which is to refer to the NZTA website for the location of LARs[21].

49. At the hearing, the Panel sought further clarification from NZTA about why the authority needed MDC to include LAR provisions in the PMEP given the statutory controls that already apply to LARs.

**NZTA Explanation[22]**

50. An LAR is a state highway or part of a state highway that the NZTA has declared as such in the Gazette under the provisions of the Government Roading Powers Act 1989 (GRP Act). Under this legislation the NZTA has the authority to approve or refuse activities that front or directly access a LAR. The NZTA submits that it is most efficient if this Licensed Crossing Place approval process, is aligned with that of the RMA resource consent process. The response by NZTA included a number of submission points in explanation.

51. The first of the responses to the Panel is to request a provision (a method) in Chapter 17 for Limited Access Road. A method of implementation specific to LARs would support the other requested provisions for LARs regarding the identification of the location of LARs and that the NZTA's approval is required for access to these particular provisions under the GRP Act.

52. The submitter seeks the following relief:

> *17.M.x Limited access roads*
>
> *The MEP includes maps showing the location of limited access roads at the time the MEP became operative. Where access is proposed onto a section of the state highway*

[20] NZTA (1002.106). K Searle, Evidence, paragraph 46.
[21] Reply to Evidence, Page 5
[22] NZTA letter, Kathryn Barrett Response to Questions Asked, paragraphs 2.1-9.1, 6 August 2018.

*which has been declared a Limited Access Road, the approval of the New Zealand NZTA will need to be obtained as described in the Government Roading Powers Act 1989.*

53. The gazetting process for a LAR does not provide for public participation officially under the GRP Act; the declaration and plan must go to the territorial authority once issued under this legislation. The NZTA generally liaises with the territorial authority to ensure the LAR will make sense in terms of the management of the region's roading system.1

54. The second response seeks a definition for Limited Access Road as follows:

    ***Limited Access Road*** *means any road or part of a road which has been declared a 'limited access road' under the Government Roading Powers Act 1989.*

55. NZTA seeks to use LARs to shape the location, type and design of development in the region by 'using access management tools, such as its statutory powers in relation to these roads, to manage access to and from state highways'.[23]

56. The NZTA's third submission proposes a new Rule 2.32.4.X be included in the PMEP because the Council has an obligation to consider *all* effects from subdivision, land use and development, including any traffic effects, safety implications and access. The RMA's level of obligation in this respect is seen by NZTA as having a much wider implications than its own legislation. As a minimum, the NZTA would accept limiting the rule to 60 km/h and above.

57. The proposed rule is identified as:

    *Rule 2.32.4.X Any new or altered vehicle access shall not be formed on a State Highway.*

58. Ms Searle considers it is also appropriate in the PMEP that a Restricted Discretionary status is provided to the activity as opposed to discretionary as that would prompt a full discretionary resource consent process which would be unnecessary.

59. The progression of the LAR is included within the Regional Land Transport Plan 2015-2021.

**Consideration**

60. The Panel decided not to adopt the relief requested in respect of limited access roads, as it does not consider it appropriate to apply the management proposed by the submitter.[24] A new rule is not needed because new developments (including roading proposals) require NZTA's approval anyway, under the State Highway Control Statutory Protection provision. It is therefore not efficient to duplicate an existing statutory control. However, the Panel is open

[23] Kathryn Barrett, Responses to Questions, paragraphs 4.1-5, 5.1-8.3.
[24] Section 42A Report, paragraphs 159, 160-162.

to the provision of an information method to provide information outside of the PMEP as suggested (e.g. via reference to the NZTA website).[25] This could be added to 17.M.11 such as '… Further information on Limited Access Roads is provided on the NZTA website.'[26]

**Decision**

61. The inclusion of a new method as following:

*[D]*

***17.M.X Limited Access Roads***

*Limited Access Roads are sections of the State Highway identified by the New Zealand Transport Agency that can only be accessed from authorised crossing points. Where access is proposed onto a section of the State Highway which has been declared a Limited Access Road, the approval of the New Zealand Transport Agency is required. Further information on Limited Access Roads is provided via the New Zealand Transport Agency website.*

## [New] Method 17.M.15

62. In one of its submissions NZTA (1002.177) sought particular provisions be inserted in the Plan to address the issue of the potential damage that might be caused by forestry trucks. The submission's main thrust in that regard is conveyed by the following passage:

> *The Transport Agency considers that commercial forestry that directly accesses a State Highway or that accesses a road that intersects a State Highway should be considered by a consent process, so that effects on the State Highway can be fully assessed and the effects appropriately managed.*
>
> *The carting of loads on unsealed roads after rain can cause significant damage to these roads. A permitted activity standard has been suggested to address this.*

**Consideration**

63. In a number of decisions on similar issues both the report writer and the Panel concluded that it was not appropriate to single out the weights and effects of trucks servicing a single industry. The forestry industry stressed to the Panel that quarry trucks, dairy tankers, stock trucks, grape trucks at vintage, fertiliser trucks and numerous other heavy vehicles service differing industries, and all use the roading network.

64. Whilst the Panel has to accept that that is the case, nonetheless there are other more specific statutory powers to address particular concerns in particular localities where road safety or

[25] Section 42A Report, Reply to Evidence, page 5.
[26] NZTA (1002.148).

roading structural integrity may be placed at risk by the potential movement of large numbers of heavy vehicles. That can often be exacerbated in wet winter conditions.

65. The Panel decided that the most appropriate response to this type of submission was to insert a new method which drew attention to those powers of more specific targeted controls under the Land Transport Act 1998.

**Decision**

66. Insert a new method as follows:

*[D]*

*17.M.15 Roading controls under the Land Transport Act 1998*

*The Council will consider using its powers under the Land Transport Act to manage the potential damage associated with the transportation of heavy loads, including harvested logs and quarried rock, on local roads or state highways, or the imposition of temporary restrictions on heavy traffic under 516A.*

*This could involve bylaws under section 22AB of the Act. The controls would be used to protect the physical condition and integrity of the road or for reasons of road safety.*

# General Rules – Transportation

## 2.31 Permitted Activities

### Calcium Manganese Acetate

67. NZTA requests a new permitted activity rule and associated standards that provide for the application of calcium manganese acetate.[27] Calcium manganese acetate is a chemical de-icer used to assist in minimising ice formation and to minimise the exposure of road users to an ice hazard with associated runoff to land and water. In the absence of a general rule for the discharge of contaminants to land on the legal road (which is unzoned), such a discharge is not provided for and defaults to a discretionary activity.

**Consideration**

68. Discharge of calcium magnesium acetate for de-icing purposes should be enabled through permitted activity rules. The application of de-icing materials has safety benefits for the community and does not result in adverse effects on the receiving environment.[28]

[28] Section 42A Report, paragraphs 175-179

69. The proposed standard prevents direct discharges of calcium magnesium acetate to water but the Panel acknowledges that there will be indirect discharges from application of the calcium magnesium acetate through runoff. This requires a rule enabling that indirect discharge.

70. In response to other submissions addressed in other topics the Panel has converted the heading 'Discharge to Air' on page 2-28 to 'Activities in the Road and Railway Corridor'. The Section 42A Report writer recommended inserting the new rule in the Transportation rules[29]. As calcium magnesium acetate is applied to roads, the Panel considers that the recommended rule is better located in the road section of the PMEP.

**Decision**

71. As recommended and accepted by the Panel insert new rule:

*[D]*

*Rule 2.21.x Discharge of calcium magnesium acetate to land for the purpose of de-icing the road network, including in circumstances where the calcium magnesium acetate may enter water by way of indirect discharge.*

*2.22.x Discharge of calcium magnesium acetate to land for the purpose of de-icing the road network, including in circumstances where the calcium magnesium acetate may enter water by way of indirect discharge.*

*2.22.x.1 The application of calcium magnesium acetate shall be made by, or on behalf of, the Marlborough District Council or the road controlling authority.*

*2.22.x.2 There shall be no direct discharge of calcium magnesium acetate to any waterbody or to coastal water.*

*2.22.x.3 The calcium magnesium acetate shall be applied in accordance with the manufacturer's recommended application rates and standards.*

*2.22.x.4 Written records shall be kept of all applications of calcium magnesium acetate, including date, time, position and amount applied.*

[29] Section 42A Report , pages 28-29

## Rule 2.32.1

**Parking associated with permitted activities in all zones except the Business 1 Zone.**

**Table 2.1: Parking and Queuing Space Requirements**

72. Several submitters sought various changes to Table 2.1 (Parking and Zoning Requirements) which form part of Standard 2.32.1.1.[30]

**Visitor accommodation or homestay[31]**

73. The submitter at Beaver Road Bed and Breakfast requests that parking requirements are amended to provide for homestays – 1 bedroom of the homestay in addition to that required for the dwelling, instead of 2.

74. In evidence the submitter considers an amendment of 1 parking space per bedroom rather than 2 parking spaces in Rule 2.32.1 should be considered. The parking requirement of 2 could be insufficient. The standard should be based on the number of bedrooms.

75. The report writer identifies that accessible carparking required by Standard 2.32.1.11. would have to be provided under 2 space or 1 bedroom scenarios.

76. On the grounds that the submission appeared to be motivated for a disabled carpark to be included, the report writer recommends the standard for homestays be amended ‘1 parking space for each bedroom’ as an equitable solution.[32]

**Consideration**

77. The Panel agreed with the recommendation except that the word ‘guest’ should be added before ‘bedroom’ as reflecting a bed and breakfast facility to further clarify the intention behind what is required.

**Decision**

78. Table 2.1 is amended in relation to “Visitor Accommodation or Homestay” as follows:

*For homestays – ~~2~~ 1 for each guest bedroom of the homestay in addition to that required for the dwelling.*

## Marina activities

79. PMNZ consider that there should be specific parking requirements for Port and Marina activities as set out in Rule 33.1.1.3. (relating to Port activities) and Rule 34.1.1.2. (relating to Marina activities) of the operative Marlborough Sounds Resource Management Plan (MSRMP).[33]

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[30] Ministry of Education (974.14), Marlborough Kindergarten Association (963.1).
[31] Beaver Bed and Breakfast (1069.1), Rachel Hopkins, Evidence (2 photographs).
[32] Section 42A Report, Reply to Evidence, page 5.
[33] PMNZ (433.90).

80. Rule 2.32.1 of the PMEP is prefaced by the statement that parking spaces must be 'sufficient to accommodate the number of vehicles for these activities and if an activity is referred to in Table 2.1 then compliance with the relevant table is deemed compliance with the Standards'.

81. Port and Marina activities are not provided for in Table 2.1 despite having been subject to specific rules in the Operative Marlborough Sounds Resource Management Plan. This renders the activity of parking in these areas very uncertain. The report writer recommends that the parking requirement of the Operative Plan will provide certainty when PMNZ and the Council are assessing resource consents or confirming activities are permitted. It is appropriate to include the provisions in Table 2.1.[34]

**Consideration**

82. The Panel agrees parking standards for marina and port activities should be included in the PMEP and we considered changes should be made to the recommended provisions for both activities as follows:

**Decision**

83. Table 2.1 is amended by including the following:

| Activity | Minimum Requirements – Number of Spaces |
|---|---|
| Marina Activities | Retail activities - One for every 25m$^2$ of gross floor area of premises and one per two employees.<br>Ship brokering and boat hire/chartering – one for every two employees the operation is designed to cater for.<br>Marina – one for every two berths, 10% of which should be assigned to trailer parking. |
| Port Activities | Car and ship hire/chartering – one space for every two employees the operation is designed to cater for.<br>Marina – as specified for Marina Activities above. |

[34] Section 42A Report, paragraphs 181-183.

## Rule 2.32.4

**Vehicle crossing associated with permitted activities in all zones**

## Standard 2.32.4.2

84. Table 2.6 and Figure 2.6 have the sentence 'This standard does not apply if a Corridor Access Request has been approved by the Roading Authority'.

85. NZTA say this sentence is not entirely accurate. The following changes are proposed: 'This standard does not apply if an Access Plan has been approved by the Roading Controlling Authority'.

86. This change has been submitted because a Corridor Access Request is to grant approval to work within the corridor. It is not an approval of plans, therefore the change to 'Access Plan' is more appropriate.[35]

**Consideration**

87. The Panel accepts the submission made.

**Decision**

88. Standard 2.32.4.2 be amended as follows.

*… This Standard does not apply if an ~~Corridor~~ Access Plan ~~Request~~ has been approved by the Road~~ing~~ Controlling Authority*

## Figure 2.6

**Vehicle Crossing for Residential Use for One User in the Rural Environment, Coastal Environment, Rural Living or Coastal Living Zone, and;**

## Figure 2.7

**Vehicle Crossing for Residential Use for 2 - 6 Rural Users in the Rural Environment, Coastal Environment, Rural Living or Coastal Living Zone**

89. NZTA note that Figure 2.6 as presently drafted provides a 6.0m access. It said this should be a 9.0m radius.[36]

90. NZTA note that Figure 2.7 should also be able to apply for some non-residential activities.

**Consideration**

91. The Panel considered there will be instances where a site specific solution is required other than crossings required through 2.32.4.3, 2.32.4.6 or 2.32.4.10.

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[35] NZTA, Kathryn Barrett Evidence, Frank Porter Evidence, paragraph 2.7. Hearing Panel Minute to NZTA and response to questions asked. For Block 6 hearing, 6 August 2018.

[36] NZTA, Response to Panel Minute 28, page 2, paragraph 2.6.

92. The Panel did not consider the NZTA wording 'or appropriate non-residential use'[37]provided sufficient certainty to the term 'Road Users' in the various zones. This was queried in the context of both Figures 2.6 and 2.7.

93. Figures 2.6 and 2.7 should apply to some non-residential activities by adding 'appropriate non-residential use' to the figures and renaming the term 'Rural' in the Figure headings so that they apply to any residential use only. There is also no clear direction or diagram for activities that are not residential. NZTA seek to add 'and agreed by the Road Controlling Authority' to the end of 2.32.4.3 acknowledging that activities other than residential must be constructed to a commercial standard. This is not accepted by the Panel because it provides discretion to a third party.

94. The removal of the word 'Rural' from the figure 2.6 and 2.7 headings is required so that there is greater certainty as to the activities that the standard applies to. The Panel was concerned that the term rural user was ambiguous.

95. While considering the above matters, the Panel found it difficult to understand the detail in Figure 2.6 and Figure 2.7, particularly the relationship between the radius and the property boundary. In following this matter up with Marlborough Roads it was suggested that an alternative would be to set out a distance along the road frontage in addition to the width of the access.

**Decision**

96. To assist with understanding figures 2.6 and 2.7, an alteration to the diagrammatic presentation has been made to more clearly demonstrate the setbacks required.

97. The Panel confirmed the amendment of Figure 2.6's radius measurement to state 9.0m rather than the currently stipulated 6.0m.[38]

[37] NZTA, Response to Panel Minute 28, page 2, paragraph 2.5.
[38] NZTA and Marlborough Roads, Response to Minute 28, page 2.

98. Figure 2.6 is amended as follows:

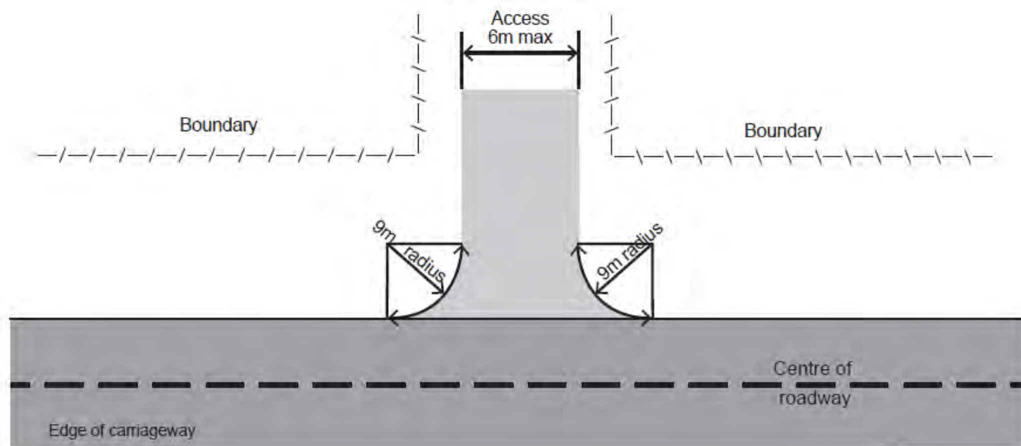


Diagram not to scale

*Figure 2.6: Vehicle Crossing for Residential Use for One ~~Rural~~ User in the Rural Environment, Coastal Environment, Rural Living or Coastal Living Zone.*

99. Figure 2.7 is amended as follows:

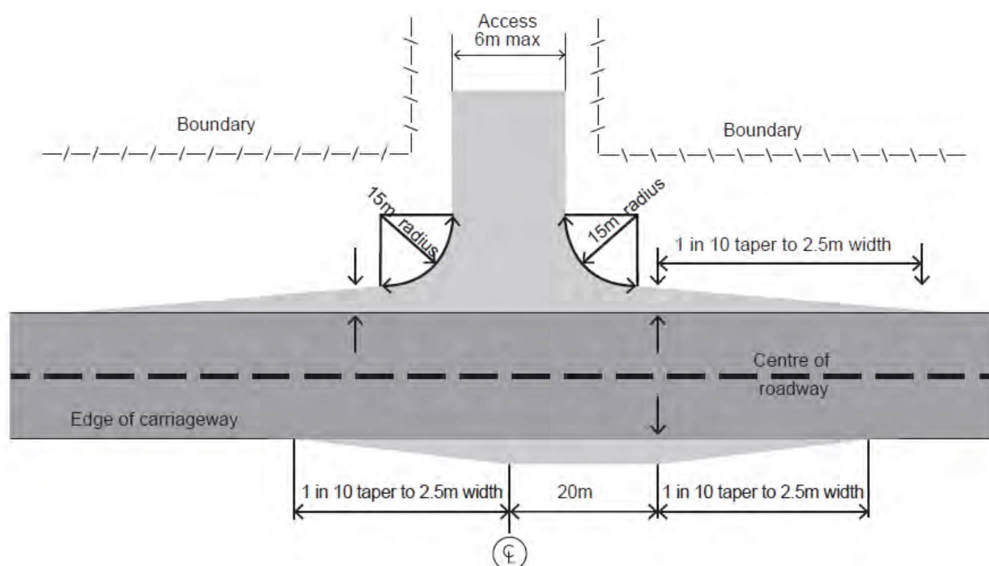


Diagram not to scale

*Figure 2.7: Vehicle Crossing for Residential Use for ~~2~~3- 6 ~~Rural~~ Users in the Rural Environment, Coastal Environment, Rural Living or Coastal Living Zone*

## Tables

100. NZTA raised issues with technical requirements for Topic 17 without providing details. The Panel through Minute 28 sought responses requiring more specific information. NZTA responded with the required detail including confirmation with, and agreement from, Marlborough Roads about errors (or matters incorrectly transposed). The relevant tables and figure are identified here.[39]

## Table 2.7

### Vehicle Crossing Width

101. Table 2.7 has the figures in columns ‘Min. Width’ and ‘Min. Formation Width’ around the wrong way.[40]

102. The recommendation is to amend Table 2.7 which the Panel accepts as follows:

| No. Units Served | Min. Width | Min. Formation Width | Qualification |
|---|---|---|---|
| 1 | ~~3.5m~~ NA | ~~NA~~ 3.5m | |
| 2-4 | ~~3.5m~~ 3m | ~~3m~~ 3.5m | Sealed. |
| 5-6 | ~~6m~~ 5m | ~~5m~~ 6m | Sealed. Width allows passing |

## Table 2.9

### Maximum Number of Vehicle Crossings

103. Finally in Table 2.9 there is an incorrect figure for the number of vehicles allowed for ‘national and arterial roads <100’. This was advised in 2.2 of NZTA’s response to the Minute, with the correct figure in the second column as follows:

| Road Hierarchy (as identified in Appendix 17) | Legal Speed Limit for Road (km/hr) | Frontage Length | | | |
|---|---|---|---|---|---|
| | | 0-20m | 21-60m | 61-100m | 101+m |
| Local & Collector | Any | 1 | 2 | 2 | 3 |
| National & | <100 | ~~2~~1 | 1 | 2 | 2 |

[39] Section 42A Report, Reply to Evidence, page 13.
[40] NZTA, Response to Panel Minute 28, paragraph 2.4.

| Arterial | | | | | |
|---|---|---|---|---|---|
| National & Arterial | 100 | 1 | 1 | 1 | 2 |

104. The amendment makes the correction to allow only 1 vehicle crossing per road frontage of the identified length.

**Decision**

105. The Panel confirmed the requested corrections to tables 2.7 and 2.9.

## New Rule – Chapter 2

106. NZTA sought a new Rule 2.32.4.X as follows.

*Rule 2.32.4.X Any new or altered vehicle access shall not be formed on a State Highway.*

107. The reason for that being sought was that the GRPA requires NZTA approval for accessways onto limited access roads, meaning that permitted activities can otherwise access the State Highway without requiring a resource consent. The S42A report writer accepted that that was the position but did not recommend acceptance of the proposed new standard.

**Consideration**

108. The Panel is of the view that the NZTA has the ability statutorily to control access to state highways through the GRPA if that is warranted by the utilisation of the limited access road procedure. The Panel's view is that RMA controls under the PMEP are not required.

**Decision**

109. No new rule is required.

## Appendix 17 Roading Hierarchy

110. NZTA request that the roading hierarchy Appendix 17 be replaced with the One Network Road Classification (ONRC) which divides New Zealand's roads into six categories based on vehicle movements, whether they connect to important destinations, or are the only route available. This will provide consistency throughout the country to facilitate local authorities working with the NZTA.[41] A spreadsheet by NZTA was provided to identify within Appendix 17 National Routes, primary and secondary arterial roads collector route and local roads.

**Consideration**

111. We concluded that although there is merit in using the ONRC for reasons of consistency, the use of Appendix 17's existing terms in provisions throughout the PMEP is extensive and the implications of substituting these terms needs to be carefully considered. The Panel did not

[41] NZTA (1002.270).

hear evidence from NZTA or any other submitter regarding the practical implications of substituting the existing roading hierarchy with ONRC. The Panel identified that there were multiple provisions that apply to national routes, and/or primary arterials, and/or secondary arterials and/or collector routes. The status of some roads is considerably different between the notified hierarchy and the ONRC. However, NZTA did not appear to have considered the consequent change in the effect of notified rules. The Panel believes that this evaluation is critical otherwise the substitution of ONRC may have unintended consequences. The Panel considers that changes to align the roading hierarchy with the ONRC would be better dealt with at a later date as a plan change/variation process.

**Decision**

112. The Panel's decision is to not adopt ONRC due to insufficient evidence on the implications of such a change.

## Definitions relating to transportation

113. NZTA seeks amendment to notified definitions of 'land development signage', 'road', and 'limited access road' to be consistent with the rules. ('Limited access road' includes a new definition.)

114. The report writer recommends rewording signage as it is consistent with the rules, the definition of Limited Access Road will assist road users of the plan to understand what they are, and the definition of 'road' reflects changes in legislation. The amendments will provide clarity and ease of reading.

115. Other submissions were recommended to be rejected as unnecessary and in one case redundant.[42]

**Decision**

116. The following definition is to be included as follows, in respect of the other two definitions, 'land development signage' and 'road', the Panel adopts the recommendations of the Section 42A Report[43].

*Limited Access Road means a road or part of a road which has been declared a "Limited Access Road" under the Government Roading Powers Act 1989.*

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[42] Section 42A Report, paragraphs 218, 225-226.
[43] NZTA (1002.239).

# Signage

## Standard 2.34.12

**Traffic or safety sign, or a sign denoting the name of a road or the number of a premise**

117. Several submitters seek amendment to the rule or that a new permitted activity be added to the sign rules. The report writer recommends rejection of the need for any change.[44]

118. NZTA considers that there is no resource management reason to impose standards upon official road and traffic signs. NZTA sought either to delete the rule, change the definition of sign or exclude this type of sign.[45]

**Consideration**

119. There is no resource management reason to impose standards upon official road signs and traffic signs. The Panel considers a change to the definition of 'sign' to exclude this type of sign is the most appropriate decision.

**Decision**

120. Standard Rule 2.34.12 is excluded from complying with the requirements in 2.35 that apply to all permitted activities and as a consequential amendment 2.34.10 is also excluded from the requirement to comply with the standards in 2.35 by adding an introductory note before Rule 2.35.1 making those exclusions as follows:

*The following standards do not apply to signs permitted by Rules 2.34.10 or 2.34.12.*

## Rule 2.34 - Permitted Activities

121. NZTA seeks that 'signage' be replaced by 'sign' in Standard 2.35.1.1 and all other instances.[46]

**Section 42A Report**

122. The report writer considers that sign rules are generally structured on the premise that a sign will be located on the same site as the activity. In some circumstances signs will be placed in locations other than where the event is taking place to ensure the event is widely publicised. Rule 2.34.11 provides for temporary signs for special or specific events as permitted activities and the change sought will allow these signs to be placed on the other sites without requiring a resource consent. The amendment is considered appropriate by the report writer.

123. The report writer therefore considers a change in the phraseology from 'signage' to 'sign' will provide consistency throughout the PMEP without altering the meaning or intent of the provisions, and the change is therefore considered appropriate by him.[47]

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[44] Section 42A Report, paragraph 279.
[45] NZTA (1002.161).
[46] NZTA (1002.162).
[47] Section 42A Report, paragraphs 291-294.

**Consideration**

124. The Panel, however, considers the word 'signage' is still appropriate in some circumstances so only the word 'Signage' in heading to 2.34 Permitted Activities should be replaced by the word 'Sign'.

**Decision**

125. The heading 'Signage' above 2.34 Permitted Activities is replaced with the word 'Sign'.

## Standard 2.35.1.1

**The signage must relate to or be associated with a service, product or event available or occurring on the site on which the sign is located.**

126. NZTA and MDC sought to exclude temporary signs from complying with the standard. The signs rules are structured on the premise that a sign will generally be located on the same site as the activity it is promoting. However, in some circumstances, signs can be placed in locations other than the site where the event is taking place to ensure the event is widely publicised. Rule 2.34.11 provides for temporary signs for community, special, educational or recreational events as permitted activities, and the change sought by the submitter will allow such signs to be placed on the other sites without requiring a resource consent. This change is considered appropriate.

127. NZTA and MDC request that the standard be amended as follows:

*The signage must relate to or be associated with a service, product or event available or occurring on the site on which the sign is located, except for signs subject to Rule 2.34.11.*

**Decision**

128. Standard 2.35.1.1 is amended as follows:

*The signage must relate to or be associated with a service, product or event available or occurring on the site on which the sign is located, except for signs subject to Rule 2.34.11.*

## Standard 2.35.1.3

**A sign must not be erected on, or adjacent to, a road reserve, where the sign may: (a) – (f)**

129. NZTA[48] sought the following:

That Rule 2.35.1.3 be amended as follows:

A sign must not be erected on, or adjacent to, a legal road ~~reserve~~, where the sign ~~may~~:

(a) is on or over a State Highway and the prior approval of the New Zealand Transport Agency (under clause 4 of the New Zealand Transport Agency (Signs on State Highways) Bylaw 2010) has not been obtained;

[48] NZTA (1002.163).

~~(a)~~(b) may obstruct the line of sight of any corner, bend, intersection or vehicle access;

~~(b)~~(c) may obstruct, obscure or impair the view of any ~~traffic~~ official road sign or signal;

~~(c)~~(d) may physically obstruct or impede traffic or pedestrians;

~~(d)~~(e) may resemble or be likely to be confused with any ~~traffic~~ official road sign or signal;

~~(e)~~(f) uses reflective materials (other than an official road sign or ~~traffic~~ safety and hazard sign) that may interfere with a road user's vision;

(g) ~~be~~ is within 120 m of any State Highway intersection or bridge, ~~within~~ that has a ~~100km/hr~~ speed limit of 70km/hr or greater~~;~~

(h) has more than six words and/or symbols of more than 40 characters;

~~(f)~~ (i) is infrangible.

130. NZTA suggests standard (g) is currently inconsistent with the relevant bylaw and needs to apply to sections of the State Highway with a speed limit of 70km/hr or greater. Standard (h) is unnecessary as Standard 2.35.1.4 already requires messages to be clear and concise with lettering sizes identified so that they do not cause safety issues.

131. Standard (i) relating to the frangibility of signs (i.e. their ability to break upon impact) as proposed by NZTA is considered by the submitter to be necessary to ensure traffic safety in the event of a vehicle colliding with a sign.

**Consideration**

132. The Panel considers the report writer's recommended (a) should be deleted as a bylaw[49] will regulate these signs. Otherwise the suggested amendments by the report writer are accepted as providing clarity to the present drafting of the rule.

**Decision**

133. Standard 2.35.1.3 is amended as follows:[50]

*A sign must not be erected on, or adjacent to, a legal road ~~reserve~~, where the sign ~~may~~:*

*(a) may obstruct the line of sight of any corner, bend, intersection or vehicle access;*

*(b) may obstruct, obscure or impair the view of any ~~traffic~~ official road sign or signal;*

*(c) may physically obstruct or impede traffic or pedestrians;*

*(d) may resemble or be likely to be confused with any ~~traffic~~ official road sign or signal;*

[49] Signs on State Highways Bylaw 2010.
[50] Section 42A Report, paragraphs 302-304.

*(e) uses reflective materials (other than an official road sign or ~~traffic~~ safety and hazard sign) that may interfere with a road user's vision;*

*(f) ~~be~~ is within 120m of any State Highway intersection or bridge, ~~within~~ that has a ~~100km/hr~~ speed limit of 70km/hr or greater;*

*(g) is infrangible.*

### Standard 2.35.1.5

**A sign must be erected to present an unrestricted view to the motorist for the applicable minimum distance as shown in Table 2.11.**

And;

### Standard 2.35.1.11

**The minimum distance between signs on successive properties, as read from the one direction and measured parallel to the centre-line of the road, must be as shown in Table 2.12.**

134. NZTA seeks to include separation between signs and official road signs. It also seeks to change the heading of column two of Table 2.12 to ensure the intent of the standard is clear (in terms of separation distance).[51]

135. Initially the report writer recommended that the two rules be deleted, because several submitters submitted that the Port Zone and Business 1 Zone should be exempt from their application as they imposed additional restrictions, with other submitters considering any change should be through a plan change process and disputing a second freestanding sign distance from the road boundary.

136. The report writer considered the restrictions imposed by the two tables introduce a relatively complex approach to siting signs and could be confusing. Both tables appear to impose additional restrictions to address matters already addressed in existing standards.[52]

**Consideration**

137. In his first recommendation after hearing evidence, the report writer considered there was no change to his opinion that the provisions should be deleted, but that the Panel should give consideration to the NZTA submission as while it was potentially restrictive, the amendment was still worthy of consideration.[53] He notes that the submissions of those opposing the change did not actually request deletion of the provisions.

138. As to the content of Table 2.12 the Panel agrees with the evidence of Kate Searle as follows:

[51] NZTA (1002.166).
[52] Section 42A Report, pages 51-52.
[53] Section 42A Report Reply to Evidence, page 10.

This would effectively exclude most areas zones Business, Residential and Port other than in higher speed areas, in which case I understand from the Transport Agency that a minimum distance between signs may be appropriate from a road safety perspective[54].

**Decision**

139. The Panel decides Standard 2.35.1.11 is amended as follows:

*The minimum distance between signs on successive properties, and between signs and official road signs, as read from the one direction and measured parallel to the centre-line of the road, must be as shown in Table 2.12.*[55]

140. Table 2.12 has been amended as follows.

| Regulatory Speed Limit (kph) | Visibility Minimum Distance Between Signs (m)[56] |
|---|---|
| 0 - 70 | 60 |
| 71 70 – 80 | 70 |
| 81 – 100 | 80 |

## Standard 2.35.1.6

**A sign must comply with the height and, where applicable, recession plane requirements for the zone in which it is located.**

141. The Original Section 42A Report for Topic 15 (paragraph 312) included a reference to submission point 1004.47. This reference is incorrect and paragraph 312 should be amended by noting the correct submission point as 1004.46.[57]

142. Submission 1004.46 of the Oil Companies relates to Rule 2.35.1.6 and seeks that the rule be amended to delete the requirement that free standing signs in front yards comply with the height in relation to boundary control.

143. The report writer notes that Rule 2.35.1.7 does not require a sign to comply with road setback requirements. Where the road setback is also the front yard, this could give rise to the situation where a sign may not comply with the recession plane requirement. He also considers that the other General Rules relating to signs, including size restrictions and restrictions on placement, provide sufficient control. He also considers that requiring

[54] NZTA, K Searle, Evidence, Page 20-21
[55] Section 42A Report Reply to Evidence, page 10.
[56] NZTA, K Searle, Evidence
[57] Section 42A Report, Addendum, 4 May 2018, paragraphs 21-25.

compliance with recession plane will create conflict with other signage standards. He therefore agrees with the submitter that the rule is not necessary.

**Consideration**

144. The Panel does not agree with Rule 2.35.1.7 being deleted as the intent of 2.35.1.6, as amended below, and Rule 2.35.1.7 is to ensure protection of the amenity of adjoining property owners whilst recognising that factor is not of significance on the road boundary. The protection of residential amenity values is important, as recognised by Section 7 RMA and Objective 12.2 of the PMEP.

**Decision**

145. That Rule 2.35.1.6 is amended as follows:

*A sign must comply with the height and,~~ where applicable~~, except for signs adjacent to road boundaries, must comply with recession plane requirements for the zone in which it is located.*

## Standard 2.36.2.1

**Flashing or revolving lights must not be used on any sign.**

146. NZTA requests a number of specific adjustments. This standard relates to flashing or revolving signs. In particular, it seeks to change Standard 2.36.2 Illumination of a sign except where fronting or clearly visible from a state highway.

147. The report writer identifies that the present rule restricts the illumination of signs visible from a state highway and does not relate to other features of signs that may be distracting to visitors to the state highway, creating a safety hazard. The relief sought by NZTA goes considerably beyond this.

148. The report writer considers that of the amendments sought, flashing, rotating, variable or animated parts are appropriate to amend the rule to avoid distraction.

149. The Panel consider a simpler wording will achieve that purpose.

**Decision**

150. Standard 2.36.2.1 is amended as follows:

*Variable, ~~F~~flashing or rotating lights or animated parts ~~revolving lights~~ must not be used on any sign.*

## Standard 2.36.7.3

**Where a pavement sign (except a tear drop banner) is used it must:**
**(a) not exceed 750mm in height by 600mm in width; …**

151. Jessica Bagge considers that where a pavement sign is used it should be amended to:

    (a) not exceed ~~750mm~~ 1100mm in height by 600mm in width.[58]

152. The report writer considered there was no evidence that the present size of pavement signs is inappropriate and the cost of compliance (would be) excessive. An amendment is therefore inappropriate.[59]

153. In evidence Ms Bagge demonstrated that 750mm in height is too restrictive given the size of the ACM panels which the signs are made of. The majority of signs are 1100mm if the base and standard panel are included.[60]

154. In reassessing the evidence, the report writer considered the amended size was a reasonable request but pointed out it conflicts with Council bylaw in height[61].

**Consideration**

The Panel reviewed the relevant Council bylaw and related policy. The bylaw requires compliance with Council policy. The current policy is a height limit of 750mm. Council policies can change and the Panel has to make an RMA effects decision. The Panel could see no RMA reason why 1100mm caused an amenity issue. The Panel accepted Ms Bagge's evidence that most signs of this nature are 1100mm in height if the base is included.

**Decision**

155. Standard 2.36.7.3 is amended as follows:

    *2.36.7.3 Where a pavement sign (except a teardrop banner) is used it must:*

    *(a) not exceed ~~750mm~~ 1100mm in height by 600mm width; …*

## Rule 2.34.9 and Rule 2.36.8

**Sign on any land zoned Urban Residential 1 (show home), Urban Residential 2 (including Greenfields) (show home), Urban Residential 3 (show home), Rural Environment, Coastal Environment, Rural Living or Coastal Living.**

156. NZTA requests clarification as to why the standard is specific to show homes.

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[58] Jessica Bagge (19.1).
[59] Section 42A Report page 54.
[60] NZTA (1002.170).
[61] Reply to Evidence page 12

157. The report writer considers that the wording of this standard and its relationship with the Permitted Activity Standard 2.34.9 to which it relates, is confusing and its purpose unclear. Does it apply to show homes in all the listed zones or just those with ‘show homes’?[62]

158. The report writer considers there is no apparent reason why signs for Show Homes would be treated any differently than signs associated with other permitted activities in the zones, including Home Occupations. The General Rules applying to signs provide sufficient control to avoid any adverse effects on traffic and pedestrian safety. The rule is therefore considered unnecessary.[63]

**Consideration**

159. The standard is confusing as to whether it applies to show homes in all the listed zones or just those with ‘show home’.

160. The term ‘show home’ (and not just for show homes as set out in the Section 42A Report), should be removed from 2.34.9 so it becomes a rule for those identified zones. Rule 2.36.8 should be retained with the equivalent removal of ‘show home’ so that these become zone standards. Urban Residential 1, 2, 3 should be removed from both 2.34.9 and 2.36.8. It is not appropriate to provide for permitted activity signs in residential environments in order to retain a high standard of amenity as recognised in Objective 12.2.

161. These standards required a site visit for they may replicate 2.36.3.1 which relates to the provision of a land development sign.

162. A site visit was undertaken by the Panel on 8 November 2018 where it was agreed to make explicit provision for show homes and include a new standard to limit the sign to a $2m^2$ area of signage.

**Decisions**

163. Rule 2.36.8 is amended as follows:

*2.36.8. Sign on any land zoned ~~Urban Residential 1 (show home), Urban Residential 2 (including Greenfields) (show home), Urban Residential 3, (show home),~~ Rural Environment, Coastal Environment, Rural Living or Coastal Living.*

164. Rule 2.34.9 is amended as follows:

[62] NZTA (1002.170).

[63] Section 42A Report, pages 54-55.

*Sign on any land zoned ~~Urban Residential 1 (show home), Urban Residential 2 (including greenfields) (show home), Urban Residential 3 (show home),~~ Rural Environment, Coastal Environment, Rural Living or Coastal Living.*

165. Insert a new rule and standard as follows:

*2.34.X Signs for show homes*

*2.36.X Signs for show homes*

*The maximum area of signage shall not exceed 2m$^2$ per show home.*

## New rules

### Pouwhenua

166. Te Ātiawa seeks provision for the erection of pou and/or cultural signage.[64]

167. The report writer considers this submission has merit but highlights that no specifics were included in the submission. The Panel however referred back to Te Ātiawa's submission in Marlborough's tangata whenua iwi topic where it sought *'the inclusion of a permitted rule in all Zones of the MEP where a pou or other structure/carving/sign can be erected to identify an area of Māori significance'*.[65]

168. To protect amenity and safety the Panel considers the relevant zone standards for structures should apply.

**Decision**

169. Insert new permitted activity:

*2.34.15 Pouwhenua*

170. And associated standard:

*2.36.12. Pouwhenua*

*2.36.12.1. The pouwhenua must comply with the permitted activity standards for constructing or siting a building or structure with respect to height and proximity to property boundaries applicable for the zone within which the pouwhenua is to be erected.*

[64] Te Ātiawa (1186.114).

[65] Te Ātiawa, Evidence Topic 2: Marlborough's Tangata Whenua Iwi.

**Supermarket Signage**

171. Progressive Enterprises Limited seek a new Rule 2.36.10 for supermarket signage.[66]

172. The report writer considers that because by their nature supermarkets are large buildings, their locations are such that they require signage on more than one location. The reality is that modern supermarkets do have the extent of signage identified in the submission.[67]

173. The Panel undertook a site visit on 8 November 2018 to confirm whether we agreed with recommendations as to supermarket signage in the Section 42A Report.[68] Presently there are no sign rules for supermarkets. After the site visit we accepted the recommendations in the report.

**Decision**

174. Insert new Rule 2.36 as follows:

*2.36.10 Supermarket Signage*

*2.36.10.1 The maximum signage including free standing signs per supermarket shall not exceed 80m.$^2$*

*2.36.10.2 Supermarket free standing signs shall not exceed 9m in height, 3.5m in width and not have a sign face exceeding 30m$^{2.}$*

## Definitions relating to signs

175. NZTA requests the term 'Official Road Sign' to be used in the PMEP in place of 'traffic or safety sign' and proposed a definition of sign which excluded an 'official road sign' (wording provided).[69] As will be discussed below, the Panel considered this added unnecessary complexity to the Plan.

176. The report writer considers this definition is appropriate for use of the term 'Official Road Sign' will make it clear when a sign relating to traffic or roading qualifies as a permitted activity and any other sign that falls outside the definition will require consent. This clarification will assist in reducing a proliferation of signs adjacent to roads which in turn will increase the safety of the road network for users.[70]

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[66] Progressive Enterprises Limited (1044.9).
[67] Section 42A Report, paragraph 348.
[68] Hearing Panel Minute. Section 42A Report, paragraphs 348-349.
[69] NZTA (1002.246).
[70] Section 42A Report, paragraph 365; Recommendation, page 13.

177. NZTA and the Oil Companies request that a definition be included for sign, as the absence of such a definition makes the application of the signs rules unclear. The NZTA provided their proposed definition.[71]

178. From his assessment of this amendment the report writer concludes that the definition in the Operative Plan is broad while the wording proposed by the submitter provides greater clarity. He observes in this process that 'sandwich boards' in the CBD are controlled through a bylaw and it is therefore appropriate to specifically exclude sandwich boards in the Business 1 Zone.[72]

179. In evidence the Oil Companies sought to add other signs to the exclusion list relating to regulatory signs which the report writer considered as a reasonable request.[73]

**Consideration**

180. The Panel agrees that a definition of sign would aid the implementation of the relevant provisions for signs. The Panel agrees with the wording proposed by NZTA with the exception of (d). Traffic or safety signs are signs and should be covered by the definition of signs. If NZTA's concern is that the PMEP may constrain the use of such signs the Panel notes that these signs are explicitly provided for by Rule 2.34.12. In addition, the Panel decision with respect to both 2.34.10 and 2.34.12 is that there should be an exemption from the standards having to comply with those rules in respect of road signs. This can be achieved by a new standard 2.35.1.1 stating:

*The following standards do not apply to signs permitted by Rules 2.34.10 or 2.34.12.*

*In summary, the result will be traffic and safety signs can be appropriately erected as a permitted activity.*

181. Given the above consideration the Panel does not consider it necessary to use the term 'Official road sign' and as a result the definition sought by NZTA is not required.

182. There are several consequential amendments resulting from the evidence and tabled statements, as a result of what was now before the Panel:

- the replacement of 'sandwich boards' suggested in (c) with 'pavement signs';
- consideration of inserting 'bylaw' in Rule 2.34.10.

[71] Section 42A Report, paragraph 367. Oil Companies (1004.43) tabled letter.
[72] Footpaths Policy – Commercial Use (refer Council Minute No W95/96 and P05/06.23.)
[73] Section 42A Report, Reply to Evidence, Tabled Letter pages 13-14

**Decision**

183. That the following definition of 'Sign' be included in the PMEP:

*Sign means any name, figure, character, outline, display, notice, placard, poster, banner of any kind, advertising device or appliance, or any other thing of a similar nature intended to attract attention; and*

*(a) includes all materials composing the sign, together with the frame, background, structure and support or anchorage of the sign;*

*(b) includes any of the above listed things when fixed or mounted on any vehicle that is parked on a State Highway for the purpose of displaying that sign;*

*(c) includes road safety billboards, pavement signs (except where located in the Business 1 Zone) and temporary local banners.*

184. Amend permitted activities:

*2.34.10. Sign required for, or established by statute, rule, ~~or~~ regulation or bylaw.*

*2.34.12. Traffic or safety sign, or a sign denoting the name of a road ~~or the number of a premise~~ installed by the roading authority.*

185. Include new permitted activity:

*2.34.13 Sign denoting the number of a premise.*

186. Insert a new standard:

*2.35.1.1 The following standards do not apply to signs permitted by Rules 2.34.10 or 2.34.12.*

# Proposed Marlborough Environment Plan

# Topic 16: Climate Change

**Hearing dates:** 19 – 20 February 2018

**S42A Report Writer:** David Jackson

**Conflicts of Interest:** Commissioner Kenderdine

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| DAPP | Dynamic adaptive pathways planning |
| IPCC | Intergovernmental Panel on Climate Change |
| LTP | Long Term Plan |
| MDC | Marlborough District Council |
| MfE | Ministry for the Environment |
| NESPF | National Environmental Standard for Plantation Forestry |
| NIWA | National Institute of Water and Atmospheric Research |
| NPSWF | National Policy Statement for Freshwater Management 2014 |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| PMEP | Proposed Marlborough Environment Plan |
| RCP | Representative Concentration Pathways |
| RMA | Resource Management Act 1991 |
| SLR | Sea level rise |

**Submitter abbreviations**

| | |
|---|---|
| AQNZ | Aquaculture New Zealand |
| CKM | Climate Karanga Marlborough |
| Forest & Bird | Royal Forest and Bird Protection Society NZ |
| FNHTB | Friends of Nelson Haven and Tasman Bay Incorporated |
| KCSRA | Kenepuru and Central Sounds Residents' Association |
| MFA | Marine Farming Association Incorporated |
| Ngāti Kuia | Te Runanga O Ngati Kuia |
| Nelson Forests | Nelson Forests Limited |
| NMDHB | Nelson Marlborough District Health Board |
| NZDF | New Zealand Defence Force |
| NZTA | New Zealand Transport Agency |
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

## Overall Introduction

1. Earth's climate is changing, mostly due to emissions of greenhouse gases from human activities, such as burning fossil fuels (for example, coal and oil), agriculture, and deforestation (where large areas of trees are cleared). The greenhouse gases we emit include carbon dioxide, methane and nitrous oxide. They warm the Earth, and one of the major, and most certain consequences of warming, is sea level rise.[1]

2. The MDC is required to give particular attention to the effects of climate change through s 7 (i) RMA.[2]

3. Specific provisions within the New Zealand Coastal Policy Statement 2010 (NZCPS) also require those exercising functions and powers under the RMA to:

   - identify coastal hazards over at least 100 years, giving priority to identification of areas of high risk;
   - have particular regard to the effects of climate change on all such areas;
   - take into account national guidance and the best available information on the likely effects of climate change on the region or district.[3]

**Marlborough submitters and their concerns**

4. The submissions of most participants and their requested amendments to the notified Chapter 19[4], offered thoughtful observations and suggestions to the existing PMEP provisions which have resulted in change. The participants, with the exception of very few, sought more emphasis to be given to the seriousness of the threats from climate change; and for the PMEP to better reflect the findings identified in the most recent predictions in publications, not only from the Intergovernmental Panel on Climate Change (IPCC), [5] but also from MfE.[6] This MfE report identifies climate change projections for the various regions of New Zealand, including Marlborough. Using the NIWA supercomputer, for atmospheric projections, MfE detailed that

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[1] Ministry for the Environment (2017) Preparing for Coastal Change: A Summary of Coastal Hazards and Climate Change Guidance for Local Government, Introduction, page 4.
[2] See Appendix 1 to this chapter for the legal provisions relating to climate change.
[3] Ministry for the Environment (2017) Coastal Hazards and Climate Change: Guidance for Local Government, 3rd Edition. Since 2001 the Ministry has provided guidance on how to adapt to the risks from coastal hazards caused by climate change. This 2017 edition is a major revision of the 2008 Guidance. It updates scientific understanding, legal framework, risk and vulnerability and collaborative approaches to engaging with communities. The Guidance supports local government in its complex role on this issue.
[4] Section 42A Report on submissions and further submissions. Topic: Climate Change, 13 November 2017.
[5] Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report 2014 (IPCC 5th assessment).
[6] Ministry for the Environment (2016) Climate Change Projections for New Zealand. Atmospheric projections based on simulations undertaken by the IPCC Fifth Assessment, Mullan B, Sood A, Stuart S, National Institute of Atmospheric Research, Wellington.

New Zealand's regional climate models predict an *'… unprecedented level of detail and robustness in the information provided'*.

5. The latest MfE Coastal Hazards and Climate Change guidance document[7] (the 2017 Guidance), which updates the 2008 Guidance, has overtaken the uncertainty of aspects of climate change, earlier identified in the PMEP as notified, requiring 'catch up' for all involved in the PMEP.

6. A component of Climate Karanga Marlborough's (CKM) presentations to the PMEP process, was the expert contribution from Professor James Renwick and Dr Judy Lawrence, both experts in different aspects of climate change developments, who appeared before the Panel in February 2018. This decision reflects the evidence of both which the Panel found to be persuasive.

7. What follows is the Panel's assessment of the various provisions of the PMEP against that evidential background. These reflect in part the updates that occurred throughout the Section 42A Report, the Addendum to the Section 42A Report (November 2017), and Reply to Evidence by the report writer (March 2018).

8. What have been helpful are the explanations at the beginning of the Section 42A Report, the Addendum and Reply to Evidence of the various updates that have occurred in the science, as well as the technical planning publications on climate change since the PMEP was notified.

9. The report writer fulfils the NZCPS Policy 24(1)(h) requirements for the identification of coastal hazards and climate change '*taking into account national guidance and the best available information on the likely effects of climate change on the region or district'*.[8] We note that scientific evidence is continually being updated. We also note that Table 11 and Table 12 of the 2017 Guidance have in their headings 'approximate' years, from possible earliest years of effect to latest, and 'minimum' transitional New Zealand-wide sea level rise values[9] as an indication that predictions may well change.

10. The Addendum to the Section 42A Report provides a summary of the planning implications that are created by the 2017 Guidance. It introduces 'adaptive planning' that differs from previous guidance editions and from current coastal hazard management practice in two specific ways:

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[7] *Coastal Hazards and Climate Change: Evidence for Local Government* 3rd Edition, Addendum to Section 42A Report dated 13 November 2017 on submissions and further submissions topic: Climate Change, pages 7-11.
[8] NZCPS (2010), page 23.
[9] See 2017 Guidance, pages 107-108.

- how it deals with uncertainty and risk; and
- how it places community engagement at the centre of decision-making.

11. The dynamic adaptive pathways planning approach (DAPP) 'identifies ways forward (pathways) despite uncertainty, while remaining responsive to change should this be needed (dynamic)'.[10]

12. The report writer's Section 42A Report Addendum reflects not only the advice supplied in the 2017 Guidance but the updated science (available in Professor Renwick's evidence). It also focuses on the DAPP approach as the preferred method for planning in an uncertain world (see the evidence of Dr Lawrence).

**Climate Change Experts**

13. Professor James Renwick is an international atmospheric climate change scientist and a lead author on the Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report.[11] He is the current Co-Chair of the Scientific Steering Group Climate Change and Cryosphere project (World Climate Research Programme 2017), as well as being the holder and recipient of many other positions and distinctions.

14. Dr Judith Lawrence is a Senior Research Fellow of the New Zealand Climate Change Research Institute, Victoria University, and Director of PS Consulting Limited. Dr Lawrence has 40 years' experience in New Zealand and internationally, working in the fields of resource management, hazards management and climate change. She co-authored the revised MfE publication of Coastal Hazards and Climate Change Guidance (2017). She is currently Co-Chair of the Government's Climate Change Adaptation Technical Working Group assessing adaptation options available to New Zealand over the next 100 years.[12]

**The Science**

15. The evidence provided by Professor Renwick describes the consensus of the global scientific community on the causes and effects of climate change, and time frames for effectively mitigating those effects. The following is a brief summary of that evidence.[13]

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[10] Section 42A Report, paragraphs 26-27.
[11] IPCC 2010-2013, page 4.
[12] CKM, Dr Judith Lawrence Statement of Evidence 1 February 2018 page 11 summarises *What it took to catalyse adaptive planning and the lessons learned: Lawrence and Haasnoot (2017). The approach has been applied in the Netherlands (Haasnoot et al, 2013) Bangladesh, UK Thames River Management (Ranger et al 2013), in US (Florida) for sea level rise and urban inundation; (Obeysekera, 2017) Australia, Natural Resource Management (Bosomworth et al, 2017; Wise et al, 2014) ; England (Petr and Ray, 2017) for forestry management.*
[13] Prof James Renwick, Statement of Evidence 19 February 2018, pages 3-14.

16. Climate change is assessed on the basis of two futures: low carbon (no more than 2 degrees warming) and high carbon (3-4 degrees plus). These findings are from the 2018 Assessment Report of the Intergovernmental Panel on Climate Change.

17. Evidence shows anthropogenic climate change is clear and unequivocal. Atmospheric $CO^2$ levels have increased 40% since pre-industrial times and are at the highest level in 3 million years.

- Total radiative force is positive – Earth's surface is absorbing more heat than what is emitted to space. The largest contributor to this is atmospheric $CO^2$.

- Atmospheric $CO^2$ has a lifetime of centuries to millennia. Policies need to be assessed not on the rate of emissions but on the total cumulative amount.

- Representative Concentration Pathways (RCPs) in the scientific literature illustrate an indication of a range of possible future emissions and their associated radiative imbalance.

  - RCP 2.6 is the low carbon future (no more than 2 degrees warming) which aligns with the Paris Agreement goal of well below 2 degrees pre-industrial warming and is the only RCP to consider mitigation.

  - RCP 8.5 is the high carbon future (3 to 4 degrees of warming this century) which proceeds on a 'business as usual' scenario throughout the 21st century where fossil fuels are consumed using present-day patterns – adopting no mitigation efforts – and assumes continued increases of emissions through to 2100. This will cause species extinction, food insecurity and limited potential for adaption.

- Warming will continue beyond 2100 for all RCPs (it is likely that only RCP 2.6 will result in warming of less than 1.5 degrees). Warming is likely to exceed 2 degrees celsius for RCP 6.0 and RCP 8.5, and more likely than not to exceed 2 degrees celsius for RCP 4.5.

- From 2015 to 2017, global average temperatures have been the highest on record. In 2016 temperatures exceeded 1.2 degrees above pre-industrial levels.

18. Furthermore, it is very likely that the Arctic sea ice cover will continue to shrink and thin, and that Northern Hemisphere spring snow cover will decrease during the 21st century as global mean surface temperature rises. Global glacier volume will further decrease.

19. A large fraction of anthropogenic climate change will be irreversible unless net carbon removal technologies are employed (15-40% of emitted carbon will be in the atmosphere for

1000+ years). The ocean also has already absorbed about 30% of the emitted anthropogenic $CO^2$, causing ocean acidification to accelerate.

**Global Sea Level Rise**

20. Potential sea level rise (SLR) is based on different RCPs and assessed relative to the base 1986-2005 period:

- RCP 2.6 – 2081-2100 period: 0.26m-0.55m rise
- RCP 8.5 – 2081-2100 period: 0.45m-0.82m rise.

There are a number of tipping points which, if reached, will cause abrupt and irreversible damage.

21. The Arctic Sea Ice Summary identifies ‘marine ice sheet instability’ as one of these threats. This term refers to the shutting down of the deep sea circulation where the release of methane from thawing permafrost will be a likely tipping point that will occur this century. If the phenomenon known as marine ice sheet instability occurs it would bring about several metres of SLR over coming centuries. This being the case, estimates of the upper limits of SLR this century would need to be raised significantly upwards. If marine ice sheet stability is disturbed then this figure could still be as high as 1.8-2.9 metres by 2100.[14]

**New Zealand**

22. Average temperatures in New Zealand have increased by approximately 1 degree since pre-industrial times, in line with global mean change and continued warming is virtually certain. An increase in mean temperatures of 0.7 to 1.0 degree is likely by the 2040s and 0.7 to 3.0 degrees by the 2090s.

23. There has been an increase in droughts and floods, storm surges and landslides and the proliferation of these non-uniform events will become very likely (99% probability).

24. The largest projections identified in mean annual wave heights (expressed in percentage terms) were between ± 10 percent, with the highest increases projected for the tropical Pacific and Southern Ocean. The mean annual wave height in the Southern Ocean will increase largely in winter months. Wave climate in waters around Australia and New Zealand are expected to increase slightly by 2070-2100. Some small increases are expected in the swell exposed west and south coasts of New Zealand in line with the results for long term values.[15]

[14] CKM, Professor James Renwick, Statement of Evidence 19 February 2018, bullet point 9, page 3.
[15] 2017 Guidance: 582 Wave Projections for the Pacific and New Zealand, page 113.

25. Below provides a glance at what New Zealand could expect for both a low carbon future (RCP 2.6) and a high carbon future (RCP 8.5).

**Low Carbon Future**

- Another 1 degree temperature increase this century.
- Eastern and northern regions will get drier, resulting in more droughts.
- Western regions will get wetter, resulting in more floods.
- SLR (relative to 1986-2005 levels) – 2100: 0.46 metres on average; 2150: 0.69 metres on average.

**High Carbon Future**

- Another 2.5-5 degrees temperature increase this century.
- Eastern and northern regions will see a 10% decrease in annual rainfall.
- Western regions will see a 10% increase in annual rainfall.
- SLR (relative to 1986-2005 levels) – 2100: 0.79-1.05 metres; 2150: 1.41-1.88 metres.

In summary, 'the wet get wetter' and 'the dry get drier'.

26. In both futures there will be increased ocean acidification, but to a larger extent under the high carbon future, as global warming increases the uptake of carbon by the ocean.[16]

**Implications for Marlborough**

27. The MfE Report[17] addresses the following implications of a high carbon future for Marlborough.

- Continued increase in 'hot days' above 25°C by a factor of 4.
- Increased drought risk – double the 1995 rate by 2090. This will cause water shortages, increase in irrigation needs and increased risk of wildfires. Droughts are expected to increase in frequency and intensity over time.
- Increased extreme rainfall events.
- 30-80% decrease in frosts.
- SLR: nearly 2.0m by 2150.[18]

[16] As noted elsewhere in this chapter, this will result in the significant impairment of key species (such as mussels) to form carbonate shells.

[17] http://www.mfe.govt.nz/climate-change/how-climate-change-affects-nz/how-might-climate-change-affect-my-region/marlborough

28. Coastal roads and infrastructure will face significantly increased risk from coastal erosion and inundation. Every 10 cm rise triples the risk of coastal inundation.[19]

29. There will be increased biosecurity risks and an increase in food and waterborne diseases; as well as increased respiratory illness, infectious disease, heart disease, stroke and mental health disorders.

## Scientific Consensus on the Required Mitigation

### Cumulative $CO^2$ emissions required to keep temperatures below 2 degrees

30. The Working Group III of the IPCC of the Fifth Assessment Report provides a summary in Table SPM.1 illustrating the likelihood of staying below certain $CO^2$ thresholds. Proceeding on RCP 2.6 it would be more unlikely than likely for temperature rise to stay below 1.5 degrees, but it is likely to stay below 2 degrees. By comparison, proceeding to RCP 8.5, it is unlikely to stay below even 3 degrees, and even remaining below 4 degrees is more unlikely than not.[20]

31. This illustrates the need for significant reductions (mitigation), occurring globally, to occur now. Rockstom et al suggest the halving of global emissions each decade starting in 2020.[21]

### Recent Developments in Scientific Knowledge

32. Further research on the contribution of Antarctic ice sheet melt on the effects of SLR has been conducted. RCP 2.6 is the only pathway likely to result in minimal ice sheet melt.

33. Research on SLR has discovered that the upper-bounds estimates of SLR are 'implausible under current understandings'.[22]

### Planning

34. The evidence submitted by Dr Lawrence complements that of Professor Renwick and addresses four main issues:

- The characteristics of climate change impacts relevant to the PMEP, being time frame issues, uncertainty, changing risk profiles and the implications these have on planning.
- The mandate for the risk-based approach in the RMA and the NZCPS.
- Application of the revised MfE Coastal Hazards and Climate Change Guidance 2017.

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[18] CKM, Professor James Renwick Statement of Evidence, 19 February 2018, page 5.
[19] CKM, Professor James Renwick Statement of Evidence, 19 February 2018, page 6(d).
[20] CKM, Professor James Renwick Statement of Evidence, 19 February 2018, page 9.
[21] CKM, Professor James Renwick Statement of Evidence, 17 November 2017, page 12 citing Rockstrom I, Gaffney O, Rangili J, Meinshausen M, Nakicenovic N and Schellnhuber H (2017 A road map for rapid decarbonization. *Science* 355 (6331), 1269 (1271) doi:10.1126science.aah3443. (See Appendix page 12.)
[22] CKM, Professor James Renwick Statement of Evidence, 19 February 2018, page 13.

- Other potential impacts of climate change across the region relevant to the PMEP.

35. In addressing the first issue, Dr Lawrence emphasises that analysing, characterising and dealing with uncertainty is fundamental to decision-making on climate change. Uncertainty cannot be used as a reason for delaying action on risks – waiting for certainty is not a prudent approach and this should be made clear by the MDC.

36. Dr Lawrence identifies that the 2017 Guidance outlines four elements that support development and implementation of planning strategies in a manner that mitigates this uncertainty over long time frames by identifying:

    - different levels of uncertainty, including statistical and scenarios
    - community engagement
    - Dynamic Adaptive Pathways Planning (DAPP)
    - a monitoring programme with early signals and triggers (decision points).

37. These approaches are embodied in the NZCPS's 'precautionary principle'[23] (Article 3.3 of the UNFCCC) and the risk-based approach of the earlier 2008 MfE Guidance. The 2017 Guidance, however, provides the DAPP approach for managing uncertainty and changing risk profiles over at least 100 years.[24] This requires consideration of climate change risks to be incorporated into decisions made now, but in a way that retains flexibility (in adjusting to changes before climate change effects became unmanageable). Designing and monitoring signals and triggers for such adjustments should therefore be incorporated into the PMEP. Actions on adaptation can be taken in an anticipatory manner if a risk-based approach is used.[25]

38. The implications of this new DAPP approach by which councils are recommended to address the challenges of climate change and its implications, are set out in the 2017 Guidance. The 2017 Guidance outlines a 10 step decision process, to clarify the necessary steps for developing climate change adaptation strategies with community collaboration at its heart.

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[23] NZCPS (2010) Policy 3 – Precautionary Approach (to the use and management of coastal resources), page 12.
[24] NZCPS (2010) Policy 24(1) identification of coastal hazards, Policy 25(a)-(f) subdivision use and development in areas of coastal hazards risk, Policy 27(1) and (2) strategies for protecting significant existing development from coastal hazard risk.
[25] CKM, Dr Judith Lawrence Statement of Evidence, February 2018, page 16.

39. Figures 1, 2 and 3 from the 2017 Guidance[26] are included to explain the 10 step decision process for developing adaptation processes. Dr Lawrence identifies that at the heart of the process for the community is Step 3 where it can identify what matters most to them, and is the collaborative process that can elicit options and adaptive pathways for addressing the priorities in the region. This provides a way of making adaptation to climate change more manageable, addresses the uncertainties and to gain a degree of community consensus for actions starting now and continuing over time.

## Global Warming

40. Society will continue to rely on fossil fuels as an energy source for the foreseeable future. The consumption of these fuels results in the release of carbon dioxide and other greenhouse gases into the atmosphere. The general consensus of scientific opinion is that the world is getting warmer, causing its climate to change. Global temperatures are approximately 0.6 degrees Celsius higher now than they were in the early 1990s.

41. The timetable for achieving meaningful reduction in carbon is disturbingly short and informs the PMEP's future provisions. An example of the shift in statistics that occurs in analysis of climate change occurs at the outset from submissions.

42. The report writer accepted the change in the Introduction that global average is now more than 1 degree Celsius higher than pre-industrial temperatures, as a better reflection of Professor Renwick's evidence and a change that has occurred since the PMEP was notified. The Panel agrees.

43. A submitter[27] sought to amend the reference in the Introduction explanation to the words 'Global average temperature is now more than 1 degree Celsius higher than pre-industrial temperatures'.

44. Several submitters[28] also support in part the Introduction to Chapter 19. But they are concerned that the words used do not fully reflect the scale and urgency of the problem and understate the amount of warming that has occurred because of a misleading baseline in the PMEP.[29] They are also concerned at the use of the term 'While there is not unanimous agreement' as to the anthropogenic cause of warming from increased levels of greenhouse gases – they assert it is overstated. They are further concerned to not only have the word

[26] 2017 Guidance, pages 14, 17 and 27.
[27] Peter Deacon (89.2).
[28] CKM (1059.1), Helen Ballinger (351.44), Peter Deacon (89.1).
[29] CKM (1059.1), Helen Ballinger (351.44), Peter Deacon (89.1), FNHTB (716.176).

'uncertainty' removed from the Issue 19A description, but particularly the word 'potential' in the heading.[30] These submitters provided a marked-up version of the Introduction to explain the nature of their concerns outlined in the Section 42A Report.[31]

45. Other submitters seek: the dates of Marlborough climate change forecasts be changed from 2040 and 2090 to 2060 and 2116 to reflect the 100 year time horizon in the NZCPS. They say the projections discussed in the Introduction are just part of setting the scene;[32] the Introduction should reflect the fact that climate change is the biggest global health threat in the 21st century – this needs a reflection in the Introduction;[33] the Introduction is misleading – the Panel is entitled to rely on official New Zealand Government and IPCC reports for its factual basis.[34]

46. As to the projections to the ten year life of the plan, the PMEP states in the Introduction: 'Uncertainty about the nature of these effects at international, national and local level makes this a difficult task. Most projections are also long term and certainly beyond the ten year life of the Marlborough Environment Plan.'

47. In discussing the Introduction, last paragraph, Dr Lawrence observes that in summary:

- The impacts of global warming will emerge in different ways and have different levels of uncertainty.
- It will encompass slow sea level rise accompanied with rising groundwater levels.
- There will be widening climate variability – drought, increased pluvial flood frequency.
- There will be extremes – coastal storm surge and inundation.
- Surprises and impacts of accelerated sea level rise.
- Continued impacts of all of the above.
- Cascading impacts from sector to sector into other sectors and socio economic systems such as the provision of water services and health services. [35]

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[30] CKM (1059.1), Helen Ballinger (351.44), Peter Deacon (89.1), FNHTB (716.176).
[31] Section 42A Report, pages 33-35.
[32] FNHTB (716.176).
[33] NMDHB (280.37).
[34] Davidson Family Trust (934.1).
[35] This concern arose in part because Dr Lawrence's original evidence was written in response to the notified PMEP and not some of the recommendations made in the Section 42A Report in response to the release of the 2017 Guidance.

48. In the coastal environment, the number of residential, commercial and marine activities exposed to climate change effects, and further compounded by natural hazards, would increase the pressure on the Council and costs of adjustments to sea level rise when inundation and coastal flooding increases. Issues such as stormwater debris and sedimentation systems during high intensity rainfall or intense dry periods need to be addressed. Storm water impacts, in the context of health issues, from contamination during high intensity rainfall, will require further attention.

49. In the rural environment, intense rainfall, wind speed, drought and fire events will lead to land use change, sedimentation, sludge, culvert maintenance and an increased demand for water resources across the whole region.[36]

50. Sea level rise is virtually certain until mid-century but, depending on the behaviour of the polar ice sheets and how quickly carbon emissions can be resolved, its rate and magnitude is uncertain beyond that. The Marlborough coastline is long and exposed to the effects of sea level rise, inundation and flooding over short and long terms. But uncertainty is not a reason for delay in addressing risks for climate change.[37]

**Section 42A Report**

51. The issue of the PMEP initially underplaying climate change was raised by numerous submitters, and the submission of James Wilson, a member of CKM,[38] provided scope for the report writer to assess the changes sought. The report writer considers that the change identified by Mr Deacon is a better reflection of the change that has occurred, and this was confirmed by Professor Renwick's evidence.[39]

52. The Section 42A Report acknowledged it is reasonable to remove the words 'will continue to rely' and 'for the foreseeable future' from the Introduction. It also supports the removal of the words 'While there is not unanimous agreement' from the first paragraph in the Introduction about the human contribution to global warming. The IPCC Fifth Assessment Report concludes that it is 95-100% likely that human influence has been the dominant cause of warming since mid-20$^{th}$ century. It is therefore recommended that it is sufficient to simply start the sentence in the first paragraph with 'There is now strong evidence…'

[36] CKM, Dr Judith Lawrence, Evidence, page 16.
[37] CKM, Dr Judith Lawrence, Evidence, page 3.
[38] CKM, James Wilson (139.1).
[39] Section 42A Report, Reply to Evidence, page 1.

53. It is also acknowledged that the Introduction could be improved by amending unnecessary assumptions about future behaviour, and by updating the current statistics to be consistent with the latest IPCC findings. It is noted that CKM also seeks to add to the Introduction[40] '… that the long-term effects of global warming are likely to outweigh any regional short-term benefits that may occur' to the current sentence which refers to responding to 'the adverse and positive effects created by climate change'.

54. Finally, it is recommended to include reference to livestock farming in the Introduction as this sector contributes approximately 48% to New Zealand's cumulative emissions.[41]

55. The Panel agrees with the evidence of Dr Lawrence, and agrees with the Section 42A Report, that there is a need to emphasise the urgency of the matter and amend the uncertainty as follows by accepting the amendments sought by the submitters.[42]

**Decision**

56. The Introduction to Chapter 19 is amended to read:

*Society ~~will continue to rely~~ currently relies on fossil fuels as an energy source ~~for the foreseeable future~~ but needs to find alternatives as quickly as possible. The consumption of these fuels ~~results~~ and livestock farming are the two major contributors to the large increase in the release of carbon dioxide and other greenhouse gases into the atmosphere over the last 150 years. The general consensus of scientific opinion is that the world is getting warmer, causing its climate to change. ~~Global temperatures are approximately 0.6 degrees Celsius higher now than they were in the early 1990s~~ Global average temperature is now more than 1 degree Celsius higher than pre-industrial temperatures. To prevent dangerous and potentially irreversible impacts of climate change, the rise in global temperatures must be kept to less than 2 degrees Celsius above pre-industrial levels. ~~While there is not unanimous agreement,~~ There is now strong evidence that most of the warming observed is attributable to increased concentrations of greenhouse gases produced by human activities. As more gases accumulate in the atmosphere, the Earth gets warmer, resulting in rising sea temperatures and levels, the melting of glaciers and ice caps and greater extremes in weather patterns, such as more storms of greater intensity and longer droughts.*

[40] Section 42A Report, Reply to Further Evidence, page 3 following Mr Wilson's detailed submission 'Raise the profile of Global Warming and Climate Description within the Environment Plan'.
[41] Section 42A Report, page 34.
[42] Section 42A Report, Reply to Evidence, pages 17-19.

*In Marlborough, ~~NIWA predicts~~ it is predicted that the mean temperature will increase by approximately ~~1.~~0.7-1.0 degrees by 2040 and ~~2.~~0.7-3.0 degrees by 2090 above 1995 levels. The climate is likely to become drier and the frequency of droughts is expected to increase. There is also a predicted increase in westerly winds, especially in winter and spring.*

*Section 7 of the ~~the Resource Management Act 1991 (~~RMA~~)~~ requires the Council to have regard to the effects of these predicted climatic changes in exercising its functions under the RMA. ~~Uncertainty about the nature of these effects at international, national and local level makes this a difficult task. Most projections are also long term and certainly beyond the ten year life of the Marlborough Environment Plan (MEP).~~ While there is now a state of scientific certainty regarding the facts of climate change, the exact nature of these effects will always involve a degree of uncertainty, given the timeframe, the range of factors involved and the complexity of global weather systems, as well as the extent that the global community reduces greenhouse gas emissions. However, there is strong national guidance providing for an adaptive management approach that allows uncertainty to be addressed and flexibility in adapting as more information becomes available. Taking all of this into account, the provisions of this chapter focus on applying the best available information to enable people and communities to respond to the adverse ~~and positive~~ effects created by climate change – and any beneficial effects that may arise. It is noted that the adverse long-term effects of global warming are likely to outweigh any regional short term benefits that may occur.*

## Issue 19A

**Climate change has the potential to affect Marlborough's natural and physical resources and the ability of people and communities to use these resources.**

57. Marlborough relies on its natural and physical resources for its social and economic wellbeing and these resources, especially land and freshwater, are dependent on climate. This makes Marlborough vulnerable to any long term changes in climate.[43]

58. Several submitters[44] support the Issue 19A statement and most of the explanation. However, they seek:

- The fourth paragraph, regarding potential agricultural benefits, be moved to the end of the explanation section.

[43] PMEP Issue 19A, first paragraph 19-1.
[44] CKM (1059.19), Peter Deacon (89.2), Helen Ballinger (351.46), Marion Harvey (230.1) and FNHTB (716.77).

- The final paragraph regarding the uncertainty associated with climate change predictions be deleted, as the submitters fear that use of the word 'uncertainty' may result in inaction.
- Recognition that decreased water supply would cause increased competition between existing users, and also between existing users and values.
- Increased emphasis on the seriousness of threats from climate change and the recognition of more recent predictions and models produced by MfE and NIWA.

59. Several submitters specifically seek recognition of the potential adverse effects on mental health, potential injury from extreme weather events (droughts/floods/fires), and recognition of changing insect-borne disease patterns. CKM raises the issues of spread of pest and plants.[45]

60. MFA and AQNZ seek to include ocean acidification generally in Chapter 19, under Issue 19A, and also that the objective should include reference to ocean acidification.[46]

**Section 42A Report**

61. The Section 42A Report accepts many of these submissions and recommends that the last paragraph in Issue 19A should be amended, as it is no longer an accurate reflection of the state of knowledge regarding potential climate change effects in New Zealand. Ambiguity arises as the wording does not depict uncertainty in greenhouse gas emissions level predictions but rather the policy decisions that governments and communities will choose. This paragraph is recommended to be amended, rather than deleted, to reflect the certainty in predictions and models in light of the recent IPCC and MfE reports.

62. The fourth paragraph is recommended for retention at its location as notified because moving it to the end of the section, as requested by three submitters, would cause it to become an odd outlier. Instead a qualifying statement should be added to provide stronger emphasis to the negative impacts of climate change. A statement regarding the potential for increased competition for water and also the possible health implications associated with climate change is also recommended to be included in the explanatory section.

63. The Section 42A Report recommends declining AQNZ and MFA's submission on the grounds that ocean acidification is recognised as a potential effect of what is normally recognised as climate change. The report writer nevertheless sees merit in at least referring to ocean

[45] NMDHB (280.28), Peter Deacon (89.2), CKM (1059.19).
[46] Reply to Evidence under Issue 19A, page 2.

acidification, but in the discussion under Issue 19A (as this aspect of the issue is not discussed in the PMEP as notified).[47] He recommends adding to the third paragraph of the explanatory text the words … Ocean acidification, as oceans absorb more carbon dioxide, may cause harm to marine ecosystems and affect fishing and aquaculture.

64. MFA considers in evidence that the report writer's recommendation still does not go far enough to address the issue and provides proposed wording in a tabled revision-marked paper:

> *Marlborough's natural ecosystems could also be vulnerable to the effects of climate change and/or ocean acidification. Indigenous terrestrial, aquatic and marine species could respond to increased temperatures and drier conditions by shifting to more climatic zones. Any inability to move may have significant consequences for the long term viability of affected indigenous species, especially plants. Ocean acidification, as oceans absorb more carbon dioxide, may cause harm to marine ecosystems and affect fishing and aquaculture.*

65. In the opinion of the report writer, Counsel's proposed wording gives more information on the effects of ocean acidification, which goes beyond effects on aquaculture and includes effects on ecosystems and other fisheries. He therefore recommends the Section 42A Report wording remain.[48]

66. MFA nevertheless seeks that the words 'and ocean pH' be added to the last sentence of the first paragraph of Issue 19A. This is considered by the report writer as appropriate to read … 'This makes Marlborough vulnerable to any long term changes in climate and ocean pH.'

**Consideration**

67. In relation to the AQNZ and MFA submissions, we recognise that in addition to climate change, a consequence of higher carbon dioxide levels in the sea is ocean acidification. Shells are predominantly calcium carbonate, which dissolve in acid. An increasing seawater acidity therefore has a direct effect on the ability of shellfish to form shells. In addition to obvious effects on shellfish, there is a potential for other species to be impacted as well. Although a serious potential threat to Marlborough's marine ecology, ocean acidification is not an effect of climate change and is therefore not addressed in this chapter.

[47] Section 42A Report, page 17.
[48] Section 42A Report, Reply to Evidence, pages 2-3.

**Decision**

68. The explanatory text to Issue 19A is amended to read:

> *Marlborough relies on its natural and physical resources for its social and economic wellbeing and health and safety. The nature of many natural and physical resources and the ability to use them, especially land and freshwater resources, is dependent on climate. This makes Marlborough vulnerable to any long term changes in climate.*
>
> *Primary industry makes a significant contribution to Marlborough's economy and is vulnerable to changes in climate. Many primary industries rely on sufficient quantities of rainfall or freshwater in rivers and aquifers to supplement rainfall through irrigation. The various crops that are grown or the type of stock that is grazed reflects these climate variables. Predictions of higher temperatures, more extreme temperatures and reduced rainfall could therefore have a significant impact on rural land users through increased risk of drought and decreased water availability. Any decrease in water availability will also increase the competition for freshwater amongst existing users and between extractive and in-stream values.*
>
> *Marlborough's natural ecosystems could also be vulnerable to the effects of climate change. Indigenous terrestrial, aquatic and marine species could respond to increased temperatures and drier conditions by shifting to more suitable climatic zones. Any inability to move may have significant consequences for the long term viability of affected indigenous species, especially plants.*
>
> *However, climate change may create new opportunities. Plant growth could improve due to longer growing seasons and rising carbon dioxide levels. Warmer temperatures and decreased frost risk may enable new crops to be established; for example, Marlborough may become more suited to growing red wine grape varieties. Changes in climate may also create the opportunity to develop new ways to produce ~~renewable energy~~. However, these benefits may be limited by negative effects of climate change such as prolonged drought or greater frequency and intensity of storms.*
>
> *The public health effects of climate change include warmer winters, which may alleviate cold related illnesses and death. This would have the added advantage of reducing energy consumption during the winter months. In contrast, hotter summers may cause heat stress while drier and windier conditions could create*

*more dust and affect sufferers of respiratory disease. Windier conditions will also create additional challenges for the use of agrichemicals in the rural environment. Climate change may also lead to more stress-related mental health effects from extreme weather events such as droughts, floods or fires as these can cause disruption to individuals and business, including in the primary sector.*

*Communities may enjoy the health benefits of warmer winters, but warmer temperatures may also have significant biosecurity implications. Sub-tropical diseases may become a problem if carrier insects become established. Rising average temperatures could lead to the wider establishment and spread of new and/or existing pest plants, increased abundance of animal pests and greater survival of a range of insect pests. Some of these insects, such as mosquitos, may be carriers of diseases which are currently not present in Marlborough, and which adversely affect human, animal or plant health.*

*~~The predictions of climate change at a national level involve significant uncertainty and little work has been undertaken to apply these national predictions to Marlborough's climate~~. Climate models are improving and many more global model projections were available for the Fifth Assessment Report for the Intergovernmental Panel on Climate Change (IPCC) compared to the Fourth Assessment Report. The 2016 Ministry for the Environment report 'Climate Predictions for New Zealand' has drawn on this work, and as well as a detailed New Zealand regional climate model run on the NIWA supercomputer, to give a report with 'an unprecedented level of detail and robustness in the information provided'. The report notes that climate change effects over the next decades are predictable with some level of certainty. This situation is complicated ~~further,~~ however, by the fact that New Zealand and Marlborough are subject to natural climate variations associated with La Nina/El Nino and the Interdecadal Pacific Oscillation. These natural variations will be superimposed on human-induced long term climate changes.*

## Objective 19.1

**Mitigation of and adaptation to the adverse effects on the environment arising from climate change.**

69. Dr Lawrence challenges the PMEPs understating of the difficulties in addressing climate change in the second and third sentences of the explanation to the objective. She considers

that the PMEP overstates uncertainty and the difficulties in addressing climate change should be reworded and reworked across the PMEP.[49]

70. Several submitters seek the removal of the word 'offset' from the last sentence to the explanation and its replacement with the word 'reduce', believing that reducing emissions is the more effective approach.[50] Others support the objective and seek its retention as notified since they see it supporting the planting of trees.[51]

**Section 42A Report**

71. The report writer says that the significance of adverse effects relative to positive effects should also be illustrated.[52] The existing discussion of Issue 19A is said to imply that negative and positive effects are of equal likelihood and importance when they are not.

72. The original explanation to Objective 19.1 includes the observation that the exact nature of climate change is unknown, making it difficult to plan for its adverse effects. It contains the words '… it is prudent to promote actions that offset carbon emissions and retain sufficient flexibility … to enable resource users to adapt to a changing climate.'

73. The report writer notes that exact wording changes were not included in Dr Lawrence's evidence but in view of the issue of underlying climate change was revised, the submission of James Wilson provides scope.[53]

74. The Section 42A Report identifies that, in the international agreements the report writer has seen, 'offsetting' is an allowable approach and that New Zealand has met some of its obligations through offsets. He admits the concept is controversial where verification from some regimes is difficult and outcomes questionable. But other offsets such as allowing scrub to revert to forest (or restoration of indigenous biodiversity) are legitimate approaches and have additional environmental benefits. The report writer also recommends amending the last sentence of the explanation to Objective 19.1 and acknowledges there is now certainty regarding the likely local climate changes in Marlborough.

[49] CKM, Dr Judith Lawrence, Evidence, paragraphs 20-21.
[50] Peter Deacon (89.3), Helen Ballinger (351.46),
[51] Nelson Forests (990.257), MFA (962.116)
[52] Section 42A Report, Reply to Evidence: Peter Deacon (89.2), Marion Harvey (351.45), Helen Ballinger, CKM (1059.19).
[53] Section 42A Report, Reply to Evidence, page 3.

**Decision**

75. The Panel agree the PMEP understates the uncertainty of climate change, and it should be removed. The Panel also accepted the additional recommendations of the report writer and amended the text under Objective 19.1 to read as follows:

*This objective focusses on actions that the community can take to reduce the potential for adverse effects on the environment caused by climate change and to respond to any effects that do occur~~. One of the difficulties is that t There is inherent~~ There is now scientific certainty regarding climate change. There remains, however, an inherent uncertainty regarding the exact nature and extent of likely local climate changes in Marlborough and their effects. While ~~and therefore~~ the exact nature of those adverse effects is unknown, ~~making it particularly difficult~~ it is still possible to plan for climate change. The planning however needs to be flexible and adaptive. Further research will assist in this regard, refining the potential impacts. In the meantime, it is prudent to promote actions that reduce and offset carbon emissions and retain sufficient flexibility in the use, development and protection of natural and physical resources to enable resource users to adapt to a changing climate.*

## New Method - Carbon sequestration purposes

76. Helen Ballinger suggested a method is required to acknowledge rules included in the PMEP enabling the planting of trees for carbon sequestration purposes.[54]

**Section 42A Report**

77. The report writer in traversing Government's climate change initiatives approves the submission to read: *Encourage tree planting in appropriate locations to assist with carbon sequestration.*

**Consideration**

78. The Panel notes that there are notified rules to enable the planting of carbon sequestration forestry. These rules place limits on both species and location. It would be appropriate for the recommended method to acknowledge these limits.

**Decision**

79. We also consider it appropriate that a new method is inserted before 19.M.8 relating to tree planting and subsequent methods be renumbered accordingly. New method 19.M.8 to read:

*Encourage tree planting of appropriate species in appropriate locations to assist with carbon sequestration.*

[54] Helen Ballinger (351.52).

## Policy 19.1.1

**Promote actions within Marlborough to reduce or offset carbon emissions**

80. Policy 19.1.1 attracts the same concerns and submitters as Objective 19.1 with Forest and Bird[55] supporting the policy together with the benefits of permanent carbon sinks involving native species, and with NMDHB[56] seeking recognition of the MDC's encouragement of tree planting activities as a reminder to those seeking such an amendment.

81. Dr Renwick considers the policy should focus on promoting a reduction in emissions given the latest evidence that reductions are required. Peter Deacon also expresses these concerns.

**Section 42A Report**

82. The report writer agrees with the suggestion to include a preference in the policy for reductions in emissions rather than 'offsetting', bringing the wording in the policy into line with Method 19.M.1.

83. And as to submitters seeking to provide tree planting as a carbon sink,[57] the Government is establishing a Climate Commission which proposes to plant one billion trees over a 10 year period. MDC is now committed to a part in aligning with the NESPF programmes to achieve these goals.

**Consideration**

84. The Panel does not accept deletion of the word 'offset' as originally sought. It is also included in s 104(1)(a)(b) RMA where it is relevant to resource consents to offset or compensate for any adverse effects. By inserting the word 'reduce' in the policy it aligns with Professor Renwick's evidence that real reductions in emissions are needed 'to avoid dangerous climate change'.[58] The policy should also focus on promoting a reduction in emissions and only promote offsetting as a last resort.

**Decision**

85. Policy 19.1.1 is amended as follows:

> *Promote actions within Marlborough to reduce ~~or offset~~ carbon emissions as the preferred option, with offsetting as a less favoured alternative.*

## Policy 19.1.2

**Improve the community's understanding of the potential effects of climate change on the Marlborough environment.**

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[55] Forest and Bird (715.30).
[56] NMDHB (280.39).
[57] Helen Ballinger (351.58).
[58] CKM, Professor James Renwick, Statement of Evidence, page 11, paragraph 3.

86. Several submitters seek changes to the explanatory statement and Anticipated Environmental Results to explain how it will be implemented (i.e. public outreach and education).[59] Another submitter is concerned that there is a lack of detail on how this policy would be put into practice and requires a clear action plan.[60] Others ask for a Climate Change Advisor and others a reference to ocean acidification.[61]

**Section 42A Report**

87. The recommendation from the Section 42A Report initially was that the policy remains unchanged but that a Climate Change Advisor position be pursued through the Annual and Long Term Plan process to improve the community's understanding of the issue.[62]

88. The report writer's viewpoint was that the community engagement approach (DAPP) could also be part of the way of involving the community and helping it gain a better understanding of climate change and its effects. He therefore recommends the following amendment at the end of the explanation to read:[63]

> *The Council will also use a collaborative engagement process involving the community to help define and understand coastal hazards and climate change, based on the Ministry for the Environment guidance for local government 'Coastal Hazards and Climate Change' 2017.*

**Decision**

89. Given the prominence of the DAPP process in the 2017 Guidance, the Panel accepts this addition to the policy to read as set out above.

### Policy 19.1.4

**Take a precautionary approach to the allocation of additional freshwater resources and where freshwater has already been allocated, ensure that the allocation reflects the status of the resource.**

90. Several submitters support the policy as notified. Two submitters seek deletion of the policy.[64] They consider the policy is already addressed in Chapter 5 Allocation of Public Resources. Another seeks that the policy could be improved by adding at the end the words 'and the effects on both extractive and instream uses and values'.[65] In terms of the latter, trout in particular have limited ability to adapt to increased water temperature. Another submitter

[59] Peter Deacon (89.5), Helen Ballinger (351.48), CKM (1059.4).
[60] Bill McEwan (259.1), Birte Flatt (478.1).
[61] AQNZ (401.180), MFA (426.188).
[62] Section 42A Report, Reply to Evidence, Climate Change, page 5.
[63] Section 42A Report, Reply to Evidence, pages 5 – 6.
[64] Federated Farmers (425.343) and Trustpower (1201.114).
[65] FNHTB (716.181).

identifies that the policy does not include mention of climate change and does not reflect the intent in the explanatory text.[66]

**Section 42A Report**

91. In the report writer's opinion the policy should remain, for it provides additional guidance in the Plan on water allocation specific to climate change and its potential implications and guidance that is not reflected in Chapter 5. He notes that Policies A1 and B1 NPSFW require regional councils when making changes to plans to have regard to 'the reasonably foreseeable impacts of climate change'.

92. On the other hand, the proposed addition of FNHTB would improve the guidance in the policy. The current wording, where it relates to freshwater already allocated, seeks to 'ensure that allocation reflects the status of the resource'. Allocation status of a resource is the terminology used in Chapter 5 and relates to a business-as-usual allocation judgement, not a precautionary approach, to reflect the additional effects of climate change. The change provides guidance as to the effects considered rather than just the allocation of the resource.[67]

93. Trustpower's witness considers the policy should be amended to reflect results of sustainable yield if her interpretation of the explanation is covered with wording identified. The report writer, however, identifies in the first paragraph of the policy that climate change was factored into the sustainable yield of factors used to set into parameters within the PMEP. In the second paragraph, caution is needed if climate change reduces sustainable yield further than forecast.

94. And the last paragraph indicates that the policy can be applied to environmental data collected over the life of the PMEP and inform any subsequent review of Chapter 5 provisions.

95. Nevertheless, the report writer is happy to insert reference to climate change.

**Decision**

96. Policy 19.1.4 is retained but amended for the reasons given in both FNHTB and Trustpower's submissions as follows:[68]

> *Policy 19.1.4 - Take a precautionary approach to the allocation of additional freshwater resources taking into account the foreseeable impacts of climate change and where*

[66] Fonterra (1251.55).
[67] Section 42A Report, pages 20-21.
[68] Section 42A Report, Reply to Evidence, page 7.

*freshwater has already been allocated, ensure that the allocation reflects the status of the resource* *<u>and the effects on both out-of-stream and instream uses and values.</u>*

**Policy 19.1.5**

**Ensure that the freshwater that is available for out-of-stream use is allocated and used efficiently, by:**

**(a) requiring that the rate of water use authorised by water permit be no more than that required for the intended use, having regard to the local conditions;**

**(b) enabling the transfer of water permits between users within the same Freshwater Management Unit; and**

**(c) enabling the storage of water for subsequent use during low flow and low level periods.**

97. Two submitters to this policy consider that (c) is ambiguous because it misses out high flows;[69] two others consider the policy focuses on water allocation and does not fit comfortably with Chapter 19.[70] Two seek that the policy should be deleted.[71]

**Section 42A Report**

98. The report writer details the differences between Policies 5.4.4 and 5.4.5 (which encourage the use of streamlined transfer of water permits); Policy 5.7.3 which requires rate of water to match intended use in irrigation takes; and Policies 5.8.1 and 5.7.11 which encourage water storage.

99. This is not duplicated with Policy 19.1.5 although they mention storage, water permit transfer and water take. The report writer points out the policy provides an additional lens through which water allocation is viewed to take account of climate change and when adapting to it. It groups together a number of approaches to ensure out-of-stream water use is allocated and used efficiently within the context of adopting and mitigating the effects of climate change.[72]

**Consideration**

100. It became apparent to the Panel in considering the submission points on policies 19.1.4 and 19.1.5 that the effect of climate change on catchment yield/aquifer level should also be recognised in Chapter 5 in particular where climate change may influence the environmental flows and levels contained in Appendix 6. For this reason, the Panel has also chosen to include additional text in the introduction to Chapter 5 to reinforce this cross-reference.

**Decision**

101. For the reasons given, Policy 19.1.5 is amended as follows:

[69] Helen Ballinger (351.51) and Climate Karanga (1059.7).
[70] Warwick Lissaman (255.7) and Te Ātiawa (1186.100).
[71] Federated Farmers (425.344) and Trustpower (1201.115).
[72] Section 42A Report, Reply to Evidence, pages 9-10.

*Policy 19.1.5 – Ensure that the freshwater that is available for out-of-stream use is allocated and used efficiently, by:*

*(a) requiring that the rate of water use authorised by water permit be no more than that required for the intended use, having regard to the local conditions;*

*(b) enabling the transfer of water permits between users within the same Freshwater Management Unit; and*

*(c) enabling the storage of water <u>during periods of high river flow</u> for subsequent use during low flow and low level periods.*

102. The introduction to Chapter 5 has the following addition:

*<u>The environmental flows and levels set in accordance with the provisions of Chapter 5 are based on hydrological records collated up to the notification of the PMEP. If data collected over the life of the Plan demonstrates that catchment/aquifer yield has changed as a result of climate change, then there may be the need to review the environmental flows and levels contained in Appendix 6. Any change to the operative environmental flows and levels deemed necessary as a result of the review will be made via plan changes.</u>*

## Method 19.M.1 Council carbon footprint

103. Several submitters variously seek additional wording to tie the goals for emission reductions to those of the national reduction targets.[73] In evidence, Peter Deacon considers that Method 19.M.1 should take into consideration the zero emissions target, announced by the Government in 2018, when planning and implementing changes to its own operations in order to support the national target.

### Section 42A Report

104. The Section 42A Report identifies there is merit in the MDC having regard to the national targets when setting carbon reduction goals and its action plan.[74] This allows it to recognise that its regional, and sector, carbon footprints may be different from those at national level. It is recommended that Method 19.M.1 be amended to read: *'… set goals for reducing carbon emissions <u>having regard to New Zealand's national emissions reduction targets</u> and develop an action plan to reach these goals'.*

105. This additional suggestion was rejected by the report writer as he considers this concern is already adequately addressed by the Section 42A Report recommendation. National targets

[73] Peter Deacon (89.7), Helen Ballinger (351.52) and CKM (1059.8).
[74] Section 42A Report, pages 22-23.

relate to greenhouse gases in general not just carbon emissions as included in the Council's operation plan for its own operations. The submission is seen to have merit, however, with regard to the national targets when setting their carbon reduction goals.

106. In the light of the importance of monitoring, the MDC sought the addition of a new AER as follows:

> *There is a reduction in the carbon footprint of the Marlborough District Council's operations.*
>
> *Monitoring effectiveness: Council report establishing existing carbon footprint and subsequent reports on reductions achieved.*

**Decision**

107. The Panel accepts the recommendations of the report writer as set out below:

*19.M.1 Council carbon footprint*

*Investigate Council operations to establish their carbon footprint; set goals for reducing carbon emissions <u>having regard to New Zealand's national emissions reduction targets</u> and develop an action plan to reach those goals.*

108. The Panel accepts that request for the new AER. It links back to the Council's own approach to addressing its own carbon footprint.

| *Anticipated environmental result* | *Monitoring effectiveness* |
|---|---|
| *<u>19.AER.4</u>*<br>*<u>There is a reduction in the carbon footprint of the Council's operations.</u>* | *<u>Council report establishing existing carbon footprint of its operations and subsequent reports on reductions achieved.</u>* |

*19.M.2 Marlborough Regional Land Transport Plan*

*Consider, in review of the Marlborough Regional Transport Plan, provisions to reduce emissions of greenhouse gases <u>taking into account the climate change provisions of the MEP.</u>*

*19.M.4 Research*

*Apply the findings of international and national climate change research to Marlborough's environment to the extent that is possible <u>and support research relating to Marlborough</u>. The findings can then be applied to determine and better understand the implications of climate change.*

## Climate Change and Sea Level Rise

### Issue 19B

**Climate change could affect natural hazards and create coastal inundation hazard associated with sea level rise.**

109. Under this heading, a number of submitters support the issue statement in part, but seek changes to the explanatory statement. They variously seek: removal of the word 'potentially' from the third sentence of the third paragraph of the explanatory statement, as inundation will undoubtedly occur as a result of sea level rise; inclusion of a statement that land subsidence in the Sounds is adding to the rate at which relative sea level rise is experienced; oppose the issue statement, considering it as too limited, deletion of the words 'and create a coastal inundation hazard associated with sea level rise' would be more appropriate; coastal inundation is only one of the effects of sea level rise, others are increased risk of landslides, damage from waves as well as effects on natural values including mitigation by sea walls; and a further issue statement is needed to give effect to NZCPS Policies 14 (Restoration) and 26 (Defences against natural hazards).[75]

110. Dr Lawrence however, under the heading 'Implications for the MEP', points out that it is quite clear that sea level rise will affect coastal structures, reclamations, ports and marinas with coastal inundation, storm surge and coastal flood events.[76] The Marlborough region with its long coastline will be exposed to the effect of sea level rise, inundation and flooding events over the short and medium terms. Dr Lawrence also agrees with the Section 42A Report that the lower Wairau area and around the Wairau lagoons are likely to be exposed to similar effects, and this is where the MDC's sewage ponds are located. The extent of sea level rise will also depend on local geology and hydrology.

111. Dr Lawrence considers that the text in paragraph three of the explanatory statement of Issue 19B could be more definitive, with the following amendments:

> *… Global warming is raising sea level due to thermal expansion of ocean water and melting of glacial and polar ice. Sea level is predicted to rise around 0.18 to 0.59 metres by 2090. This rise potentially increases the risk of inundation at the coast. Coastal erosion in areas will become more prevalent, increasing the demand for coastal protection measures …*

[75] Peter Deacon (89.11), Helen Ballinger (351.57), CKM (1059.14), Judy and John Hellstrom (688.173), FNHTB (716.183).

[76] CKM, Dr Judith Lawrence, Evidence, paragraphs 6 and 12.

112. It is Dr Lawrence's evidence, however, that while the PMEP used the 2008 Guidance to inform the sea level provisions (because when they were written the 2017 Guidance was not available) it was not applied correctly in the Section 42A Report. This came about by not assessing a baseline value of 0.5m relative to the 1980-1999 sea level average along with the recommendation in assessment of potential consequences of a mean sea level rise of at least 0.8m relative to the 1980-1999 average.

113. If the sea level rise allowances are recalculated by assessing this, allowance for sea level rise becomes 1 metre as the minimum level for planning and decision purposes rather than the 0.67m figure recommended in the Section 42A Report.

114. As a result, Dr Lawrence recommends that Council use Table 10 of the 2017 Guidance to set a planning allowance, in conjunction with Table 12 in the 2017 Guidance for activities. Application of the guidance means providing an allowance of 1.52 metres sea level rise at approximately 2130.[77] The PMEP should therefore be changed to reflect the correct minimum allowance of sea level rise as 1.52 metres by 2130.

**Section 42A Report**

115. Policy 19.2.2 addresses long-term sea level rise and the effects of storm surge. Also, Method 19.M.4 deals with research to understand the areas along the coast that are likely to be affected by sea level rise. The report writer considers that a minor change to the wording of the existing issue statement, along with providing more explanation, is the most appropriate relief. In addition, changes to Policy 19.2.2 and Method 19.M.4 would also provide some further relief.

116. The report writer accepts that the issue relating to the coastal impacts of climate change involves more than just sea level rise. Storm surges affect inundation and can be a function of both higher sea levels and at times potentially more extreme storms, and some of the risks to natural values. The report writer supports this concept being introduced into the explanatory statement.

117. The report recommends that the word 'potentially' is removed, as it is redundant. Further, land subsidence is considered a relevant issue when combined with climate induced sea level rises and should be included in the explanatory section.

118. The report says a new Issue statement to give effect to NZCPS Policies 14 and 26, however, would be too general to include: hence deletion of the current text would not be appropriate.

[77] CKM, Dr Judith Lawrence, Evidence, page 5, paragraph 24.

To address the fact that sea level rise is not the only coastal impact of climate change further explanation of other impacts would have to be included.

119. In the report writer's Addendum[78] the report writer supports the changes and recommends that Issue 19B[79] be retained as notified with suggested amendments as follows:

*Global warming is expected to result in a rise in sea level due to thermal expansion of ocean water and melting of glacial and polar ice. Sea level is predicted to rise around 0.18 to 0.59 0.55 to 1.36 metres by 2090 2120.[1] This rise potentially increases the risk of inundation at the coast. Coastal erosion could also become more prevalent, increasing the need for coastal protection measures, both of which can have adverse effects on natural values. Along the coastal margin of the Wairau Plain, the level of the Wairau River bar and river mouth efficiency has far greater influence on the potential for inundation than the projected sea level rise. Further south, the topography and lack of settlement minimises any inundation risk. However, the risks are far greater in the Marlborough Sounds where settlement and associated infrastructure (especially means of access, such as jetties and access tracks) tend to be located in the coastal environment and near the water edge. Where land is subsiding, the adverse effects of sea level rise from climate change can be accelerated.*

*Footnote [1]: Table 10, Coastal Hazards and Climate Change: Guidance for Local Government, 3rd Edition. Ministry for the Environment, December 2017.Consideration*

120. The Panel considers the explanation is too limited and includes inaccuracies. It needs to incorporate the changes as set out in the evidence of Dr Lawrence (who uses a sea level rise of 1.52m at 2130 in comparison to the report writer who uses a sea level rise of 1.36m at 2120).

121. And the extension of that same paragraph with the sentence: Where land is subsiding, the adverse effects of sea level rise from climate change can be accelerated.[80]

122. Otherwise Issue 19B is retained as notified.

**Decision**

123. The explanatory text to Issue 19B is amended as follows:

*… Global warming is ~~expected to result in a rise in~~ <u>rising</u> sea level due to thermal expansion of ocean water and melting of glacial and polar ice. Sea level is predicted to rise <u>0.55 to</u>*

[78] Addendum to Section 42A Report, Paragraph 52
[79] Erroneously referred to in paragraph 52 of the report as Issue 4A
[80] Section 42A Report, Reply to Evidence, page 12. Judy and John Hellstrom (688.17).

*1.52 ~~around 0.18 to 0.59~~ metres by ~~2090~~ 2130. This rise ~~potentially~~ increases the risk of inundation at the coast. Coastal erosion ~~could also~~ in areas will become more prevalent, increasing the ~~need~~ demand for coastal protection measures, both of which can have adverse effects on natural values. Along the coastal margin of the Wairau Plain, the level of the Wairau River bar and river mouth efficiency has far greater influence on the potential for inundation than the projected sea level rise. Further south, the topography and lack of settlement minimises any inundation risk. However, the risks are far greater in the Marlborough Sounds where settlement and associated infrastructure (especially means of access, such as jetties and access tracks) tend to be located in the coastal environment and near the water edge. Where land is subsiding, the adverse effects of sea level rise from climate change can be accelerated.*

### Policy 19.2.2

**Avoid any inundation of new buildings and where appropriate infrastructure within the coastal environment by ensuring that adequate allowance is made for the following factors when locating, designing and/or constructing any building or infrastructure:**

**(a) Rising sea levels as a result of climate change of at least 0.5 metres relative to 1980–1999 average; and**

**(b) Storm surge.**

124. FNHTB[81] oppose the policy as they consider it does not give effect to the NZCPS. It seeks instead that the policy is replaced with one that requires any new development to avoid coastal hazards and take into account at least a 100 year time frame having regard to the NZCPS policies, in particular Policy 24(1)(a)-(h).

125. Ngāti Kuia[82] and Federated Farmers[83] support the policy in part and variously seek:

- A more conservative allowance of one metre for sea level rise over 100 years.
- A focus on habitable buildings where there is a risk to human life, not simply any building (for example, farm sheds and other ancillary buildings).
- Deletion of 'and where appropriate infrastructure' for similar reasons.

126. KCSRA[84] support Chapter 19 in part. It is concerned, however, that Policy 19.2.2 relates only to avoiding and locating new buildings and infrastructure within the coastal inundation area. It considers that a new policy should be provided so as to define steps to protect or replace existing infrastructure such as roads in the context of coastal hazard and sea level rise – an issue we address under an additional Policy later in this topic decision.

[81] FNHTB (716.185).
[82] Ngāti Kuia (501.82).
[83] Federated Farmers (425.346).
[84] KSCRA (869.32).

**Section 42A Report**

127. Following the release of the 2017 Guidance document, the writer of the Section 42A Report considered that further amendment to his initial recommendations on Policy 19.2.2 is required to bring the PMEP to align with its findings and recommendations.

128. In order to determine scope to make required changes, the report writer advised that FNHTB, in its initial submission,[85] had opposed Policy 19.2.2 as it did not give effect to the NZCPS (2010) Policy 24: Identification of coastal hazards. Consideration of this policy also brought into consideration other relevant policies of the NZCPS and Objective 5, which require that decision-makers ensure that coastal hazard risks, taking into account climate change, are managed (by locating new development away from areas prone to risk and considering responses including managed retreat for existing development).

129. The submission around non-habitable buildings and services infrastructure is not supported in the Section 42A Report as it removes important guidance on coastal locations. Restriction of non-habitable buildings would exclude commercial buildings, commercial centres and industrial centres. These could otherwise be located in areas subject to sea level rise.

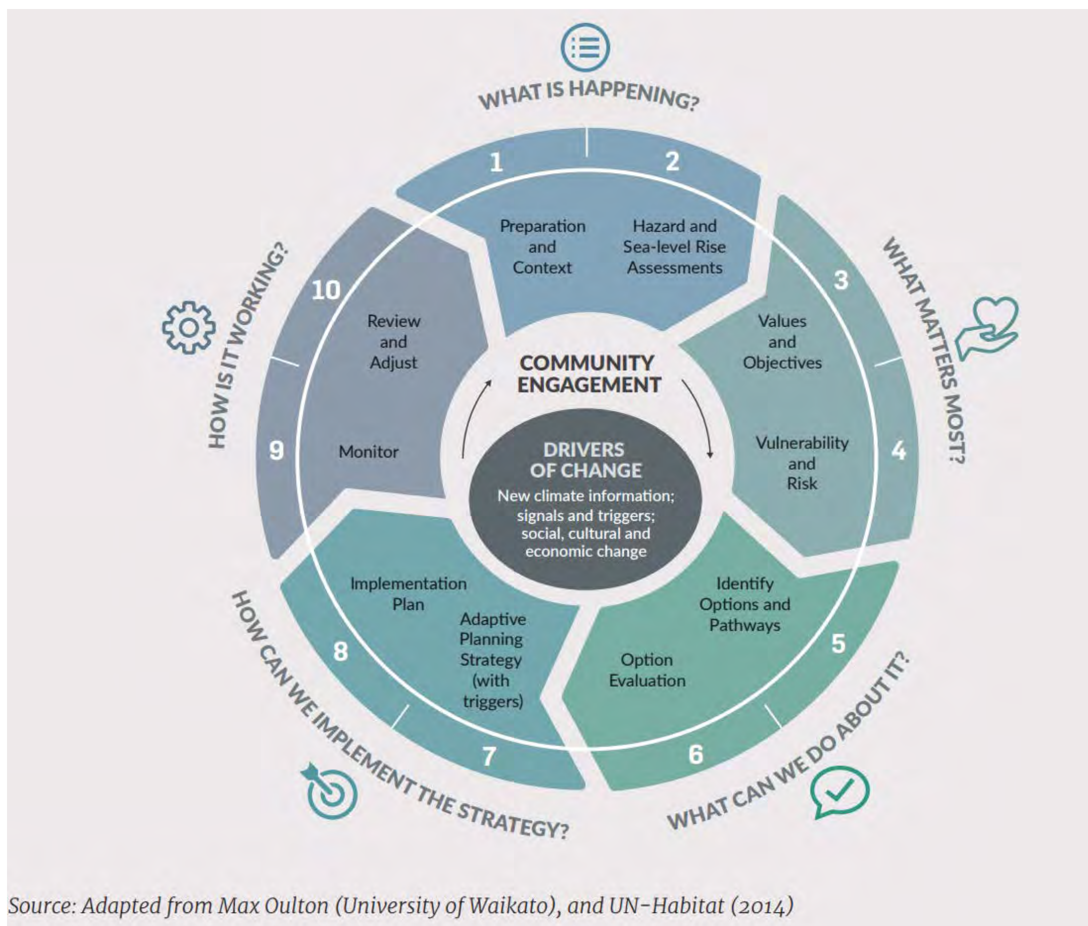
130. Excluding infrastructure from the policy would also remove important guidance as to the location of infrastructure relative to coastal inundation. It is prudent to have regard to sea level rise and storm surge risk when decisions are made on the location and design of new infrastructure, since these developments can often be multi-million dollar community investments. Finally, buildings (whether habitable or not) and vulnerable infrastructure if allowed to establish within identified future inundation areas, and this occurs, can have effects on natural character and coastal processes (if buildings (and roads) are destroyed) or lead to pressure for coastal defence works to protect the infrastructure. The changes sought are not supported in the report.[86]

131. With regard to NZCPS (2010), the PMEP contains three provisions seeking to give effect to the precautionary approach as required in implementing Policy 24. These are the explanation to Policy 19.2.2 (which requires buildings to be set back from the Coastal Marine Area); Policy 19.2.2 itself (which operates as a guide for building applications within the setback) as well as construction of infrastructure in the coastal environment; and amended Method 19.M.9 (which provides an investigation process for defining the extent and nature of the inundation hazard).

[85] FNHTB (716.185).
[86] Section 42A Report Addendum, pages 16-19 and 29-30.

132. The report writer agrees the explanation to Policy 19.2.2 should be based on a timeframe of at least 100 years.[87] The current time frame in the policy is only 75 years and this does not give effect to the NZCPS (Policy 24(1)). This change will result in adjustment of the sea level figure provided by MfE to reflect the longer timeframe and a further explanatory statement depicting how the amended figure is derived.

133. The 2017 Guidance draws on the relevant NZCPS requirements around coastal hazards, their identification, location and management and use provisions to transition to the dynamic adaptive pathways planning approach. Until this approach is finalised, interim guidance on minimum sea level rise allowances and scenarios is required. These are set out below and constitute the basis for further amendment to Policy 19.2.2 as analysed and set out in the Section 42A Report.




*Source: Adapted from Max Oulton (University of Waikato), and UN-Habitat (2014)*

**Figure 1** The 10-step iterative decision cycle in the revised 2017 NZ coastal guidance, grouped around five questions that frame each stage in the process (Source: (Ministry for the Environment, 2017). Adapted by the Ministry for the Environment from (UN-Habitat, 2014).

[87] NZCPS (2010) Policy 24(1) requires identification of areas of high hazard risk 'over at least 100 years'. The NZCPS (2010), Policy 24(1) identification of Coastal Hazards.

134. Figure 1 describes the dynamic adaptive pathways planning approach (DAPP) provided in the 2017 Guidance. At its heart, as identified by Dr Lawrence, is community engagement which is critical to the process:

> *The Dynamic Adaptive Pathways Planning (DAPP) approach (Haasnoot et al)*[88] *is an exploratory model-based planning tool that helps design strategies that are adaptive and robust over different scenarios of the future. It has been developed as an analytical and assessment approach for making decisions under conditions of uncertainty. Effective decisions must be made under conditions of unavoidable uncertainty (Dessai et al, 2009).*
>
> *In the context of rising sea levels, where conflicting values prevail for coastal areas, the consequences of decisions can be profound, and may be impossible to reverse. This will result in activities that are locked-in to the place and space, thereby reducing the ability of decision-makers to adapt to future conditions. Costly adjustments that have distributional consequences on different groups within society may result.*
>
> *The DAPP therefore focuses on keeping multiple pathway options open into the future – these help alleviate irreversible decisions and reduce the risk of being wrong when making decisions in the present. It does this by making transparent future actions that can be taken, should actions today prove insufficient to meet objectives.*
>
> *The DAPP approach can also be used to facilitate iterative decision-making involving both decision-makers and stakeholders. The DAPP approach has been used increasingly for implementing climate-resilient pathways for water management in situations of uncertainty; its application to a problem of compounding coastal hazard risk resulting from sea-level rise is particularly helpful for decision makers.*
>
> *Within the DAPP, a plan is conceptualized as a series of actions over time (pathways). The essence of the approach is the proactive planning for flexible adaptation over time, in response to how the future actually unfolds. The DAPP approach starts from the premise that policies/decisions have a design life and*

[88] Based on two complementary approaches for designing adaptive plans: 'Adaptive Policymaking' and 'Adaptation Pathways', which Haasnoot et al (2013) originally called 'dynamic adaptive policy pathways'. Here the term Dynamic Adaptive Pathways Planning is used.

*might fail as the operating conditions change (Kwadijk et al, 2010).*[89]

135. The process anticipates the inevitable adverse effects on communities by linking transitional sea level rises to the scale or type of development; the MDC is thus given the ability to avoid increasing exposure to coastal hazards – a requirement of the NZCPS Policy 24(1)(h). These transitional sea level rise allowances set out in Table 12 are:

**A Coastal subdivision, greenfield developments and major new infrastructure – avoid the hazard risk by using SLR over more than 100 years and H+ scenario**

**B Changes in land use and redevelopment (intensification) – adapt to hazard by conducting a risk assessment using a range of scenarios and using the pathways approach**

**C Land use planning controls for existing coastal development and assets planning – use of single values at local/district scale until DAPP is undertaken**

**D Non-habitable short lived assets with a functional need to be at the coast, and either low consequence or readily adaptable (including services) – 0.65m sea level rise**.[90]

**Consideration**

136. Dr Lawrence recommended using Table 10 of the 2017 Guidance to set out a planning allowance until the DAPP processes can be applied using the four RCP scenarios *in conjunction with Table 12 in the 2017 Guidance for Activities A.* 'For the life of the PMEP at approximately 2130 gives a minimum allowance of 1.52 metres.' This would amend the recommendation given in the original Section 42A Report for Policy 19.2.2.[91]

137. Table 12 identifies minimum transitional New Zealand-wide SLR allowances for use in planning instruments where a single value is required at a local/district level while in transition towards adaptive planning pathways planning.

138. Category A gives a description for coastal subdivision, greenfield developments and major new infrastructures and a transitional response which requires avoiding hazard risk by using sea level rise over more than 100 years in the $H^{+}$ scenario. Category B is where intensification of existing development is inadvisable. Category C generally concerns existing infrastructure. Category D deals with non-habitable short lived assets where consequences are low.

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[89] Statement of Evidence by Judith Helen Lawrence on behalf of Climate Karanga Marlborough, 1 February 2018, Appendix 1 Dynamic Adaptive Pathways Planning Approach, page 21.

[90] 2017 Guidance, Table 12 Minimum transitional New Zealand-wide SLR allowances and scenarios for use in planning instruments where a single value is required at a local/district scale while in transition towards adaptive pathways planning using the New Zealand-wide SLR scenarios, page 108.

[91] Guidance 2017, pages 107-108.

139. The Panel queried why the four RCP scenarios of New Zealand-wide regional sea level rise projections for use with the 2017 Guidance included extensions to the $H^+$ 2150 based on Kopp et al (2014).

140. The 2017 Guidance document identifies that no further extrapolation of the IPCC beyond 2120 (the minimum requirement) is possible (for the scientists to model appropriately), hence the rate of rise for the Kopp 4 median projections ($50^{th}$ percentile) for RCP2.6, RCP4.5 and RCP8.5 $H^+$ are shown as dashed lines from 2130 to provide extended projections to 2150. All scenarios include a small sea level rise offset from the global mean SLR for the regional sea around New Zealand.[92]

141. $RCPH^+$ is a reminder that sea levels will keep rising after 100 years, irrespective of actual future greenhouse gas emissions. It is a stress-tested scenario used by US Army Corp of Engineers 2014, National Research Council 2012, US Department of Transportation 2014, and UK (Lowe et al) for critical infrastructure.

142. Dr Lawrence's opinion is based on the application of s 6(h) RMA and the management of significant risks for subdivision, greenfield development and the guidance given in the NZCPS. Objective 5 (locating new development away from areas at risk from coastal hazard risk and climate change) is also referenced.[93]

143. The Panel also queried a transitional provision in the 2017 Guidance category B 'Changes in land use and redevelopment (intensification) – adapt to hazard by conducting risk assessment using a range of scenarios and using the pathways approach'.

144. The words 'a range of scenarios', whether RCP4.5 median or RCP8.5 median, does not provide the certainty required by decision makers as do those set out in categories C and D for hazard risk and vulnerability. We note that the 2017 Guidance identifies that where intensification is inadvisable (category B) no transitional value is provided. It is not provided 'as this could create future path dependency and avoidable increase in future risk if a higher SLR

[92] The largest projections identified in mean annual wave heights (expressed in percentage terms) were between ± 10 percent, with the highest and best use increases for the tropical Pacific and Southern Ocean. The mean annual wave height in the Southern Ocean will increase largely in winter months. Wave climate in waters around Australia and New Zealand are expected to increase slightly by 2070-2100. Some small increases are expected in the west and south coasts of New Zealand.

[93] We note that as identified by Dr Lawrence, Section 13 Use of Coastal Environment is a context setting section for the whole region. As noted earlier, a cross-reference to the climate change chapter in the PMEP would signal relevant impacts and risks the region faces from climate change.

occurred'.[94] But the heading to Table 12 of the 2017 Guidance refers to a 'single value' for category B while in transition towards adaptive planning use.

145. One of the concerns held by the Panel is that if a range of options is not fully explored with input from all sectors of the community, when it comes to resource consent applications in the future then consents may be held accountable for either too little protection or too much. This is where a staged approach may be the best option, also advised in the 2017 Guidance.

146. Dr Lawrence makes the point that on current projections it becomes increasingly important that areas already at risk from the effects of climate change are not made more so by increasing exposure to the community and assets. The results have the potential to be extremely costly (both to the community and MDC) as ongoing sea level rises and frequency of high intensity rainfall increases. Dr Lawrence stresses the meaning of 'effect' under the RMA has particular relevance to the changing risk conditions that are evolving for the 'effects of climate change' (see s 7(i) RMA) and the definition of effects under s 3 RMA which includes cumulative effects arising over time regardless of scale, intensity, duration or frequency. This reference to 'cumulative effects' should be mentioned in the top level policy (as it will be at the district level resource consents).

147. To reflect the Panel's concerns about the application of a single value to SLR for intensification until the adaptive pathways approach was complete, we drew attention to the report writer about its lack of certainty in the planning context.[95] Intensification of existing development is more problematic than that identified in categories A, C and D, as it is essentially an amalgam of new and older development together with the infrastructure that services an area against a background of rising sea levels.

148. On the advice of MfE and the authors of the 2017 Guidance, the Panel was advised through the memorandum from the report writer, that the inclusion of category B in Table 12 as having a single value for sea level rise, is a mistake. The revision of the penultimate draft in 2017 of the Guidance introduced a new category for sea level rise to the existing three by separating out greenfields developments (and major new infrastructure) from intensification of existing development. Table 12 as an oversight does not accurately reflect this.[96]

149. The recommendation of the report writer against this background is to have a set figure from the guideline in Table 10 (a SLR of 1.52m for the $H^+$ scenario and 1.18m for RCP8.5) but with

[94] 2017 Guidance, pages 111-112. Also Chapters 9 and 10.
[95] Minute 27 of the Hearing Panel to David Jackson, Reporting Officer, dated 24 May 2018.
[96] Memorandum to Chair and Members, Hearing Panel, David Jackson, Reporting Officer, 2 July 2018.

the option to vary this approach if the proponent of the development undertakes a DAPP approach in accordance with the guidelines and that is acceptable to the Council.

150. This approach, in the report writer's opinion, would give the developers and the public the certainty and simplicity of a figure but the ability to look at modifying that approach if they wish to spend the time of undertaking a DAPP. In the transition period which category B is designed to provide certainty for, the Panel considers it is unlikely a DAPP could be realistically achieved and prefers the certainty of the 1.52m H+ scenario.

151. Such a policy for Category B might be as follows:

> (b) Changes in land use and redevelopment (intensification) – use a minimum 1.52m sea level rise using the range of scenarios and a dynamic adaptive pathways planning approach; use of minimum 1.52m sea level rise, or a level set by conducting a risk assessment using the range of scenarios and a dynamic adaptive pathways planning approach at a scale appropriate to the proposed development.

152. We note that Dr Lawrence had earlier recommended using Table 10 of the 2017 Guidance in conjunction with Table 12 for Table A in the 2017 Guidance. At approximately 2130 this would give a minimum allowance of 1.52 metres. This is for an $H^+$ scenario.

**Timing**

153. Dr Lawrence also considered that Policy 19.2.2 (as recommended in the Reply to Evidence[97]) should be amended further to clarify when application of the 100-year timeframe should be considered. She considers it should be from the end of the life of the plan, not the start (when notified).

154. The report writer advises he does not consider that tying the timeframe to the end of a plan's life is appropriate, as this is very uncertain; rather, it is better the forecast be from the time the proposal is planned to be built/developed. This gives a definable starting point and allows for situations where developments may obtain any lag between statutory approvals and commencement of works. The final sentence in the policy should be amended to clarify this by adding:

> *Dynamic adaptive pathways planning approach, and the climate change/sea level rise scenarios in clauses (a) and (b) [of the policy], are as defined in 'Coastal Hazards and Climate Change: Guidance for Local Government', Ministry for the Environment,*

[97] Section 42A Report, Reply to Evidence, Climate Change, page 13.

*December 2017. Sea level rise figures, and scenarios/forecasts, are applied from the year in which the development is planned to occur.*

155. The Section 42A Report recommended that Policy 19.2.2 is deleted and replaced entirely[98] but the report writer's response to Minute 27 was that a single figure approach for Category B was preferable for the transition period but the Panel may wish to consider leaving open the option of a DAPP for a developer. The Panel did not agree with that option.

**Decision**

156. The Panel agrees for the reasons given. The replacement recommendation which the Panel accepts is as follows:[99]

*Policy 19.2.2 - For planning and development in the coastal environment the following sea level rise allowances and scenarios must be used (until a dynamic adaptive pathways planning process is completed) to assess and manage potential coastal hazard risk:*

*(a) Coastal subdivision, greenfield developments and major new infrastructure – use a minimum 1.52m sea level rise; and;*

*(b) Changes in land use and redevelopment (involving intensification or use of land beyond the existing footprint of built development or structures) – use a minimum 1.52m sea level rise; and;*

*(c) Existing coastal development and assets within their existing footprint – use a minimum 1.0m sea level rise; and*

*(d) Non-habitable short-lived assets with a functional need to be at the coast, and which either have low consequences or are readily adaptable (including services) - use a minimum 0.65m sea level rise.*

*Dynamic adaptive pathways planning approach, and the climate change/sea level rise scenarios are described in "Coastal Hazards and Climate Change: Guidance for Local Government, Ministry for the Environment, December 2017"*

157. Consequential changes in response to the submissions of FNHTB and Ngati Kuia,[100] are accepted to the extent that the explanation to Policy 19.2.2 is amended as follows:

*~~In 2013,~~ T~~t~~he International Panel on Climate Change has determined that it is very likely that the rate of global mean sea level rise during the twenty-first century will exceed the rate*

[98] FNHTB (716.185), Ngāti Kuia (501.82).
[99] Section 42A Report, Reply to Evidence (Addendum, page 18).
[100] FNHTB (716.85) and Ngāti Kuia (501.82).

*observed during 1971–2010 due to increases in ocean warming and loss of mass from glaciers and ice sheets.*

*The Ministry for the Environment advises local government ~~(for planning and decision timeframes out to 2090-2099)~~, to use a 'dynamic adaptive pathways planning' approach to considering the effects of climate change, and managing and adapting to it and the hazards risk from ~~plan for a~~ sea level rise and climate change. The approach provides flexibility that allows an agreed course of action to be changed if the need arises. ~~to plan for a sea level rise of 0.5 metres relative to the 1980-1999 average as a base value but that assessments be made of potential consequences from a sea level rise of up to 0.8 metres.~~*

*Until the adaptive pathways planning is undertaken, the Ministry for the Environment guidance is to use interim sea level rise allowances and scenarios, depending on the type of activity. This advice, for four categories of activity, is reflected in Policy 19.2.2. The allowances are based on Table 10 and Table 12 of the guidance which provides for three minimum transitional sea level rise allowances and scenarios. Also, the decadal increments for sea level rise over the next 100 years are not equal, but get larger under the H+ scenario further into the future.*

*The Council has chosen to specify a single values for Category A and Category B activity of 1.52m (unlike the guidance) in order to provide certainty to resource users~~.: 1.52 metres for Category A activity and 1.18 metres for Category B activity~~ 1.52 metres is the H+ scenario for greenfield development and new infrastructure in 2130.* ~~:1.18 metres is the RCP8.5 M scenario for land use change/intensification in 2130.~~ *The minimum sea level rise allowances in (a) and (b) therefore provide a 100 year allowance for that type of activity proposed during the life of the MEP.*

*Although the life of the MEP is only ten years, buildings have a minimum design life of 50 years and new subdivisions and property titles have an indefinite life. Equally, new infrastructure can be long-lived, and involve multi-million-dollar community investment. The policy reflects the different timeframes, and increases of sea level – and the different risk involved – associated with various types of development. It also recognises that a different approach is possible with new compared to existing development. ~~It is therefore important that any new building is located, designed and/or constructed having regard to the long term risk of inundation as a result of sea level rise. This approach is also appropriate to infrastructure located in the coastal environment that is not intended by design to be subject to inundation. The Ministry for the Environment advice has been utilised to establish the increase in sea level~~*

~~*to be applied.*~~ *For example, development under (a) and (b) both involve multiple (and potentially numerous) properties. In these circumstances, given the scale of development, and therefore the scale of the investments being made, it is necessary and appropriate to take a precautionary approach to planning for sea level rise for new or intensification development. In contrast, development under (c) is more likely to involve an existing individual property and, as the development already exists, it is acceptable to plan for a lower level of sea level rise.*

~~*Storm surges occurring in response to low-pressure weather systems can cause higher than normal sea levels and inundation of low lying areas. This hazard increases with increasing sea levels, so any risk assessment made in accordance with this policy should also take into account the potential additive effects of storm surge on top of sea level rise.*~~

*This policy will be applied to the determination of resource consent applications, plan changes and designations. Rules elsewhere in the MEP require buildings to be set back from the coastal marine area. This in itself will act to protect buildings from the adverse effects of sea level rise and/or storm surge. However, when applications are made to establish a building within this setback, then the policy will be able to be applied.*

### [New] Policy 19.2.3

158. Several submitters support Chapter 19 in part but also sought additional policies relating to: the installation, operation and utilisation of alternative energy sources that do not emit greenhouse gases; the promotion of plantation and carbon sequestration forest planting; the protection or replacement of existing infrastructure (such as roads) in the context of sea level rise and coastal inundation.[101]

**Section 42A Report**

159. The Section 42A Report initially recommended that the PMEP should be retained as notified with no additional policies. Chapter 18 for example contains policies that promote renewable energy and carbon sequestration forestry so additional policies on those issues are not considered necessary.

160. It is also initially pointed out in the Section 42A Report that the PMEP has little influence over existing infrastructure because it is owned by independent companies. Method 19.M.8 does however require areas subject to risk of future inundation (and the infrastructure in these areas) to be defined. It was considered the best way to manage risks to existing infrastructure

[101] Te Rūnanga o Ngāti Kuia (501.80), Nelson Forests (990.259), KCSRA (869.42).

was considered to be via various Asset Management Plans as these provide strategies, timeframes and financial resources to address the risk.

**Reply to further evidence**

161. Mr Caddie, on behalf of KCSRA, did not favour the original Section 42A Report response limiting MDC to research, together with the LTP and Annual Plan processes, as to what steps needed to be taken either to review what the Council needs to either protect or renew existing infrastructure in the context of sea level rise and coastal hazard. He was concerned about the practicality and lack of policy support for the relevant method (19.M.8 Research) as well as the need to give effect to the NZCPS. Mr Caddie proposed: 'Identify Council infrastructure (for example, roads) where the coastal environment is under threat of inundation from rising sea levels and associated storm surges and take steps to avoid or mitigate the adverse effects of such outcomes on the use and availability of that infrastructure.'

162. While this submission was initially rejected by the report writer, as advised to the Panel, the Addendum to the Section 42A Report after the release of the 2017 Guidance provided scope to give effect to KCSRA's suggested policy. Peter Deacon's original submission on Objective 19.2[102] provided that scope to investigate where and how the effects of sea level rise will be felt in Marlborough, and into what measures are needed to futureproof communities and create resilience to sea level rise.

163. On this issue, the report writer reflected that Policy 19.2.2 is an interim approach only, and Mr Caddie's proposed Policy 19.2.3 would therefore form part of the DAPP approach outlined in the revised Guidance. The DAPP process involves a high level of community engagement and ownership, including the community defining what matters to them, and options to address the effects on things that matter.

**Consideration**

164. In the process of addressing Mr Caddie's argument, the report writer and the Panel queried why focus on the Council's infrastructure but not other infrastructure owned by the NZTA, KiwiRail and wharves, jetties or community facilities, even if not owned by the MDC.

165. We accept most of the report writer's amended recommendations in the light of all the further evidence identified. The intent of this new policy is wider than just existing Council

[102] Section 42A Report citing Peter Deacon (89.12), page 27.

infrastructure and he identifies the relevant policies of the NZCPS (2010) which require such assessments.

166. The amendments we considered were to refer to 'communities' at the end of the policy (as opposed to repeating areas, assets and infrastructure), and the first and second sentences of the recommended explanation to be modified to refer to policies of the NZCPS.

**Decision**

167. A new policy is inserted as 19.2.3 as follows:

*Using a collaborative community engagement model, identify and prioritise areas, assets and infrastructure (eg roads) where the coastal environment is under threat of inundation from rising sea levels and associated storm surges. Using that process, develop an implementation plan to avoid or mitigate the adverse effects of inundation on the community.*

168. And the explanation to the new policy will read:~~-~~[103]

*Policy 24(1) of the New Zealand Coastal Policy Statement requires identification of areas 'potentially affected' by coastal hazards and climate change' (and Policy 25 and Policy 27 of the NZCPS) 'likely to be affected and developing strategies for reducing risk. Policy 19.2.2 in the MEP provides interim guidance on coastal hazards 'until a dynamic adaptive pathway planning process is completed'.*

*This policy sets out the process to be applied in the 'dynamic adaptive pathways planning' (DAPP). The DAPP process, and the community engagement that is integral to it, is described in the 'Coastal Hazards and Climate Change: Guidance for Local Government', Ministry for the Environment, December 2017.*

169. The methods listed are included in the PMEP with minor amendments accepted as suggested by the submitters and the Section 42A Report.

*19.M.~~8~~9 Research*

*In order to plan for the effect of sea level rise, it is necessary to understand the areas along the Marlborough coast that are likely to be affected by inundation and storm surge in the long term, and those that are most valued by the community, including iwi. The Council will undertake an investigation to establish the extent and nature of the inundation hazard using the International Panel on Climate Change's most recent projections of sea level rise*

*[R, C, D]*

[103] NZCPS (2010) Policy 25 Subdivision, use and development in areas of coastal hazard risk, page 24.

*[R, C, D]*

*19.M.10 Community engagement and evaluation*

*The Council will lead a process to evaluate and identify the areas, assets and infrastructure valued by the community but also likely to be inundated by sea level rise and associated storm surges. An action plan will be developed with the affected communities using the engagement process in the Ministry for the Environment guidance. This involves using the 10 step decision cycle for long term strategic planning and decision making for coastal areas set out in Figure 6.1*

*[R, C, D]*

*19.M.~~9~~10 Monitoring*

*The Council will continue to monitor water levels and flows in Marlborough's rivers. This will provide information on the magnitude and frequency of flood events over time and will allow changes in flood risk to be identified and evaluated.*

*[D]*

*19.M.~~10~~11 District rules*

Use rules to establish buffers between buildings and infrastructure and the coastal marine area. The horizontal setback created will reduce the potential for structures and infrastructure to be inundated until the research and community engagement outlined above is completed. The research and community engagement may prompt the need for additional district rules in certain locations to ensure Policy 19.2.2 continues to be met.

## Anticipated environmental results and monitoring effectiveness

### New AER

170. Dr Lawrence affirms inclusion of a statement regarding monitoring of environmental results and the effectiveness of the PMEP to include natural hazards and climate change effects.

171. The Panel considered that it was important to ensure the DAPP process was completed during the life of the Plan. A new 19.AER.4 is proposed to ensure that occurs.

**Decision**

172. A new 19.AER.4 is inserted as follows:

*19.AER.4*

*The community is involved in planning for the consequences of inundation from sea level rise and associated storm surge.*

*Monitoring Effectiveness: The 10 step community engagement and evaluation process set out in Policy 19.2.3 and Method 19.M.9 is completed.*

## Location and Profile of Chapter 19

173. A number of submitters[104] support the profile of a separate chapter on climate change in part and variously seek:

- Climate change to be recognised as a much higher priority. This could be achieved by moving the chapter to the start of the MEP or by integrating climate change provisions throughout other chapters.[105]
- Further emphasis of the disruptive and potentially exponential effects of climate change.

174. A number of submitters seek to stress the importance of climate change and have it moved up in the hierarchy of chapters.

### Section 42A Report

175. The Section 42A report writer considers there is not only one correct way to address climate change within a planning document. It flows more logically from the processes of identifying resource management issues and then developing objectives, policies and methods to address these.

176. The report concludes by recommending that Chapter 19 remain as notified, but with cross-referencing and other amendments supported in this report. Placing the provisions in a separate chapter highlights that it is a significant issue and reduces the risk of climate change effects being de-emphasised (that is, if provisions were to be scattered throughout the document). The climate change provisions could, however, be strengthened by an increased emphasis on the disruptive and exponential effects as submitted above.

### Consideration

177. The Panel considered whether the Climate Change chapter should be retained where it is located, merged into the Natural Hazards chapter, or moved. Our consensus is that the issue of climate change is so important it should be located to an earlier chapter in the PMEP.

178. We considered that relocating Chapter 19 in proximity with Chapter 7 'Natural Hazards' is more appropriate due to its close association with that topic in NZCPS Policy 24(1)(a)-(h).

[104] James Wilson (139.1), Roger and Leslie Hill (378.1), Birte Flatt (478.1), Bill McEwan (2591), Hugh Steadman (427.1), Pamela Nichols (309.1) and Te Runanga of Toa Rangatira (1663).
[105] Such as Chapter 8 Indigenous Biodiversity, Chapter 13 Use of the Coastal Environment.

Natural hazards and climate change have inter-related connections but require separate identification for other independent issues that arise. The seriousness of the issue for New Zealand and Marlborough is identified throughout Professor Renwick's scientific evidence and experience, and the adaptive measures identified by Dr Lawrence in her evidence addressing how communities may adapt to its effects if mitigation measures to restrict growth of carbon are unsuccessful.

179. We note better integration of climate change throughout the PMEP also comes up in the evidence of Dr Lawrence who suggests Chapter 13 Use of the Coastal Environment is a context setting for the whole region and cross-referencing to climate change in specific Issue 13D, Objective 13.5 and Policy 13.5.7 (with other references) would provide a more robust statements for the climate change issue.[106] The Panel accepts this method of integrating the issue into other chapters because of its significance.

**Decision**

180. The Panel shifted the position of Chapter 19 Climate Change in Volume 1 of the PMEP to Chapter 6.

181. As will be addressed in other topic decisions, several other chapters will also be repositioned. These include Chapter 11 Natural Hazards moving to the Chapter 5 position, with cross referencing to the Use of the Coastal Environment chapter. Also Chapter 5 Allocation of Public Resources to move to immediately before the Use of the Coastal Environments chapter. As a consequence of these re-arrangements, numbering within chapters will change in accordance with these amendments.

182. For clarity, the table of contents for Volume 1 will appear as follows:

1. Introduction
2. Background
3. Marlborough's Tangata Whenua Iwi
4. Use of Natural Resources
5. Natural Hazards
6. Climate Change
7. Natural Character

[106] CKM, Dr Judith Lawrence, Evidence, paragraph 21d.

8. Landscape
9. Indigenous Biodiversity
10. Public Access and Open Space
11. Heritage Resources and Notable Trees
12. Urban Environments
13. Allocation of Public Resources
14. Use of the Coastal Environment
15. Use of the Rural Environment
16. Resource Quality (Water, Air, Soil)
17. Waste
18. Transportation
19. Energy

# Proposed Marlborough Environment Plan

# Topic 16: Energy

**Hearing dates:** 19 & 20 February 2019

**S42A Report Writer:** David Jackson

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| EECA | Energy Efficiency and Conservation Authority |
| MDC | Marlborough District Council |
| NPSREG | National Policy Statement for Renewable Electricity Generation |
| NZCPS | New Zealand Coastal Policy Statement 2010 |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |

### Submitter abbreviations

| | |
|---|---|
| Te Ātiawa | Te Ātiawa o Te Waka-a-Māui |

## Introduction

### Renewable Energy Assessment: Marlborough District

1. The background study commissioned by the Energy Efficiency and Conservation Authority (EECA)[1] identified and assessed the renewable energy potential in the Marlborough District, its aim to assist Marlborough District Council to identify where it can play a role in realising that potential using both regulatory and nonregulatory approaches. The report concluded the renewable potential comprised:

   - Remaining hydro potential of about 125MW in mini, small, medium and large scale projects outside Department of Conservation lands and indigenous forest areas, compared to the existing installed capacity of 13.5 MW.
   - Wave energy in the thousand megawatt range, ignoring environmental constraints and conflicts with other maritime users.
   - About two million litres of ethanol per year for transport fuel from grain crops currently grown in the region. About thirty million litres per year of ethanol or 125 GWh/year of electrical energy from woody biomass derived from low-grade forestry.
   - Significant potential for solar thermal hot water systems, considerably less for solar photovoltaic.[2]

## Issue 18A

### Marlborough requires a secure and efficient supply of energy.

2. Transpower supports the explanatory text to Issue 18A but seeks capitalising the term 'national grid' – National Grid.

3. The Section 42A Report recommends the first paragraph of the explanatory text as a consequential change be amended as follows:

   *Similarly, the majority of electricity demand is satisfied from the ~~national grid~~ National Grid which runs through Marlborough.*

**Decision**

4. The Panel amends Issue 18A explanatory text as follows:

   *Similarly, the majority of electricity demand is satisfied from the ~~national grid~~ National Grid which runs through Marlborough.*

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[1] *Renewable Energy Assessment: Marlborough District,* report by SKM for EECA, 2006.

[2] Section 42A Report, pages 10-11.

## Objective 18.1

**Optimise the use of Marlborough's energy resources.**

5. Trustpower[3] is concerned that Objective 18.1 does not sufficiently reflect the requirements of NPSREG 2011.[4] The company seeks additional words to be added at the end of the objective: *by recognising and providing for development, operation, maintenance and upgrading of new and existing renewable electricity generation activities.*

**Section 42A Report**

6. The report writer identifies that this submission seeks to add more or less the exact wording currently in the single objective of the NPSREG. But he does not consider that the PMEP objective needs to so closely mirror the NPSREG as suggested by Trustpower.

7. The PMEP is required 'to give effect to' any national policy statement or national planning standard.[5] The report writer points out that 'to give effect to' is a strong directive replacing the earlier 'not be inconsistent with' legislative wording in the RMA 2003. The directive 'to give effect to' is affected by the context of what it relates to, in terms of 'what' must be given effect to. The *King Salmon* case held that, '*A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction*.'[6]

8. The PMEP objective therefore needs to closely mirror the NPSREG in order be given effect to. But the present wording of the objective relates to optimising the use of all Marlborough's energy resources, not just renewables that generate electricity such as wind power, biofuels, wood waste and solar power.

9. The report writer observes that:

   - The 2006 EECA Renewable Energy Assessment for Marlborough District identifies the considerable potential that exists in renewable energy resources, not just for those for electricity generation – one of the biggest being wood waste.

   - The objective is required by the wording of the issue to give effect to the broader issue of a secure and efficient supply of (all) energy. The amendment sought by Trustpower would restrict both the objective and the issue to renewable energy generation activities only.

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[3] Trustpower (1201.108).

[4] National Policy Standard for Renewable Electricity Generation 2011.

[5] Section 62(3) for regional policy statements, s 67(3) for regional plans, and s 75(3) for district plans.

[6] *Environmental Defence Soc Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38 [2014] 1 NZLR at [80].

- Succeeding policies can provide a more particular focus to the NPSREG and its requirements sought by Trustpower.

10. The amendment sought by Trustpower was not recommended by the report writer.[7]

11. In evidence, Trustpower also sought a new Objective 18.3 be added: 'Recognise the national and regional significance of renewable electricity generation activities by providing for their continued development, operation, maintenance and upgrading'.

12. The witness also sought the addition of four supporting Policies 18.3.1-18.3.4 and a consequential amendment to avoid duplication with proposed Policy 18.3.4.[8]

13. The report writer initially considered that these changes are outside Trustpower's original submission,[9] including a new objective (but similar to Objective 18.1) with four new related policies. Scope was considered a real issue and if there are two objectives as proposed, it would create a structural relationship problem for the existing policies.[10]

14. In his recommendation the report writer provided an amendment to the original Objective 18.1, but qualified its inclusion by suggesting that the Panel consider the issue as to how directive the wording should be, bearing in mind his reference to the *King Salmon* reference. The amendment he suggests follows:

    *Objective 18.1 – Optimise the use of Marlborough's energy resources and recognise and provide for the development, operation, maintenance, and upgrading of new and existing renewable electricity generation activities.*

15. Here the report writer has substituted an 'and' at the end of 'Marlborough's energy resources', and provides minor consequential changes which make renewable electricity generation conjunctive with 'Marlborough's energy resources'.

**Consideration**

16. The Panel notes that the suggested amendment to Objective 18.1 responds to the concerns of the report writer. He agrees for it to be within scope of Trustpower's original submission[11] but it potentially restricts both the wording of the issue and of the objective.

[7] Section 42A Report, page 14.
[8] Trustpower, Nicola Foran Evidence, pages 5-9.
[9] Amendment to Objective 18.1; amendment to Policy 18.1.1; retention of Policy 18.1.2; amendment to Policy 18.1.3; and addition of two new policies (one to address potential reverse sensitivity impacts; the other to provide for the output from and the maintenance of existing renewable electricity generation systems).
[10] Section 42A Report, Recommendation, Reply to Evidence, page 1.
[11] [Ibid]

17. On the other hand, Trustpower has included 'new' as well as existing renewable electricity generation activities. This enables new generation for that sector also.

18. On reflection, the Panel considers that the notified form wording of the objective does enable new development without amendment.

**Decision**

19. Retain Objective 18.1 as notified.

### Policy 18.1.1

**Promote and encourage the use and development of renewable energy resources.**

20. Transpower[12] supports Policy 18.1.1 in part, and seeks a minor amendment to the second last sentence on paragraph 1 of the explanation to the policy so that the correct use of the term 'National Grid' is used (as opposed to 'National Electricity Grid').

21. Trustpower[13] also seeks in evidence that in Policy 18.1.1 the words 'Promote and encourage' the use and development of renewable energy resources be changed to 'Provide for the use and development of renewable energy resources'. Trustpower remains concerned that any proposal for a renewable electricity generation activity will still need to be assessed against all relevant provisions of the PMEP. An objective or policy that seeks to provide for renewable electricity generation activities would not 'trump' any provisions seeking to manage environmental values and environmental effects.[14] The company claims the policy needs to be strengthened in order to appropriately reflect s 7(j) RMA – 'the benefits to be derived from the use and development of renewable energy'.

**Section 42A Report**

22. The change to the identity of the National Grid is supported by the report writer. The second last sentence of paragraph 1 in the explanation to Policy 18.1.1 is recommended to read as follows:

> *… improving security of supply and reducing stress on the N~~n~~ational G~~g~~rid.*

23. The report writer is concerned as to how directive the policy would be by amending 'promote' to 'provide for' without qualification. The policy as notified applies to ***all*** renewable energy resources, not just renewable *electricity generation*. As such, the use and development of renewable energy resources will always be appropriate but does not need to be provided for as a matter of law.

[12] Transpower (1198.35).
[13] Trustpower (1201.109).
[14] Trustpower, Nicola Foran Evidence, page 14.

24. Section 7(j) RMA does not require renewable energy be 'provided for', rather that 'particular regard be had to the benefits from the use and development of renewable resources'.

**Consideration**

25. We agree with the report writer that as a matter of law it is not necessary for the policy 'to provide for' and the Panel prefers the concept of promotion.

26. The Panel is also of the view that the policy does not fail to give effect to NPSREG particularly when other policies are considered as well.

27. Transpower sought amendment of the name 'National Electricity Grid' to be 'National Grid' and the Panel agrees with that request.

**Decision**

28. The Panel amends the term 'National Electricity Grid' in the explanation to read 'National Grid' as follows:

*… Renewable sources of energy ensure that electricity can be sourced on an ongoing basis, improving the security of supply and reducing stress on the National ~~Electricity~~ Grid. …*

## Policy 18.1.3

**When considering the environmental effects of proposals to use and develop renewable energy resources, to have regard to:**

**(a) the benefits to be obtained from the proposal at local, regional or national levels, including:**

**(i) maintaining or increasing security of renewable electricity supply by diversifying the type and/or location of electricity generation;**

**(ii) maintaining or increasing renewable electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;**

**(iii) for economic, social or cultural wellbeing; and**

**(b) effects on the immediate and surrounding environment, including effects on air quality, water quality, water quantity, ecosystems, natural character, outstanding landscapes, visual amenities and from noise;**

**(c) the degree of effect (extent, magnitude) and the degree to which unavoidable adverse effects can be remedied or mitigated, including the relative degree of reversibility of the adverse effects associated with the proposed generation technologies;**

**(d) where the adverse effects are significant, alternatives to the development in terms of either means, location or scale; and**

**(e) the environmental values affected or enhanced and whether these are of local, regional or national significance.**

29. Te Ātiawa seeks insertion of a new subclause (c) 'effects on Maori cultural values'. The iwi submit that it is important to make clear distinction between Māori cultural values and others, such as European cultural values, to clarify the context of the Maori world view in any related

text, hence the amendment sought.[15] Subclause (b) includes a number of natural values to which regard is to be had when considering environmental effects of the use and development of renewable energy resources.

30. Trustpower supports the policy in part seeking an additional clause to give effect to Policy C1 NPSREG as follows:[16] (f) the logistical or technical practicalities associated with locating renewable electricity generation infrastructure.

**Section 42A Report**

31. The Section 42A Report identifies that Policy 18.1.3 concerns the consideration of the environmental effects of proposals to use and develop electricity generation.

32. The report writer originally thought that the addition would "disrupt the inherent balance within the policy".[17] He recommended rejection of the submission for this reason.

33. Ms Foran in her written evidence proposed a new Policy 18.3.1 that would set out a number of matters to 'recognise and provide for' new and existing renewable electricity generating activities. One matter which concerns the company is the 'locational, logistical and technical constraints that are encountered when developing, operating, maintaining and upgrading' such facilities.[18]

34. The report writer considered the proposed new Policy 18.3.1 was well outside the scope of the original submission, as it sought to include new matters other than the logistical, locational and technical factors first proposed (such as developing, monitoring and upgrading).[19]

35. However, he also reconsidered his original recommendation in the Section 42A Report. In that report, he was concerned about adding a provision specifically for renewable electricity ***generation***, when the policy as notified dealt with ***all*** renewable energy holistically. The report writer noted in his Right of Reply that Policy 18.1.3(a) already includes provisions relating to renewable electricity generation. On reflection, having considered Trustpower's evidence and reviewing the existing policy, he concluded the amendment originally sought by Trustpower in submission was appropriate.

36. The report writer recommends amending Policy 18.1.3 by adding a new clause:

[15] Te Ātiawa (1186.98). Ian Shapcott, Evidence, page 11.
[16] Trustpower (1201.111). Nicola Foran, Evidence, paragraph 5.21.
[17] Section 42A Report page 16.
[18] Ibid.
[19] Section 42A Report, Reply to Evidence, pages 3-4.

*(f) the logistical or technical practicalities associated with locating renewable electricity generation infrastructure*

37. As to Te Ātiawa's submission, clause (b) of the policy includes a number of natural resources and values to which regard must be had when considering the environmental effects of the use and development of renewable energy resource. This is an inclusive list, but the report writer's suggestion is the HNZ List focuses on the biophysical which could lead to a lack of consideration of cultural values. He supports expansion of the List as requested.

**Consideration**

38. It is appropriate that reference to the cultural values of Marlborough's Tangata Whenua iwi is included in the policy. It is acknowledged that that there are specific policies in Chapter 3 that will achieve the same end as the recommended addition. However, there are a range of matters already listed in the policy and effects on cultural values are a glaring omission given Section 6(e) of the RMA.

39. The Panel also agreed with the report writer with respect to the relief requested by TrustPower. Ms Foran conceded, in response to questioning from the Panel, that there was an issue with scope in respect to the amended request in evidence. For this reason, the Panel did not consider that request further. However, the relief originally sought aligns with Policy c1(b) of the NPSREG. [20] For this reason, the Panel accepts the submission.

**Decision**

40. Policy 18.1.3 clause (b) is amended as follows:

*(b) effects on the immediate and surrounding environment, including effects on air quality, water quality, water quantity, ecosystems, natural character, outstanding landscapes, visual amenities, <u>the cultural values of Marlborough's tangata whenua iwi</u> and from noise; …*

41. A new (f) is added to Policy 18.1.3 as follows:

*<u>(f) the logistical or technical practicalities associated with locating renewable electricity generation infrastructure.</u>*

42. Insert a new paragraph three to the explanation to Policy 18.1.3 as follows:

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[20] NPSREG 2011, page 5.
C. Acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities
Policy C1 Decision makers shall have particular regard to the following matters:
(a) …
(b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;
(c) …

*… It is acknowledged that regard must to be had to the objective and policies of the NPSREG.*

*(f) of the policy recognises that the development of some renewable electricity generation activities are constrained by functional requirements such as where the resource is located and proximity of the development to the National Grid or distribution network. …*

*Consideration can also be given to matters (a) to (e) when determining the status of activities involved in developing and operating renewable energy projects. …*

### Method 18.M.2 Incentives

**Provide incentives for the preferential uptake of renewable solar thermal technologies, including a payback scheme for the installation of solar water heating through a targeted property rate.**

**Section 42A Report**

43. As noted above under Policy 18.1.2, Save the Wairau River supports a policy, seeking more emphasis on photovoltaic generation (PV) and selling back to the grid.[21] The report writer agrees with the submission as being appropriate, under this heading. For the method as written relates just to solar thermal technologies such as solar water heating units or passive solar heating.[22]

44. The report writer observes that use of PV is becoming more prevalent, and consequently it would be equitable for Council to support indirect use of solar energy for PV generation. He recommends the method be amended to widen its scope.

**Decision**

45. The Panel accepts the recommendation as written to widen the scope of renewable solar thermal activities. Method 18.M.2 is amended as follows:

*Provide incentives for the preferential uptake of renewable solar thermal and photovoltaic (PV) technologies, including a payback scheme for the installation of solar water heating or PV through a targeted property rate.*

### Two new policies

46. Two new policies were submitted by Trustpower to be included in Chapter 18.[23] These were initially inadvertently omitted from the report writer's report of 11 November 2017 but included in an Addendum to the Section 42A Report identified in Annexure A Erratum to Address Missed Submissions 1201.112, 1201.113 by Trustpower, dated 15 February 2018.

[21] Save the Wairau River (1142.3).
[22] Section 42A Report, page 17.
[23] Trustpower (1201.112 and 1201.113).

47. Ms Foran said in her Skype evidence that in terms of the Erratum recommendations, the Panel could either decide to take on board the two policies from their original submission, or the policies she has proposed in her evidence.[24]

48. The report writer addresses two policies from Ms Foran's original submission.

## [New] Policy 18.1.5

49. The suggested wording and consequential amendments to the new policy are as follows:

> *'Avoid reverse sensitivity effects by not allowing subdivision, use and development to occur in a location or form that constrains the use, operation, maintenance and upgrading of consented and existing renewable electricity generation activities.'*

50. Trustpower submits that this policy is needed in order to avoid effects on renewable generation and to give effect to NPSREG Policy D. This provision provides that 'decision-makers shall, to the extent reasonably possible, manage activities to avoid reverse sensitivity effect on consented and existing renewable electricity generation activities'. Trustpower seeks to ensure that new land use or resource use activities do not impinge on the full operation of infrastructure critical to Marlborough and/or New Zealand'.

**Section 42A Report**

51. The report writer supports the addition of a new policy (Policy 18.1.5) but on the basis that his concerns about the word 'avoid' in the light of the strong and directive provision in the *King Salmon* decision as stated above are taken into account. He also identifies other difficulties as:

- This wording goes further than Policy D NPSREG. It has lost the qualification 'to the extent reasonably practicable'.
- It seeks to apply the policy to 'upgrading of existing generation activities': the meaning of the term 'upgrading' is not clear – it could involve improvements to an activity, but much of this could be covered by 'maintenance'.
- It could involve increase in expansion or increase in output from the activity.
- It is unreasonable and to a large extent impracticable, to restrict other activities through the use of the word 'avoid' around an existing renewable generation facility.
- It is impossible to determine in advance the reverse sensitivity effects of an as yet unknown upgrade.

[24] Nicola Foran, Evidence, pages 1-7.

- The policy could be used to argue for very large setbacks to protect activities that never occur.

52. The report writer recommends a new policy that more closely reflects the intent of the NESREG Policy D. As a consequential change, an explanatory text is needed to accompany the new policy. He recommends as follows:

    [New] Policy 18.1.5 – Manage the effects of other activities to the extent reasonably practicable, to avoid effects on consented or existing renewable electricity generation activities.

    This policy, consistent with the National Policy for Renewable Electricity Generation 2011, recognises the national significance of renewable electricity generation activities, and that even minor reductions in generation output can cumulatively have significant adverse effects on national and regional output.

**Consideration**

53. The Panel in Chapter 1 set out the constraints around the word 'avoid' in *King Salmon.* That word should not affect the requirements of this policy in the way it does into the outstanding landscapes under the NZCPS where development is not allowed. The word 'avoid' in this policy as notified, however, relates to its commonplace or statutory meaning, opening it up to a solution through remedy as an example.

54. Important, too, is the suggestion of the report writer that an amended policy more closely aligns with the intent of the NESREG but we do not agree to the word 'cumulatively' in the second to last line of the explanation. It should be deleted.

55. The Panel agree with the report writer's policy but with an amended explanatory wording to similar effect.

56. There should also be explicit reference to reverse sensitivity effects in order to properly give effect to Policy D of the NPSREG.

**Decision**

57. A new policy is included as follows:

    *[R, C, D]*

    *Policy 18.1.5 - Manage other activities to the extent reasonably practicable to avoid reverse sensitivity effects on consented or existing renewable electricity generation activities.*

58. A new explanatory statement is included as follows:

*This policy recognises the national significance of renewable electricity generation activities and the potential for other activities to adversely affect those generation activities. Even minor reductions in generation output can collectively have a significant impact on national and regional electricity output. This policy seeks to such avoid such reverse sensitivity effects to the extent that is reasonably practicable, as required by Policy D of the National Policy Statement for Renewable Electricity Generation 2011.*

## [New] Policy 18.1.6

59. Trustpower sought provision for the on-going generation of electricity from existing renewable energy generation infrastructure by the insertion of a new policy as follows:

    *Provide for the on-going generation of electricity from existing renewable energy generation infrastructure by:*

    1. *Maintaining the output from existing renewable electricity generation schemes; and*
    2. *Enabling the maintenance and upgrading of existing renewable electricity generation schemes.*

60. Trustpower submits[25] that the policy is needed to specifically recognise the importance of protecting existing renewable electricity generation resources, to facilitate maintenance and upgrading, and to enable re-consenting.

**Section 42A Report**

61. Trustpower advanced the submission in support of this new policy in both the Rural and Energy topics. In respect of the Rural topic, it advanced a wording that identified these renewable electricity generation activities were most likely to occur in a rural location. It also advanced the same type of policy in the Energy topic. The result was that the Section 42A Report writers in each topic concluded that the concept of such a policy warranted its recommendation. However each of the two reports recommended a different wording.

62. The Panel preferred the wording recommended in the report on the Energy topic, albeit it made some amendments to that wording, as discussed below. Hence, the Panel's comments from here on when referring to the Section 42A Report or report writer is referring to the Energy topic Section 42A Report.

63. The report writer reiterates the concerns he has under new Policy 18.1.5 about 'enabling the maintenance and upgrading of existing schemes (emphasis added)'. [26] Upgrading may not

[25] Trustpower (1201.113)
[26] Section 42A Report, Annexure A: Erratum to Address Missed Submissions 1201.112 and 1201.113 (Trustpower), pages 3-4.

always be consistent with other objectives within the PMEP and provision, for example, related to water scarcity or water quality in the case of hydro schemes.

64. While he supports the inclusion of a new policy, the report writer proposes a qualifier to be added 'where the adverse effects on the environment are avoided, remedied or mitigated to an acceptable level'.

65. The report writer recommends the inclusion of a new Policy 18.1.6 and explanatory text[27] as follows:

*Policy 18.1.6 - Provide for the on-going generation of electricity from existing renewable energy generation infrastructure by having particular regard to:*

*(a) Maintaining the output from existing renewable electricity generation schemes; and*

*(b) Enabling the maintenance of renewable electricity generation schemes, and their upgrading where the adverse effects on the environment can be avoided, remedied or mitigated to an acceptable level.*

*This policy recognises the national significance of renewable electricity generation activities, and that even minor reductions in generation output can cumulatively have significant adverse effects on national and regional output. It recognises that upgrades of existing schemes can contribute to a nationally significant goal, subject to addressing adverse environmental effects.*

**Consideration**

66. The Panel agrees with the new policy but prefers a differently worded explanation to similar effect which relates to the national objective which is now set out in the National Policy Statement for Renewable Electricity Generation 2011. The Panel considers the use of the term 'to an acceptable level' creates a level of subjectivity that is not appropriate in this Plan process. Rather than utilising the recommended word 'cumulatively' which is already captured in the definition of effects in the RMA the Panel preferred to capture the concept by using the phrase 'in combination'.

**Decision**

67. A new Policy 18.1.6 is included as follows:

Policy 18.1.6 - Provide for the on-going generation of electricity from existing renewable energy generation infrastructure by having particular regard to:

[27] Section 42A Report, Reply to Evidence, page 9: 'That the methods under Objective 18.2 be renumbered, so that they follow on sequentially from the last method (18.M.7) under Objective 18.1: 18.M.1 becomes 18.M.8 etc'

*(a) Maintaining the output from existing renewable electricity generation schemes; and*

*(b) Enabling the maintenance of renewable electricity generation schemes, and their upgrading where the adverse effects on the environment can be avoided, remedied or mitigated.*

68. A new explanation statement to Policy 18.1.6 is included as follows:

*[R, C, D]*

*This policy recognises the national significance of renewable electricity generation activities. Even minor reductions in generation output can collectively have significant impact on national and regional electricity output. The policy also recognises that upgrades of existing schemes can contribute to a national objective, as set out in the National Policy Statement for Renewable Electricity Generation 2011.*

### Methods of Implementation

69. Method 18.M.2 (under Policy 18.2.1) relates to the liaison the Council will do with central government, particularly EECA. It should be noted that the Methods under Objective 18.2 are wrongly numbered in the PMEP as notified. The methods repeat the numbering of methods under Objective 18.1, and therefore do not have unique identifiers. The report writer considers Method 18.M.2 should be 18.M.8, and 18.M.3 should be 18.M.9 etc, but this is in error. Method 18.M.1 should be 18.M.8 etc.

70. The Panel recommend the numbering be corrected either when the PMEP is made operative or the substantive portion of the decision is incorporated into the PEMP.

# Proposed Marlborough Environment Plan

# Topic 17: Subdivision

**Hearing dates:** 30 April 2018 – 2 May 2018

**S42A Report Writer:** Ian Sutherland

**Conflicts of Interest:** Commissioners Shenfield, Arbuckle and Crosby

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| MDC | Marlborough District Council |
| MSRMP | Marlborough Sounds Resource Management Plan |
| NZCPS | New Zealand Coastal Policy Statement |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| KiwiRail | KiwiRail Holdings Limited |
| NZIS | New Zealand Institute of Surveyors |
| NZTA | New Zealand Transport Agency |

**[New] Rule 24.3.1.**

1. One submitter opposes the subdivision rules as there is no reference to landscaping requirements for subdivision.[1] She requests that a rule be included which requires a street tree to be planted on the berm adjacent to a new allotment, or a dedicated grass berm or street trees with a minimum area of $9m^2$ be provided within urban residential, business and industrial developments with no intrusion of underground or overhead services within that space. A related submission also requests that an additional matter of control be added:

   *4.3.1.27. Landscape planting and development including land shaping and tree species and location and ornaments, street furniture and pathways and other structures within the road reserves and other part of the subdivision proposed to be vested in Council or held under corporate body or other community ownership and administration within the subdivision that are required by Rule 24.1.*

2. Another submitter expresses similar concerns to Helen Ballinger, but goes further in also requesting that a provision be included that any trees removed as part of a subdivision, shall be valued using a nationally recognised standard valuation method with compensation paid for the loss of the tree and the costs for a replacement tree.[2] He also refers to a 'Code of Practice for subdivision' (presumably referring to MDC's Code of Practice for Subdivision and Land Development) which relates to landscaping, design and practice.

3. Another submission includes matters relating to the subdivision rules and expresses similar concerns about the lack of matters of control relating to landscape quality, urban design or public safety.[3] Of the list of matters he refers to, the only matter that is relevant to the subdivision chapter is: *Any new subdivisions shall include trees planted within the road reserves and the applications for consent to subdivide shall include a landscape planting and land shaping plan including street trees at a minimum of one tree located within the area of the road reserve that is adjacent to each lot within the subdivision.*

**Section 42A Report**

4. The report writer responds to the following issues raised by submitters relating to landscape:

   - Landscaping on new roads, reserves and esplanade areas created as part of a subdivision is much easier to control than the landscaping of new allotments or existing roads because the subdivider does not know where any future dwellings would be placed on new allotments.

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[1] Helen Ballinger (351.25, .26).
[2] Robin Dunn (352.1).
[3] Mark Bachelor (263.2).

- Landscaping on existing road frontages makes a little more sense but this would only apply to infill subdivision and it is not often possible to locate trees in the road reserve adjacent to new lots due to underground services or lack of space.
- The PMEP already contains some provisions relating to landscaping. These are in the Business and Industrial Zones and supported by policy 12.6.2(c) '*providing planting on road reserve*' and 12.6.2(d) '*requiring integration of landscaping on individual allotments to soften the appearance of buildings fronting the road in areas outside the streets identified in Appendix 18'*.
- The Use of the Coastal Environment (13), Use of the Rural Environment (14), and the Residential section within Urban Environment (12) refer to the need to '*maintain and enhance character and amenity values*' but do not specifically refer to landscaping as being required.
- In relation to Chapter 7 of the Code of Practice for Subdivision and Land Development, as a result of its requirements, Appendix 7 PMEP requires landscape works proposed on road reserves to be provided with subdivision applications.
- As a result, it is practical to require the subdivision rules to include a matter of control requiring landscaping to be compulsory on new roads rather than the current voluntary requirement under the MSRMP and WARMP. However he had reservations about including specific design parameters in Chapter 24 where design conflicts may arise from the specificity and default to discretionary activity.
- To support the recommended new landscaping matter of control, it is appropriate to have additional policies in the Urban Environment, Coastal Environment Rural Environment chapters of the PMEP, and each new policy may need an explanation to help inform sustainable management.[4]

**Consideration**

5. The Panel has decided that appropriate landscaping of new roads, reserves and esplanade areas can be beneficial for the overall outcome of subdivision activity. Accordingly, the Panel decided the relevant policies should be amended to ensure that aspect of amenity enhancement was addressed at subdivision stage. The report writer recommended that the Panel may need to provide further explanation to help inform sustainable management. The Panel is of the view that the amended policies are self-explanatory.

[4] Section 42A Report, paragraphs 88-91.

**Decision**

6. The following rule is inserted into the PMEP:[5]

*24.3.1.26. Landscape works proposed on road reserves, other land to vest as reserve, and esplanade strips.*

7. As a consequential change to support the above new rule, Policy 12.2.1 is amended as follows:

*Policy 12.2.1 - The character and amenity of residential areas within Marlborough's urban environments will be maintained and enhanced by:*

*(a) providing for a range of areas with different residential densities and lot sizes, including for infill, greenfield and large lot developments;*

*(b) ensuring there are residential areas within walkable distance to community, social and business facilities;*

*(c) providing for sufficient open spaces and parks that are equitably distributed, ~~and~~ integrated, accessible and safe, and vary in size, form and purpose ~~open spaces and parks~~ to meet people's recreational needs;*

*(d) providing for walking and cycling linkages to support connected neighbourhoods and communities, active transport options, and recreational opportunities;*

*(~~d~~ e) higher standards of urban design that positively contributes to public space amenity and safety, and visual interest ~~and amenity~~;*

*(~~e~~ f) ensuring people's health and wellbeing through good building design, including energy efficiency and the provision of natural light; and*

*(~~f~~ g) effective and efficient use of existing and new infrastructure networks.*

8. Consequential changes have also been made to policies in Chapter 13. Policies 13.5.6 and 13.18.4 are amended as follows:

*Policy 13.5.6 Maintain the character and amenity values of land zoned Coastal Living by the setting of standards that reflect the following:*

*… (j) the need for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.*

*Policy 13.18.4 The environmental effects from activities within Port, Port Landing Area and Marina Zones are avoided, remedied or mitigated through the setting of standards so that:*

[5] Section 42A Report, paragraph 97.

… *(g) appropriate landscaping of new roads, reserves and esplanade areas is created by subdivision.*

9. A further consequential change has been made to Policy 14.5.6 and it is amended to read:

*Policy 14.5.6 Where resource consent is required within the Rural Living Zone, ensure that residential development and/or subdivision is undertaken in a manner that:*

*… (f) provides for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.*

### Rule 24.1.14

**In circumstances where a connection to a Council owned reticulated water supply is not possible, the applicant must provide for a minimum of 2m$^3$ of potable water per day for each proposed allotment (except for allotments to vest as reserve or road).**

10. Three submitters support the rule in part.

11. Another submitter observes that occasionally there are 'allotments' that are amalgamated and those allotments do not require water connections.[6] The submitter seeks that the rule should be amended so that the word 'allotment' is substituted with 'Certificate of Title'.

**Section 42A Report**

12. In terms of the NZIS submission, the report writer partly agrees with the submitter while pointing out that the PMEP correctly uses the term 'Computer Register' instead of the old term 'Certificate of Title'. The key purpose of the submission, nonetheless, is to substitute a term for 'allotment'.

13. The purpose of the rule is to ensure that there is a sufficient water supply for a dwelling where there is no connection to a Council owned reticulated supply. A computer register can contain more than one allotment and under the current wording of the rule this would mean that the applicant would have to provide multiple quantities of 2 m$^3$/day to reflect the number of lots on one computer register, but only one dwelling is permitted on the site (other than the Urban Residential 1 Zone).

14. The writer therefore recommends that the rule should be amended to refer to 'computer register' instead of 'allotment' to be consistent with the zone rules.[7]

**Consideration**

15. The PMEP is a modern document and should reflect modern legal and statutory terminology wherever possible. The term 'record of title' is a modern term reflecting the digitalisation of

[6] NZIS (996.31).
[7] Section 42A Report, paragraphs 141-144.

the Land Transfer system and should be applied wherever relevant in the Plan. Its use in preference to the word 'allotment' or the phrase 'certificate of title' is agreed to by the Panel.

**Decision**

16. Rule 24.1.14 is amended as follows:

*24.1.14. In circumstances where a connection to a Council owned reticulated water supply is not possible, the applicant must provide for a minimum of 2m$^3$ of potable water per day for each proposed ~~allotment~~ Record of Title (except for allotments to vest as reserve or road).*

## Rule 24.1.16

**In accordance with Section 230 of the RMA, in respect of any subdivision of land in which any allotment of less than 4 hectares is created, an esplanade reserve or esplanade strip of 20m must be provided, unless the property adjoins the Waikawa Marina or Picton Marina.**

17. Mr T Hawke a Marlborough surveyor sought that the rule be amended to change the word 'must' to read 'may', or a controlled activity approach for waivers, so as to more readily enable waivers of the esplanade reserve or strip requirements in s 230 of the RMA. The NZIS submission on this rule sought similar relief.

**Section 42A Report**

18. The report writer was opposed to that course because of a range of complications the report described, but particularly for the very strong reason that s 6 RMA provides that maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance.

19. The report writer pointed out that s 230(3) RMA provides for rules to enable waivers and that if a full-width reserve is not provided the outcome of the rules regime in the PMEP would mean that the proposed subdivision would default to a discretionary activity under Rule 24.5.1 which is the general non-compliance provision which provides:

*24.5 Application must be made for a Discretionary Activity for the following:*

*24.5.1. Any subdivision of land that does not comply with Rules 24.1.1 to 24.1.18.*

20. In summary the report stated:

*154) If the process of waiving or reducing the esplanade width is to be done through a subdivision rule then there has to be certainty that that outcome is the appropriate outcome in every case which will be very difficult to achieve. So while it is technically possible to provide a complete list of waterbodies (those for public access and those for conservation value) within the MEP, this would not be an easy task, and I believe would be beyond the scope of these submissions.*

21. The report writer then concluded that it was preferable for a site by site assessment to be made as to whether a waiver was appropriate and that could be best achieved by the default discretionary activity process. Accordingly, the report recommended rejection of any amendment to the notified rules in respect of this issue..

**Consideration**

22. The Panel agrees with the general approach taken in the report that s 6 and s 230 RMA both emphasise the importance of the provision of esplanade reserves or strips to provide for access or conservation purposes. It also agrees that any waiver or reduction sought from that general proposition requires individual site by site assessment.

23. The Panel considers, though, that while the effect of the provisions of rule 24.5.1 do enable discretionary activity applications as the avenue for waiver or reduction in width, that could be made more specific if the rule actually said that rather than the avenue for that being expressed generally in relation to subdivisions not complying with standards.

24. That can be readily provided for by a new discretionary activity rule making that avenue open expressly.

**Decision**

25. Insert a new rule at 24.5.2 as follows:

*[D]*

*24.5.2 Any waiver or reduction of the esplanade reserve or esplanade strip requirements of Rules 24.1.16, 24.1.17 or 24.1.18 in accordance with Section 230(3) of the RMA.*

*24.5.3.~~2.~~ Any permitted activity, controlled activity or restricted discretionary activity subdivision of land that does not meet the applicable standards.*

*24.5.4.~~3.~~ Any subdivision of land not provided for as a permitted, controlled or restricted discretionary activity.*

## Standard 24.3.1.4

**The land being subdivided must not have direct access to or from a State Highway.**

26. KiwiRail supports the rule in part, but seeks that it be amended to include '*or via a level crossing*'. To ensure that the adequacy and safety of a level crossing to accommodate additional traffic is able to be considered.[8]

27. NZTA supports in part the standard but also has concerns about new subdivisions on roads that lead to a state highway because of safety concerns at intersections from increased

[8] KiwiRail (873.171).

traffic.[9] It requests to add *'or access to a road that leads to a state highway'* added to the standard. This is opposed by NZIS as it is too vague and ambiguous, as all roads lead to a state highway.[10]

**Section 42A Report**

28. The report writer identifies that media coverage around the country identifies that there are obvious potential safety issues arising from uncontrolled level railway crossings, particularly with private level crossings. Even if such accidents in Marlborough are low, they could still result in serious or fatal outcomes.

29. The writer therefore considers it appropriate to include wording as requested to enable subdivisions to be declined should Council not be satisfied that potential adverse effects on the land transport network will be minimised, as sought by Objective 17.4 and 17.AER.2.

30. The only reservation the report writer has with the relief sought is that the wording proposed is not perfectly clear. Some users of the PMEP may find it ambiguous or confuse reference of a level crossing with vehicle entranceways, or be unsure if it relates to subdivisions that are down the road from a level crossing. The writer has recommended slightly different wording to help clarify when it applies, and to be consistent with the existing wording in relation to state highways.

31. The report writer expects that the concerns from NZTA relate to larger controlled activity subdivisions on no exit roads that intersect a state highway having the potential to create adverse traffic effects. Such proposals should default to being a discretionary activity so that either appropriate conditions can be imposed, or that the activity could be declined if mitigation measures were not possible. The current proposed wording in NZTA's submission, however, does not reflect this, and the report writer therefore agrees with NZIS that the proposed wording is too vague and could be taken as meaning any road, and include urban subdivision.

32. The report writer acknowledges that he has been unable to craft any suitable alternative wording that may meet NZTA's needs. The company needs to narrow down the criteria with new wording so that only the subdivisions that are likely to create an issue with state highway intersections are caught by the rule before he could consider recommending any change. Even then Council has the ability to impose conditions under Controlled Activity Standard 24.3.1.15 if deemed necessary without the need to impose further restrictions as proposed by NZTA.

[9] NZTA (1002.221).
[10] NZIS, further submission to 1002.221

**Consideration**

33. As to the NZTA's request to expand the restriction on subdivision of any property with road access leading to a State Highway, at the hearing NZTA proposed alternative wording options. In the Panel's view the overall outcome of those options was still to cause any proposed subdivision of a property with access indirectly to the state highway system defaulting to a discretionary activity. The Panel agreed with the concerns expressed by the NZIS and the report writer that was unnecessarily restrictive. The controlled activity status for other subdivisions can provide the necessary consideration of traffic effects and conditions needed to address those effects can be imposed. The rule defaults proposed subdivisions with direct access to state highways to discretionary activity which is a reasonable level of restriction justifying detailed consideration of a recognised traffic risk.

34. In terms of the KiwiRail request the evidence is clear that access directly across railway lines which are not controlled by barriers carries a level of increased risk which should not be allowed as a controlled activity.

**Decision**

35. The Panel rejects the relief sought by NZTA.

36. Rule 24.3.1.4 is amended as follows:

    *The land being subdivided must not have direct access to or from a State Highway, or have direct access to or from a level railway crossing.*

## Standards 24.3.1.17 and 24.3.1.22

37. Omaka Valley Group supported the provisions. Tony Hawke supported the rule in part, seeking an exemption be added for esplanade reserves or strips on minor boundary adjustments. NZIS supported his proposal[11].

**Section 42A Report and consideration**

38. The Panel agreed with the report writers recommendations to amend Standard 24.3.1.22 to include consideration of sediment discharges and for the insertion of a new standard 'Controls to mitigate the adverse effects on the cultural values of tangata whenua iwi' as set out in the Addendum to the Right of Reply.

39. The Panel also considered the inclusion of additional wording to Standard 24.3.1.17 was required to ensure the potential for the enhancement of indigenous biodiversity and so that the manner in which that could be achieved was within the Council's specified control on subdivisions.

[11] Omaka Valley Group (1005.27), Tony Hawke (369.13), NZIS further submission on 369.13

40. Finally, the Panel decided as part of the various requests from some of Marlborough's tangata whenua for rules and standards to recognise their cultural values that a new standard enabling controls to protect those values is inserted in the subdivision standards.

**Decision**

41. Standard 24.3.1.17 is amended to read:

*24.3.1.17 The provision of esplanade reserves and esplanade strips* <u>*including enhancement of indigenous species*</u>*.*

42. Standard 24.3.1.22 is amended as follows:

*Controls to mitigate the adverse effects of subdivision construction,* <u>*including effects on water quality from sediment discharges.*</u>

43. A new standard in included as 24.3.1.27, as follows:

*(x) Controls to mitigate the adverse effects on the cultural values of Marlborough's tangata whenua iwi*

## Rule 24.4.3

**Subdivision of land located within 90m of the National Grid Blenheim Substation on Sec 1 SO 4246, Lot 1 DP 8572 and Pt Sec 1 SO 6959 (or any successor).**

**Section 42A Report**

44. The opposing submission made by Karen and John Wills on related Standard 24.3.1.5 ('*The land being subdivided must not be within 90m of the National Grid Blenheim Substation*') identified that 'the restrictions prescribed by these rules are more than required to provide the protections needed by the National Grid … particularly as the restrictions relate to the submitters' residential property at 121 Old Renwick Road'[12]. As a result of further investigations on this submission and the evidence on this controlled activity standard, Transpower proposes a restricted activity status for subdivisions within 15 metres of the Blenheim Substation and a controlled activity for subdivisions between 15 and 90 metres of the Blenheim Substation.

45. Transpower's investigations considered the company's requirement for a restricted discretionary activity within 90 metres of the Blenheim Substation on the basis that potential electrical risks would be overly onerous.[13] Nevertheless, the 90 metre setback manages other adverse effects including reverse sensitivity effects. Having considered these, and the costs to

[12] Karen and John Wills (66.2).
[13] Transpower, Ainsley McLeod, Evidence, paragraph 21, citing Andrew Renton, Senior Principal Engineer, Transpower, pers.comm., 12 March 2018.

owners of neighbouring properties, it was Ms McLeod's conclusion that the extent of regulation on subdivision (and land use) could be reduced.

**Consideration and decision**

46. After hearing the evidence of Ms McLeod[14], together with the recommendations of the report writer,[15] the following amendments she proposes to the provisions of the PMEP are accepted for the reasons given:

47. Rule 24.2.1 is retained as notified.

48. Controlled Activity Standard 24.3.1.5 is deleted.

49. A new controlled activity rule is inserted with an additional matter added by the Panel with cross-referencing to the other matters:

*24.3.3. Except as provided for by Rule 24.2.1 and Rule 24.4.1, subdivision of land within 90m of the designation boundary of the National Grid Blenheim substation:*

*Standards and terms:*

*24.3.3.1. All allotments shall identify a building platform for a principal building or any dwelling that is to be located greater than 15 metres from the designation boundary of the National Grid Blenheim substation.*

*Matters over which the Council has reserved control:*

*24.3.3.2. The extent to which the proposed development design and layout on the proposed allotments enables appropriate separation distances between activities sensitive to National Grid lines and the substation.*

*24.3.3.3. The risk of electrical hazards affecting public or individual safety, and the risk of property damage.*

*24.3.3.4. Measures proposed to avoid potential adverse effects, including reverse sensitivity effects, on the operation, maintenance, upgrading and development of the substation.*

*24.3.3.5. The matters set out in 24.3.1.8 to 24.3.1.27.*

50. The following additional standard is inserted in Rule 24.4.1.:

*24.4.1.10. For allotments within 90m of the designation boundary of the National Grid Blenheim substation, all allotments shall identify a building platform for a*

[14] Transpower, Ainsley McLeod, Evidence, Attachment C, page 1.
[15] Section 42A Report, second Reply to Evidence, page 24-16.

*principal building or any dwelling that is located greater than 15 metres from that designation boundary.*

51. Rule 24.4.3 is amended so that it acts to determine status (such as restricted discretionary activity) in the event of non-compliance of the new controlled activity rule or new restricted activity standard for the Urban Residential-Greenfields Zone, as follows:

    *24.4.3. Subdivision of land located within 90m of the designation boundary of the National Grid Blenheim Substation that does not comply with Rules 24.3.1 or 24.4.1.10.~~on Sec 1 SO 4246, Lot 1 DP 8572 and Pt Sec 1 SO 6959 (or any successor)~~.*

52. Standard 24.4.3.4 is amended by removing the words 'or mitigate' as follows:

    *24.4.3.4 Any other measures proposed to avoid ~~or mitigate~~ potential adverse effects, including reverse sensitivity effects, on the substation.*

## Rule 24.4.4

**Subdivision of land within the National Grid Corridor.**

*Matters over which the Council has restricted its discretion:*

*24.4.4.1 The matters set out in 24.3.7.1 to 24.3.7.17.*

*24.4.4.2 The extent to which the subdivision may adversely affect the operation, maintenance, upgrade and development of the National Grid.*

*24.4.4.3 Technical details of the characteristics and risks on and from the National Grid.*

*24.4.4.4 The location, design and use of the proposed building platform or structure as it relates to the National Grid transmission line.*

*24.4.4.5 The risk of electrical hazards affecting public or individual safety, and the risk of property damage.*

*24.4.4.6 The nature and location of any vegetation to be planted in the vicinity of the National Grid transmission line.*

53. Transpower is concerned that the rule does not fully give effect to Policies 10 and 11 of the NPSET to the extent that the proposed rule does not 'avoid' reverse sensitivity effects. The company requests the following:

    - a minor amendment to ensure that any subdivision undertaken by Transpower as a utility can still be a permitted activity under Rule 24.2.1;
    - an additional standard be added that requires the location of the dwelling on the proposed allotments be identified in the application;
    - that an additional standard be added that requires access to National Grid assets to be maintained;

- include reference to compliance with New Zealand Electrical Code of Practice (NZECP 34:2001) in relation to the matters Council has restricted it discretion to[16]; and
- a non-complying activity status be added for any subdivision that does not meet the above standards.[17]

**Section 42A Report**

54. Transpower's submission seeks a limited amendment to Rule 24.4.4 to clarify that the rule does not apply to subdivision of land associated with utilities.[18]

55. The report writer supports changing Rule 24.4.4 to exclude utility subdivisions as he doubts that the proposed rule was intended to capture subdivision. There will be no impact on any other person compared to other utility subdivisions that could be captured by subdivisions undertaken under Rule 24.2.1. The report writer also does not support the need for any subdivision that does not meet these standards defaulting to a noncomplying activity, and in his opinion defaulting to a discretionary activity under existing Rule 24.5.2 is sufficient and will still enable Council to decline subdivision applications if needed.[19]

**Consideration**

56. The Panel agrees that utility subdivision activity was not sought to be included in Rule 24.4.4 and that needs to be clarified by an amendment to that rule.

57. As to the other requests made by Transpower the Panel did not accept reference to the NZCEP was necessary as compliance with that is required by statutory regulation. It also agreed with the report writer's view that default to non-complying status was unnecessary. The default to discretionary activity status for non-compliance with standards is the consistent approach taken in the Plan, and in the event of serious non-compliance in terms of effects on the Grid discretionary activity consent could be declined. The other matters sought by Transpower are accepted as being reasonable requests and amendments are made accordingly.

58. The Panel notes that Standard 24.4.4.1 in the PMEP as notified, incorrectly identifies 24.3.7.1 to 24.3.7.17 as the matters over which Council has restricted its discretion. The matters should reference 24.3.1.9 to 24.3.1.26. This error has been corrected as part of this decision.

**Decision**

59. Rule 24.4.4 is amended as follows:[20]

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[16] Transpower NZ (1198.149)
[17] Transpower (1198.150 and .151).
[18] Transpower, Ainsley McLeod Evidence, paragraphs 28-29.
[19] Section 42A Report, paragraph 331.
[20] Transpower, Ainsley Jean McLeod Evidence, Attachment C, pages 1-2.

*24.4.4. Except as provided for by Rule 24.2.1, ~~S~~subdivision of land within the National Grid Corridor*

60. A new title and new standards are inserted as follows:

*Standards and terms*

*24.4.4.1. All allotments shall contain an identified building platform for the principal building and any dwelling/sensitive activity to be located outside the National Grid Yard.*

*24.4.4.2 Access to National Grid assets shall be maintained.*

61. The existing standards are amended as follows:

*Matters over which the Council has restricted its discretion:*

*24.4.4.~~1~~3 The matters set out in 24.3.1.8~~7.1~~ to 24.3.1.28.~~7.17.~~*

*24.4.4.~~2~~4 The extent to which the subdivision may adversely affect the efficient operation, maintenance, upgrading and development of the National Grid.*

*24.4.4.~~3~~5 Technical details of the characteristics and risks on and from the National Grid.*

*24.4.4.~~4~~6 The location, design and use of the proposed building platform or structure as it relates to the National Grid transmission line.*

*24.4.4.~~5~~7. The risk of electrical hazards affecting public or individual safety and the risk of property damage.*

*24.4.4.~~6~~8 The nature and location of any vegetation to be planted in the vicinity of the National Grid transmission line.*

## [New] Rule 24.4.5 – Boundary Adjustment

62. One submitter seeks to have boundary adjustments specifically provided for as a specific plan, similar to Standard 27.3.3.1.3 of the MSRMP as follows:[21]

*27.3.3.1.3 Boundary Adjustment*

*The Council may consent to the re-subdivision of existing lots where one or more lots do not comply with the minimum area requirements as set out in Rules 27.2.1 and 27.3.1 provided that the following standards are met. The proposed subdivision shall not create additional allotments or new titles (excluding any reserves) which are smaller than those the subject of the application unless:*

[21] Rikihana Clinton Bradley (436.1).

*a) Each lot provides sufficient area for a dwelling meeting the standards for permitted activities;*

*b) Any significant environmental features on the lot are protected through covenants or similar means as a consequence of the subdivision; and*

*c) Access and servicing, as required by the Plan, is available to each lot.*

*Allotments comprised in the application must be contiguous in all zones except in the Rural Zone where they may be separated by a road, river, rail line or reserve.*

63. NZIS requests the retention of the existing subdivision Rule 28.3.7 from the WARMP and Rule 27.3.3.2 from the MSRMP, with boundary adjustments to be a permitted activity if certain standards are met and the new site area does not differ by 10% net area, or to be a controlled activity if the standards are not met.[22]

64. Okiwi Bay Limited refers to contiguous boundary adjustments being a permitted activity under the recent Resource Legislation Amendment Act 2017.[23]

**Section 42A Report**

65. The report writer considers:

- Providing boundary adjustments to be a permitted activity would be problematic with no ability to make an assessment under s 106 for natural hazards or impose conditions. Most boundary adjustments are already approved as a discretionary activity under the WARMP and MSRMP, and recommended as such by the PMEP. If they were a controlled activity there would be no ability for the Council to decline them. Under the PMEP the only difference will be there are no standards or assessment criteria so any determination will be based on adverse effects, objectives and policies. Introducing a more lenient activity status may introduce tension and difficulty to achieve the anticipated results listed in the PMEP.

- Okiwi Bay's reference to contiguous boundary adjustments being a permitted activity is incorrect – they may be confused with the reference in their identified legislation to permitted boundary activities which relate only to land use activities (recession plane encroachments).

- Okiwi Bay and NZIS also seek to retain the old special subdivision rules, and Rikihana Bradley wants the boundary adjustment rule maintained. There is no benefit in this because these rules will still be a discretionary activity under the PMEP. The objectives

[22] NZIS (996.33).
[23] Okiwi Bay Limited (458.3).

and policies in the PMEP have, if anything, tightened up a little on rural subdivisions so introducing a more lenient activity status for subdivisions is not recommended.

- Footnote 2 to Standard 24.3.1.2 of the PMEP, is intended to ensure that there is a suitably sized and shaped building site available on each allotment to provide for a range of options for dwelling shape and location for new owners (examples given of previous problems with controlled activities in the WARMP). These problems could be avoided as a difficult subdivision can default to a discretionary activity where the applicant would need to obtain appropriate land use consents at the same time as the subdivision, or provide alternatives, to satisfy Council.[24]
- Footnote 3 is seen by the report writer as intending to solve a problem where a right of way to a rear allotment was included in the total road frontage width of the front allotment. In these situations it would mean that the usable area of land on the front lot would be narrower than anticipated by the PMEP. The footnote should be amended to clarify that the building shape factor must exclude rights of way.

66. A new rule is recommended to be inserted into the PMEP as follows:

*24.4.5. Boundary Adjustments*

*24.4.5.1. Available in the Rural Environment Zone, excluding the Wairau Plain and Omaka Valley overlay areas*

*The Council may consent to the re-arrangement of boundaries between adjacent existing Computer Registers where one or more proposed allotments do not comply with the minimum area requirements as set out in Rule 24.3.1.2, provided that the following standards are met:*

*Standards and terms:*

*24.4.5.2. The proposed subdivision shall not create any additional Computer Registers (excluding any reserves), or any additional permitted right to erect a dwelling.*

*24.4.5.3. All new allotments must demonstrate adequate access and servicing is available as required by the Plan, and each lot provides sufficient area for a dwelling meeting the standards for permitted activities in relation to building setback and/or recession plane controls.*

[24] Section 42A Report, paragraph 221.

*24.4.5.4. Allotments comprised in the application may be separated by a road, railway, drain, water race, river or stream.*

*Matters over which the Council has restricted its discretion:*

*24.4.5.5. The extent that the boundary adjustment will result in adverse effects on productive land.*

*24.4.5.6. The extent that the boundary adjustment is likely to result in reverse sensitivity conflicts arising.*

*24.4.5.7. The matters set out in 24.3.1.8 to 24.3.1.27.*

*24.4.5.8. Amalgamation conditions.*

**Consideration**

67. In terms of proposed boundary adjustment rule, the Panel notes that 'subdivision' has its own extended definition in s 218 RMA and does not qualify as a term for 24.4.5.2. Accordingly, the term 'subdivision' is amended to 'boundary adjustment' in 24.4.5.2.

68. In the Reply to Evidence the report writer provided examples of difficulties that had arisen from attempts to avoid the policy restrictions on the creation of new allotments in the Wairau Plains and Omaka Valley overlay areas and in the Coastal Environment Zone by use of boundary adjustment proposals. For those policy reasons which seek to restrict intensive residential use, those areas were recommended to be excluded from this new rule. The Panel agrees that the policy protection requires those exceptions.

69. We note that in one of the documents put to us, the word 'stream' had been deleted, but the report writer subsequently identified that 'stream' is included in s 2 RMA within the definition of 'water body'.

70. In terms of 'Matters over which the Council has restricted its discretion', the matters identified in 24.4.5.7 are in error. The numbers 24.3.1.8 to 24.3.1.27, require amending to read: *24.3.1.9 to 24.3.1.26.*

71. The report writer subsequently clarified that 'required by the Plan' in recommended Standard 24.4.5.3 equates to Rules 24.2.4, 24.1.14, 24.1.15 and Standard 24.3.1.3.

**Decision**

72. A new Rule 24.4.5 is inserted into the PMEP as follows:

*24.4.5. Boundary Adjustments*

*24.4.5.1. Available only in the Rural Environment Zone, excluding the Wairau Plain and Omaka Valley overlay areas*

*The Council may consent to the re-arrangement of boundaries between adjacent existing Records of Title where one or more proposed allotments do not comply with the minimum area requirements as set out in Rule 24.3.1.2, provided that the following standards are met:*

*Standards and terms:*

*24.4.5.2. The proposed boundary adjustments shall not create any additional Records of Title (excluding any reserves), or any additional permitted right to erect a dwelling.*

*24.4.5.3. All allotments must demonstrate adequate access and servicing is available as required by Rules 24.1.4, 24.1.14, 24.1.15, and Standard 24.3.1.3, and each lot provides sufficient area for a dwelling meeting the standards for permitted activities in relation to building setback and/or recession plane controls.*

*24.4.5.4. Allotments comprised in the application may be separated by a road, railway, drain, water race, river or stream.*

*Matters over which the Council has restricted its discretion:*

*24.4.5.5. The extent that the boundary adjustment will result in adverse effects on productive land.*

*24.4.5.6. The extent that the boundary adjustment is likely to result in reverse sensitivity conflicts arising.*

*24.4.5.7. The matters set out in 24.3.1.8 to 24.3.1.28.*

*24.4.5.8. Amalgamation conditions.*

## Definition - Computer Register

73. Federated Farmers requests the term ‘Computer Register’ be deleted from the PMEP because:

a) it would not be understood by readers;

b) the definition does not enlighten the reader as to what it means;

c) it is not a term used by other Councils, nor in wide use; and

d) it will impact significantly on farming activities as the term sets out permitted limits for vegetation clearance and excavation amongst other activities.[25]

**Section 42A Report**

74. The report writer recommends replacing 'Computer Register' with 'Certificate of Title'. This comes about through the change in definition due to old paper copies of titles being converted to electronic copies at Land Information New Zealand. LINZ changed the name of these records in 2001 to 'computer registers' including 'computer freehold registers', 'computer interest titles', 'computer unit title registers' and 'composite computer registers' – all relating to their various interests. Computer interest registers are for licences and leases that have a lesser interest in land then a computer freehold register, and the definition in the PMEP excludes them because they can often be created without Council approval.

**Consideration**

75. The Panel's decision above at paragraph 15 observed that the PMEP is a modern document and should reflect modern legal and statutory terminology wherever possible, which has changed since the Section 42A Report was prepared. The term 'record of title' is a modern term reflecting the digitalisation of the Land Transfer system and should be applied wherever relevant in the Plan. Its use in preference to the word 'allotment' or the phrases 'certificate of title' or 'computer register' is agreed to by the Panel.

**Decision**

76. The definition for Computer Register is replaced as follows:

| | |
|---|---|
| ***Record of Title*** | *has the same meaning as in section 5 of the Land Transfer Act 2017 and, until a record of title is created for an estate or interest in land for which there is a computer register or certificate of title, includes the computer register or certificate of title* |

## Landscaping

77. Three submitters, Helen Ballinger, Robin Dunn and Mark Batchelor, sought that provision for landscaping is included in the subdivision rules in Chapter 24. The submitters all highlighted the importance of landscaping in providing for improved amenity outcomes. They felt that a means of achieving this outcome was for landscaping to be considered and required as part of the process of subdividing land.

**Section 42A Report**

[25] Federated Farmers (425.389).

78. The report writer agreed that landscaping was an important matter to be considered as part of the subdivision consent process. In doing so, he highlighted that this can be practically achieved through works on what would become public domain (i.e., roads, reserves, esplanade reserves).

79. The report writer considered the existing policy framework and its provision for landscaping. He noted that the policies in Volume 1, Chapters 12, 13 and 14 placed emphasis on maintaining and enhancing character of urban, rural and coastal environments and the amenity values in those environments. Importantly in the context for his subsequent recommendations, the report writer pointed out that the policies did not specifically mention landscaping and the contribution landscaping makes to character/amenity values.

80. The report writer went on to recommend the addition of landscape works as a specific matter of control for Rule 24.3. Due to the lack of specific reference to landscaping in the notified policies, the report writer also recommended that landscaping be added to notified policies 13.5.6, 13.18.4 and 14.5.6.

**Consideration**

81. The Panel is in agreement with the submitters and the report writer with respect to the importance of landscaping as a matter of control when determining subdivision consent applications. On considering the notified policies referred to above and also Policy 12.2.1, it is clear that the Plan has placed significant emphasis on maintaining and enhancing the character and amenity values of urban, rural and coastal environments. A method for implementing this direction is to ensure that there is regard to landscaping at the time of subdivision. The subdivision of land typically acts as a precursor for land use change or the intensification of existing land use. It therefore presents an ideal opportunity to implement Policies 12.2.1, 13.5.6, 13.18.4 and 14.5.6 at an early stage. For this reason, the Panel agrees with the recommended addition to Rule 24.3. If this matter was not added, the Council could not impose conditions requiring landscaping works to occur.[26]

82. The Panel's view is that the exercise of control would be assisted through more specific policy guidance. The Panel concurs with the report writer in terms of the policies that require addition (13.5.6, 13.18.4 and 14.5.6). The Panel has considered the wording additions recommended by the report writer and agrees with the intent of that wording. However, the Panel believes that minor changes are required to the recommended wording for Policies

[26] Section 104A of the RMA

13.5.6 and 13.18.4 to provide for improved integration with the notified intent of those policies. Those changes are incorporated into the decision below.

83. The Panel noted the report writer's reference to the Topic 10 Section 42A Report in terms of equivalent recommendations to the notified wording of policy in Chapter 12 (Urban Environments).[27] Those recommended changes have been adopted by the Panel and therefore are not specifically referred to in the Topic 10 decision. The decision below includes those changes for completeness and to enable those changes to be considered alongside the equivalent changes for the rural and coastal environment policies.

84. Consideration was given to whether the Plan should go further than outlined above. The submitters did specify a number of prescriptive landscaping measures in their submissions. On balance, the Panel agreed with the report writer[28] that it is not appropriate to include prescription in the rule. That is because the environmental setting for the subdivision will be influential in determining the appropriate nature of any landscaping provision. It is therefore important to retain the flexibility for making this determination as part of the subdivision consent process. The Panel is confident that the matter of control recommended by the report writer, supported by the addition to the policies, will achieve this outcome.

**Decision**

85. Policy 12.2.1 is amended as follows:[29]

*The character and amenity of residential areas within Marlborough's urban environments will be maintained and enhanced by:*

*(a) providing for a range of areas with different residential densities and lot sizes, including for infill, greenfield and large lot developments;*

*(b) ensuring there are residential areas within walkable distance to community, social and business facilities;*

*(c) providing for sufficient open spaces and parks that are equitably distributed, and integrated, accessible and safe, and vary in size, form and purpose ~~open spaces and parks~~ to meet people's recreational needs;*

*(d) providing for walking and cycling linkages to support connected neighbourhoods and communities, active transport options, and recreational opportunities;*

[27] Topic 10 Section 42A Report, page 24-25
[28] Section 42A Report, page 17
[29] Note that this decision reflects the Panel's adoption of recommendations in the Topic 10 Section 42A Report at paragraphs 93 and 723.

*(~~d~~e) higher standards of urban design that positively contribute to public space amenity, safety, and visual interest ~~and amenity~~;*

*(~~e~~f) ensuring people's health and wellbeing through good building design, including energy efficiency and the provision of natural light; ~~and~~*

*(~~f~~g) effective and efficient use of existing and new infrastructure networks; and*

*(h) street and road reserve areas that are attractively planted and maintained, including trees appropriate to the character and amenity of the area.*

86. An additional matter is added to the listed matters of Policy 13.5.6, as follows:

*(j) the need for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.*

87. An additional matter is added to the listed matters of Policy 13.18.4, as follows:

*(g) appropriate landscaping of new roads, reserves and esplanade areas is created by subdivision.*

88. An additional matter is added to the listed matters of Policy 14.5.6, as follows:

*(f) provides for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.*

MARLBOROUGH DISTRICT COUNCIL

# Proposed Marlborough Environment Plan

# Topic 18: Nuisance Effects, Temporary Military Training and Noise

**Hearing dates:** 12 – 14 November 2018

**S42A Report Writer:** Paul Whyte, Nevil Hegley

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| MFE | Ministry for the Environment |
| NMDHB | Nelson Marlborough District Health Board |
| NZDF | New Zealand Defence Force |
| NZTA | New Zealand Transport Agency |

## Nuisance Effects

## Lighting

1. The effects of lighting are managed in the PMEP by general performance standards attaching to permitted activities in each zone.

    - NZTA seeks the phrase 'or any road' be added in respect of all residential and living zones or alternatively, that a new permitted activity standard applicable to all permitted activities in the Residential and Living Zones, Rural Environment Zone, Coastal Environment Zone, Coastal Living Zone, Coastal Marine Zone, Floodway Zone and the Lake Grassmere Saltworks Zone is added as follows: *All outdoor lighting and exterior lighting must be directed away from roads so as to avoid any adverse effects on traffic safety.*[1]

**Section 42A Report**

2. The existing standards are focused on zones likely to have significant outdoor lighting. The report writer does not consider it necessary to add the zones identified by NZTA, given the nature of the zones, but suggested the Panel could consider adding the standard to these zones as a 'backstop' in terms of road safety.[2]

3. The report writer clarified that except for Rule 12.2.3.2, the measurement of the light spill is taken at the boundary.[3]

4. The report implies that if the Panel decided it was appropriate, that the following standard is recommended to be added to 'Use of External Lighting' in Urban Residential 1 - 3 Zones, the Coastal and Rural Living Zones, Rural Environment Zone, Coastal Environment Zone, Coastal Marine Zone, Floodway Zone and the Lake Grassmere Saltworks Zone:[4]

    *Xxxx All outdoor lighting and exterior lighting must be directed away from roads so as to avoid any adverse effects on traffic safety.*

**Consideration**

5. The Panel accepts the recommendation for the reasons that the report provides, but notes that in some of the zones referred to in the report the standard would be amended, whereas in other zones it would need to be inserted as new standard.

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[1] NZTA (1002.192, .193, .215, .216, .218, and .219).
[2] Section 42A Report, paragraph 33.
[3] Section 42A Report, paragraph 44.
[4] NZTA (1002.215).

**Decision**

6. The following standard is added to the Use of External Lighting in Urban Residential 1 - 3 Zones, Coastal Living and Rural Living Zones:

   *x.2.3.2 All outdoor lighting and exterior lighting must be directed away from roads so as to avoid any adverse effects on traffic safety.*

7. In Rural Environment Zone, Coastal Environment Zone, Coastal Marine Zone, Open Space Zone, Floodway Zone, and the Lake Grassmere Saltworks Zone insert a new standard with identical wording under the heading as follows:

   *x.x.x Use of external lighting*

   *x.x.x.x. All outdoor lighting and exterior lighting must be directed away from roads so as to avoid any adverse effects on traffic safety.*

## Odour

8. The effects are managed in the PMEP by general performance standards attaching to permitted activities in each zone. The standard for all zones is as follows:

   > *The odour must not be objectionable or offensive, as detected at or beyond the legal boundary of the area of land on which the permitted activity is occurring.*

9. The standard is supported by a number of submissions. Other submissions variously seek: that farming is excluded from the rule;[5] the deletion of the standard;[6] the addition of 'where practicable' to the standard;[7] the addition of the 'most practicable option';[8] the standard is amended to provide more certainty in terms of 'offensive and objectionable odours';[9] that Rule 23.2.7.1 in the Airport Zone is drafted so that it is consistent with Ministry for the Environment guidance on the recommended form of consent conditions;[10] to ensure that where rules providing for odour associated with a specific activity have been included elsewhere in the plan these activities are excluded from the Industrial zones odour rule. It is submitted this could be achieved by making a change as follows: *The odour that is not specifically provided for by any other rule, must not be objectionable or offensive, as detected at or beyond the legal boundary of the area of land on which the permitted activity is*

[5] Federated Farmers (425.515, 638, .721).
[6] Murray Chapman (348.38).
[7] Sanford Ltd (1140.66, .67).
[8] M and K Gerard (424.143).
[9] Fonterra (1251.132, .141).
[10] NZDF (992.74).

*occurring;*[11] the standard is amended to require a bond and notification to residents when spraying occurs.[12]

**Section 42A Report**

10. With regard to Federated Farmers' submission, the report writer considers it is not realistic to delete the standard as there would be no controls in place. Farming should be subject to some control, given its potential to generate adverse effects. However, some amendment is appropriate.[13]

11. The report writer noted that the proposed standard in the PMEP differs from the type of recommended standard in the MFE document 'Good Practice Guide for Assessing and Managing Odour' (2016), a matter which has been raised by some of the submitters, and agrees the standard should be amended to better reflect the MFE guideline. He also believes it is useful to generally refer to 'FIDOL Factors', as this provides some explanation in respect of 'objectionable and offensive' which is not found elsewhere in the PMEP and is consistent with the MFE guideline. However, he does not consider it necessary to exclude discharge permits that have been granted as this situation applies in respect of all permitted activity standards.[14]

12. With regard to the Oil Companies' submission points, the report writer notes that the General rules are generally prefaced by the words '*Unless expressly limited by a rule elsewhere in the Marlborough Environment Plan the following activities shall be permitted without resource consent …*' which appear to indicate that the suggested words by the Oil Companies are not required, and at this stage a change is not required.[15]

13. The report writer considers the amendment sought by S and J Peoples is overly restrictive and would be difficult to administer, and should be rejected.[16]

14. The report writer recommends the standard for odour in the PMEP be amended as follows:[17]

> *There shall be no ~~The odour must not be~~ objectionable or offensive odours to the extent that it causes an adverse effect ~~as detected~~ at or beyond the ~~legal~~ boundary of the site. ~~area of land on which the permitted activity is occurring.~~*
>
> *Note 1: For the purpose of this performance standard, an offensive or objectionable odour is that odour which can be detected and is considered to be offensive or*

[11] Oil Companies (1004.68, .80, .96).
[12] S and J Peoples (450.1).
[13] Section 42A Report, paragraph 50.
[14] Section 42A Report, paragraph 54.
[15] Section 42A Report, paragraph 56.
[16] Section 42A Report, paragraph 57.
[17] Fonterra (1251.132).

*objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the 'FIDOL' factors shall be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the 'site' comprises all that land owned or controlled by the entity undertaking the activity causing the odour.*

**Consideration**

15. The Panel agreed with the reasoning provided by the report writer. However, for consistency, the word 'shall' in the report writer's recommendation is amended to read 'must'.

16. The Panel also noted that there are equivalent odour standards in 2.17.3.4 and 2.17.5.5.

**Decision**

17. The same change recommended for the standards in the zone chapters should also apply to these General Rules.

18. The standard for odour in the PMEP be amended in all zones as follows:[18]

*There must be no ~~The odour must not be~~ objectionable or offensive odours to the extent that it causes an adverse effect ~~as detected~~ at or beyond the ~~legal~~ boundary of the site. ~~area of land on which the permitted activity is occurring.~~*

*Note 1: For the purpose of this performance standard, an offensive or objectionable odour is that odour which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the 'FIDOL' factors shall be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the 'site' comprises all that land owned or controlled by the entity undertaking the activity causing the odour.*

19. Amend Standard 2.17.3.4 to read:

*…(c) any emissions of objectionable odours to the extent that it causes an adverse effect.*

20. Amend Standard 2.17.5.5 to read:

*2.17.5.5 There must be no emission of objectionable odour to the extent that it causes an adverse effect.*

[18] Fonterra (1251.132).

## Dust

(This is a common standard in every zone – the wording being as follows.)

**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.**

21. There were a large number of submissions in relation to various aspects of the effects of discharge of dust in general terms and specifically particulate matter from the venting of stacks. The Panel accepted the recommendations of the report writer addressing all of those issues for the reasons set out in the Section 42A Report. However the Panel preferred to use the word 'must' instead of the word 'shall' and the decision reflects that change to the recommendations.

**Consideration and decision**

22. The Panel accepts the recommendations of the report writer, except for one small wording change. For consistency with the way in which standards are expressed in the PMEP, the 'shall' in the relevant recommended provisions is amended to 'must'.

23. The standard for the discharge of dust is replaced in the relevant chapters to read:

*There must be no objectionable or offensive discharge of dust to the extent that it causes an adverse effect (including on human health) at or beyond the legal boundary of the site.*

*Note 1: For the purpose of this performance standard, an offensive or objectionable discharge of dust is one which can be detected and is considered to be offensive or objectionable by a Council officer. In determining whether an odour is offensive or objectionable, the "FIDOL" factors must be considered (the frequency; the intensity; the duration; the offensiveness (or character); and the location). For the purposes of this performance standard, the "site" comprises all that land owned or controlled by the entity undertaking the activity causing the dust.*

### NZTA reverse sensitivity/cumulative effects

24. NZTA made a number of submissions relating to reverse sensitivity and/or cumulative effects in respect of the state highway network. It seeks new objectives and/or policies as follows:[19]

> *A new RPS and regional objective and/or policy that will ensure an integrated planning approach is taken to managing the effects of growth and development on transport infrastructure.*
>
> *Ensure noise sensitive activities are set back a sufficient distance from land transport network boundaries to avoid, remedy and mitigate effects.*

[19] NZTA (1002.89 and .101).

*Allow noise sensitive activities to be located near land transport networks only where they do not compromise or limit the existing or planned function of the land transport network.*

25. NZTA also suggests adding buffer and effects areas adjacent to the state highway network in which particular activities would be regulated because of reverse sensitivity effects, for example, new residential buildings near the state highway could be affected by traffic noise which in turn leads to complaints about the operation of the state highway.[20]

**Section 42A Report**

26. The report writer noted that at the Transportation hearing, NZTA advised it no longer wished to pursue the implementation of transport cumulative effects areas as an overlay.[21] However, he did recommend some minor changes including reference to cumulative or reverse sensitivity effects in the explanation to Policy 17.4.1.[22]

27. The report writer did not favour the introduction of buffer and effects areas as he considers it would add unnecessary complexity to the PMEP. He believes there are sufficient provisions in the PMEP to control these matters including zoning, activity status and setbacks. Additional controls are therefore unnecessary and unjustified.[23]

As recorded in the Section 42A Report for Topic 15: Transportation and Signage, the report writer advised that the previous “no build provision” within 40m of the state highway sought by NZTA was likely to be replaced by a provision allowing building within 100m subject to noise attenuation. NZTA advised that the provisions would be confirmed prior to the hearing on Nuisance Topic. The Panel did not have the benefit of any such evidence from NZTA.

28. The report writer recommended that Policy 17.4.1 is amended as follows:[24]

*Manage the density, scale and location of subdivision and/or activities to maintain the planned function of the ~~roading~~ land transport network.*

*A major method in the MEP for managing the efficiency of the road network is through identification of a road's function, which is established by the road hierarchy (set out in Appendix 17 and Policy 17.3.2). It is important that subdivision or and activities that generate traffic (whether on land or in the coastal marine area) are managed so that their location, density, design, and/or scale does not impair the function of a particular*

[20] NZTA (1002.272).
[21] NZTA (1002.274).
[22] Section 42A Report (Transportation), Reply to Evidence, page 2.
[23] Section 42A Report, paragraph 99.
[24] NZTA (1002.89).

*road, including as a result of cumulative or reverse sensitivity effects. Management will occur through district rules that describe where there is a need to consider the impacts of activities on the function of a road through the resource consent process.*

**Consideration**

29. For the reasons outlined in the Section 42A Report for this topic, and also for the reasons set forth on similar issues in Topic 15 on Transportation, the Panel was not satisfied that the complexity required to meet the NZTA request is warranted in the Marlborough transport setting. The Panel was satisfied that the existing provisions as recommended to be amended appropriately address reverse sensitivity noise effects.

**Decision**

30. Policy 17.4.1 is amended as follows:

*Manage the density, scale and location of subdivision and/or activities to maintain the planned function of the ~~roading~~ land transport network.*

*A major method in the MEP for managing the efficiency of the road network is through identification of a road's function, which is established by the road hierarchy (set out in Appendix 17 and Policy 17.3.2). It is important that subdivision or and activities that generate traffic (whether on land or in the coastal marine area) are managed so that their location, density, design, and/or scale does not impair the function of a particular road, including as a result of cumulative or reverse sensitivity effects. Management will occur through district rules that describe where there is a need to consider the impacts of activities on the function of a road through the resource consent process.*

### Definitions

31. The Panel adopted the recommendation that a definition was inserted in to the PMEP of 'reverse sensitivity' for the reasons given in the report. However, the report recommended its insertion in Chapter 19 whereas the Panel directs that it is inserted in Chapter 25 of Volume 2, with all other definitions.

## Temporary military training

32. Temporary military training activities are managed by General Rule Temporary Military Training Activity in which Rule 2.41-2.43 allows the activity as a permitted activity subject to standards that relate to:

- the activity not exceeding 31 days;
- no permanent structures;

- noise limits.

33. 'Temporary military training' is defined in the PMEP as a temporary training activity undertaken for the defence purposes in accordance with the Defence Act 1990.

34. NZDF seeks amending the introductory sentence in respect of which rules of the PMEP apply by the following: Temporary Military Training Activities are not required to comply with the requirements of any other part of the Plan except the provisions for earthworks and permanent structures, and any relevant regional rules.[25]

35. NZFS seeks that 'Emergency Management and Training Activities' be added to the Temporary Military Training Activity provisions, including a rule allowing the discharge of contaminants to land from the use of firefighting foam for training purposes.[26] NMDHB seeks to amend Rule 2.42.1.3 to provide for nationally consistent terms but retain the noise limit of 122 dBC in Rule 2.42.1.4.[27] NZDF seeks the deletion of Rule 2.24.1.4[28] and H Thomson seeks the limit of 122 dBC is increased.[29]

36. Transpower seeks that a standard be included regulating temporary military training activities in the National Grid Yard as it relates to buildings and explosives.[30] However, NZDF opposes this submission, without giving a particular reason.[31]

37. NZDF seeks that Rule 2.42.1.1 be deleted as it considers it is inappropriate and inefficient to require a resource consent to be obtained for a permanent building or structure that complies with the building standards for the zone.[32] NZDF also considers Rule 2.43.2 should be a restricted discretionary activity because the potential effects relate to noise only.[33]

**Section 42A Report**

- The report writer considers the existing wording of the definition of 'temporary military training' is satisfactory. He also agrees with NZDF that it is inappropriate to provide for emergency management and training activities within the same rule as temporary military training activities.

[25] NZDF (992.51).
[26] NZFS (993.23).
[27] NMDHB (280.96).
[28] NZDF (992.56).
[29] H Thomson (117.1).
[30] Transpower (1198.77).
[31] NZDF, further submission on 1198.77.
[32] NZDF (992.54).
[33] NZDF (992.57).

- The report writer asked S and J Peoples to clarify their submission which appears to query the status of temporary military training activities in the Open Space 3 Recreation Zone with reference made to the Conservation Zone of the WARMP.[34]
- With respect to Transpower's submission, the report writer considers that, given Policy 10 of the NPSET and policies already within the PMEP, it is appropriate to include the standard requested by the submitter.
- He agrees that a time limit of 31 days (as in the WARMP and the MSRMP) for an activity to be considered 'temporary' is appropriate. And he agrees with NZDF there may be some instances where a permanent structure results from training activities, such as when NZDF personnel are involved in constructing a Habitat for Humanity home, however further details are required.

**Consideration**

38. The Panel agree with the report writer for the reasons given in the Section 42A Report.

**Decision**

39. Insert a new standard 2.42.1.5 as follows:

*2.42.1.5 Within the National Grid Yard no explosives may be used.*

40. The definition of 'temporary military training activity' is amended as follows:

*Temporary military training activity means a temporary training activity undertaken for defence purposes in accordance with the Defence Act 1990.*

[34] S and J Peoples (450.32).

## Noise

41. In Topic 18: Nuisance Effects and Temporary Military Training, the Panel received a report from Mr Nevil Hegley which contained a number of ambiguities and inconsistencies. Amongst the problems the Panel faced was that recommendations made in respect of many submissions was not specific as to wording recommended, and in some cases either proved to be contradictory with other submissions also recommended for approval, or comments of approval would be inconsistent with wording changes recommended. In a number of cases incorrect references to Plan provisions were also given which caused delay and confusion.

42. Further, Mr Hegley had initially recommended changes to permissible noise standards. These recommendations appeared to be based primarily on his technical approach. The approach the Panel took in its consideration was that there needed to be an evidential basis linked to relief requested in submissions for there to be any change in noise standards.

43. As a consequence the Panel issued minutes numbered 43 and 54 seeking clarity. In Minute 54 addressed to Paul Whyte, Section 42 Report Writer (Nuisance Effects and Temporary Military Training), the Panel requested an agreed set of recommended changes by Mr Whyte having discussions with Mr Hegley to address all of the concerns raised in both minutes. On receipt of that agreed response the Panel still had a number of specific concerns which led to the issue of Minute 59 addressed to both Mr Hegley, and Mr Whyte.[35]

44. In Minute 59 joint clarification was sought on the following issues:

- In relation to Rule 3.2.4.1, reductions are proposed in dB levels for two categories but the submission provided[36] does not appear to show any request to reduce the dB levels as recommended. The Panel queried that reduction and the scope for it. It could be that the difference between the two National Standards provides the answer but that is not clear to the Panel at the moment on the material it has.
- The same issue arises in respect of the reductions recommended at Rule 4.2.3.1.
- In relation to Rule 3.3.5.1, subclause (c) is recommended to be deleted. Again checking against the relief sought in the submission that is referred to[37] it does not appear to provide scope. The Panel sought reasons for the proposed deletion and for scope

[35] Minute 43 to Nevil Hegley (Noise Expert), 13 November 2018; Minute 54 to Paul Whyte (Section 42A Report Writer, Nuisance Effects and Temporary Military Training), 15 March 2019; Minute 59 to Paul Whyte (Planning) and Nevil Hegley (Noise), 10 April 2019.
[36] Pernod Ricard (1039.114).
[37] Horticulture NZ (769.98).

purposes, a submission reference to that specific relief sought in a particular submission.

- In many rules the A qualifier to the dB level is recommended to be removed and in other locations it is recommended to be inserted. The Panel sought an explanation as to why that occurred with appropriate references providing scope for those recommendations. An example of that contrast is found at Chapter 13 for the Port Zone and Chapter 14 for the Port Landing Areas. In the former, the A qualifier is recommended for inclusion while the latter is recommended for deletion. Another example appears at Chapter 22 in relation to the Lake Grassmere Salt Works Zone where at varying times of the day the A factor is recommended to be deleted or included.

45. The report writers jointly provided a tracked change response to Minute 54 with a further detailed reply on the issues raised in Minute 59.

46. The Panel agreed with the tracked change recommendations for the reasons set out in the responses to Minutes 54 and 59 with amendments which this decision will now address.

47. In this case of this topic, therefore, the general approach of the Panel's overall decision in respect of all other topics is not applicable, i.e. that the Section 42A Report reasons and recommendations were agreed with by the Panel and formed part of its decision process, unless the topic decision disagreed or provided further elucidation.

48. In the case of this topic that approach relates to the responses provided to Minutes 54 and 59. The recommendations in respect of particular provisions in those responses can be taken as forming part of the Panel's reasons and decisions on the provisions dealt with in those responses, unless those provisions are further addressed in this topic decision document.

49. The specific consideration of any of the provisions requiring further consideration is now set out below in this decision, or otherwise the recommendations are adopted from the responses to the later minutes 54 and 59.

**Standard 3.2.4.1.**

**Any new noise sensitive activity located within 300m of any frost fan not within the same site must be designed and constructed so that within the external building envelope surrounding any bedroom (when the windows are closed), airborne sound insulation meets the following single-number rating for airborne sound insulation, determined in accordance with AS/NZS ISO 717.1:2004 Acoustics – Rating of Sound Insulation in Buildings and of building elements Part 1 – Airborne sound insulation:**

**Dwellings located less than 300m and more than 200m from the nearest frost fan DnT,w + Ctr50-3150 ≥ 27 dB**

**Dwellings located less than 200m and more than 100m from the nearest frost fan DnT,w + Ctr50-3150 ≥ 32 dB**

**Dwellings located less than 100m from the nearest frost fan DnT,w + Ctr50-3150 ≥ 37 dB**

50. One submitter generally supported the rule and standard, adding: retain Rule 3.2.4 including any other measures as appropriate to manage reverse sensitivity effects.[38] Others sought extension of the rule relating to noise sensitivity effects to cover any existing commercial forest boundary sufficient to mitigate any temporary adjacency noise effects from normal rural activities;[39] reference to 2004 edition of ISO 717.1 is outdated and should be superseded here and in the two other instances in Volume 2 (4.2.3.1 and 8.2.3.1).[40]

**Section 42A Report**

51. The report writer agreed with the Pernod Ricard request. He did not support PF Olsen's submission to extend the existing commercial boundary as no credible reason to adopt such an approach was identified. In terms of amending the noise standards, the report writer agreed that the 2004 edition is superseded by ISO 717.1:2013.

**Consideration**

52. The Panel in Minute 59 raised issues relating to several particular matters in respect of the recommended amendments to these noise provisions.

53. The first matter raised was whether the Panel had sufficient scope to agree to the amendments in Standard 3.2.4.1. The wording concerned requested 'Retain Standard [*sic*] 3.2.4 including any other or additional measures as appropriate to manage reverse sensitivity effects'.

54. Mr Hegley advised that the proposed amendments to the respective decibel levels will improve the rule because the levels recommended better reflect the measured noise effects from frost fans as received within the dwelling. While there was no direct evidence on this matter Mr Hegley considers the amendments are appropriate having considered the overall

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[38] Pernod Ricard (1039.115).
[39] PF Olsen Ltd (149.12).
[40] NMDHB (280.130).

evidence on frost fans. In particular, the amended levels are considered to provide sufficient mitigation and do not require persons to invest in unnecessary noise control when establishing a noise sensitive activity (such as a dwelling) to manage reverse sensitivity effects.

55. While it is acknowledged the amendments are 'replacing' one figure with another one, it appears they can be considered as an "other measure" as requested in the submission that will better "manage reverse sensitive effects" as per the decision requested in the Rural Environment Zone. The report writer's response to Minute 59 was:

    *If the Panel is comfortable with this, the amendment can remain. If it takes a more strict and narrow view that the amendment is not within the ambit of the submission, then the decibel levels should be retained as notified.*[41]

56. There is no detailed technical evidence to support the report writer's recommendation and we have not heard other such technical evidence. The notified standards have been in operation in Marlborough for many years now and no change was notified in the plan which would have enabled submission by affected members of the public. The Panel is not comfortable with the recommendation of changes which appear on their face to lessen the protection of the noise amenity levels in dwellings nearby without there being a strong body of evidence to support the change and without opportunity for submission on that issue. The result is that the noise levels in Standard 3.2.4.1 should be retained as notified.

57. We concluded from this response to delete 'any other or additional measures appropriate to manage reverse sensitivity effects' is not precise enough and was too vague to provide certainty to enable cross submission.

**Decision**

58. Standard 3.2.4.1 is retained as notified with one minor amendment updating the standard referenced in the provision to read as follows:

    *Any new noise sensitive activity located within 300m of any frost fan not within the same site must be designed and constructed so that within the external building envelope surrounding any bedroom (when the windows are closed), airborne sound insulation meets the following single number rating for airborne sound insulation, determined in accordance with AS/NZS ISO 717.1:~~2004~~2013 Acoustics– Rating of Sound Insulation in Buildings and of building elements Part1 – Airborne sound insulation:*

    *Dwellings located less than 300m*

[41] Report writer's Response to Minute 59, 12 April 2019, paragraphs 3 and 4.

*and more than 200m from the nearest frost fan* *DnT,w + Ctr 50-3150 ≥ 27 dB*

*Dwellings located less than 200m and more*

*than 100m from the nearest frost fan* *DnT,w + Ctr 50-3150 ≥ 32 dB*

*Dwellings located less than 100m from the*

*nearest frost fan* *DnT,w + Ctr 50-3150 ≥ 37 dB*

59. As a consequence and to ensure consistency between provisions, Standards 4.2.3.1 and 8.2.3.1 are also amended as above.

**Standard 3.3.5.1**

**3.3.5.1. A Category A or Category B device must not be operated:**

**(a) between 8.00 pm and 7.00 am the following day if the device is within 2km of a noise sensitive activity;**

**(b) within 800m of any rest home, public or private hospital;**

**(c) within 160m of the boundary or notional boundary of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device);**

**(d) such that sound is emitted at a level greater than 65 dB LAE, measured at or within the boundary (Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3 Zones, and Coastal Living and Rural Living Zones) or notional boundary (Rural Environment or Coastal Environment Zones) of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device).**

**(e) closer than 250m to any other audible bird-scaring device.**

60. Evidence presented by Horticulture NZ to Standard 3.3.5.1(c) relates to the distance to dwelling houses. The submitter considers that the proposed standard is arbitrary by using distances rather than being based on the noise emitted from the device. The measure LAeq is not defined while the SEL measure is more appropriate for measuring impulsive sound and therefore should be used in the bird-scaring role.[42]

61. The submission reads:

> *Amend Standard 3.3.5.1 as follows:*
>
> *A category A or Category B device must not be operated*
>
> *a) After sunset and before sunrise*
>
> *b) Exceed 65dB SEL when measured at the notional boundary of the nearest habitable building on a site other than on which the device is located or the zone boundary*

[42] Horticulture NZ (769.98).

**Section 42A Report**

62. The report stresses it is apparent that this submission does not specifically refer to the deletion of subclauses (c) and (e) given that it relates to other subclauses. As a consequence, the report suggests it appears this submission cannot be relied upon to make the proposed changes. The report writer notes that CJ Smith does request amendment to (c) but does not appear sufficiently robust to allow for deletion of this subclause (or (e)). Accordingly, the report writer considers that there is not sufficient scope to allow deletion of the respective subclauses.

63. Mr Hegley advises that in the supplementary evidence of Ms Wharfe, she noted that dawn and dusk are periods when birds feed and asked for this period to be used rather than 8pm/7am to provide more flexibility, to which he agreed.

64. The Panel was advised that Standard 3.3.5.1 was also considered under the Rural Environment topic. The Reply to Evidence recommended a similar amendment whereas the original report had recommended the standard remain without amendment. The recommendation in the Rural topic in the Reply to Evidence accords with Mr Hegley's recommendation in this Topic in respect of 3.3.5.1(a) where he recommends that the '8pm/7am' is deleted and 'sunrise/sunset' substituted[43].

**Consideration**

65. We note in his comment in the Section 42A Report (Noise) that Mr Hegley states that Sound Expansive Level (SEL) is the same LAeq, and as only SEL is defined in Chapter 25 so it should be adopted.

66. The Panel agreed the current standard should be clarified in that respect and this has been done.[44] SEL means 'the A-weighted sound pressure level that, if maintained constant for a period of one second, would convey the same sound energy to the receiver as is actually received from a given noise event'.

67. We also note that the Panel had to resolve the different recommendations in respect of Standard 3.3.5.1(a), that is, retain the status quo or insert sunrise/sunset. There are strongly held opinions in the community of this issue as instanced by Mr Driver's evidence and his submission which actually sought prohibited activity status for this activity.

68. It is understood that in February and into March when 'bird bangers' begin and continue, sunrise occurs progressively at a later time. In early February that may be 6:30am but will be

[43] Reply to Evidence, pages 60 and 61
[44] Chapter 25 Volume 2 Definitions pages 25-31.

increasingly later each day. Moreover, the evidence of Ms Wharfe stressed that bird feeding commences at sunrise. The Panel has taken into account the policy approach in the plan of enabling primary production activities which include aspects of noise in rural zones while endeavouring to manage those effects reasonably.

69. We concluded that the standard is more effective if it is applied between sunrise and sunset rather than during specified hours.[45]

70. The Panel concluded that the recommendation to delete subclauses (c) and (e) lacked scope from submissions for that to be done and therefore they are retained as notified.

**Decision**

71. Standard 3.3.5.1 is amended as follows:

*3.3.5.1. A Category A or Category B device must not be operated:*

*(a) between ~~8.00 pm and 7.00 am~~ sunset and sunrise the following day if the device is within 2 km of a noise sensitive activity;*

*(b) within 800 m of any rest home, public or private hospital;*

*(c) ~~within 160 m of the boundary or notional boundary of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device);~~*

*(d) such that sound is emitted at a level greater than 65 dB SEL ~~LAE~~, measured at or within the boundary (Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3 Zones, and Coastal Living and Rural Living Zones) or notional boundary (Rural Environment or Coastal Environment Zones) of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device);*

*(e) closer than 250 m to any other audible bird-scaring device.*

## dB v dBA

72. NMDHB requested the noise limit references to dBA $L_{Aeq}$ are amended to denote the appropriate format, dB $L_{Aeq}$.[46]

**Section 42A Report and Consideration**

73. Minute 59 of the Panel sought clarification on the appropriate use of dB and dBA. This followed from recommendations from Mr Hegley to sometimes utilise dBA where it is not

[45] Section 42A Report, paragraphs 78-79; Reply to Evidence, pages 60-61.
[46] NMDHB (Multiple submission point)

used in the notified rules and sometimes remove dBA when it is included in the notified rules. This left the Panel confused as to when it was appropriate to use dB or dBA. Helpfully, in the response, the report writer clarified the issue, stating:

> *… "dBA" applies when the "$L_{dn}$" (average noise level) is being measured as set out in NZS 6809: 1999 Acoustics - Port Noise Management and Land Use Planning. Otherwise measurements relating to $LF_{Amax}$ and $L_{Aeq}$ are "dB" as adopted in NZS6802:2008 Acoustics – Environmental Noise.*

**Decision**

74. That this drafting error citing the incorrect reference is amended throughout the plan.

## Standards 3.2.4, 4.2.3 and 8.2.3

### Noise sensitive activity

75. One submitter generally supported the standard as notified, and another requested the standard wording be amended to read 'Noise sensitive activity and frost fans'.[47]

**Section 42A Report**

76. Although the report writer agreed with both submitters despite the difference in relief requested, he appeared to favour the inclusion of reference to frost fans in the rule.

**Consideration**

77. The Panel agreed with the inclusion of the reference to frost fans on the basis that there are separate standards for noise sensitive activities in the context of port noise. However, the Panel did not agree with the proposed phrasing. In order to provide clarity, the Panel included the additional wording 'in the context' of frost fans.

**Decision**

78. Standards 3.2.4, 4.2.3 and 8.2.3 are amended to read:

    *Noise sensitive activity <u>in the context of frost fans</u>.*

79. For the same reason (i.e. to distinguish the standards) the Panel has also decided to amend Standard 13.2.4 as follows:

    *Noise sensitive activity <u>in the context of the port zone</u>*

[47] Pernod Ricard (1039.115) and Nelson Marlborough District Health Board (280.127)

## Point of measurement issue

## Standards 3.2.3.1, 4.2.2.1, 5.2.2.1, 6.2.2.1, 7.2.2.1, 8.2.2.1, 9.2.2.1, 10.2.2.1, 11.2.2.1, 14.2.3.1, 15.2.3.1, 17.2.2.1

(The following discussion relates to the above standards for different zones relating to particular descriptors such as 'zone boundaries', 'notional boundaries' and 'within boundaries'. Separate decisions are made on each.)

**An activity must not cause noise that exceeds the following limits at the Zone boundary or within the Zone: …**

80. Several submissions variously sought retention of the listed standard(s), as notified; multiple submitters suggested alternative wording for the point at which noise limits are measured; others requested the amendment of noise limits in the Port Landing and Marina zones; one sought 'New Zealand Fire Service' be amended to 'emergency services' where relevant.

81. The zone standards as notified commonly used the expression 'at the zone boundary or within the zone'. Submitters highlighted practical issues with administering such a standard, especially as it implies that the noise standard is to be complied with at source. The evidence heard by the Panel confirmed that such a requirement is inappropriate.

82. The response to Minute 54 contained recommendations with respect to the point at which noise limits (set as plan standards) apply. In practice, this also determines the point at which noise levels would be measured and, depending on the noise reading and state of compliance/non-compliance, enforcement action taken. This matter is therefore of some significance and the Panel considered each recommendation carefully on its merits for that reason.

83. In summary, the recommendations normally included the use of the following in recommended standards:

    (a) the notional boundary of any other property within the same zone;

    (b) at any point within the boundary of any other property.

## The notional boundary of any other property within the same zone

### Section 42A Report

84. The Section 42A report writers have recommended that the above descriptor is utilised in the Rural Zone and the Coastal Environment Zone instead of noise limits applying at the zone boundary or within the zone. They consider that there is sufficient scope to consider this change provided by submission points 91.194 and/or 280.121.

**Consideration**

85. There is merit to considering the notional boundary of any other dwelling within the same zone because it is particularly noise level amenity within a dwelling that is important.

86. However, the Panel do believe that it is appropriate to use notional boundary *of the property* as the concept of a notional boundary relates to a dwelling. Properties have boundaries defined by survey.

**Decision**

87. Standards 3.2.3.1 (Rural Environment), 4.2.2.1 (Coastal Environment) and 14.2.3.1 (Port Landing Area) are amended as follows:

*3.2.3.1 An activity must not cause noise that exceeds the following limits at ~~the Zone boundary or~~ any point within the notional boundary of any dwelling in the Rural Z~~z~~one (other than on a property on which the activity occurs): …*

*4.2.2.1 An activity must not cause noise that exceeds the following limits at ~~the Zone boundary or~~ any point within the notional boundary of any dwelling in the Coastal Environment Z~~z~~one (other than on a property on which the activity occurs): …*

*14.2.3.1 An activity must be conducted to ensure that noise when measured at any point ~~at the boundary of, or~~ within the notional boundary of a dwelling of any site zoned Coastal Living or Coastal Environment ~~the Port Landing Area Zone~~ does not exceed the following noise limits:*

| | | |
|---|---|---|
| *7.00 am to 10.00 pm* | *~~50~~ 55 dB~~A~~* $L_{Aeq}$ | |
| *10.00 pm to 7.00 am* | *~~40~~ 45 dB~~A~~* $L_{Aeq}$ | *~~70~~ 75 dB* $L_{AFmax}$ |

**At any point within the boundary of any other property**

**Section 42A Report**

88. The Section 42A report writers have recommended that the above standard is utilised in the remaining zones.

**Consideration**

In the case of residential zones (Urban Residential 1, 2 and 3, Coastal Living and Rural Living) and industrial zones (Industrial 1 and 2), the Panel believes that the noise limit should apply at the boundary of any other property within the zone. This is because in residential zones the density of housing is such that noise level amenity requires closer control at all points within a property within that zone.

89. For the remaining zones, the Panel has adopted the recommendation that the noise limit applies at the boundary of any other property regardless of its zoning.

90. However, the same case does not apply in the business zones (Business 1, 2 and 3) or the industrial 1 and 2 zones. This is because the amenity level sought to be protected in the business and industrial zones is not as sensitive as for the residential zones. The Plan rules and standards endeavour to ensure that within the business and industrial zones a lower level of amenity in respect of other properties in those zones is acceptable. However, on a zone boundary with a residential zone there are different standards requiring protection of residential amenity. That is provided for by standards 9.2.2.2, 10.2.2.2 and 12.2.2.4.

**Decision**

91. Standards 5.2.2.1 (Urban Residential 1 and 2), 6.2.2.1 (Urban Residential 3), 7.2.2.1 ( Coastal Living Zone) and 8.2.2.1 (Rural Living) are amended to read:

*The activity must not cause noise that exceeds the following limits at any point within the boundary of any other property within the zone: …*

92. Standards 9.2.2.1 (Business 1), 10.2.2.1 (Business 2) and 11.2.2.1 (Business 3)are amended to read:

*An activity must not cause noise that exceeds the following limits at any point within the boundary of any other property zoned Business 1, Business 2 or Business 3 ~~at the zone boundary or within the zone~~:*

93. Standards 12.2.2.1 (Industrial 1) is amended to read:

*An activity must not cause noise that exceeds the following limits at any point within the boundary of any other property zoned Industrial 1 ~~the zone boundary or within the zone~~:*

*At any time* *70 dB~~A~~ LAeq* *80dB LAFmax*

*Exception: This noise limit does not apply to the operation of helicopters using the established helicopter pad on Pt Sec 24 Blk III Taylor Pass SD.*

94. Standards 12.2.2.3 (Industrial 2) is amended to read:

*An activity must not cause noise that exceeds the following limits at any point within the boundary of any other property zoned Industrial 2 ~~the zone boundary or within the zone~~:*

*At any time* *75 dB~~A~~ LAeq* *85dB LAFmax*

95. Standard 12.2.2.2 is amended to read:

*12.2.2.2 An activity must not cause noise that exceeds the following limits at any point within the boundary ~~with, or within~~ of any adjacent Business 1 or 2 Zone:…*

96. Standard 17.2.2.1 is amended to read:

*17.2.2.1 An activity must not cause noise that exceeds the following limits at ~~the zone boundary or within the zone~~ <u>any point within the boundary of any other property</u>*

## Marina Zone

## Standard 15.2.3.1

**An activity must be conducted to ensure that noise when measured at the boundary of, or within, the Zone does not exceed the following limits:**

| | | |
|---|---|---|
| **7.00 am to 10.00 pm** | **60 dBA LAeq** | |
| **10.00 pm to 7.00 am** | **40 dBA LAeq** | **70dB LAFmax** |

97. AQNZ sought an amendment to the proposed standard so noise measurements could be taken at the notional boundary of a property rather than the noise source as its submission asserted the standard allowed to occur.[48] The relief requested was:

> *An activity must be conducted to ensure that noise when measured at the boundary of the Marina Zone does not exceed the following limits*

98. PMNZ requested that there be no standard required in the Marina Zone on the basis that there were no noise sensitive activities adjacent.

**Section 42A Report**

99. The Section 42A Report agreed the measurement position requires to be clarified.

**Consideration**

100. The Panel accepts that the notified version of the Plan in many of these standards is worded in a manner which creates uncertainty as to the place of measurement of noise levels as it appears to leave open differing options e.g. in the case of this standard either at the boundary of the zone or within the zone. As this standards require compliance and have regulatory consequences for non-compliance there cannot be an uncertain location for measurement of the sound created by an activity. Sometimes it may be appropriate , for example at a Marina zone boundary to specify the zone boundary itself as other premises within the zone may be considered not to be so sensitive.

101. The PMNZ request overlooks the reality that residential zones exist next to the marina zones and also would leave noise amenity uncontrolled within the marina zone. The Panel does not agree with either of those outcomes. The Panel notes that there are already noise sensitive activities occurring in marina zones such as cafes and retail activities.

[48] 401.215

102. The Panel's view is that the same consistent approach to standards and points of measurement should apply to the business, industrial and marina zones, i.e. a lesser level of protection is acceptable within the zone but at the boundary of residential zones the residential amenity must be protected.

**Decision**

103. Amend Standard 15.2.3.1 (Marina) as follows:

*15.2.3.1 An activity must not cause noise that exceeds the following limits at any point within the boundary of any other property zoned Marina or be conducted to ensure that noise when measured at the notional boundary of any noise sensitive activity within the zone does not exceed the following limits:*

| | |
|---|---|
| *7.00 am to 10.00 pm* | *60dB~~A~~ $L_{Aeq}$* |
| *10.00 pm to 7.00 am* | *~~40~~ 45dB~~A~~ $L_{Aeq}$ ~~70~~ 75 $L_{AFmax}$* |

## Recommendation of Consolidation of Industrial 1 & 2 Zone Standards

## Standards 12.2.2.1 and 12.2.2.3

**Standards for the Industrial 1 Zone only:**

**12.2.2.1. An activity must not cause noise that exceeds the following limits at the zone boundary or within the zone:**

| | | |
|---|---|---|
| **At any time** | **70 dBA LAeq** | **80dB LAFmax** |

**Exception: This noise limit does not apply to the operation of helicopters using the established helicopter pad on Pt Sec 24 Blk III Taylor Pass SD.**

**Standards for the Industrial 2 Zone only:**

**12.2.2.3. An activity must not cause noise that exceeds the following limits at the zone boundary or within the zone:**

| | | |
|---|---|---|
| **At any time** | **75 dBA LAeq** | **85dB LAFmax** |

104. NMDHB opposed the reference to the phrase 'within the zone' and sought 'at the boundary with' to be replaced by 'at any point within the…' as well as seeking various other changes. Timberlink requested the removal of compliance for noise measurement onsite.[49]

105. MDC sought the integration or consolidation of the two industrial zone standards and the amendment of 12.2.2.1 to read:

> "*An activity must not cause noise that exceeds the following limits at or within the boundary of any other property zoned Industrial 1 or Industrial 2 ~~at the Zone boundary or within the Zone~~*:"[50]

[49] 280.191

[50] 91.215 and .217

**Section 42A Report**

106. The Section 42A Report recommended that in 12.2.2.2 the words 'at the boundary with' be replaced by 'at any point within…' and that the relief requested by Marlborough District Council be accepted.

**Consideration**

107. Panel decided not to consolidate the standards in the industrial zones. The standards are retained as notified except for clarification as to the point of measurement as canvassed earlier in this decision and the dBA references being corrected as also earlier discussed.

**Decision**

108. The standards in the industrial zone are not consolidated.

### Standard 3.2.3.3

**The following activities are excluded from having to comply with the noise limits:**

**(a) sirens and call out sirens associated with the activities of the New Zealand Fire Service;**

**(b) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Rural Environment Zone;**

**(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.**

### Standard 4.2.2.3

**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.**

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'.[51]Marlborough 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.

110. A similar set of submissions related to Standard 4.2.2.3 which is the equivalent provision in the Coastal Environment zone.

[51] Marlborough District Council (91.195), Nelson Marlborough District Health Board (280.123)

**Section 42A Report**

111. 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.

**Consideration**

112. 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.

113. 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.

114. 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.

**Decision**

115. Standard 3.2.3.3 (Rural Zone) is amended as follows:

*3.2.3.3 The following activities are excluded from having to comply with the noise limits:*

*(a) sirens and call out sirens associated with the activities of ~~the New Zealand Fire Service~~ emergency services;*

*(b) mobile machinery used for a limited duration as part of agricultural or horticultural activities occurring in the Rural Environment Zone;*

*~~(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.~~*

116. Standard 4.2.2.3 (Coastal Zone) is amended as follows:

*4.2.2.3 The following activities are excluded from having to comply with the noise limits:*

*(a) sirens and call out sirens associated with the activities of emergency services;*

*(~~a~~b) 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.~~*

## Rural Zone

## Standard 3.2.3.4

**Noise emissions from any generator or wind powered equipment used solely for electricity generation must be operated so that noise emissions measured at the notional boundary of any dwelling in any zone must not exceed 55 dBA LAeq(15 min) at all times.**

117. Nelson Marlborough District Health Board sought Standard 3.2.3.4 be divided in two to address electrical generators and wind turbines separately.[52]

**Section 42A Report**

118. The report writer in his text recommended the deletion of this provision and its replacement with separate provisions for wind turbines that referred to NZS 6808:2010 Acoustics – Wind Farm Noise and a new standard for generators to be measured under NZS 6802:2008 Acoustics – Environmental Noise.

**Consideration**

119. The Panel accepted the logic of the submission by NMDHB and the wording recommended in the text of the Section 42A Report as to two separate replacement standards for wind turbines and generators.

120. The same provisions and considerations apply to the equivalent Coastal Environment Zone provision and the same consistent decisions are explained.

**Decision**

121. Delete the notified Standard 3.2.3.4 and replace with the following two standards:

*3.2.3.4 Noise emissions from any generator used for electricity generation must be operated so that noise emissions at any point within the notional boundary of any dwelling in any zone must not at any time exceed 55 dB LAeq(15 min) when measured and assessed in accordance with Rule 3.2.3.5.*

*3.2.3.5. Wind turbine sound must be measured and assessed in accordance with NZS 6808:2010 Acoustics - Wind Farm Noise and the noise at any point within the notional boundary of any residential Dwelling must not exceed 40 dB LA90(10min) or the background sound level LA90(10 min) plus 5dB, whichever is higher.*

122. Delete the notified Standard 4.2.2.4 and replace with the following two standards:

*4.2.2.4 Noise emissions from any generator used for electricity generation must be operated so that noise emissions at any point within the notional boundary of any dwelling in any zone*

[52] (280.124)

*must not at any time exceed 55 dB LAeq(15 min) when measured and assessed in accordance with Rule 4.2.2.5.*

*4.2.2.5 Wind turbine sound must be measured and assessed in accordance with NZS 6808:2010 Acoustics - Wind Farm Noise and the noise at any point within the notional boundary of any residential Dwelling must not exceed 40 dB LA90(10min) or the background sound level LA90(10 min) plus 5dB, whichever is higher.*

123. Insert as a consequential change a new definition for wind turbine in Chapter 25 as follows:

*Wind turbine device used to extract kinetic energy from the wind for electrical generation and includes any wind farm*

**Coastal Environment Zone & Urban Residential Zones 1 & 2**

## [New] 4.2.2.X and 5.2.2.X

124. Port Marlborough sought the inclusion of two new noise standards to control activities within the outer control noise boundary.[53]

**Section 42A Report**

125. The report writer proposed:

*Port Noise*

*(a) Any new noise-sensitive activity, or alteration or addition to an existing building used for a noise sensitive activity within the Outer Noise Control Boundary at the port in the Coastal Environment Zone shall be adequately insulated from port noise.*

*(b) Adequate sound insulation must be achieved by constructing the building to achieve a spatial average indoor design sound level of 40dBA Ldn in all new habitable spaces and buildings used for noise sensitive activities. The indoor design level must be achieved with all windows and doors open unless adequate alternative ventilation means is provided, used and maintained in operating order. The sound insulation design must be certified by an acoustic engineer. The completed construction must be certified by the builder as built in accordance with the design.*

126. The report writer recommended the same standard be inserted in the Urban Residential 2 Zone, with subclause (a) referencing the Urban Residential 2 Zone in place of the Coastal Environment Zone. The same issue was also raised by PMNZ in relation to Standard 13.2.4.2 which is the existing standard addressing these insulation requirements on new buildings within the Outer Noise Control boundary.

[53] (1284.10)

127. The original Section 42A Report referred to the submission by PMNZ as follows:

> *PMNZ considers that it is appropriate to control activities that are sensitive to noise in order to manage the potential for reverse sensitivity effects.*
>
> *Some amendments to this rule are suggested to provide additional certainty as to the standard of noise insulation required.*
>
> *It is noted that the standard should be referred to in this rule (13.2.4 -Noise sensitive activity). This standard specifies an indoor design requirement of 45dB Ldn. However, PMNZ considers that a more stringent indoor design requirement of 40dB Ldn is preferable to ensure improved amenity for residents and to manage potential reverse sensitivity effects.*
>
> *40 dB Ldn is the internal standard required for noise sensitive activities within the airport noise boundary. Further, additional information can be provided to support this standard, such as a standard design spectrum and standard minimum construction options that, if adhered to, may alleviate the need for certification from an acoustic engineer.*

**Consideration**

128. The Panel decided earlier that the title should be amended to clarify this standard was "in the context of port noise".

129. However, the Panel was uncertain which 'standard' the Section 42A Report was referring to as the notified standard 13.2.4 does not appear to specify a limit. It states:

> *13.2.4. Noise sensitive activity.*
>
> *13.2.4.1. A new noise-sensitive activity, or alteration or addition to an existing building used for a noise sensitive activity between the Inner and Outer Noise Control Boundaries at the port in Picton and Shakespeare Bay and at Havelock are adequately insulated from port noise.*
>
> *13.2.4.2. Such insulation must be certified by an acoustic engineer as adequate to achieve the design standard.*

130. The report further did not assist when in the recommendations at page 72 as to standard 13.2.4 the report stated:

> *It is agreed the Noise Sensitive Activity provisions as notified are retained unless there is credible information to warrant a change.*

131. But then at page 75 it stated:

*The recommended amendment to Rule 13.2.4.2 is agreed with.*

And recommended those changes at page 77.

132. The Panel did not agree with the inclusion of the statement 'The indoor design level must be achieved with all windows and doors open unless adequate alternative ventilation means is provided, used and maintained in operating order.' The building code requires double glazing be fitted to all new builds and that any house designed in such a way that windows and doors to the exterior may be closed need an alternative means of ventilation. In this context, where a person building a new house is aware of port noise as an issue (as signalled by the noise exposure overlays) the noise standard requiring that measurement occur with doors and windows closed is not unreasonable, given those building code requirements.

133. The Panel was also uncertain if these new standards were recommended to be included in the Plan why Standard 13.2.4 is needed at all. This is because management applies to noise sensitive activities that may be established on adjoining zones to the Port Zone, which include Coastal Environment Zone, Urban Residential 1 and 2 Zone and Business 1 Zone. These are the zones in which there is land within the Outer Noise Control Boundary. The provision in the Port Zone seems to be made redundant by the incorporation of these new provisions. Within the Port Zone, the port company is the landowner controlling the types of activities that can establish through its own leasing mechanisms.

**Decision**

134. A new standard is inserted as 4.2.2.X as follows:

*Noise sensitive activity in the context of port activities*

*(a) Any new noise-sensitive activity, or alteration or addition to an existing building used for a noise sensitive activity within the Outer Noise Control Boundary at the port in the Coastal Environment Zone shall be adequately insulated from port noise.*

*(b) Adequate sound insulation must be achieved by constructing the building to achieve a spatial average indoor design sound level of 40dBA Ldn in all new habitable spaces and buildings used for noise sensitive activities. The sound insulation design must be certified by an acoustic engineer. The completed construction must be certified by the builder as built in accordance with the design.*

135. For consistency, a new standard is also inserted as 5.2.2.X as follows:

*Noise sensitive activity in the context of port activities*

*(a) Any new noise-sensitive activity, or alteration or addition to an existing building used for a noise sensitive activity within the Outer Noise Control Boundary at the port in the Urban Residential Zone shall be adequately insulated from port noise.*

*(b) Adequate sound insulation must be achieved by constructing the building to achieve a spatial average indoor design sound level of 40dBA Ldn in all new habitable spaces and buildings used for noise sensitive activities. The sound insulation design must be certified by an acoustic engineer. The completed construction must be certified by the builder as built in accordance with the design.*

136. A new standard is inserted as 9.2.2.X as follows:

*Noise sensitive activity in the context of port activities*

*(a) Any new noise-sensitive activity, or alteration or addition to an existing building used for a noise sensitive activity within the Outer Noise Control Boundary at the port in the Business 1 Zone shall be adequately insulated from port noise.*

*(b) Adequate sound insulation must be achieved by constructing the building to achieve a spatial average indoor design sound level of 40dBA Ldn in all new habitable spaces and buildings used for noise sensitive activities. The sound insulation design must be certified by an acoustic engineer. The completed construction must be certified by the builder as built in accordance with the design.*

137. Standard 13.2.4 is removed from the Plan

**Rural Environment Zone and Coastal Environment Zone**

## Standard 3.2.4.2 and 4.2.3.2

**3.2.4.2. For the purposes of Standard 3.2.4.1, "external building envelope" means an envelope defined by the outermost physical parts of the building, normally the cladding and roof.**

**4.2.3.2. For the purposes of Standard 4.2.3.1, "external building envelope" means an envelope defined by the outermost physical parts of the building, normally the cladding and roof.**

**Section 42A Report**

138. The report referred to submission 592.12 by CJ Smith as providing scope for an amendment to these standards.

139. The report writer recommended:

*For the purposes of (Standard 3.2.4.2/4.2.3.1), "external building envelope" means an envelope defined by the outermost physical parts of the building, normally the cladding and roof and has a bedroom window facing towards one or more frost fans.*

**Consideration**

140. The Panel noted that the submission by CJ Smith was very general and did not seek the specific relief that was recommended by the report writer.

141. In any event, the Panel took note of the fact that the notified text has previously gone through a First Schedule process and to the Environment Court. Practical experience has not shown the existing standard adequate. The recommended wording involves judgement as to whether a bedroom is 'facing towards one or more frost fans'. It is inappropriate to have such a discretion as part of a permitted activity standard

**Decision**

142. Standards 3.2.4.2 and 4.2.3.2 are retained as notified.

**Business 1 Zone and Business 2 Zone**

## Standard 9.2.2.2

**An activity must not cause noise that exceeds the following limits at the boundary of, or within, any land zoned Urban Residential 1, Urban Residential 2 (including Greenfield) or Open Space 1: …**

## Standard 10.2.2.2

**An activity must not cause noise that exceeds the following limits at the boundary of, or within, any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3 or within the notional boundary of a dwelling within any other zone: …**

143. NMDHB supported the provisions in part but sought "at the Zone boundary or within the Zone" be amended to read "at any point outside the Zone or on another site within the Zone".[54]

**Section 42A Report**

144. The report writer recommended

> *An activity must not cause noise that exceeds the following limits at any point within the boundary of, or at any point within, any land zoned Urban Residential 1, Urban Residential 2 (including Greenfield) or Open Space 1*

**Consideration**

145. The Panel considered the wording 'at the boundary of, or within' from the notified text uncertain and imprecise. It preferred to identify with precision the point of measurement in a clear manner by reference to "any point within" the adjacent sensitive zones or at any point within the notional boundary of a dwelling within any other zones.

**Decision**

146. Standard 9.2.2.2 is amended as follows:

[54] 280.102 and .105

*9.2.2.2 An activity must not cause noise that exceeds the following limits at any point ~~the boundary of, or~~ within~~,~~ any land zoned Urban Residential 1, Urban Residential 2 (including Greenfield) or Open Space 1 …*

147. Standard 10.2.2.2 is amended as follows:

*10.2.2.2 An activity must not cause noise that exceeds the following limits ~~at the boundary of, or~~ at any point within, any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3 or at any point within the notional boundary of a dwelling within any other zone:*

*7.00 am to 10.00 pm 50dB~~A~~* $L_{Aeq}$

*10.00 pm to 7.00 am 40dB~~A~~* $L_{Aeq}$ *70dB* $L_{AFmax}$

## Industrial 1 & 2 Zones

### Standard 12.2.2.4

**An activity must not cause noise that exceeds the following limits at or within any adjacent land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3, or within the notional boundary of a dwelling in any adjacent zone (except Industrial 1 or 2 Zones):**

| | |
|---|---|
| **7.00 am to 10.00 pm** | **50 dBA LAeq** |
| **10.00 pm to 7.00 am** | **40 dBA LAeq 70dB LAFmax** |

**Exception: Where Lots 16 to 20 DP 348832 and Lot 2 DP 352510 adjoin Urban Residential 2 Zone, the noise limits for Industrial 1 in 12.2.2.1 and 12.2.2.2 apply.**

148. One submitter sought the removal of the requirement for compliance within a site. Another submitter sought the removal of the phrase 'Standards for the Industrial 2 Zone only' from above the provision.[55] The Marlborough District Council and the NMDHB sought changes to ensure that the point of measurement was not at source. Other submitters sought an increase in permissible noise levels essentially by 5dBA.[56]

**Section 42A Report**

149. The s.42A report agreed with the requests and reasons for identifying a point of measurement which was not at source, and also agreed with the increased noise levels sought.

150. Another recommendation was to change the word at the foot of this standard from 'Exception' to 'Note'.

[55] Timberlink (460.6) and MDC (91.215)

[56] MDC (91.216), NMDHB (280.110). Others are Timberlink (460.7), Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited (1004.67) & Fonterra Co-operative Group Limited (1251.140).

**Consideration**

151. The Panel was also in agreement as to the need to specify a point for measurement to avoid ambiguity and provide certainty at a location related to the impact of the noise and not at source.

152. The Panel also accepted the recommendation of a 5 dBA increase in noise level as it accepted that from the acoustic experts Mr Hunt and Mr Hegley there was expert evidence that should not affect residential amenity.

153. The Panel did not agree though, with the suggested amendment of the word ‘Exception’ to read ‘Note’. That is a specific exception of importance – it should not be downgraded and left ambiguous in its intent by being described as a ‘Note’. It is specifically in the Plan to provide for a situation where it is known the requirements of Rule 12.2.2.4 could not be strictly met, and where there is an added separation distance created by a setback between dwelling and the residential zone boundary as shown in Appendix 19. That means residential amenity can be provided by applying the rules for Industrial 1 Zone.

**Decision**

154. Standard 12.2.2.4 is amended as follows:

*Standards for the Industrial 2 Zone only*

*12.2.2.3 An activity must not cause noise that exceeds the following limits at ~~or~~ any point within any adjacent land zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3, or at any point within the notional boundary of a dwelling on any property zoned Rural Living, Coastal Living or Rural Environment in any adjacent zone ~~(except Industrial 1 or 2 Zones)~~:*

*7.00 am to 10.00 pm ~~50~~ 55dBA L~~A~~$_{eq}$*

*10.00 pm to 7.00 am ~~40~~ 45dBA L~~A~~$_{eq}$ ~~70~~ 75dB $L_{AFmax}$*

*Exception: Where Lots 16 to 20 DP 348832 and Lot 2 DP 352510 adjoin Urban Residential 2 Zone, the noise limits for Industrial 1 in 12.2.2.1 and 12.2.2.2 apply.*

## Port Zone

### Standards 13.2.3.1 and 13.2.3.2

**For port operations in Picton and Shakespeare Bay, an activity must be conducted to ensure that noise when measured at the boundary of, or within, the Port Zone does not exceed the following noise limits:**

| Location | Day-night (Long term) | Night-time (Short term) |
|---|---|---|
| **At any point on land at, or beyond, the Inner Noise Control Boundary.** | **65 $L_{dn(5\ day)}$**<br>**68 $L_{dn(1\ day)}$** | **60 dB $L_{Aeq(9\ hours)}$**<br>**65 $L_{Aeq(15\ min)}$**<br>**85 dB $L_{AFMax}$** |

**13.2.3.2. For port operations in Havelock, an activity must be conducted to ensure that noise when measured at the boundary of, or within, the Port Zone does not exceed the following noise limits:**

| Location | Day-night (Long term) | Night-time (Short term) |
|---|---|---|
| **At any point on land at, or beyond, the Outer Noise Control Boundary.** | **55 $L_{dn(5\ day)}$**<br>**58 $L_{dn(1\ day)}$** | **50 dB $L_{Aeq(9\ hours)}$**<br>**55 $L_{Aeq(15\ min)}$**<br>**75 dB $L_{AFMax}$** |

155. One submitter requested these provisions are amended to clarify that the noise measurement is taken from the notional boundary of the property and not the noise source.[57] Another submitter sought the rewording of Standard 13.2.3.2 to read:

> **~~For port operations i~~In Havelock, an activity must be conducted to ensure that noise ~~when measured at the boundary of, or within, the Port Zone~~ does not exceed the following noise limits:**
>
> **Location**
>
> *At any point on land ~~at, or~~ beyond, the Outer Noise Control Boundary. …*[58]

#### Section 42A Report

156. The Section 42A Report, consistent with other recommendations for other standards, recommended for certainty and to remove ambiguity that a point of measurement was fixed which was not at source, and in the case of Havelock was fixed at the Outer Noise Control Boundary. The wording recommended under the heading 'Location' was:

> *"At any point on land at any point beyond, the Outer Noise Control Boundary".*

#### Consideration

157. The Panel agreed with the recommendation in the response to Minute 59 as to place of measurement with the exception of the inclusion of the additional unnecessary phrase 'at any

[57] AQNZ (401.189)
[58] PMNZ (1284.2)

point' within the location description as that phrase already exists in the location description recommended.

158. In the recommendations made in the response to Minute 59 the point of measurement in Rule 13.2.3.2 read as to location any point 'beyond the Inner Noise Control boundary'. The Panel has decided that at Havelock there is only an Outer Noise Control Boundary in the Plan – see later decision on the overlay maps. The Panel has retained the notified plan to read 'beyond the Outer Noise Control Boundary'.

**Decision**

159. Standard 13.2.3.1 is amended to read:

*13.2.3.1 ~~For port operations~~ ~~i~~In Picton and Shakespeare Bay, an activity must be conducted to ensure that noise ~~when measured at the boundary of, or within,~~ from the Port Zone does not exceed the following noise limits:*

| Location | Day-night (Long term) | Night-time (Short term) |
|---|---|---|
| **At any point on land ~~at, or~~ beyond~~,~~ the Inner Noise Control Boundary.** | **65 dBA $L_{dn(5\ day)}$**<br>**68 dBA $L_{dn(1\ day)}$** | **60 dB $L_{Aeq(9\ hours)}$**<br>**65 dB $L_{Aeq(15\ min)}$**<br>**85 dB $L_{AFMax}$** |

160. Standard 13.2.3.2 is amended to read:

13.2.3.2. ~~For port operations~~ ~~i~~In Havelock, an activity must be conducted to ensure that noise ~~when measured at the boundary of, or within,~~ from the Port Zone does not exceed the following noise limits:

| Location | Day-night (Long term) | Night-time (Short term) |
|---|---|---|
| **At any point on land ~~at, or~~ beyond, the Outer Noise Control Boundary.** | **55 dBA $L_{dn(5\ day)}$**<br>**58 dBA $L_{dn(1\ day)}$** | **50 dB $L_{Aeq(9\ hours)}$**<br>**55 dB $L_{Aeq(15\ min)}$**<br>**75 dB $L_{AFMax}$** |

## Marina Zone

### Standard 15.2.3.2

**An activity undertaken within the Marina Zone must be conducted to ensure that noise when measured within an Urban Residential 2 or Open Space 1 Zone does not exceed the following limits:**

| | | |
|---|---|---|
| **7.00 am to 10.00 pm** | **50 dBA LAeq** | |
| **10.00 pm to 7.00 am** | **40 BA LAeq** | **70dB LAFmax** |

161. AQNZ requested a technical correction seeking the noise measurements were 'at or' within the zone boundary not at noise source.[59]This was a similar issue to that in other provisions.

162. PMNZ and other submitters sought that the noise levels in various of these rules be increased.[60]

**Section 42A Report**

163. The report agreed clarification was needed and recommended use of the phrase "at or within".

164. The text of the original report did not recommend changes to the noise limits in standard 15.2.3.2 stating:

> *There is no supporting information to increase the noise levels so it is not agreed there should be any increase to the noise levels. Any increase to the noise would also be incompatible to the aims of the Plan.*

165. However, in the reply to evidence the report writer stated that he considered sufficient evidence had been produced to support the noise level changes requested and he recommended those changes.

**Consideration**

166. the Panel agreed with the recommendations by the report writer, consistently with earlier recommendations, to provide a more precise point of measurement which was not at source, but the Panel also included the words 'the notional boundary of any dwelling' in relation to other adjacent zones.

167. The Panel was not persuaded that the evidence produced at the hearing was sufficient to increase the noise levels as recommended. The Panel agreed with the original report views that the Plan aims to set noise levels which protect residential amenity. Those residential amenity standards need to be consistent throughout the plan. The noise levels are to remain as notified.

[59] 401.215
[60] Section 42A Report (Noise), page 84

**Decision**

168. Standard 15.2.3.2 is amended to read:

*15.2.3.2 An activity undertaken within the Marina Zone must be conducted to ensure that noise when measured at any point within an Urban Residential 2 or Business 1 Zone or at any point within the notional boundary of any dwelling of any site zoned Open Space 1, Coastal Living or Coastal Environment does not exceed the following limits:*

*7.00 am to 10.00 pm* *50 dB~~A~~ $L_{Aeq}$*

*10.00 pm to 7.00 am* *40 dB~~A~~ $L_{Aeq}$ 70 dB $L_{AFmax}$*

## Open Space 2 Zone

## Standard 18.2.2.1

**An activity must not cause noise that exceeds the following limits at the zone boundary or within the zone:**

**7.00 am to 10.00 pm** **50 dBA $L_{Aeq}$**

**10.00 pm to 7.00 am** **40 dBA $L_{Aeq}$ 70dB $L_{AFmax}$**

**This standard does not apply to sirens and call out sirens associated with the activities of the New Zealand Fire Service.**

169. MDC requested modification of the provision to clarify the intention of the standard, and the inclusion of a phrase that had been omitted from the notified plan. They sought the provision read:

> *The ~~An~~ activity must not cause noise that exceeds the following limits at or within the boundary of any other property ~~at the zone boundary or within the zone~~.*
>
> *This standard does not apply to sirens and call out sirens associated with the activities of the New Zealand Fire Service, or noise associated with recreational events or special events provided the noise does not exceed a level of 60 dBA $L_{eq}$ between the hours of 11.00 pm and 9.00 am at the boundary of any property zoned Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3.*[61]

**Section 42A Report**

170. The report writer recommendations also included amendment for consistency with similar noise standards at 3.2.2.3 and 5.2.2.1.

171. The report's recommendation was for an amended wording as follows:

*18.2.2.1 An The activity must not cause noise that exceeds the following limits ~~at the zone boundary or within the zone~~ any point within the boundary of any other property:*

*7.00 am to 10.00 pm 50dB~~A~~ LAeq*

[61] 91.127 and 91.235

*10.00 pm to 7.00 am 40dB~~A~~ LAeq 70dB LAFmax*

*This standard does not apply to sirens and call out sirens associated with the activities of emergency services ~~the New Zealand Fire Service~~, or noise generated by temporary activities in the Open Space 2 Zone which may exceed the noise rules between the hours of 7am and 11pm for 12 days every calendar year but not being more than 3 consecutive days provided that noise does not exceed a level of 60 dB LAeq at the boundary of any Urban Residential Zone or dwelling.*

**Consideration**

172. The Panel agreed with the reasons for the amendments sought but instead of the Section 42A Report recommended text the Panel amended the text after the phrase 'this standard does not apply to'. The Panel decided that the exceptions would be clearer if set out as a list.

**Decision**

173. Standard 18.2.2.1 is amended to read:

*18.2.2.1 An ~~The~~ activity must not cause noise that exceeds the following limits ~~at the zone boundary or within the zone~~ any point within the boundary of any other property:*

*7.00 am to 10.00 pm 50dB~~A~~ LAeq*

*10.00 pm to 7.00 am 40dB~~A~~ LAeq 70dB LAFmax*

*This standard does not apply to:*

*(a) sirens and call out sirens associated with the activities of emergency services ~~the New Zealand Fire Service~~, or*

*(b) noise generated by temporary activities in the Open Space 2 Zone ~~which may exceed the noise rules between the hours of 7am and 11pm for 12 days every calendar year but not being more than 3 consecutive days provided that noise does not exceed a level of 60 dB LAeq at the boundary of any Urban Residential Zone or dwelling~~.*

*In the case of (b), temporary activities may exceed the standards in X between the hours of 7 and 10 for12 days every calendar year provided:*

*(i) the temporary event is not more than 3 consecutive days;*

*(ii) the noise does not exceed a level of 60dB LAeq at the boundary of any urban residential zone or the notional boundary of any dwelling in any other zone*

## Open Space 3 Zone

## [New] Standard 19.2.2.4

174. Federated Farmers sought a new standard in the Open Space Zone to reflect maximum noise limits that apply in the Rural Environment and Coastal Environment zones. They also requested further exemptions to the noise limits.[62]

**Section 42A Report**

175. The report agreed but recommended a wording as follows:

*19.2.2.3 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 Rural Environment Zone;*

**Consideration and decision**

176. The Panel agreed with the recommendation of the report writer, however noted a drafting error as to the zoning referred to. The provision was accepted with 'Rural Environment' being amended to 'Open Space 3' as follows:

*19.2.2.4 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 Open Space 3 Zone;*

## <u>Lake Grassmere Salt Works Zone</u>

## Standard 22.2.2.2

**Noise from salt harvest operations, when measured at or beyond the Lake Grassmere Salt Works Noise Control Boundary, which is a distance of 500 metres from the 'outside' edges of the salt crystallising ponds, must not exceed the following standards:**

| | |
|---|---|
| **7.00 am to 10.00 pm Monday to Sunday** | **55 dBA $L_{Aeq}$** |
| **At all other times** | **45 dBA $L_{Aeq}$ 75dB $L_{AFmax}$** |

177. NMDHB requested the phrase 'when measured at or' is replaced with 'when assessed'. They also sought consistency in wording for the point at which noise limits can be measured.

**Section 42A Report**

178. The Section 42A Report proposed replacing the phrase 'at the boundary' with the phrase 'at any point within the boundary' and agreed with other technical aspects requested by the submitter.

[62] (425.720)

**Consideration**

179. The panel amended the wording for noise limits for clarity to be measured outside of the Salt Works Noise Control boundary but did not agree with the change from 'measured' to 'assessed'.

**Decision**

180. Standard 22.2.2.2 is amended to read:

*Noise from salt harvest operations, when measured at any point ~~or~~ beyond the Lake Grassmere Salt Works Noise Control Boundary, which is a distance of 500 metres from the 'outside' edges of the salt crystallising ponds, must not exceed the following standards:*

*7.00 am to 10.00 pm Monday to Sunday* *55 dB~~A~~* $L_{Aeq}$

*At all other times* *45 dB~~A~~* $L_{Aeq}$ *75dB* $L_{AFmax}$

## Documents incorporated by reference.

181. On several occasions, submitters and/or Section 42A report writers recommend the use of alternative standards. Consideration of these issues is set out in the Introduction section of the decision and where relevant in other parts of the decision. For the avoidance of doubt, the Panel wishes to make it clear that where alternative standards are utilised, these documents are incorporated by reference in accordance with Part 3 of the First Schedule.

## Overlay maps – Noise control boundaries

182. Port Marlborough sought amendments to the noise control boundaries in Picton and Havelock to reflect the modelling completed by the acoustic consultants Marshall Day.

**Section 42A Report**

183. In his response to Minute 54, the report writer agreed with the evidence presented by Mr Fitzgerald of Marshall Day for Port Marlborough.

184. The Panel noted that the evidence of Craig Fitzgerald and Louise Taylor highlighted that remodelling of noise contours had occurred since Port Marlborough lodged its submission. In particular, the evidence of Mr Fitzgerald identified that:

> *The noise modelling software and quality of available geospatial information have improved significantly since our model was first prepared in 2013/2014. To ensure the model is up-to-date, and to improve the information displayed in the figures, we have updated underlying information, such as the cadastral boundaries, aerial photos and zone boundaries.*

185. Mr Fitzgerald has recommended the following:

- *We recommend that NCBs be expanded to align with the outer extents of the Port Zone boundaries where the noise contours do not extend beyond. This as a practical simplification with no material change to the noise effects or applicable controls. With reference to Figure 2E, there are six locations in Picton and Shakespeare Bay where proposed NCB's are positioned within the proposed MEP Port Zone.*
- *The revised future contours extend beyond the proposed MEP Outer NCB in six locations in Picton. However, no changes to the NCBs are recommended in Picton because changes in predicted noise levels are within the tolerance of the model and not significant.*
- *The Havelock rules relate to the Outer NCB. Therefore, we understand that the Inner NCB serves no purpose and has been removed for simplicity (note if retained it would be unchanged).*

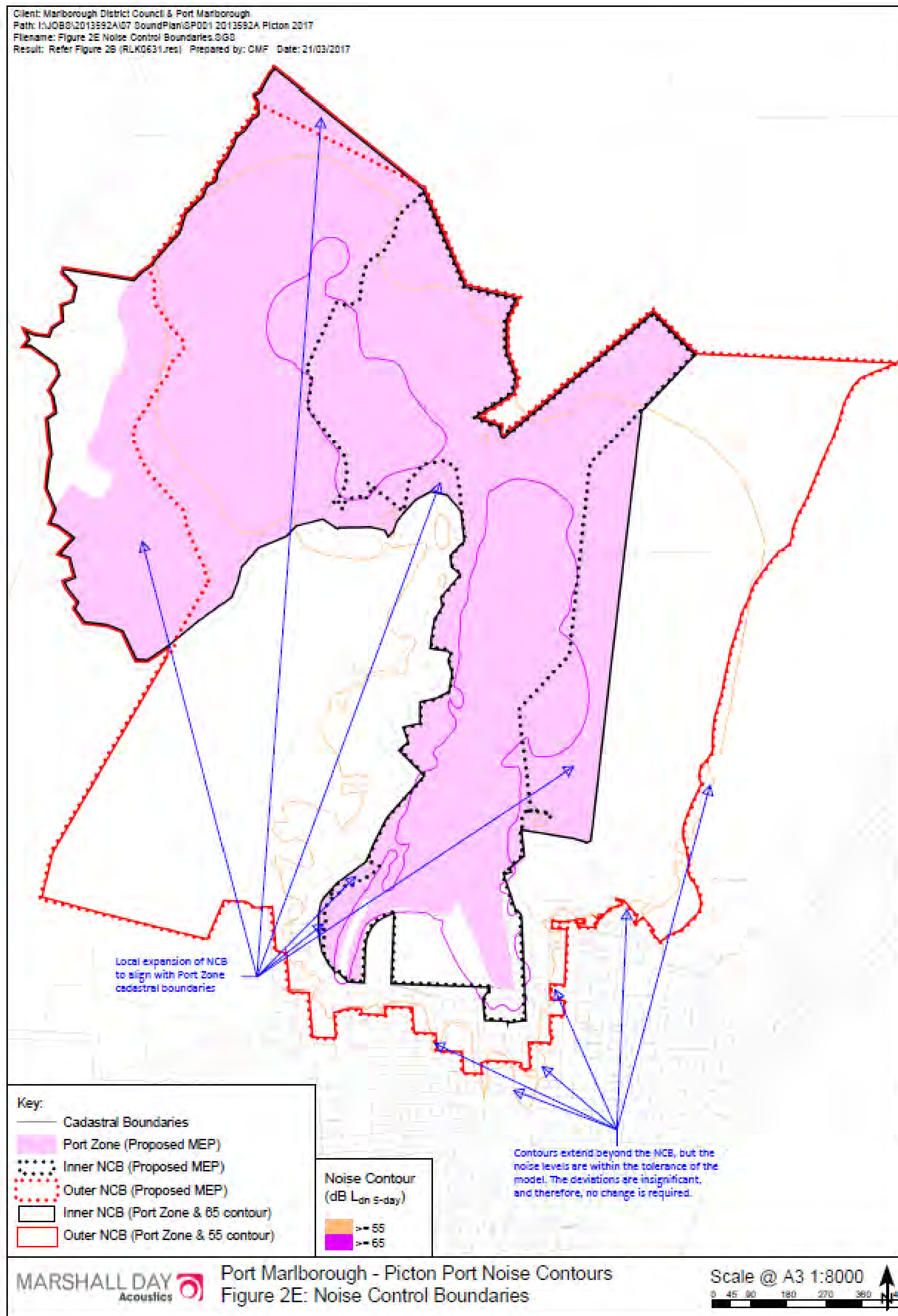
**Consideration**

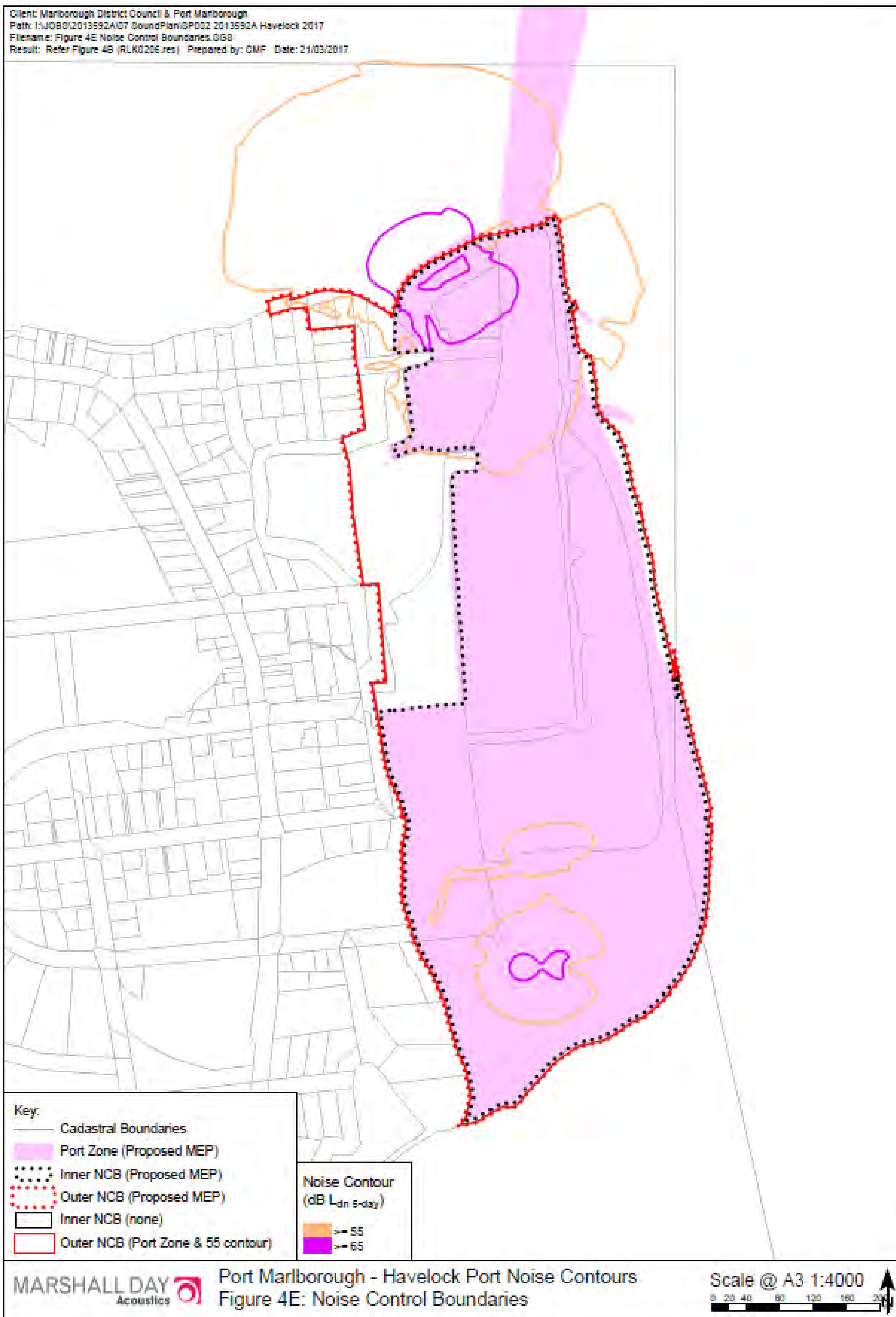
186. The Panel adopted the revised boundaries based on Marshall Day remodelling. This reflects both accurate and up-to-date information but also a degree of practicality where the noise control boundaries do not extend to the Port Zone boundary. As the purpose of the noise control boundary, and associated rules, is to manage adverse noise effects beyond the port, the Panel agrees that in this situation the noise control boundary should be located at the zone boundary.

**Decision**

187. The Picton port noise control boundaries are amended to reflect those shown on Figure 2E: Noise Control Boundaries, attached to the evidence of Port Marlborough and shown below.

188. The Havelock port noise control boundaries are amended to reflect those shown on Figure 4E: Noise Control Boundaries, attached to the evidence of Port Marlborough and shown below.


Client: Marlborough District Council & Port Marlborough
Path: I:\JOBS\2013592A\07 SoundPlan\SP001 2013592A Picton 2017
Filename: Figure 2E Noise Control Boundaries.SGS
Result: Refer Figure 2B (RLK0631.res) Prepared by: CMF Date: 21/03/2017
Local expansion of NCB to align with Port Zone cadastral boundaries
Contours extend beyond the NCB, but the noise levels are within the tolerance of the model. The deviations are insignificant, and therefore, no change is required.
Key:
Cadastral Boundaries
Port Zone (Proposed MEP)
Inner NCB (Proposed MEP)
Outer NCB (Proposed MEP)
Inner NCB (Port Zone & 65 contour)
Outer NCB (Port Zone & 55 contour)
Noise Contour
(dB $L_{dn\ 5\text{-}day}$)
>= 55
>= 65
MARSHALL DAY Acoustics
Port Marlborough - Picton Port Noise Contours
Figure 2E: Noise Control Boundaries
Scale @ A3 1:8000


Client: Marlborough District Council & Port Marlborough
Path: I:\JOBS\2013592A\07 SoundPlan\SP002 2013592A Havelock 2017
Filename: Figure 4E Noise Control Boundaries.SGS
Result: Refer Figure 4B (RLK0206.res) Prepared by: CMF Date: 21/03/2017
Key:
Cadastral Boundaries
Port Zone (Proposed MEP)
Inner NCB (Proposed MEP)
Outer NCB (Proposed MEP)
Inner NCB (none)
Outer NCB (Port Zone & 55 contour)
Noise Contour
(dB $L_{dn\ 5\text{-}day}$)
>= 55
>= 65
MARSHALL DAY Acoustics
Port Marlborough - Havelock Port Noise Contours
Figure 4E: Noise Control Boundaries
Scale @ A3 1:4000

# Proposed Marlborough Environment Plan

# Topic 13 & 19: Resource Quality (Soil) & Land Disturbance

**Hearing dates:** 2 – 4 & 9 July 2018

**S42A Report Writer:** Hannah Goslin

**Conflicts of Interest:** None

**Interim decision:** None

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

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## Abbreviations

| | |
|---|---|
| ESMS | Ecologically Significant Marine Site |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| WARMP | Wairau/Awatere Resource Management Plan |

**Submitter abbreviations**

| | |
|---|---|
| Hort NZ | Horticulture New Zealand |
| MEC | The Marlborough Environment Centre Incorporated |
| MDC | Marlborough District Council |
| MFIA | Marlborough Forest Industry Association Incorporated |
| NMDHB | Nelson Marlborough District Health Board |
| NZTA | New Zealand Transport Agency |
| Oil Companies | Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited |
| PMNZ | Port Marlborough New Zealand Limited |

## Policy 15.4.2

**Encourage land management practices that:**

**(a) maintain soil structure by:**

**(i) avoiding or remedying soil compaction;**

**(ii) avoiding the loss of soil organic matter; and**

**(iii) avoiding or remedying the effects of increased sodium levels;**

**(b) maintain nutrients at appropriate levels; and**

**(c) retain topsoil in situ.**

1. A number of submitters supported the Policy and its current wording.[1] MFIA and Nelson Forests sought changes to the policy so it did not require avoidance when related to built infrastructure[2].

2. In evidence at the hearing, Hort NZ also sought an addition to the explanation to highlight the importance of good management practice.

**Section 42A Report**

3. The report writer considers that additional wording to the explanatory text would provide clarity for plan users regarding soil compaction and recommends the following inclusion.

> *Soil compaction may be necessary in some circumstances, such as providing a stable foundation for a road or building.*

4. In response to the evidence of Ms Wharfe at the hearing, the report writer also recommended the following amendments in their Reply to Evidence[3]:

> *… The Council will work with rural industry groups to ensure that land management practices and good management practices address the potential for unnecessary soil compaction, accelerated soil erosion… The Council may also undertake joint investigations with rural industry groups to gain a better understanding of the impact of particular rural land use activities and land management practices on the soil resource. There are a range of codes of practice or guidelines that set out good management practices for rural land uses.*

**Consideration**

5. The Panel consider it is appropriate to make reference to the need for soil compaction in some circumstances and therefore agree with the recommendation of the report writer to include the following:

[1] KCSRA, Ravensdown, McoC, Federated Farmers
[2] MFIA (962.100) Nelson Forests (990.244)
[3] Reply to Evidence, pg3

6. … Soil compaction may be necessary in some circumstances, such as providing a stable foundation for a road or building.

7. The Panel also agree with the recommendation to include specific reference to the range of codes of practice available, however, with this inclusion, the Panel consider the reference to *'and good management practices'* leads to unnecessary duplication and therefore this request is rejected.

**Decision**

8. The explanatory text to Policy 15.4.2 is amended as follows:

*This policy recognises that while soil structural degradation, nutrient depletion/enrichment and accelerated soil erosion are not of widespread concern in Marlborough, there is a long term risk that irreversible degradation in soil quality may occur if appropriate land management practices are not used. Soil compaction may be necessary in some circumstances, such as providing a stable foundation for a road or building. The Council will work with rural industry groups to ensure that land management practices address the potential for unnecessary soil compaction, accelerated soil erosion, retention of organic matter and increased soil sodium concentrations and nutrient levels. Subsequently, some existing land uses may continue while elsewhere adjustments and changes to land management practices may be required. The Council may also undertake joint investigations with rural industry groups to gain a better understanding of the impact of particular rural land use activities and land management practices on the soil resource. There are a range of codes of practice or guidelines that set out good management practices for rural land uses.*

## Policy 15.4.4

**In considering any land use consent application to undertake land disturbance, regard shall be had to:**

**(a) the physical characteristics of the site, including soil type, slope and climate;**

**(b) any industry standards that are relevant to the activity;**

**(c) sediment and erosion control measures required to reasonably minimise adverse effects caused by rainfall events, including the use of setbacks from waterbodies;**

**(d) the proximity of the land disturbance to any fresh waterbody or coastal water and the potential for eroded soil to reach the waterbody or coastal waters;**

**(e) where it is possible for eroded soil to reach any fresh waterbody or coastal water:**

**(i) the objectives and policies of this chapter under Issues 15A to 15C; and**

**(ii) the likely degree of compliance with water quality standards set for the waterbody;**

**(f) any potential adverse effects on community water supplies; and**

**(g) whether the land disturbance is necessary for the operation or maintenance of regionally significant infrastructure.**

9. Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ (The Oil Companies) seek that Policy 15.4.4(b) is amended to state the following:

*(b) Any industry standards, <u>guidelines and codes of practice</u> that are relevant to the activity;*[4]

**Section 42A Report**

10. The report writer considers that the reference to industry standards is broadly based and would probably include guidelines and codes of practice where they are relevant to a specific land disturbance activity. In her opinion, the relief sought by the submitter may provide clarification for plan users that these guidelines and codes of practice may be relevant in considering land use to create a soil disturbance. The report writer recommends the relief sought be adopted – (b) should be expanded to include reference to 'guidelines and codes of practice'.

**Consideration**

11. The Panel agrees with the inclusions as recommended by the report writer. Further, the Panel amend, by way of Schedule 1 Clause 16, the preliminary wording of the policy from 'regard shall be had to' to 'have regard to' as more direct language.

**Decision**

12. Policy 15.4.4 is amended as follows:

*Policy 15.4.4 – In considering any land use consent application to undertake land disturbance~~,~~ ~~regard shall be had to~~ <u>have regard to</u>:*

*(a) the physical characteristics of the site, including soil type, slope and climate;*

*(b) any industry standards<u>, guidelines and codes of practice</u> that are relevant to the activity; …*

## Policy 15.5.5

**Establish a response capability to deal with spills of hazardous substances.**

## Method 15.M.50

**Spill Response Contingency Plan**

*A Spill Response Contingency Plan will be developed collaboratively by the Council, Fire Service, Police and Marlborough Roads. The Plan will identify the methods to be used to contain and clean up any spill of hazardous substances, the role of each agency in implementing these methods and communication between the agencies. In this way, the Plan will ensure that response actions are effective and the potential for soil contamination caused by spills is minimised.*

[4] The Oil Companies, Kahlia Thomas Evidence, Attachment A, page 1.

13. NZTA supports the policy in part due to the large volumes of goods transported around Marlborough on the State Highway.[5] It seeks the following amendment to its involvement in the notification process, along with the Council and the Fire Service, the inclusion of the words 'the New Zealand Transport Agency road controlling authority' in the first paragraph of the explanation, and the inclusion of 'the State Highway network' in the second paragraph of the explanation.[6]

**Section 42A Report**

14. The report writer recommended the following amendment to the explanation to Policy 15.5.5:

*Several agencies are potentially involved in any spill event, including the Council, Fire Service, Police, <u>the New Zealand Transport Agency road controlling authorities</u>* [sic] *and (in the coastal marine area) Maritime Safety. An ad hoc response from each agency creates the potential for ineffective containment and for soil contamination to occur over a wider area than if the spill was effectively contained.*

*It is important therefore that the actions of each agency in responding to a spill are co-ordinated. This is especially the case considering the risks posed by the volume of goods transported to and through Marlborough on <u>the</u> State Highway ~~1~~ network.*

15. And the following amendment to Method 15.M.50:

> *A spill response contingency plan will be developed collaboratively by the Council, Fire Service, Police<u>,</u> ~~and~~ Marlborough Roads <u>and the New Zealand Transport Agency road controlling authority</u>. The Plan will identify the methods to be used to contain and clean up any spill of hazardous substances, the role of each agency in implementing these methods and communication between the agencies. In this way, the Plan will ensure that response actions are effective and the potential for soil contamination caused by spills is minimised.*

**Consideration**

16. The provisions should also require involvement of the NZTA in the notification of and response to spills. It is one of the major parties to this type of activity.

17. The Panel accepts the recommendation of the report writer for both the policy and the method, except for the deletion of reference to the recommended 'road controlling authority'. The term 'road controlling authority' as it is presently written in the Section 42A Report is qualified by the reference to New Zealand Transport Agency whereas the NZTA is the

[5] NZTA (1002.82).
[6] NZTA (1002.84).

only transport agency with the authority to act in spill events and (in the coastal marine area), Maritime Safety, along with the Council, Police and Fire Service.[7]

**Decision**

18. The explanation to Policy 15.5.5 is amended as follows:

*Several agencies are potentially involved in any spill event, including the Council, ~~Fire Service~~ Fire and Emergency New Zealand, Police, the New Zealand Transport Agency, Marlborough Roads and (in the coastal marine area) Maritime Safety. An ad hoc response from each agency creates the potential for ineffective containment and for soil contamination to occur over a wider area than if the spill was effectively contained.*

*It is important therefore that the actions of each agency in responding to a spill are co-ordinated. This is especially the case considering the risks posed by the volume of goods transported to and through Marlborough on the State Highway ~~1~~ network.*

19. Method 15.M.50 is amended as follows:

*A spill response contingency plan will be developed collaboratively by the Council, ~~Fire Service~~ Fire and Emergency New Zealand, Police, ~~and~~ the New Zealand Transport Agency and Marlborough Roads. The Plan will identify the methods to be used to contain and clean up any spill of hazardous substances, the role of each agency in implementing these methods and communication between the agencies. In this way, the Plan will ensure that response actions are effective and the potential for soil contamination caused by spills is minimised.*

## Standard 3.3.13

## Cultivation definition

**Cultivation means breaking up or turning soil such that the surface contour of the land is not altered.**[8]

20. Federated Farmers seeks (inter alia) the recognition that cultivation involving 'minimum tillage' does not create the same potential for environmental effects. Mr Sycamore requests that the slope and setback provisions relate only to cultivation ('mechanical cultivation') and a new definition for 'minimum tillage' is requested to be incorporated into the PMEP. The following definition is proposed: [9]

*Minimum Tillage: is a tillage method that does not turn the soil over. It is contrary to intensive tillage, which changes the soil structure.*

[7] Section 42A Report, pages 21-22.
[8] PMEP, Volume 2, Chapter 5, page 25-6.
[9] Federated Farmers, Darryl Sycamore Evidence, Section 42A Report, Reply to Evidence, paragraph 110.

21. Hort NZ requests that the definition of cultivation is amended to include 'ancillary erosion and sediment control measures'.[10]

**Section 42A Report**

22. In the Addendum, the report writer recommended the following amendments to the definition:

> *Cultivation means breaking up, turning and mounding of soil ~~such that the surface contour of the land is not altered~~ in preparation for sowing, planting or harvesting a crop or pasture. But excludes the recontouring of land.*[11]

23. The Section 42A Report considers that 3.3.13.5 is important in order to retain productive top soil from erosion and loss of sediment to water bodies.[12]

24. The report writer did not therefore support Hort NZ's submission. Erosion and sediment controls are mitigation measures employed to comply with the relevant activity standards, therefore their inclusion in a definition is not necessary. If Standard 3.3.13.5 cannot be met then resource consent would be required and industry standards would be considered as part of that process, as set out in Policy 15.4.4, and therefore the relief being sought is already provided in that policy.[13]

25. In the report writer's opinion the cultivation methods proposed to be excluded by Federated Farmers have the potential to result in adverse effects on soil quality. Some methods such as direct drilling have a lower impact than other methods of cultivation. There may be periods prior to or following cultivation taking place where topsoil could be lost and sediment eroded to surface water and excluding the management of this does not accord with the policy direction of the PMEP. The report writer does not recommend the relief sought by the submitter is adopted, and recommends the definition of cultivation remains as notified.[14]

**Consideration**

26. The submitter sought recognition that cultivation involving 'minimum tillage' does not create the same potential for environmental effects.

27. The Panel considered that it would be appropriate to include minimum tillage in the recommended exemption so that it reads '<u>But excludes minimum tillage and the recontouring of the land</u>'.

[10] Hort NZ, Lynette Wharfe Evidence, paragraph 6.2.
[11] Section 42A Report, Addendum, recommendation paragraph 36.
[12] Section 42A Report, paragraph 143.
[13] Section 42A Report, paragraph 145.
[14] Section 42A Report, paragraph 128.

28. A definition should be added for 'minimum tillage' to Chapter 25 as follows:

*means a tillage method that does not turn the soil over and includes direct drilling.*

**Decision**

29. The definition of 'Cultivation' is amended as follows:

***Cultivation*** *means breaking up, ~~or~~ turning and mounding of soil ~~such that the surface contour of the land is not altered~~ in preparation for sowing, planting or harvesting a crop or pasture. But excludes minimum tillage and the recontouring of land.*

30. A new definition 'Minimum tillage' is added to Chapter 25 Definitions as follows:

***Minimum tillage*** *means a tillage method that does not turn the soil over and includes direct drilling.*

## Definition of 'Vegetation clearance'

*Vegetation clearance means the cutting, destruction or the removal of all forms of vegetation including indigenous or exotic plant vegetation by cutting, burning, cultivation, crushing, spraying or chemical treatment.*

31. Hort NZ and Federated Farmers oppose the definition of 'vegetation clearance' as the definition includes 'cultivation' which is defined and provided for in the PMEP separately.[15] Beef & Lamb opposes the inclusion of 'spraying or chemical treatment' in the definition due to the potential for lower risk activities being unintentionally restricted.[16] NZTA opposes the definition and consider there is potential for the definition to capture the mowing of grass and domestic gardening activities.[17] MDC supports the definition but seek it is amended to clarify that vegetation clearance excludes commercial forestry harvesting, carbon sequestration (non-permanent) forestry harvesting and woodlot forestry harvesting.[18] J Hickman and G Mehlhopt support the definition in part, but seeks it is amended to provide for routine farm operations to occur without resource consent.[19]

32. NZTA did not provide specific detail in its submission for an amended definition.

**Section 42A Report**

33. The report writer agrees with NZTA that the notified definition has the potential for some activities to be unintentionally captured by the definition of 'vegetation clearance' as it applies to standards related to both non-indigenous and indigenous vegetation clearance.

[15] Hort NZ (769.99, .132), Federated Farmers (425.654, .727).
[16] Beef & Lamb (459.65).
[17] NZTA (1002.265).
[18] MDC (91.206).
[19] J Hickman (455.69), G Mehlhopt (456.69).

34. The report writer states:

> *While cultivation is broadly defined as 'vegetation clearance' there are specific standards included in the PMEP which provide for cultivation. Accordingly, when undertaking a rule assessment to assess cultivation, the most specific rules would be subject of assessment (that is, the cultivation standards would be assessed over the standards providing for vegetation clearance). Further, the definition of 'vegetation clearance' applies to 'indigenous vegetation clearance' as well as 'non-indigenous vegetation clearance'. As such, any amendment made to the definition may unintentionally impact the activities captured by the indigenous vegetation clearance standards. On this basis, the report writer does not support the submissions made by Hort NZ and Federated Farmers.*

35. Nor does the report writer support the submission made by Beef & Lamb due to the application of the 'vegetation clearance' definition to both 'indigenous' and 'non-indigenous' vegetation clearance. As such, the report writer states that any amendments made to the definition in the Section 42A Report may unintentionally impact the activities captured by the indigenous vegetation clearance standards. Non-indigenous vegetation clearance undertaken via spraying or chemical treatment has the potential to result in effects similar to those arising from other methods of vegetation clearance, therefore management of potential adverse effects through the standards is required to give effect to Objective 15.4 and policies 15.4.2 and 15.4.3.

36. MDC considers its proposed amendment would be particularly useful in zones where forestry is not permitted. The report writer agrees with the additional wording sought by MDC as it would assist plan users in determining whether vegetation clearance or woodlot forestry harvesting standards apply to a particular activity. Accordingly, the report writer recommends the relief sought by MDC is adopted.[20]

37. The report writer recommends the definition of 'vegetation clearance' be amended as follows:[21]

> ***[Vegetation clearance** means] the cutting, destruction or the removal of all forms of vegetation including indigenous or exotic plant vegetation by cutting, burning, cultivation, crushing, spraying or chemical treatment.* <u>*For clarity, it does not mean*</u>

[20] Section 42A Report, paragraphs 156-157, 159.
[21] Section 42A Report, paragraph 169.

> *commercial forestry harvesting, carbon sequestration (non-permanent) forestry harvesting and woodlot forestry harvesting.*

38. In evidence, NZTA seeks an amendment to the definition of 'vegetation clearance' which excludes mowing and domestic gardening activities which are unlikely to result in any discernible adverse effects. The following relief is proposed to be included as part of the 'vegetation clearance' definition:[22]

> *For clarity, where it does not relate to indigenous vegetation, this excludes mowing and domestic gardening activities.*

39. Given the number of amendments to vegetation clearance, the report writer provided an alternative strategy for clarity as follows:[23]

> *[**Vegetation clearance**] means the cutting, destruction or the removal of all forms of vegetation including indigenous or exotic plant vegetation by cutting, burning, cultivation, crushing, spraying or chemical treatment.*
>
> *The definition of vegetation clearance does not mean:*
>
> *(a) Commercial forestry harvesting, carbon sequestration (non-permanent) forestry harvesting and woodlot forestry harvesting; or*
>
> *(b) The removal of species listed in the Biosecurity NZ Register of Unwanted Organisms or the Marlborough Regional Pest Management Strategy; or*
>
> *(c) Where it relates to non-indigenous vegetation, the definition of vegetation clearance excludes mowing and domestic gardening activities.*

**Consideration**

40. The Panel agrees to exclude mowing and domestic gardening activities from the definition.

**Decision**

41. The definition of 'Vegetation clearance' is amended as follows:

***Vegetation clearance*** *means the cutting, destruction or the removal of all forms of vegetation including indigenous or exotic plant vegetation by cutting, burning, cultivation, crushing, spraying or chemical treatment but does not include:*

*(a) commercial forestry harvesting, carbon sequestration forestry harvesting and woodlot forestry harvesting;*

[22] NZTA, Section 42A Report, Reply to Evidence, Kathryn Barrett Evidence, page 9.
[23] Reply to Evidence, pages 10-12

*<u>(b) mowing and domestic gardening activities where they relate to non-indigenous vegetation.</u>*

**Vegetation clearance for biosecurity reasons**

**Rule 3.3.12**

42. Hort NZ seeks an exemption to the rules listed in the case of clearance for biosecurity reasons.

43. There have been instances where there has been a need to remove vegetation in response to a biosecurity incursion but the district plan rules have placed regulatory barriers to the rapid removal of such vegetation. For instance, removing vegetation in riparian areas would require resource consent. Hort NZ seeks that there is the ability to remove such vegetation without the need to obtain consent as time is important when an incursion occurs.

44. Hort NZ requests that an additional standard is included in Rule 3.3.12 which provides an exemption from permitted activity standards 3.3.12.2, 3.3.12.4, 3.3.12.7, 3.3.12.8 if the clearance is for biosecurity purposes.[24]

**Section 42A Report**

45. In the context of the submissions earlier, the report writer agrees to the relief sought by Hort NZ requesting a new standard, as opposed to the proposed- change to the definition of 'Vegetation clearance' in the Reply to Evidence. The report writer recommends the definition of 'Vegetation clearance' be amended to exclude the removal of species listed in the Biosecurity NZ Register of Unwanted Organisms or the Marlborough Regional Pest Management Plan.[25]

**Consideration and decision**

46. The relief requested as a new standard (as opposed to the recommended change by the report writer to the definition of 'vegetation clearance') is accepted by the Panel. However, the Panel considered the wording would be better positioned directly under the 3.3.12 heading and to read as follows:

*<u>Standards 3.3.12.2, 3.3.12.3, 3.3.12.4, 3.3.12.7, 3.3.12.8 do not apply in the case of clearance of species listed in the Biosecurity New Zealand Register of Unwanted Organisms or the Marlborough Regional Pest Management Plan.</u>*

47. For consistency, the same note is inserted under the following headings 4.3.11, 7.3.8, 13.3.19, 14.3.10, 15.3.18, 17.3.3, 18.3.4, 19.3.4, 22.3.9

[24] Hort NZ, Lynette Wharfe Evidence, paragraphs 7.17-7.19.
[25] Section 42A Report, Reply to Evidence, pages 10-11.

## Cleanfill

48. A number of filling standards in the PMEP specifically apply to the filling of land with cleanfill material. NMDHB for example supports the current cleanfill standards and seeks an additional permitted activity standard is included which specifies acceptable cleanfill material in accordance with the Ministry for the Environment's 'A Guide to the Management of Cleanfills' (2002).[26]

49. Fulton Hogan, S MacKenzie, PMNZ and Federated Farmers oppose the notified definition of cleanfill and the standards as there is no definition of commercial cleanfill in the PMEP which is a restricted activity by virtue of Standard 3.3.16.1 and similar standards in other zones.[27] The MDC opposes the definition of cleanfill for the same reasons.[28]

**Section 42A Report**

50. The report writer in her consideration, notes:

- The national definition of cleanfill, appropriate waste acceptance criteria, and advises best practice methods for managing cleanfill, adopting the recommendations in the MfE guidelines.
- The standards authorizing 'the filling of land with cleanfill' in the PMEP are consistent with MfE's guidelines.
- There are criteria which enable small-scale cleanfilling to occur and standards requiring water and erosion control measures to be in place.
- Other standards restrict filling where this occurs within close proximity to an abstraction point for a drinking water supply and Soil Sensitive Area identified as loess soils.
- Policy 15.4.4(b) requires regard to be had to any industry standards relevant to the activity when considering an application for a land disturbance activity. The report writer considers that if such an application be made this policy would signal that the Council would be required to have regard to the most recent guidelines as part of the consenting process. The report writer does not consider an additional standard requiring cleanfilling to be in accordance with the guidelines is required.

[26] NMDHB (280.48, .45, .46, .44, .43, .40).
[27] Fulton Hogan (717.72, .75, .79) S MacKenzie (1124.24, .25) PMNZ (433.152, .170, 433.194), Federated Farmers (425.559, .740).
[28] MDC (91.150, .151).

- She supports the industry submitters seeking that the standard restricting the use of commercial cleanfill for filling of the land is deleted from the Plan, and recommends all standards requiring filling *not to use commercial cleanfill* be deleted from the PMEP.
- As a result of this conclusion, the report writer does not consider a definition for non-commercial cleanfill, as requested by MDC, is required.[29]

**Consideration and decision**

51. The restriction on the use of 'commercial cleanfill' should be removed from the plan as there is no difference in environmental effect.

52. Delete Standards 3.3.16.1; 4.3.15.1; 13.3.18.1; 14.3.9.1; 15.3.17.1; 17.3.5.1; 18.3.6.1; 19.3.6.1, and 22.3.7.1. As a consequential change, delete the definition of 'Non-Commercial cleanfill' given that the change above no longer results in a distinction between commercial and non-commercial cleanfill.

## Lake Grassmere

## Rule 22.4.2. and Standard 22.3.6

**Excavation of land exceeding 500mm in depth.**

53. The relevant standards and terms are as follows:

*22.4.2.1. The excavation must not exceed a depth of 1.5m.*

*22.4.2.2. The excavation must not occur further than 100 metres from the zone boundary.*

*Matters over which the Council has reserved control:*

*22.4.2.3. The excavation of test pits;*

*22.4.2.4. The protection of adjoining land from contamination by brine/saline water;*

*22.4.2.5. Transmissiveness of the soils media between the site of excavation and the zone boundary;*

*22.4.2.6. The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.*

54. Matter of control 22.4.2.1 requires any excavation greater than 1.5 metres in depth in Lake Grassmere to obtain resource consent as a discretionary activity.

55. Dominion Salt opposes Standard 22.4.2 which provides for a controlled activity status for the excavation of land exceeding 500 mm depth.[30] The submitter seeks that the standard is reinstated as a permitted activity as is the case in WARMP.

[29] Section 42A Report, paragraphs 231-235.

**Section 42A Report**

56. The report writer reviewed the rule structure in WARMP and agrees that the excavation of land within 100 metres of the zone boundary, not exceeding 500 mm in depth, is able to be adequately managed through the permitted activity standards without the need to proceed through a resource consent process to impose further conditions. In reviewing the permitted activity standards, the report writer recommends an additional permitted activity standard is included which restricts the excavation of land within the Lake Grassmere Ecologically Significant Marine Site, so as to achieve the outcomes of the PMEP that relate to such significant sites.

57. The report writer identifies two further errors in the drafting of these standards which are able to be addressed within the scope of the submission received. Matter of control 22.4.2.1 requires any excavation to not exceed 1.5 metres in depth. The current WARMP standard framework requires any excavation greater than 1.5 metres in depth in the Lake Grassmere Zone to obtain resource consent as a discretionary activity. The report writer recommends an additional standard limiting the maximum excavation depth in the zone to 1.5m is included in standard 22.3.6. Any excavation within the zone deeper than 1.5 metres below ground level will require assessment via a resource consent process to impose further conditions if necessary. Further, Standard 22.3.6.2 requires excavation to not occur within 8 metres of a lake. As the entire area has been identified as a 'lake' this standard would limit any excavation from occurring within the zone without resource consent. Accordingly, the report writer recommends 'lake' is omitted from Standard 22.3.6.2.[31]

58. The report writer recommends the following changes to Rules 22.3.6 and 22.4.2 to remedy drafting errors in the PMEP:

> *22.4.2 Excavation of land exceeding 500mm in depth <u>and within 100 metres of the zone boundary</u>:*
>
> *22.4.2.1 The excavation must not exceed a depth of 1.5m.*
>
> *~~22.4.2.1 The excavation must not occur further than 100 metres from the zone boundary.~~*

59. The following standards be added to Rule 22.3.6:

> *22.3.6 Excavation*

---

[30] Dominion Salt (355.16).
[31] Section 42A Report, paragraphs 197-198.

*…*

*22.3.6.2 Excavation must not be within 8m of a river (except an ephemeral river when not flowing), ~~lake (except during salt harvest operations)~~ or the coastal marine area.*

*…*

*22.3.6.x Excavation within 100m of the zone boundary shall not exceed 500mm in depth;*

*22.3.6.x Excavation must not occur within an Ecologically Significant Marine Site;*

*22.3.6.x Excavation anywhere within the zone must not exceed 1.5m in depth.*

60. In evidence, Dominion Salt agrees with the report writer's recommendations but seeks further relief in relation to Standard 22.3.6.8 which currently states: 'Excavation must not occur within an Ecologically Significant Marine Site'.

61. Dominion Salt wishes to continue to remove silt which drops out of suspension from water in the lake within the Ecologically Significant Marine Site (ESMS 8.3). Dominion Salt advised at the hearing the locations where limited work is sought to be undertaken within ESMS 8.3 in the Lake Grassmere Salt Works Zone. According to Mr Davies, there are three areas within the lake where this occurs (as shown by the crosshatch areas on Plan B appended to Mr McLeish's evidence). As a result of introducing Standard 22.3.6.8, undertaking the sediment removal activity within two of the identified areas would require a resource consent to be sought.

62. Mr Davies proposes a 'Salt Works Lake Maintenance' overlay is created and the following addition to Standard 22.3.6.8 is made:

*22.3.6.8. Excavation must not occur within an Ecologically Significant Marine Site except within the Salt Works Lake Maintenance Area Overlay.*

63. Mr Davies also seeks Standard 22.3.6.3 is amended to improve consistency with Standard 22.3.6.2. The following amendment is proposed:[32]

*22.3.6.3. 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 (except during salt harvest operations)~~ or the coastal marine area.*

64. The report writer recommends the development of a 'Salt Works Lake Maintenance' overlay in accordance with Plan B of Mr McLeish's evidence and Standard 22.3.6.8 be amended as follows:[33]

[32] Section 42A Report, Reply to Evidence, page 17.

*22.3.6.8. Excavation must not occur within an Ecologically Significant Marine Site except within the Salt Works Maintenance Overlay.*

65. And that Standard 22.3.6.3 be amended as follows:

> *22.3.6.3 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 (except during salt harvest operations)~~ or the coastal marine area.*

66. In response to the Panel's questions, Mr Davies provided a Memorandum of Counsel date 19 July 2018 in that he stated:

> *At the hearing of Topic 19: Soil Quality and Land Disturbance on 4 July 2018, Dominion Salt Limited advised the locations where limited work is sought to be undertaken within the Ecologically Significant Marine Site in the Lake Grassmere Salt Works Zone. It sought for these areas to be included in a Saltworks Lake Management overlay.*

**Consideration**

67. The activity outlined in the evidence of Mr McLeish for Dominion Salt relates to Lake Grassmere which is a large shallow tidal lagoon that has been extensively modified by salt work operations, but the area is also an Ecologically Significant Marine Site (ESMS 8.3) and provides a significant bird habitat.

68. The Panel agrees that the salt works activity in Lake Grassmere should proceed as in WARMP.

69. The Panel agrees with the report writer's recommendations however, considers the following amendments to those suggestions are necessary:

- Provide an exception in the first new standard (that is, excavation must not occur in an Ecologically Sensitive Marine Site) to allow for ongoing maintenance of the lake bed.[34]
- Amend 22.3.6.2 so it does not constrain excavation of the lake.[35]
- Amend 22.3.6.3 so that the standard still applies to a lake (in contrast to the recommendation).[36]
- But provide an exception for wheeled or tracked machinery to operate in the Salt Works Lake Maintenance Overlay (that is, *lake except within the Salt Works Lake Maintenance Overlay),* or the …

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[33] Section 42A Report, Reply to Evidence, pages 16-17.
[34] Section 42A Report, paragraph 246.
[35] Section 42A Report,
[36] Dominion Salt Ltd, Quentin Davies Submissions at the hearing.

- Prepare a Salt Works Maintenance Overlay as set out in the Memorandum of Counsel for the salt works.[37]

70. Rule 22.4.2 should be amended so that the depth limitation applies only within 100m of the zone boundary[38] (including deletion of 22.4.2.2).

71. The creation of the Salt Works Lake Maintenance Area, as outlined above, combined with a decision on another DSL submission point in the Topic 11: Coastal Environment decision, add additional overlays to the Plan. The effect of the overlays is to allow location specific rules apply to specific activities. The same also applies in the case of the existing Intake and Pipeline Extension Corridor.

72. Having made decisions on these submission points on their merits, but in isolation to each other, the Panel has reflected on the best structural option for giving effect to its decisions. As they stood, the decisions would introduce a level of complexity to the permitted activity rules in 22.1, and their accompanying standards in 22.2 The Panel considered that this complexity would create the potential for confusion in the implementation and administration of the rules.

73. In the process of considering a remedy to this matter, the Panel noted the content of Appendix 16 of Volume 3. As notified, Appendix 16 contains three scheduled sites[39] and it operates to allow a set of specific rules apply to each of the scheduled sites. This is exactly how the Salt Works Lake Maintenance Area and Salt Works Outlet Area (see Topic 11 decision) are designed to operate with respect to DSL's operations at discrete parts of Lake Grassmere.

74. The Panel has determined that Appendix 16 should therefore be utilised to provide for the rules that apply to each of the relevant spatial areas. To achieve this end, the relevant spatial areas have to be mapped as scheduled sites in the relevant zoning maps of Volume 4. This would have the effect of removing complexity from 22.1 and 22.2 of Volume 2. Those sections would simply contain the rules that apply to the Lake Grassmere Salt Works Zone in its entirety.

75. The Panel also noted that the Intake and Pipeline Extension Corridor operates in much the same way to the two new overlays: A discrete set of rules applies to specific activities in the

[37] Memorandum of Counsel for Dominion Salt Ltd, 19 July 2018.
[38] Dominion Salt Ltd (355.16)
[39] Decisions on Topic 21: Zoning add two additional scheduled sites.

Corridor. For consistency, the Panel is making a consequential change to also relocate the rules that apply to the Corridor to Appendix 16.[40]

76. There is one further consequential change required to implement this structure and that is a minor change to the introductory wording of 21.1 to recognise that the rules in Appendix 16 may enable activities in addition to the rules of Chapter 22. A wording for doing so is set out below.

**Decision**

77. Rule 22.3.6 is amended as follows:

*22.3.6 Excavation*

*…*

*22.3.6.2 Excavation must not be in, or within 8m of a river (except an ephemeral river when not flowing), ~~lake (except during salt harvest operations)~~ or the coastal marine area.*

*22.3.6.3. 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 (~~except during salt harvest operations~~ except within the Salt Works Lake Maintenance Area, or the coastal marine area.*

*…*

*22.3.6.x Excavation within 100m of the zone boundary shall not exceed 500mm in depth;*

*22.3.6.x Excavation must not occur within an Ecologically Significant Marine Site except within the Salt Works Maintenance Area.*

*22.3.6.x Excavation anywhere within the zone must not exceed 1.5m in depth.*

78. Amend 22.4.2 as follows:

*22.4.2 Excavation of land exceeding 500mm in depth and within 100 metres of the zone boundary:*

*22.4.2.1 The excavation must not exceed a depth of 1.5m.*

*~~22.4.2.2 The excavation must not occur further than 100 metres from the zone boundary.~~*

[40] The Panel has also decided to delete Appendix 21 as a result of accurately mapping the Intake and Pipeline Extension Corridor on the relevant zoning maps.

79. The Salt Works Lake Maintenance Area, in addition to the Salt Works Outlet Area and the Intake and Pipeline Extension Corridor, are to be depicted as scheduled sites on the relevant zoning maps in Volume 4.

80. The rules and standards applying to the new Salt Works Lake Maintenance Area, in addition to the new Salt Works Outlet Area and the existing Intake and Pipeline Extension Corridor, are added to Appendix 16 of Volume 3 as a new schedule, as follows:

# Schedule 7 – Salt Works Outlet Area, Lake Grassmere Salt Works Intake and Pipeline Extension Corridor and Salt Works Lake Maintenance Area.

Where not otherwise expressly provided for, or limited by, the rules in Schedule 7 of Appendix 16, the rules of the Lake Grassmere Salt Works Zone apply to all activities when undertaken by the operator of the salt works within the in the Salt Works Outlet Area, Lake Grassmere Salt Works Intake and Pipeline Extension Corridor and the Salt Works Lake Maintenance Area.

# Schedule 7A – Salt Works Outlet Area

## 7A.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Salt Works Outlet Area identified in Appendix 21, and where they comply with the applicable standards in Chapter 22:

[D]

**7A.1.1 Buildings, bunds, roads and other developments existing at 9 June 2016.**

[D]

**7A.1.2 Maintenance of existing seawater intake pipelines and associated structures**

[C]

**7A.1.3 Discharge of stormwater from Lake Grassmere and surrounding catchments or diluted brine to the coastal marine area.**

[C,D]

**7A.1.3 Construction and use of a temporary stormwater flood outlet channel from Lake Grassmere to the coastal marine area, including any disturbance of the foreshore and seabed.**

[R, D]

**7A.1.4 Activities permitted in the Open Space 3 Zone.**

## 7A.2 Standards that apply to all permitted activities

**7A.2.2 When undertaking an activity in accordance with permitted activities in the Open Space 3 Zone, the relevant standards for the activity in 19.3 must be complied with.**

# Schedule 7B – Lake Grassmere Salt Works Intake and Pipeline Extension Corridor

## 7B.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Lake Grassmere Salt Works Intake and Pipeline Extension Corridor identified in Appendix 21, and where they comply with the applicable standards in Chapter 22:

[C]

**7B.1.1 Take and use of coastal water.**

[C]

**7B.1.2 Maintenance of existing seawater intake pipelines and associated structures.**

[C]

**7B.1.3 Discharge of stormwater from Lake Grassmere and surrounding catchments or diluted brine to the coastal marine area.**

[C]

**7B.1.4 Construction and use of a temporary stormwater flood outlet channel from Lake Grassmere to the coastal marine area, including any disturbance of the foreshore and seabed.**

[C]

**7B.1.5 Activities permitted in the Coastal Marine Zone.**

## 7B.2 Standards that apply to all permitted activities

**7B.2.2 When undertaking an activity in accordance with permitted activities in the Coastal Marine Zone, the relevant standards for the activity in 16.3 must be complied with.**

# Schedule 7C – Salt Works Lake Maintenance Area

## 7C.1 Permitted Activities

Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent when undertaken by the operator of the salt works within the Salt Works Lake Maintenance Area, and where they comply with the applicable standards in Chapter 22:

[R, D]

**7C.1.1 Excavation**

81. The introductory wording to 22.1 is amended to read "Unless expressly permitted by rules in Schedule 7 of Appendix 16 or expressly limited elsewhere by a rule in the Marlborough Environment Plan…"

## Method 15.M.45

**Monitoring**

82. This method requires a continued regional monitoring programme to gather information on soil quality variables across representative soil types in Marlborough. This will include the nature and intensity of the predominant land uses and specific land disturbance activities. Monitoring the effects of forest activities in the coastal environment of the Marlborough Sounds is a priority.[41]

## Slope and volume limits

83. A number of permitted activity standards in the PMEP set limits for the maximum volumes of earth and slope gradients that can be excavated or where filling can occur. Several submitters oppose the standards and seek amendments to increase the minimum allowable volumes and gradient slope.

84. Numerous other submitters provided a raft of requests through submissions opposing inter alia excavation methods, overly prescriptive standards ensuring investigating earthworks are undertaken without resource consents, limitations around the construction of farm tracks.[42]

**Section 42A Report**

85. The report writer did not support the relief sought by all those submitters, and provided reasons which the Panel agreed with.

**Consideration**

86. MEC is one of the group of submitters who oppose the excavation standards in the Coastal Environment Zone (Standard 4.3.13) and Rural Environment Zone (Standard 3.3.14).[43] The submitter has suggested an upper limit of permitted excavation of 20,000 $m^3$ to prevent any large scale changes in landscape.

87. The report writer identifies that Objective 15.4, and Policies 15.4.2 and 15.4.3 seek to ensure soil quality is maintained and enhanced, and land disturbance activities are controlled for the purpose of minimising the loss of eroded sediment to surface water. Specific standards limit

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[41] PMEP, Volume 1, page 15-42.

[42] MFIA (962.106), Nelson Forests (990.249), Rainbow Sports Club (228.9), Federated Farmers (425.612, .656, .694, .728, .729, .730), J Rudd (251.1), I Bond (469.14, .15), G Cooper (743.4), PF Olsen (149.54), G Mehlhopt (456.60) J Hickman (455.60), BMCRRA (1190.26, .24), Pinder Family Trust (578.48), MEC (1193.37), SSNZ (1146.26, .48) among others.

[43] MEC (1193.37).

excavation and filling volumes in some Outstanding Natural Features and Landscapes to manage landscape effects.[44]

88. In the Reply to Evidence identifying emerging soil quality issues, the initial submission of MEC seeking a 20,000 $m^3$ limit was revised following discussion with Matt Oliver, the soil scientist from MDC, to a limit of 10,000 $m^3$ as a more practical solution if the adverse effects on the environment are mitigated effectively and if the activity is within a Soil Sensitive Area identified as loess soils.[45]

89. Policy 15.4.1 seeks improvement in Council's understanding of the effects of land use on soil quality. The explanation to the policy states that ongoing monitoring may be applied to determine whether existing or emerging land management practices should be continued or altered to minimise the impact on the quality of Marlborough's soil resource.

90. Method 15.M.44 requires the Council to undertake a regional monitoring programme to gather information on soil variables.

91. In the report writer's conclusion she considers the information is still emerging on soil disturbance issues and further information gathering to determine what effects may arise as a result of recontouring over time. Additionally, any recontouring will still need to comply with other permitted activity standards relating to Soil Sensitive Areas, surface water quality standards and separation distances. The report writer on this basis does not recommend any of the relief sought.[46]

92. MEC is concerned at large scale excavation on slopes less than 20 degrees that may be involved within the recontouring of land for viticultural development.

93. Bearing the report writer's conclusion in mind that information is still emerging on soil disturbance issues, the Panel considers a second method should be added under 15.M.45 as follows:

> *A further priority is monitoring the effects of recontouring of land in Marlborough, particularly on loess soils.*

[44] Section 42A Report, paragraph 191.
[45] Section 42A Report, Reply to Evidence, pages 18-19.
[46] Section 42A Report, Reply to Evidence, page 19.

**Decision**

94. Method 15.M.45 is amended as follows:

***Method 15.M.45 Monitoring***

*Continue to undertake a regional monitoring programme to gather information on soil quality variables. This will enable the Council to identify the effects of land use activities and practices on soil quality. The monitoring programme is designed to ensure that information is gathered from representative soil types across Marlborough and reflects the nature and intensity of the predominant land uses. The programme includes soil intactness monitoring to establish the extent of accelerated soil erosion. The results will help the Council to identify those soils most vulnerable to degradation and allow the application of the above methods to be prioritised.*

*Undertake monitoring of the effect of specific land disturbance activities and land use changes on the soil resource. This can be implemented through monitoring required as a condition of resource consent or through state of the environment monitoring. Monitoring the effects of forest harvest activities in the coastal environment of the Marlborough Sounds is a priority.*

<u>*A further priority is monitoring the effects of recontouring of land in South Marlborough, particularly on loess soils.*</u>

## Setbacks: Cleanfill

95. Several submitters seek that standards limiting the deposition of cleanfill in the Rural and Coastal Environment Zones are amended to require a setback of 100 metres from the coastal marine area.[47]

96. Ms Wardle for MEC seeks the filling of land with cleanfill to be setback because of the potential adverse effects on landscape and amenity, and the potential for cleanfill to be contaminated with other materials.[48]

**Section 42A Report**

97. The report writer considers there is no reason for a 100 metre setback, aside from 'cleanfill operations not being desirable any closer'. The current standards in the WARMP require filling to be set back at least 8 metres from surface waterbodies, and this provision has been included in the PMEP.

98. If the filling of land with cleanfill was to occur within the 8 metre setback the need for a resource consent would be triggered where a case by case assessment of the operation can be undertaken via the resource consent process.[49]

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[47] Pinder Family Trust (578.45, .46), GOTS (752.45, .46), SSNZ (1140.58, .59) and MEC (1193.34, .35).
[48] Section 42A Report, Reply to Evidence, page 19.

99. In the report writer's opinion, a 100 metre setback in the coastal marine area is an inefficient and overly onerous way to achieve the relevant PMEP objective and policies. The submissions and setbacks sought are not recommended to change.[50]

**Consideration**

100. The Panel, however, concluded that land filling with cleanfill should be set back 20 metres from the coastal marine area in the Coastal Environment, Coastal Living and Rural zones. The Coastal Environment and Coastal Living zones in the Sounds will still have land that is not fronted by a reserve, but in most cases there is an effective built in barrier in the form of a Sounds Foreshore Reserve. The Panel decided upon 20 metres to reflect that barrier distance provided by Sounds Foreshore Reserve to ensure a measure of consistency. In the Rural zone in southern Marlborough while it is common for there to be reserve or road reserve land adjacent to the sea, which again provides an effective barrier, that is not always the case.

101. If the filling of land with cleanfill was to occur within this 20 metres then the need for a resource consent would be triggered.

102. The issue of setback for excavation was not raised in the submission and the Panel did not have scope to address it.

**Decision**

103. Amend standards 3.3.16.8 and 4.3.15.9 as follows:

*Filling must not be in, or within:*

*(a) 8m of a river (except an ephemeral river when not flowing)~~,~~ or lake ~~or the coastal marine area~~;*

*(b) 8m of, a Significant Wetland;*

*(c) 8m of the landward toe of a stopbank;*

*(d) 20 metres of the coastal marine area.*

104. For consistency, amendments are made to the Coastal Living Zone as follows:

*7.3.9.7. Excavation and filling must not occur in, or within 8m of, a river, Significant Wetland, drainage channel or Drainage Channel Network and filling must not occur within 20 metres of the coastal marine area.*

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[49] Ibid, page 20.

[50] Section 42A Report, paragraph 216.

MARLBOROUGH DISTRICT COUNCIL

# Proposed Marlborough Environment Plan

## Topic 20: Utilities and Designations

**Hearing dates:** 21 – 23 May 2018

**S42A Report Writer:** Liz White

**Conflicts of Interest:** None

**Interim decision:** Yes

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

Objective 4.2 ... 3
National Grid Provisions ... 4
New standard as to reticulation and storage of water in National Grid ... 9
Exemptions from new Standard for Earthworks within the National Grid Yard ... 10
Policy 13.10.1 ... 11
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Standards that apply to all permitted activities ... 13
Standard 2.39.1.7 ... 13
Standard 2.39.1.14 ... 14
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Standard 16.3.7.1 ... 17
[New] Rule ... 19
Rules 2.38.3 and 2.39.2 ... 21
Definitions Minor Upgrading ... 22
Pine Valley Camp ... 24

## List of Abbreviations

| | |
|---|---|
| HVDC | High Voltage Direct Current |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| MLL | Marlborough Lines Limited |
| NES | National Environmental Standards |
| NESTF | National Environmental Standards for Telecommunication Facilities 2016 |
| NPSET | National Policy Statement on Electricity Transmission |
| NZECP | New Zealand Electrical Code of Practice |
| NESTF | National Environmental Standards for Telecommunication Facilities 2016 |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| MLL | Marlborough Lines Limited |
| NZART & MARC | NZART Incorporated and Marlborough Amateur Radio Club (Branch 22) |
| NZTA | New Zealand Transport Agency |

## Objective 4.2

**Efficient, effective and safe operation of regionally significant infrastructure**

1. There were no provisions in Chapter 4 as to provide for utilities, and there was confusion over the status of the provisions in respect of network utilities. This matter was also raised by Transpower in Topic 3 Natural and Physical Resources and was also addressed by the Section 42A Report Writer. The Report Writer at that point and at the outset of the hearing of this topic conceded that there was a gap between the RPS provisions and the specific rules for utilities. She initially continued to hold this view in the context of Topic 20 on Utilities and Designations.[1]

**Section 42A Report**

2. Against this background, the Report Writer formed the opinion in assessing the requirements of Topic 20 that a new Objective 4.2A should be recommended to be added to Chapter 4, and also a new Policy 4.2.4 to emphasise the importance of network utilities and to provide for their upgrade and development. The decision was made by the Panel to include the term 'network utilities'[2] in the original Objective 4.2 with the [R] designation (which rendered the recommended new Objective 4.2A otiose).

3. The new recommended Policy 4.2.4 was accepted by the Panel and coded 'C' in addition to 'R' and 'D'.[3]

**Decision**

4. Objective 4.2 is amended to read:

   *[R]*

   *Objective 4.2 – Efficient, effective and safe operation of regionally significant infrastructure <u>and network utilities.</u>*

5. The explanation to Objective 4.2 is amended to read:

6. The community relies on the considerable infrastructure that has been developed to protect and support the population. It is essential for the social and economic wellbeing, health and safety of the Marlborough community that this critical infrastructure continues to operate efficiently, effectively and safely on an ongoing basis. This includes the ability to maintain, upgrade and replace existing infrastructure and network utilities. A new policy is added as follows:

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[1] Chapter 4, Section 42A Report, paragraphs 42-55.

[2] Transpower (1198.4, 1198.5, 1198.6).

[3] Topic 20 Utilities and Designations, Section 42A Report, Reply to Evidence, pages 18 and 19.

*[R, D, C,]*

*Policy 4.2.4 Provide for the upgrade and development of network utilities, while ensuring that any adverse effects are avoided, remedied or mitigated to the extent practicable.*

*It is important that network utilities are able to be developed and upgraded, in order to provide for the social and economic wellbeing and health and safety of the community. However, this must be balanced with the need to manage the adverse effects of such infrastructure. Consideration of the management of these effects needs to take into account the logistical, technical and operational constraints associated with network utilities. Reference must also be made to the relevant policy direction in other parts of this plan, for example, where located within an Outstanding Natural Landscape, or involving the removal of indigenous biodiversity, the policy framework relating to those will be relevant.*

## National Grid Provisions

7. The Panel issued Minute 38 to Transpower seeking clarification with respect to the company's request for multiple changes to notified provisions together with new provisions in respect of the proximity of activities to the National Grid. And as to whether the company intends that the PMEP include a new rule and standard that provides that other network utilities within the National Grid Yard should be identified as a permitted activity.

8. A good example of those requests by Transpower is that addressed at paragraph 222 of the Section 42A Report where it was also recommended that a new standard was inserted into Standard 21.2 for permitted activities in Floodway zones as requested by Transpower. The wording Transpower requested was as follows:

   *21.2.x. Activities within the National Grid Yard:*

   *21.2.x.1 The activity and associated works must maintain compliance with the New Zealand Electrical Code of Practice (NZECP34:2001) at all times.*

   *Advice note: Vegetation to be planted around the National Grid should be selected and/or managed to ensure that it will not result in that vegetation breaching the Electricity (Hazards from Trees) Regulations 2003.83*

### Consideration

9. Ainslie McLeod for Transpower identifies in her additional evidence that provision of network utilities within the National Grid Yard is the outcome sought by the company and that other network utilities are permitted when they comply with the New Zealand Electrical Code of

Practice for Electrical Safe Distances (NZECP 34:2001). They are not to include the reticulation and storage of water for irrigation purposes.

10. The reasons given for Transpower's responses to Minute 38 from the Panel were that:

- There is necessity for other network utilities (and particular electricity distribution infrastructure) to connect to the National Grid; this would give effect to Policy 10 of the NPSET.
- Policies in many planning documents seek opportunities for co-location.
- The nature and scale of network utilities are less likely to compromise the National Grid than some other activities (particularly other similar linear networks such as road, rail and telecommunications networks).

11. The Panel had also requested in Minute 38 that Transpower clarify the general legal status of NZECP 34:2001. Its response was as follows:

> *Legal Status of NZECP 34:2001*
>
> *The Hearing Panel has sought clarification in respect of the legal status of NZECP 34:2001. Transpower can confirm that NZECP 34:2001 is one of a suite of Electrical Codes of Practice that are issued by WorkSafe under Section 36 of the Electricity Act 1992. Compliance with NZECP 34:2001 is mandatory (as established by Regulation 17 of the Electricity (Safety) Regulations 2010).*

12. In the Panel's view, as the NZECP constitutes a mandatory requirement under its own legislative scheme, there is no necessity for it to be provided for by incorporation in the PMEP for it to continue to have mandatory effect, or for the plan to provide for the National Grid.

13. The Panel also inquired:

- whether a simplified version of the meaning of the rules could be referenced without identifying NZECP 34:2001;
- whether there were particular clauses of the code being referred to;
- whether consideration could be given to providing a schedule of particular compliance wording for including in a new appendix.

14. Transpower identified that:

- more than one section of the code could apply to any activity that is regulated by the provisions;

- to correctly reflect the nuances of the NZECP, substantial sections of the document would need to be reproduced;
- embedding the requirements of NZECP 34:2001 without reference is not effective or practical.

15. In their response to Minute 38, Transpower provided (inter alia) amendments that it suggested may achieve consistent expression of NZECP34:2001 and provide for the refinement to make one reference to the code more specific.[4]

16. NZECP 34:2001 is readily available to the public on Transpower's website.[5]

17. Other submitters including Transpower sought regulation of planting by an advice note requiring compliance with the Electricity (Hazards from Trees) Regulations 2003.

18. Both in the Introduction Topic 1 decision and the Natural Hazards Topic 9 decision the Panel stated that as these statutory regulations have mandatory effect, it is unnecessary for there to be further references to them in a manner which incorporates them into the Plan.

19. Instead a method has been included in the Natural Hazards Topic decision at 4.M.11 drawing attention to the information available on those regulations via the websites of Transpower New Zealand Limited and Marlborough Lines limited. No addition to that method is required in this Utilities Topic.

**Decision**

20. The submissions seeking specific references to the NZECP 34:2001 and the Electricity (Hazards from Trees) Regulations 2003 by way of rules or other provisions, requiring general compliance with them are rejected. If compliance with a particular provision is specified then that has been accepted. Otherwise the new Method 4.M.11 draws attention to websites with further information as to the application of those instruments.

21. Standards 3.2.1.17, 3.2.1.18, 4.2.1.15, 4.2.1.16, 7.2.1.10, 7.2.1.11, 12.2.1.9 and 12.2.1.10 have been deleted and replaced with the following, to be inserted in 3.3, 4.3, 7.3, 12.3, 18.3 and 19.3:

<u>*x.3.x. Buildings, structures and activities in the National Grid Yard*</u>

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[4] Transpower, Ainslie McLeod Evidence, and Attachment A Transpower New Zealand Limited – Further Amendments to Relief in Response to Minute 38.

[5] https://www.transpower.co.nz/keeping-you-connected/landowners-and-developers/safe-separation-distances

*x.3.x.1 Sensitive activities and buildings for the handling or storage of hazardous substances with explosive or flammable intrinsic properties must not be located within the National Grid Yard.*

*x.3.x.2. Buildings and structures must not be located within the National Grid Yard unless they are:*

*(a) a fence not exceeding 2.5m in height; or*

*(b) an uninhabited farm or horticultural structure or building (except where they are commercial greenhouses, wintering barns, produce packing facilities, or milking/dairy sheds (excluding ancillary stockyards and platforms).*

*(c) irrigation equipment used for agricultural or horticultural purposes including the reticulation and storage of water where it does not permanently physically obstruct vehicular access to a National Grid support structure;*

*x.3.x.3 Buildings and structures must not be within 12m of a foundation of a National Grid transmission line support structure unless they are:*

(*a) a fence not exceeding 2.5m in height that is located at least 6m from the foundation of a National Grid transmission line support structure or at least 5m from a National Grid pi-pole structure (but not a tower); or*

*(b) artificial crop protection structures or crop support structures not more than 2.5m in height and located at least 8m from a National Grid pi-pole structure (but not a tower) and are:*

*(i) removeable or temporary to allow a clear working space of 12m from the pole for maintenance and repair purposes; and*

*(ii) all weather access to the pole and a sufficient area for maintenance equipment, including a crane; or*

*(c) located within 12 metres of a National Grid transmission line support structures that meets the requirements of clause 2.4.1 of the New Zealand Electrical Code of Practice (NZECP 34:2001).*

*x.3.x.4 All buildings and structures must have a minimum vertical clearance of 10m below the lowest point of a conductor under all transmission line and building operating conditions.*

22. The following permitted activity rule is added to Sections 3.1, 4.1, 7.1, 12.1, 18.1 and 19.1:

*x.1.x. Buildings, structures and activities in the National Grid Yard.*

23. A new rule is to be inserted at 18.3 and 19.3 as follows:

*X.3.X Earthworks within the National Grid Yard.*

*X.3.X.1 Earthworks within the National Grid Yard in the following circumstances are exempt from the remaining standards under this rule:*

*(a) Earthworks undertaken as part of agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track;*

*(b) Excavation of a vertical hole, not exceeding 500mm in diameter, that is more than 1.5m from the outer edge of a pole support structure or stay wire;*

*(c) Earthworks that are undertaken by a network utility operator.*

*X.3.X.2. The earthworks must be no deeper than 300mm within 6m of the outer visible edge of a foundation of a National Grid transmission line support structure.*

*X.3.X.3. The earthworks must be no deeper than 3m between 6m and 12m of the outer visible edge of a foundation of a National Grid transmission line support structure.*

*X.3.X.4. The earthworks must not compromise the stability of a National Grid transmission line Support Structure.*

*X.3.X.5. The earthworks must not result in a reduction in the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice (NZECP 34:2001).*

24. Rules 3.1.15, 4.1.14, 7.1.12 and 12.1.30 are amended as follows:

*X.1.X. ~~Excavation or filling~~ Earthworks within the National Grid Yard.*

25. Standards 3.3.15, 4.3.14, 7.3.10, 12.3.19 are amended to read as follows:

*X.3.X.1 ~~Excavation~~ Earthworks within the National Grid Yard in the following circumstances ~~is~~ are exempt from the remaining standards under this rule:*

*(a) ~~Excavation that is~~ Earthworks undertaken as part of agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track;*

*(b) Excavation of a vertical hole, not exceeding 500mm in diameter, that is more than 1.5m from the outer edge of a pole support structure or stay wire;*

~~*(c) Excavation of a vertical hole, not exceeding 500mm in diameter, that is a post hole for a farm fence or horticulture structure and more than 5m from the visible outer edge of a tower support structure foundation.*~~

*(~~c~~d) Earthworks that are undertaken by a network utility operator.*

*X.3.X.2. The ~~excavation~~ earthworks must be no deeper than 300mm within 6m of the outer visible edge of a foundation of a National Grid transmission line support structure ~~Transmission Tower Support Structure~~.*

*X.3.X.3. The ~~excavation~~ earthworks must be no deeper than 3m between 6m and 12m of the outer visible edge of a foundation of a National Grid transmission line support structure ~~Transmission Tower Support Structure~~.*

*X.3.X.4. The ~~excavation~~ earthworks must not compromise the stability of a National Grid transmission line Support Structure.*

*X.3.X.5. The ~~filling~~ earthworks must not result in a reduction in the ground to conductor clearance distances as required in Table 4 of the New Zealand Electrical Code of Practice (NZECP 34:2001).*

## New standard as to reticulation and storage of water in National Grid

26. Transpower had requested a new standard be inserted as a new 2.39.4.2 as follows:

    *The reticulation and storage of water for irrigation shall not be located within the National Grid yard.*

27. The Section 42A Report recommended that new standard be adopted because reticulation lines and storage were not good for access requirements to the whole of the National Grid.

### Consideration

28. During the hearing, Mr Renton, for Transpower, provided a practical description of the access issues created by the storage and distribution of water. The Panel agreed with those concerns but took the view that the standard was more appropriately located in the provisions related to the permitted activities for damming of water in the general rules Chapter 2. Constraints to access could be created by any storage and distribution of water not just that undertaken by a network utility operator. The Panel has also noted elsewhere in this decision that it cannot identify an example of a network utility operator storing water. The issue of reticulation could be addressed by reference in the new standard to '…*damming and storage of water, and operation of their associated reticulation lines*…'.

**Decision**

29. Insert a new standard as follows in the General rules:

*2.3.16.3 The damming of water, and operation of their associated reticulation lines, shall not occur within the National Grid Yard.*

## Exemptions from new Standard for Earthworks within the National Grid Yard

30. One of the more convoluted outcomes of the Transpower submissions and the Reply to Evidence in relation to National Grid provisions related to the requested and recommended exemptions from the new general standards in a range of zones for 'Earthworks within the National Grid Yard'. The outcome was that the Reply to Evidence recommended the following wording requested by Transpower, which provided for exemptions from the standard for the activities listed as (a) to (c):

*Earthworks within the National Grid Yard.*

*X.3.X.1 Excavation Earthworks within the National Grid Yard in the following circumstances is exempt from the remaining standards under this rule:*

*(a) Excavation that is Earthworks undertaken as part of agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track;*

*(b) Excavation of a vertical hole, not exceeding 500mm in diameter, that is more than 1.5m from the outer edge of a pole support structure or stay wire;*

~~*(c) Excavation of a vertical hole, not exceeding 500mm in diameter, that is a post hole for a farm fence or horticulture structure and more than 5m from the visible outer edge of a tower support structure foundation.;*~~

~~*(d)*~~ *(c) Earthworks that are undertaken by a network utility operator (excluding buildings or structures associated with the reticulation and storage of water for irrigation purposes).*

31. The Panel accepted the reasoning for those exemptions as recommended, except for the exclusion from the exemption in parentheses at the end of subclause (c). The use of the parentheses provides an exclusion from an exemption - which is effectively a clumsy double negative.

32. In any event as subclause (c) only applies to earthworks 'undertaken by a network utility operator' the Panel does not see that the words in parentheses are necessary. The Panel is

unaware of any situations where network utility operators reticulate or store water for irrigation purposes in Marlborough and it received no evidence to the contrary.

33. The final point the Panel decided was that the heading to this proposed provision was not accurate as it only contains exemptions. Accordingly the heading should reflect the fact it is an exemption provision.

**Decision**

34. A new standard X.3.X.1 is inserted as follows:

*X.3.X.1 ~~Excavation~~ Earthworks within the National Grid Yard in the following circumstances is are exempt from the remaining standards under this rule:*

*(a) ~~Excavation~~Earthworks ~~that is~~ undertaken as part of agricultural, horticultural or domestic cultivation, or repair, sealing or resealing of a road, footpath, driveway or farm track;*

*(b) Excavation of a vertical hole, not exceeding 500mm in diameter, that is more than 1.5m from the outer edge of a pole support structure or stay wire;*

*(c) ~~Excavation of a vertical hole, not exceeding 500mm in diameter, that is a post hole for a farm fence or horticulture structure and more than 5m from the visible outer edge of a tower support structure foundation.~~ Earthworks that are undertaken by a network utility operator.*

## National Grid Cook Strait Marine Cables

### Policy 13.10.1

**Enable structures to be located within the coastal marine area where these are necessary for the purposes of assisting with navigation of ships/vessels or are temporary in nature for scientific monitoring or research purposes.**

### Rule 16.1.9

**Repair, maintenance or replacement of the existing subsurface Cook Strait cable.**

34. Transpower in its submission requested that provision be made for the installation, operation and upgrading of the Cook Strait submarine cable to give effect to Policy 10 NPSET. The Panel has accepted that, as a matter of law, it is required to give effect to that policy. Rule 16.1.9 needs amendment to achieve that.

30. However, Policy 13.10.1 which enables rules such as Rule 16.1.9 also needs a consequential amendment to achieve that enabling outcome. To provide a policy framework for the requested amended wording of the rules it is necessary for Policy 13.10.1 which enables occupation of the coastal marine area for certain defined purposes to also include occupation for the purposes of operation of the National Grid Cook Strait cables and the related activities required to be provided for by Policy 10 of the NPSET.

**Decision**

31. Amend Policy 13.10.1 as follows:

*Policy 13.10.1 – Enable structures to be located within the coastal marine area where these are necessary for the purposes of assisting with navigation of ships/vessels, or for the operation of the National Grid Cook Strait submarine cables, or are temporary in nature for scientific monitoring or research purposes.*

32. Amend the explanatory text to Policy 13.10.1 as follows:

*For safety reasons it is important that navigational aids can be strategically located in Marlborough's coastal marine area. Monitoring equipment for scientific purposes or research is often temporary in nature and does not usually involve significant alteration or occupation of the coastal marine area. The installation of cables in the coastal marine area is necessary as part of the operation of the National Grid. The cables provide for the transmission of electricity between the South Island and North Island and are vital for security of electricity supply. An enabling approach to these types of structures is provided for through the rules, subject to standards.*

33. Insert a new paragraph at the end of the explanatory text to 13.10.1 as follows:

*The installation of cables in the coastal marine area is necessary as part of the operation of the National Grid. The cables provide for the transmission of electricity between the South Island and North Island and are vital for security of electricity supply.*

34. Rule 16.1.9 is amended as follows:

*16.1.9. Installation, operation, ~~Repair,~~ maintenance, repair and upgrade ~~or replacement~~ of ~~the existing subsurface~~ National Grid Cook Strait submarine cables including the following:*

*(a) disturbance of the foreshore or seabed and associated discharges*

*(b) the discharge of heat to coastal water; and*

*(c) associated lighting, navigational aids and signs.*

35. As a consequence, Standard 16.3.7 is also amended to read as follows:

*16.3.7. ~~Repair~~Installation, operation, maintenance, ~~or replacement~~ repair and upgrade of National Grid ~~the existing subsurface~~ Cook Strait submarine cables.*

## Standard 16.2

## Standards that apply to all permitted activities

36. Transpower's submission sought a standard to be included to protect the Cook Strait cable from activities from third parties on the foreshore.

37. However, the wording supported by both the report writer and Transpower of 'immediately adjacent to Transpower New Zealand Limited's Fighting Bay Terminal Station this description leaves an uncertainty which can be avoided by utilising the phrase '*within the Cook Strait Cable Protection Zone'*.

38. The Panel also notes that the proposed inclusion of the word 'mooring' is not apposite in the new standard as moorings are not permitted activities under rule 16.2.1. The word 'mooring' has, therefore, been omitted from the wording which the Panel has otherwise accepted as being required in the new standard.

39. Otherwise the Panel accepts that the proposed new standard should be included in the plan to meet the obligations imposed by Regulation 10 of NPSET .

**Decision**

40. The following new standard is inserted under Standard 16.2:

*16.2.X Activities in the vicinity of the of National Grid Cook Strait submarine cables*

*16.2.x.1 Except for works associated with the National Grid Cook Strait submarine cables there shall be no disturbance, anchoring, or occupation of the foreshore within the Cook Strait Cable Protection Zone.*

## Standard 2.39.1.7

**The maximum height of any aerial or support structure attached to the top of a building must not exceed the height of the building by more than 3m.**

41. This standard provides for aerials and support structures up to a height of 3 metres attached to the top of buildings.

42. Chorus and Spark seek the maximum height for aerials and support structures in the less sensitive zones (Industrial 1 and 2, Rural, Lake Grassmere Salt Works and Port Environment) should be extended to 5 metres from 3 metres.[6]

**Section 42A Report**

43. The Report Writer accepts that NESTF permits antenna attached to buildings by up to 5 metres and therefore the additional height would be consistent with this. The original Section 42A Report indicated that the higher 5 metre antenna, if allowed higher in these zones being

[6] Chorus (464.40) and Spark (1158.38).

less visually sensitive, could impact on the visual amenity of the Urban Zones. The Report Writer was neutral to the outcome.[7] She observes that the additional height due to scope issues would result in two separate height limits depending on which zone is less streamlined.[8]

**Consideration**

44. First, the standard should apply to 'antenna' not 'aerial'. 'Aerial' is not defined in the PMEP, 'antenna' is, and the definition would encompass aerials in the Panel's view.

45. Secondly, the Panel considers that it is appropriate to add the words 'except for the Rural Zone and Industrial 1 and 2 Zones where the maximum exceedance must not be more than 5 metres'. This decision excludes the Lake Grassmere Salt Works Zone and the Port Zone where amenity is an issue.

**Decision**

46. Standard 2.39.1.7 is amended as follows:

*2.39.1.7 The maximum height of any ~~aerial~~ antenna or support structure attached to the top of a building must not exceed the height of the building by more than 3m except for the Rural Zone and the Industrial 1 and 2 Zones where the maximum exceedance must not be more than 5m.*

## Network utilities

### Standard 2.39.1.14

**A line or network utility structure, or a telecommunication, radio communication or meteorological facility, or a building or depot must not be located:**

**(a) in, or within 8m of, a Significant Wetland;**

**(b) within 8m of a river or the Drainage Channel Network;**

**(c) on, or adjacent to, any land used for the purposes of a farm airstrip, or in such a manner as to adversely affect the safe operation of a farm airstrip existing at the time of the Plan becoming operative.**

47. When Significant Wetlands were being addressed in Topic 6, the Report Writer indicated that support might be given to excluding facilities (such as telecommunications, radio or meteorological facilities) located within a formed legal road from the provisions in (a) of the standard. The submitters to this provision, Chorus and Spark,[9] seek a refined amendment to the standard to exclude application of the setbacks of the facilities within a formed legal road.

48. They also seek removal of the reference to a 'building or depot' on the basis that the definition of telecommunication and radiocommunication facilities already covers such

[7] Section 42A Report, Reply to Evidence, page 10.
[8] Section 42A Report, paragraph 105.
[9] Chorus (464.40) and Spark (1158.42).

facilities. Chorus and Spark consider that new lines with a legal road are an efficient use of infrastructure (and will not give rise to noticeable effects on a Significant Wetland, drainage channel network or farm strip over and above those effects caused by the legal road).

49. Following reconsideration as a result of the 2016 NESTF they seek only that the exclusion applies to where a legal road is formed or provided for under NESTF. NESTF applies under Regulations 44-52 to district plan rules and to Significant Wetlands separately (Regulations 48-49).

50. The standard provided in the notified plan, Standard 2.39.1.14(b), identifies the various network facilities and structures exclusion within 8m of the Drainage Channel Network or adjacent to or on any land used for the purposes of a farm airstrip, Standard 2.39.1.14 (c). These activities were not originally managed under NESTF.[10] Transpower notes that the standard (which the company initially thought should be deleted) has the effect of giving priority to farm strips over regionally significant infrastructure including the National Grid (even when underground) in a manner that could frustrate site or route selection. ('Farm strips' is a permitted activity in the PMEP without onerous standards.)

**Consideration**

51. The report writer's understanding is that the reference to 'building or depot' applies to the standard as a whole rather than the named facilities, and she recommends a slight change in the order of the wording to make this clearer.

52. The Panel, noting that some of the activities would not occur in the road reserve, considered the order of activities listed including 'building or depot' should revert to the words originally set out in the opening words of the standard.

53. The Panel disagreed with reordering the matters in the standard to ensure that the exception did not apply to buildings and depots.

**Decision**

54. Amend Standard 2.39.1.14 to read as follows:

*2.39.1.14 A line or network utility structure, or a telecommunication, radio communication or meteorological facility (<u>except where located within a formed legal road),</u> or a building or depot must not be located: …*

[10] Transpower, Ainsley McLeod, Evidence, paragraph 45.

## Standard 3.3.8.2

**Planting must not be in, or within:**

**(a) 100m of any land zoned Urban Residential 1, Urban Residential 2 (including Greenfields), Urban Residential 3, Rural Living or Coastal Living;**

**(b) 30m of a formed and sealed public road;**

**(c) 8m of a river (except an ephemeral river) or lake;**

**(d) 8m of a Significant Wetland or 30m of a river within a Water Resource Unit with a Natural State classification;**

**(e) 200m of the coastal marine area;**

**(f) Steep Erosion-Prone Land, unless replanting harvested woodlot forest lawfully established.**

55. Standard 3.3.8.2 Woodlot forestry planting provides for planting distances from zoning, public roads, wetlands, rivers, Water Resource Units, the coastal marine area and steep erosion land.

56. KiwiRail seeks an additional standard to the restrictions on woodlot forestry plantings in the Rural and Coastal Environment Zones and on a formed and sealed road. The intent of the submission is to restrict planting within 10 metres of the rail corridor thereby reducing risk to the safe operation of the main trunk railway by creating a suitable buffer for KiwiRail's rail corridor operations. The purpose of the setback is to try and prevent issues in the future when woodlots and commercial forestry are developed or redeveloped on sites adjacent to the rail network.[11]

**Section 42A Report**

57. The Report Writer agreed that a setback is appropriate from the rail corridor to ensure the safety of the network but queried why only woodlot forestry should be affected rather than also addressing commercial forestry.[12]

58. In evidence, Ms Rebecca Beale for KiwiRail clarified that this type of planting (along with commercial forestry addressed elsewhere) poses a greater risk to the safe operation of the rail corridor than shelterbelt planting. This led to the Report Writer to restrict the Section 42A Report Standards 3.3.8.2(a) and 4.3.7.2(f) to recommend excluding woodlot forestry from within 10 metres of the edge of the railway track.[13]

59. Ms Beale identified that woodlot forestry is non-commercial (Standards 3.3.6.2 and 4.3.6.1) and gave a list of what can take place in the rail corridor with the intrusion of this type of forestry into sight lines, encroachment on the tracks, and harvesting which involves heavy

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[11] KiwiRail (873.127 and .122).

[12] Section 42A Report, paragraphs 179-180. In relation to other forestry planting managed under NESPF, the regulations include a requirement for afforestation (planting) to be set back 10 metres from adjoining properties which would include the boundary within the rail corridor.

[13] KiwiRail, Rebecca Beale Evidence, paragraphs 56-61.

machinery near the tracks. Restrictions on planting location is a means of combatting these effects.

**Consideration**

60. The Panel concluded, having heard the evidence, that the restriction should be consistent with Standard 3.3.8 Woodland forestry planting, that applies to the road reserves in the PMEP Standard 3.3.8.2(b) – [species named] where planting must not be in or within 30m of a formed and sealed public road.

61. MLL otherwise seeks that the permitted activity standards in the Rural Environment, Coastal Environment and Rural Living Zones that relate to woodlot forestry and conservation planting require a 40m buffer setback from their distribution circuit.[14]

62. Ms Straker for MLL in questioning was happy to accept a fall distance setback, however, rather than a 40m buffer. In response to the Panel questions she confirmed that a 40m setback covers the worst case scenario and accepted that a lesser distance would be appropriate. Therefore the Panel agreed to a 30m setback. This is consistent with the setback from the road network for woodlot forestry.

63. We concluded that there should be a consistent standard as applies to the road reserve in proposed Standard 3.3.8.2(b) with the addition of the words '*or within 30m of the Main Trunk railway track*' as there is uncertainty as to what constitutes a 'rail corridor'.

**Decision**

64. Standard 3.3.8.2 is amended as follows:

*[R, D]*[15]
*Standard 3.3.8.2 Planting must not be in or within: …*
*(b) 30m of a formed and sealed public road or 30m of the Main Trunk railway track.*

## Standard 16.3.7

**Repair, maintenance or replacement of the existing subsurface Cook Strait cable.**

## Standard 16.3.7.1

**No more than 500 $m^3$ of material must be disturbed in any one calendar year.**

65. In Minute 48 the Hearing Panel requested that Transpower provide detailed reasons for seeking the deletion of Standard 16.3.7.1 which controls the volume of foreshore and seabed materials that might be disturbed during the replacement or installation of a new submarine

[14] MLL (232.3, .4, .5, .6, .7, .8).
[15] KiwiRail. Ms Beale's Evidence, paragraph 9, pointed out that the provisions sought are both [R, D].

cable.[16] The Cook Strait cables are vital to New Zealand's electricity and communications system.

66. In evidence for Transpower, Mr Andrew Renton identified that Transpower owns and operates three High Voltage Direct Current (HVDC) submarine cables that transmit up to 1470 MW of power, and two fibre optic submarine cables that traverse Cook Strait for domestic and commercial traffic. Transpower is responsible for control and protection of the HVDC link between Benmore in the South Island and Haywards in the Hutt Valley.

67. These cables lie unburied on the seabed across Cook Strait within the Cook Strait Submarine Cable Protection Zone except where they are buried at a target depth of 0.8m for a distance of 20 metres seaward of mean high water springs and at a minimum depth of 0.6m for a further distance of 180 metres.[17] Beyond this point, burial is prevented by the topography and geology of the seabed.

68. Transpower seeks deletion of the standard to provide for:

- the ability to bury cables should they become exposed as a result of normal tidal or storm-related movement of the seabed (more than one tidal or storm event in a calendar year would trigger the need for a resource consent to bury the exposed cables);
- the ability to install a new cable within the Cook Strait Submarine Cable Protection Zone with minimal disturbance of the seabed;
- damage and repair works on the cable as a result of fishing activities – any maintenance work would be temporary as the cables rest on the sea floor.

69. Due to the critical importance of the cables and the significant expense associated with repair and maintenance, Transpower puts considerable effort into ensuring the cables are protected.

70. Transpower notes that any seabed effects would be minor and of limited duration because the seabed in the near shore area on which the cable lie has been previously disturbed and is a highly dynamic environment where any effects are not discernible after as few as two tidal cycles.

[16] Hearing Panel Minute 38.
[17] Transpower, Andrew Renton Evidence, paragraph 20.

**Consideration**

71. By virtue of the Cook Strait Submarine Cable Zone, any works limited to this area are identified by the PMEP definition of 'National Grid Cook Strait Submarine Cables' and therefore are limited to the area that has been previously disturbed.

72. In a reflection of the enabling policies of NPSET while confining activities and any associated effects, the Panel considered that Transpower's newly proposed (enabling) amendment to Rule 16.3.7 as opposed to its deletion is an appropriate solution to the issue. For the company affirmed that the extent of the disturbance to the seabed could be further confined by amending Standard 16.3.7.1 to within 200m of mean high water springs.[18]

**Decision**

73. The amended wording to Standard 16.3.7.1 is as follows:

*16.3.7.1. ~~No more than 500m$^3$ of m~~<u>M</u>aterial must <u>not</u> be disturbed <u>beyond 200m from MHWS</u>.*

## [New] Rule

74. Submissions were received from MARC & NZART which sought that provision be made in the Plan for amateur radio aerials to be constructed and operated so as to ensure amateur operators were not unduly restricted by the height limitations proposed in the PMEP rules. The submission sought:

> *Seeks that the permitted height limit for antennas attached to a building be 7m (as sought in submission) rather than the 3m recommended in the Section 42A report, on the basis that a higher height is required for technical reasons. Also explains the visual effects associated with these types of structures.*

**Section 42A Report**

75. The Reply to Evidence by the report writer on this issue stated as follows:

> *I note the comments in evidence that any antenna an ARC operator would want to mount on a building would be of a similar shape form and size to an analogue TV aerial. As such, I accept that visually, they would form an anticipated part of a residential environment. I also accept that additional technical information has been provided to demonstrate that the 3m limit would not meet technical requirements. On the basis of this, and the information provided about what these types of structures look like, I am comfortable with recommending the additional height. I note that if the Panel have concerns that a 7m height for all antennas (e.g. UHF or VHF Yagi antennas) is not appropriate, the submitters have indicated they would be happy with a 7m height for*

[18] Transpower (1198.122).

*simple, vertical collinear aerials. As a result of questions from the Panel, I do recommend some minor changes to better clarify the intent of the recommended standards.*

**Consideration**

76. Answers from the submitters satisfied the Panel that the report writer's views were accurate that the impacts of such aerials was unlikely to affect residential amenity, so long as some controls were placed on the numbers and height of aerials above structures.

77. The suggestions in that regard by the report writer were viewed as reasonable and will be adopted in the Plan as set out in the decision below. That will also require a consequential extra definition to be included for 'Amateur Radio Configurations'.

**Decision**

78. A new rule is inserted in the Plan as follows:

*X.3.X Amateur Radio Configurations*

*X.3.X.1 Except as specified below, the Recession Plane and Height Controls do not apply to any antenna or support structure.*

*X.3.X.2 Any part of an antenna or support structure must not overhang property boundaries.*

*X.3.X.3 Any of the elements making up an antenna must not exceed 80mm in diameter.*

*X.3.X.4 The maximum height of any support structure (including antenna) shall not exceed the height limit otherwise applicable to structures, except that:*

*(a) one free standing support structure (including antenna) per site may exceed the maximum height for a structure, up to a maximum of 20m; and*

*(b) any support structure (including antenna) attached to a building may exceed the height of the building by no more than 7m*

*X.3.X.6 The maximum number of antennas on a site shall not exceed 12.*

*X.3.X.7 For horizontal HF yagi or loop antenna, the maximum element length shall not exceed 14.9m and the boom length must not exceed 13m.*

*X.3.X.8 Any dish antenna must:*

*(a) Be less than 5m in diameter*

*(b) Be pivoted less than 4m above the ground*

*(c) Meet the relevant building setback*

*(d) At any point in its possible rotation, not exceed a height equal to the recession plane angle determined by the application of the Recession Plane and Height Controls in Appendix 26. The recession plane angle must be measured from a starting point 2m above ground level at the property boundary.*

79. A new definition is inserted of Amateur Radio Configurations as follows:

*Amateur Radio Configurations means the aerials, antennae and associated support structures which are owned and operated by licenced amateur radio operators.*

## Rules 2.38.3 and 2.39.2

**Trenching for cable laying**

80. Chorus and Spark[19] informed the Panel that most installations of cables are installed underground rather than using a trenching method.

81. They also raised concern with respect to Standard 2.39.2.2 in that it would limit the installation of cables in close proximity to Significant Wetlands and rivers with a Natural State classification. The submitters sought an exemption :

> *The 8m setback does not apply to undergrounding which is undertaken within formed legal road.*

82. In making this request Chorus and Spark, in the evidence of Tom Anderson, highlighted that 'road corridors to be appropriate locations for network utility lines'.

**Consideration**

83. The Panel considered that consequently rules relating to trenching should also refer to undergrounding for cable laying.

84. The Panel also agreed that roads are appropriate locations for network utility lines and the exemption sought should apply. As pointed out in evidence, the method of undergrounding involves a reduced potential for adverse effects.

**Decision**

85. Rules 2.38.3 and 2.39.2 are amended to read:

*Trenching or undergrounding for cable laying.*

86. Standards 2.39.2.2, 2.39.2.3, 2.39.2.6 are also amended to include the additional wording 'or undergrounding' as follows:

[19] Chorus (464.34) and Spark (1158.32)

*2.39.2.2. Trenching or undergrounding must not occur in, or within 8m of, a Significant Wetland or Water Resource Unit with a Natural State water quality classification. The 8m setback does not apply to undergrounding which is undertaken within formed legal road.*

*2.39.2.3. Trenching or undergrounding must not occur within such proximity to any abstraction point for a community drinking water supply registered under section 69J of the Health Act 1956 as to cause contamination of that water supply.*

*2.39.2.6. Trenching or undergrounding must not cause any conspicuous change in the colour or visual clarity of any flowing river after reasonable mixing, or the water in a Significant Wetland, lake or the coastal marine area, measured as follows: …*

### Definitions Minor Upgrading

87. The Panel accepted the report writers recommended amendment to the definition of minor upgrading but considers that upgrading should be limited to replacement structures.

*Minor Upgrading means an increase in the carrying capacity, efficiency or security of electricity (for the purpose of utilities) lines, telecommunication lines and radio communication facilities, using the existing support structures or replacement structures of a similar scale and character, and includes:*

*(a) The replacement, reconfiguration, relocation or addition of lines, circuits and conductors;*

*(b) The re-conductoring of the line with higher capacity conductors;*

*(c) The re-sagging of conductors;*

*(d) The addition of longer or more efficient insulators;*

*(e) The addition of earthwires ~~which may contain telecommunications lines~~, earthpeaks and lighting rods;*

*(f) Foundation works associated with the minor upgrading.*

*~~Minor upgrading does not include an increase in the voltage of the line unless the line was originally constructed to operate at the higher voltage but has been operating at a reduced voltage.~~*

### Maps 218 and 234

88. Kiwirail sought two changes to the designation. One of which was supported by the S42A report writer and one that was not. The Panel was not convinced that the land zoned Open Space 3 was required for rail operations. In contrast the adjoining area, which the Panel did

agree to rezoning, is in the Rural Environment Zone. The map attached below shows those two areas.

**Decision**

89. Maps 218 and 234 are amended as below:

**Map 83 and 159**

90. Amend maps as per the response to Minute 40 from NZTA

## Pine Valley Camp

91. In the course of the Panel's deliberations, the Panel became aware of an apparent mapping error for designation C15. C15 applies to the "Pine Valley School" and the requiring authority is the Ministry of Education. This site is more commonly known as the Pine Valley Outdoor Education Centre and is used extensively by local schools and the wider community.

92. The Centre is located over two properties: Section 3 Sec 2 BLK XVIII Pine Valley SD owned by the Ministry of Education and Section 4 Sec 2 BLK XVIII Pine Valley SD owned by MDC. As described in Appendix 14 of Volume 2, the designation only applies to the Ministry's property. There is no equivalent entry for the Centre in the Council's designations (pages 14-4 to 14-10). Map 155 in Volume 4, however, shows the designation applying to both properties. Given the specificity in the appendix, the Panel has determined that this inconsistency is as a result of a mapping error.

93. The Panel has also looked at the Wairau/Awatere Resource Management Plan and notes that the same mapping error occurs in that Plan[20]. It was probably simply a case of the mapping error being transferring from one plan to the other.

94. The Panel has decided to amend Map 155 to correct this mapping error in accordance with Clause 16 of the RMA. The designation will now only apply to Section 3 Sec 2 BLK XVIII Pine Valley SD.

[20] Map 132 of Volume 3

# Proposed Marlborough Environment Plan

# Topic 21: Zoning and Definitions

**Hearing dates:** 6 – 7 November 2018

**S42A Report Writer:** Paul Whyte, Andrew Henderson, Liz Gavin and Matt Oliver

**Conflicts of Interest:** Commissioners Hook, Crosby, Oddie, Arbuckle

**Interim decision:** No

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

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## List of Abbreviations

| | |
|---|---|
| GMSF | Growing Marlborough – A Strategy for the Future |
| PMEP | Proposed Marlborough Environment Plan |
| MDC | Marlborough District Council |
| NES | National Environmental Standard |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| Chorus | Chorus New Zealand Limited |
| Colonial | Colonial Vineyards Ltd |
| Levide | Levide Capital Limited |
| NZTA | New Zealand Transport Agency |
| Spark | Spark New Zealand Limited |
| Talleys | Talleys Group Limited Land (Operations) |

## Volume 4 Zone Maps

1. The following provisions are amended for the reasons set out in in the report writers' Reply to Evidence or where no commentary is provided there, then as stated in the Section 42A Report:

   Map 8 – Lot 1 DP 8533

   Map 19 – 38 and 40 New Renwick Road

   Map 21 – 100 and 102 Alabama Road

   Map 34 – 5-9 Kent Street

   Map 55 – 15 and 19 Hardings Road

   Map 57 – 80 Main Road

   Map 60/61 – Wairau Valley Tavern

   Map 140 – Lot 1 DP 467695

**Zoning Maps 12, 13, 18, 19 (Battys Road)**
**Burleigh Estate Ltd and Donna Marris**

2. Several submitters gave evidence in support of the Marris Family Trust and Burleigh Estate rezoning 31.56 ha of Rural Environment land to Urban Residential 2, to the west of Battys Road and to the north of New Renwick Road.[1] The submitters own all of the relevant land on the Computer Freehold Register 721727 Burleigh Estate Limited, and Computer Freehold Register 160333 and 160334 Marris.[2] Figure 7 in the Zoning Section 42A Report illustrates this as Area 8 which was identified in the Growth Strategy as an area suitable for urban residential land.

3. Against the background of the Southern Marlborough Urban Growth and Development – A Strategy for the Future 2013 (the Growth Strategy), which predicted an increase in the population levels from the 2006 levels, indicating an increase for Blenheim of 2770 by 2031, the submitters seek to change the land use of the site in order to provide land for a range of sustainable developments in an expanding area of Blenheim. Recent plan changes have provided only 66% of what was originally proposed in the Growth Strategy, significantly short of what is needed out to 2031.

4. The area of Burleigh/Marris land is seen to be well placed to help provide urban capacity for Blenheim in the short to medium term.

[1] Donna Marris (200.1-200.4) and Burleigh Estate Ltd (98.1).
[2] Burleigh Estate Limited and Marris Family Trust, Gavin Cooper, Evidence, paragraphs 14-15, Ayson Surveys and Report *Battys Road West – Rezoning Proposal* at Attachments 1 and 2 refer.

5. The submitters were supported by witnesses from surveying, civil engineering, traffic impact assessment, geotechnical investigations and planning professions.

6. Ms Skilton, traffic engineer for the submitters, confirmed at the hearing that the results of the projections for a roundabout at the Battys Road/New Renwick Road intersection might require land acquisition from other owners (who had not been consulted).

7. In her analysis, Ms Skilton assumed a single lane roundabout with a 15 metre diameter. She changed the default roundabout environment factor from 1.0 to 1.1 to be conservative as 'Sidra' (the analysis tool) sometimes under-estimates delays at a roundabout.[3] The layout used in the analysis is shown in Figure 22 of her evidence. It was recommended that the roundabout be constructed prior to the completion of all developments proposed in the submissions.[4]

8. The conclusion reached by Ms Skilton is that with the development, the level of service on the southern approach (Richardson Avenue) reduces to D. The right turn from Battys Road also has level of services D with an average delay for this movement of 27.7 seconds per vehicle.

9. 'With all the other developments the level of service reduces to F for both the southern and northern approaches. This level of delay is not acceptable and mitigation would be required'.[5]

10. As part of mitigation, however, Ms Skilton acknowledged there were 'space constraints due to local land use boundaries' in order to get enough capacity for the eastern approach ('two approach lanes are required here'), leaving 'final decisions at the detailed design stage'[6] which would involve liaising with Marlborough Lines.

**Section 42A Report**

11. The report writer identifies the positive aspects of the proposal from the evidence of Donna Marris in terms of the site's geotechnical investigative ground conditions, its connectivity to both New Renwick and Battys Roads, and access to the road network. New Renwick Road is currently beginning to have high delays, particularly at the intersection of Battys Road. It is this intersection that is the Panel's main focus in this decision in zoning terms.

12. As to the mitigation evidence, the report writer considered that accommodating a roundabout on New Renwick/Battys Road did not appear to be conclusive in its preliminary design. The traffic effects at the Battys Road/New Renwick Road intersection were analysed by making

[3] Burleigh Estate and Marris Family Trust, Laura Skilton, Traffic Figures Evidence, paragraphs 114-117.
[4] In Figure 24 similar conclusions were reached in respect of the analysis of effects at the Aerodrome Road/New Renwick Road intersection (Laura Skilton, paragraphs 118-132).
[5] Hearing Panel Minute 46, paragraph 3.
[6] Burleigh Estate and Marris Family Trust, Laura Skilton, Traffic Figures Evidence, paragraphs 142-145.

projections as to those cumulative effects only when added to traffic effects of already consented or permitted activities.[7]

13. The Panel sought further information on the traffic effects at the Battys Road/New Renwick Road intersection, and similarly also an analysis of the effects at the Aerodrome Road/New Renwick Road intersection for which approval would also need to be sought, also identified in the evidence of Ms Skilton.[8]

**Consideration**

14. In its Minute 46, the Panel requested that Figure 22 (and Figure 24) provided in Ms Skilton's evidence be redrawn to include:

- present property boundaries and information on the ownership of the underlying land;
- the steps undertaken to acquire the land necessary to be able to construct the roundabouts as identified in Figures 22 (and 24).

15. The Panel undertook several visits to the site including when the response to Minute 46 introduced a new Figure 1, a schematic design of the Battys/New Renwick Road roundabout. Figure 1 provided the property details adjacent to the proposed intersection, advising that the only property owner consulted was the shop owner at the 72 New Renwick Road intersection.

16. Of particular interest to the Panel in the diagram, however, was the central roundabout in Figure 22 described as '14 metres [which] will allow for a 1.5 metre wide footpath around all four corners of the roundabout without any property acquisition'.

17. The focus of the Panel's particular concern related to:

    (i) traffic movements along New Renwick Road in both directions; and
    (ii) traffic movements into and out of Battys Road onto New Renwick Road in both directions; and
    (iii) the impacts of the proposed design on current traffic flows on both Battys Road and New Renwick Road in a comparative sense with current road layout patterns.

18. The 1.5 metre wide footpath peters out not far from the corner in Richardson Avenue which indicates pedestrians would not be safe.

[7] Section 42A Report, Reply to Evidence, page 1.
[8] Hearing Panel Minute 46, paragraphs 3, 5-10.

19. A further request of Marlborough Roads[9] sought confirmation from Marlborough's roading authority (Mr Steve Murrin) as to whether a safe and efficient roundabout could be constructed within the confines of New Renwick and Battys Roads and Richardson Avenue intersection without acquiring additional land. Mr Murrin's conclusion is that a safe and efficient roundabout can be constructed within the confines of those Battys and New Renwick Roads and the Richardson Avenue intersection with the caveats being:

- consideration be given to acquiring a 2.5 metre strip along the Battys Road frontage;
- the proposal will have a significant impact on the available space in front of the shop on the corner of Richardson Avenue;
- there will be slight delays for traffic going straight through on New Renwick Road as they would need to give way at the roundabout;
- there may be a 'rat run' if traffic builds up on New Renwick Road heading east and the locals may 'rat run' run along Lancaster Avenue, Spitfire Drive and Richardson Avenue to avoid the traffic.

20. In Minute 50, however, the Panel had sought specific consideration from Marlborough Roads' response of footpath layouts and/or bicycle lanes if they were likely to be contemplated. Mr Murrin replied that the design can safely cater for cycle traffic or for pedestrian crossing roads within the intersection.[10]

**Decision**

21. The land subject to the submissions is rezoned Urban Residential 2.

22. Insert a new policy after Policy 12.9.6 as follows:

*Policy 12.9.x – Before residential subdivision and development of land in Schedule 2, Appendix 23 proceeds, roundabouts at the intersections at Battys Road and New Renwick Road and New Renwick Road and Aerodrome Road must be considered as part of the subdivision consent process with the following outcomes to be achieved:*

(a) *In respect of Battys Road and New Renwick Road intersection a roundabout must be constructed prior to any subdivision and development;*

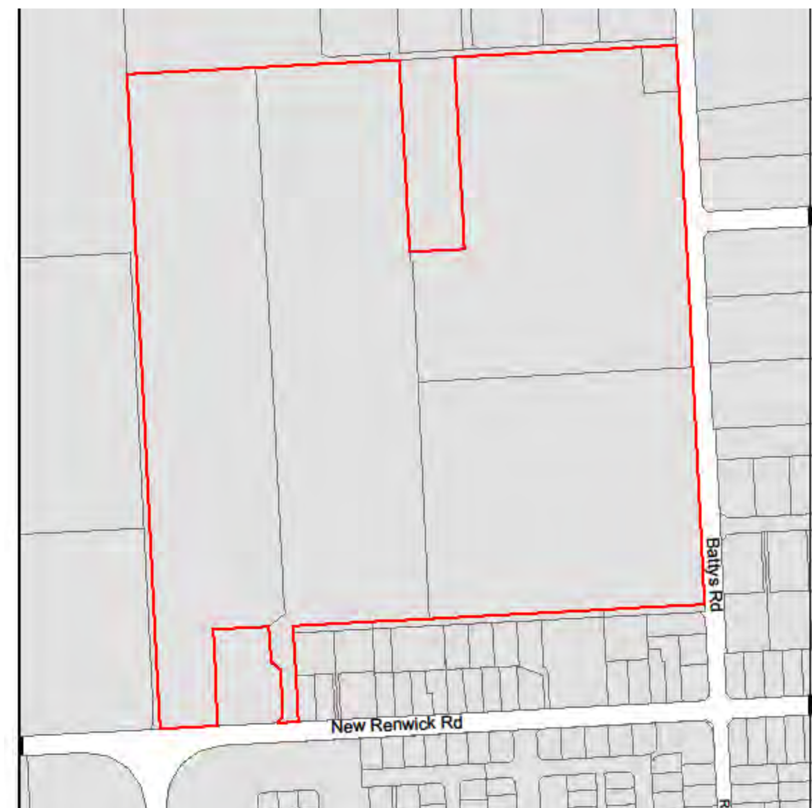
(b) *In respect of the Aerodrome Road and New Renwick Road intersection modelling of traffic volumes/flows must be considered in determining whether a roundabout is required at that intersection before any subdivision consent is granted; and*

[9] Hearing Panel Minute 50.
[10] Marlborough Roads, Steve Murrin, Response to Minute 50, paragraph 3(i)-(iii).

(c) *Any roundabout makes sufficient and appropriate provision for likely traffic volumes, cyclists and pedestrians.*

*The land in Schedule 2, Appendix 23 was rezoned Urban Residential 2 as a result of submissions made to the notified Plan. Integrating future residential development on this land with the existing road network is of critical importance as the adjacent Battys Road and New Renwick Road are both secondary arterial roads under the roading hierarchy. To cater for the increased traffic volumes on these roads created by residential use of the scheduled land and to ensure that this traffic integrates with existing and future traffic flows, a roundabout is required at the Battys Road and New Renwick Road intersection. The policy directs that this roundabout is constructed prior to any subdivision and development of the land. An intersection may also be required at the Aerodrome Road and New Renwick Road intersection, to which it is intended to provide a roading connection for the residential development. The policy directs that modelling should be used to determine whether a roundabout is also required at this intersection. The modelling will allow for increased traffic flows generated by other development in the vicinity to be factored into the assessment. The design of the roundabouts should make provision for all forms of transportation.*

23. Insert a new a Schedule in to Appendix 23 as follows:



**D'Urville offshore islands**

**Poneke Rene**

24. Mr Rene seeks to rezone a number of small offshore islands from Open Space 3 to Coastal Environment.[11] As listed in the report writer's Summary of Evidence,[12] Mr Rene's points of interest identified:

- The islands are in private Māori ownership and are ancestral land of cultural significance.
- Open Space 3 zoning would not enable the Māori landowners to provide for their social or cultural wellbeing.
- The key issue is that Open Space 3 enables conservation management over cultural space.
- Reference is made to the matters of national significance as specified in RMA s 6(e) – the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.
- Open Space 3 zoning would take Māori out of the RMA and into the Conservation Act s 4 provisions which seek to give effect to the principles of the Treaty.
- Reference is made to recommendations on appropriate spatial layers under s 6(e).
- Open Space 3 zoning would not allow the full effect of s 6(e): promoting public access, promoting conservation management and possible co-management when this is not wanted.
- Concern with property and riparian rights. [13]

**Section 42A Report**

25. The report writer points out that riparian rights are not affected by a change in zoning. Section 6 RMA will apply regardless, while Open Space zoning is not as permissive as that of the Coastal Environment Zone. Open Space may be preserved to encourage public access but appears to be in his opinion the most suitable classification.

26. The suggestion the report writer makes is that customary rights be added to permitted activities; there is a potential scope issue in defining the exercise of these activities – as an

[11] P Rene (1023.6) Submission, paragraphs 114-119.
[12] Section 42A Report, Reply to Evidence, page Page 5 and 6
[13] Section 42A Report, Reply to Evidence, Topic 21 Zoning.

example, the term 'māhinga kai' would not appear to be excluded from the zone, that is, 'māhinga kai gathering'.

**Consideration**

27. The Panel understood Mr Rene was concerned that in some way the limited permitted activities in the Open Space 3 zone would inhibit or restrict the ability of the Māori owners to be able to use these islands for their own customary practices.

28. The Panel sought clarification from Mr Rene as to what remedies would more specifically meet his concerns.[14] In terms of access to the islands, Mr Rene's attention was drawn to Policy 9.1.4 PMEP which states:

> *Policy 9.1.4 – Acknowledge that public access to land held in private ownership can only be granted by the landowner.*
>
> *Access to beaches, rivers and the high country frequently relies on landowner goodwill in allowing people to cross private land. This policy acknowledges that the Council respects the private property rights of the landowner and understands it is their prerogative to grant or refuse permission for people to cross their land.*

29. The Panel considers that method 9.M.1 may not be consistent with this policy in the context of private land. This can be remedied by a slight amendment to 9.M.1 excluding public access to the subject lands.

30. The Panel also echoed the report writer's conclusion that the Open Space 3 Zone very limited permitted activities were more protective of the islands' environment than was the wide range of Coastal Environment Zone permitted activities.

31. In response to Mr Rene's concerns that there was no specific provision for the customary gathering of māhinga kai by the Māori owners, the Panel identified there is a possibility that the words 'Passive recreation' in the wording of the first of the permitted activities in the Open Space Zone could be amended to read:

> *Passive <u>or informal</u> recreation means the voluntary and unstructured use of a range of recreational activities including the customary gathering of māhinga kai.*

32. Mr Rene did not accept that suggestion.

[14] Hearing Panel Minute 42.

33. In his response to the minute, Mr Rene reiterated some of his concerns that a zoning dilemma still exists for Māori and should be noted for future Māori/Crown relationships not yet having a 'home' in any areas of Marlborough.

34. As a way forward, the only tenable option is his response to 'leave unchanged' the Open Space 3 Zone as the islands are currently zoned.[15]

**Decision**

35. As alternative relief, amend 9.M.1 by adding to the third sentence of the explanation for the Open Space 3 Zone:

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

**Zoning Map 85 – Talleys Site, Old Renwick Road**

36. Talleys Group Limited Land (Operations)[16] seek to rezone 747 Old Renwick Road, Rapaura (19.51 ha) shown on Figures 31 and 32 in its submission as Industrial (the type of industrial zoning and its extent is not identified). Part of the site is in the Floodway Zone.

37. Currently 747 Old Renwick Road is used for mussel shell and vegetable processing. This operation dates back to 1976 when an application was made in respect of a canning factory and since this time a number of resource consents relating to new buildings, operations, discharge of processing waters to land, and discharge to air from coal boilers and water take have been granted.

**Section 42A Report**

38. The report writer identifies a rural industry in a Rural Zone as a discretionary activity so any further activities on the site will require resource consent if further developments are outside the terms of existing consents. Rezoning to Industrial would enable light and heavy industrial

[15] P Rene, Response to Minute 42 of the Hearing Panel, 30 November 2018, page 2.
[16] Talleys Group Limited (374.1).

activity, service industry, warehousing and permitted activities subject to standards which are more permissive in terms of bulk and location and noise than Rural zoning.[17]

39. The report writer called in aid Policies 12.5.6 and 14.1.3 and Objectives 4.1 and 4.4 as indications that the proposed industrial zoning might not be advantageous to the submitter. He concludes that the submitter is essentially requesting a 'spot zone' given the predominance of the surrounding rural zoned land. Zoning at such a micro level may not be encouraged - in the context of sustainable management under the RMA as well as producing the complexities of a multiplicity of interacting effects if Industrial zoning is recommended. In a case before the Environment Court, the Court had declined this spot type of zone because of the potential for reverse sensitivity adverse effects from future possible activities in a Business Zone.[18]

40. The report writer recommended rejecting the submission on grounds of:

- the site's relative isolation in a rural area;
- the lack of strategic support for such zoning in the PMEP and the Growing Marlborough – A Strategy for the Future (GMSF);
- the number and nature of potential adverse effects that could be generated on the site;
- the impact on the amenity of the surrounding rural areas.

41. The report writer concluded that the activity should remain under the control of the resource consent process rather than allow a wider range of activities potentially available if the site is zoned Industrial.

**Consideration**

42. The legal submissions of counsel and the evidence of Mr Ron Sutherland disagreed with the Section 42A Report's recommendation not to rezone the Talleys Group site. Both were persuasive that there is an alternative to rezoning – scheduling the site, described in relation to Appendix 16 as a suitable 'handbrake' on future activities. Significantly, the submitter suggested limiting activities to food processing (excluding meat which would have signified freezing works-type activities).

43. In his Summary of Evidence in Reply to the suggested restriction of the proposal to food processing only, the report writer identified he was comfortable with that approach as the suggested restriction addresses concerns about other activities on such a large site. It was

[17] Section 42A Report, paragraph 197.
[18] Section 42A Report, paragraph 200. *Kamo Veterinary Holdings Ltd v Whangarei DC* A/161/03).

identified that Talleys' processing lines currently produce 5000 tonnes of product a day, but will be expanded to 8000 tonnes in 3-4 years. He noted the site is one of a few left of its kind for processing plants as well as the ability to sustain waste water disposal on site because of the size of its land holdings.

44. The Panel in its consideration of the proposal concluded that the project is an uncomfortable zoning 'fit', being classed as a rural activity; equally it does not fit with heavy industrial also. The Panel is particularly concerned that the infrastructure services for industrial zoning such as industrial waste collection and treatment are not available at this location.

45. We concluded scheduling the activity in Appendix 16 with Industrial 2 standards to apply was the most appropriate solution as it recognises an existing use. Consent will still be required for waste disposal which requires significant areas of land. For this reason it is not appropriate to schedule all of the submitters land. Nor is it appropriate to be rezoned Industrial 1.

**Decision**

46. Insert in Appendix 16 the following:

- Schedule 6 – Talleys Group Ltd Site on land described as Lot 1 DP 4415
- Insert site on Planning Map 85 Scheduled Activity relating to Lot 1 DP 4415.
- The permitted activity rules and standards set out below
- Where not otherwise provided for by, or limited by, the rules in Schedule 6 of Appendix 16, the rules of the Rural Environment Zone apply to all activities on the Talleys scheduled site.

*6.1 Permitted Activities*

*Unless expressly limited elsewhere by a rule in the Marlborough Environment Plan (the Plan), the following activities shall be permitted without resource consent where they comply with the applicable standards in 6.2 below and 3.2 and 3.3 of the Rural Environment Zone.*

*[D]*

*6.1.1 Food production or processing (excluding red meat, deer, pig or poultry based food production or processing);*

*[D]*

*6.1.2 Activities ancillary to food production and processing (excluding red meat, deer, pig or poultry based food production or processing); including warehousing and the fabrication and maintenance of plant and machinery.*

*[R]*

*6.1.3 Permitted Activities 12.1.11, 12.1.12, 12.1.19, 12.1.20 and 12.1.28 of Chapter 12*

*6.2 Standards that apply to all permitted activities*

*6.2.1 Standards 12.3.2, 12.3.9, 12.3.10 and 12.3.17 of Chapter 12*

*6.3 Discretionary Activities*

*Application must be made for a Discretionary Activity for the following:*

*[R]*

*6.3.1 Any activity provided for as a Permitted Activity that does not meet the applicable standards.*

47. Insert a new Permitted Activity rule in the Rural Environment Zone as follows:

*Xxx Specifically identified activities listed as permitted on sites scheduled in Schedule 6 Appendix 16.*

**Zoning Map 126 – Queen Charlotte Drive, Grove Arm**

48. Beaver Ltd and Clouston Sounds Trust, and RJA Black, JE Black and JV Dallison oppose the zoning of Lot 1 DP 10803 (2900 m$^2$) and Lot 2 DP 10803 (6600 m$^2$) respectively in terms of their dual Coastal Living Zone and Coastal Environment Zone mapping (Figures 35 and 36). The submitters state that the current 'zone boundary is based on a historical error' and seek that the Coastal Living Zone should be extended over the whole of the two sites. At present the Coastal Living Zone appears to apply only to some of the existing dwellings and curtilages and the Coastal Environment Zone to the 'undeveloped' parts of the sites.[19]

49. David Dew, on behalf of the submitters, reiterated their submission that zoning should at least reflect the development on the current sites (which does not occur at present). Further development is unlikely on both sites because of the steepness of the terrain.

**Section 42A Report**

50. The Section 42A report writer notes the adjoining sites and others in the vicinity are zoned in a similar 'split' way with the Coastal Living Zone applying to existing dwellings and curtilages and the Coastal Environment Zone to the undeveloped part of the sites. The zoning also reflects the situation in the MSRMP. The current situation is therefore not unusual, and the report

[19] Beaver Ltd and Clouston Sounds Trust (29.1) and RJA Black, JE Black and JV Dallison (28.1).

writer is unsure what the 'historical error' may be referred to in submissions.[20] The sites could not be subdivided as a controlled activity because of their substandard area. The sites do not have reticulated sewerage.

51. The report writer also considers that any rezoning should have regard to the objectives and policies of the PMEP, particularly those relating to Coastal Living in terms of landscape, visual amenity, services and the stock existing already on the Coastal Living zoned land. His conclusion is not to recommend rezoning on the site.[21]

52. The report writer concluded in his Summary of Evidence after hearing Mr Dew in evidence that it is appropriate to extend the zoning on Lot 1 DP 1083 as the existing dwelling on that site is not covered by zoning. For the rest, there appears to be a mixture of zoning applied to the coastal sites across the PMEP as a whole site/part of site. But the report writer retains his opinion that the whole site should not be rezoned because of the potential further subdivision, notwithstanding the difficulties of developing the physical environment. In that respect, Policy 13.5.3 as notified is particularly relevant.

**Consideration**

53. The Panel's assessment of these submissions is that the zoning issue should be tidied up. Lot 1 Coastal Living zoning does not currently cover one of the existing houses. We considered both sites should be rezoned, making the sites no longer split into two. We also concluded because of the steepness of the two sites, it is unlikely that they could be further subdivided and consequently developed. We concluded the rezoning does not provide any development advantage in terms of additional dwellings but aligns the zoning treatment of this property in a similar manner to properties adjacent.

**Decision**

54. Zoning Map 126: The Coastal Living Zone is extended over all of Lot 1 DP 10803 and Lot 2 DP 10803.

**Zoning Map 159 – Corlett Block and Others**

55. Colonial Vineyards Ltd (Colonial) oppose the proposed industrial zoning of the Corlett Block (Lot 2 DP 440534, property number 536136) to the south of the Colonial site. Instead Colonial seeks rural zoning for that land.

56. Colonial is the developer of the Omaka Landing subdivision located on New Renwick Road between Richardson Avenue and Aerodrome Road. Development is occurring in stages with

[20] Section 42A Report, paragraph 215.
[21] Section 42A Report, Summary of Evidence, page 1.

Stages 1-6 having been completed with 138 sections sold. The next stages total another 88 sections to be completed by the end of 2019.

57. The Corlett Block is a greenfield site for an industrial zone and as such Colonial considers Council should carefully consider the impact this new industrial zone will have for the existing residents of the area. A small textile mill, a trucking company, light manufacturing, servicing and repair could be established on the site. These references were among those mentioned by Mr Mark Davis, witness for Colonial.[22] Reference was also made to a building able to be established with a maximum height of 12 metres and a minimum 6 metre boundary setback on the border with a Residential Zone.

58. The submitter notes the following:

- Council's view of the demand for industrial zoning is unrealistic as accepted in a recent case in the Environment Court affecting Colonial's land[23].
- Now that the Colonial site has been rezoned to Urban Residential, there is a clear need to reassess the Colonial /Corlett Block Rural Zone interface as adverse effects and conflicts will arise including noise and traffic.
- A buffer zone needs to be put in place between any Industrial/[Omaka] Airport zones. The retention of the Corlett Block in the Rural Zone achieves this.[24]

59. Colonial Vineyards opposes only the Industrial zoning over the Corlett Block and not the land between the Corlett Block and the Omaka aerodrome. It does not oppose the zoning of land south of Corlett Block for Industrial 1. The submitter also seeks a buffer between Omaka Landing and the proposed Industrial 1 zoning to the south, and 'is open to' this being Open Space 1 as opposed to retention of Rural zoning, which should be zoned 20 metres wide providing it also incorporates an earth bund.

**Section 42A Report**

60. The report writer identifies the PMEP has provisions recognising the interface between zones so that business and industrial activities are appropriately separated from the boundary of adjoining residential zones (Policy 12.7.1 and relevant rules – indicative sketches of such an arrangement provided by Colonial). He does not agree a buffer is necessarily desirable but, given the fact that an opportunity to provide an enhanced buffer was suggested and not opposed by the landowner, this approach is a possibility. The opportunity arises on the Corlett

[22] Colonial Vineyards Ltd, Mark Davis Evidence, paragraph 11.
[23] Colonial Vineyard Limited v Marlborough District Council [2014] NZEnvC 55
[24] Section 42A Report, paragraph 245.

Block, given its undeveloped nature at present. The report writer initially considered the Corlett Block should be retained as Industrial, but the Panel recommended consideration be given to a 20 metre wide buffer strip located on the Corlett Block and rezoned Open Space 1.[25]

61. In his Summary of Evidence the report writer recommends that any bund would have to be incorporated as a rule in the Plan, for example, The Open Space 1 Zone located between Omaka landing and Corlett land shall contain a 3m high bund with a 1:3 slope. The buffer could potentially be extended in width. The alternative could be to insert a rule in the Industrial 1 zone on the Corlett land with a 'no build zone' of say 20-30m.[26]

62. Mr Davis is supportive of the Section 42A report writer's proposition that there should be a zone between the (new) Light Industrial Zone and the Residential Zone being zoned Open Space 1. This arrangement would have the ability to create and protect amenity values.

63. If the zone is as narrow as 20 metres, Colonial would like to see this to incorporate an earth bund, approximately 3 metres high with a 1:3 slope. This would have very good acoustic deadening qualities, and when planted out would create a visual barrier for incompatible uses.

64. Counsel for Colonial considers the Council has altogether 'dropped the ball' because the PMEP provides no requirement for planting or earth bunds, or to address the visual effects of a potentially 12 metre high building on the boundary between the two sites.[27]

**Consideration**

65. Colonial's original submission is that a buffer should be created by retaining the existing Rural Zone.

66. This and several other options were considered by the Panel in order to resolve Colonial's concerns and best provide for a Rural/Industrial development. The Panel undertook a site visit with the permission of the owner. The land in question is in close proximity to Omaka aerodrome and could potentially be used to accommodate its future expansion and related activities. The shortage of land for employment use on the periphery of Blenheim and the aerodrome (which provides opportunities and constraints, depending on the nature of the purposed land use) makes employment use in this area an efficient use of this land.

67. The Panel have come to the conclusion that the notified provisions of the plan do not adequately manage the potential adverse effects that could be generated by industrial activity

[25] Section 42A Report, paragraphs 248-253.
[26] Section 42A Report, Summary of Evidence.
[27] Colonial Vineyards Ltd, Counsel Submissions, paragraph 14.

on adjoining residential land. We note that unlike other industrial/residential interfaces in Blenheim this is a greenfields development.

68. The Panel queried how best to provide for an industrial/rural interface. That included;

- an earth bund running along the boundary of the property with the land developed by Colonial Vineyard Limited;
- setbacks for industrial activity greater than those already provided for in the notified plan;
- the use of an alternative zoning such as Open Space 1 which cannot be used or driven on along the boundary of the property with the land developed by Colonial Vineyard Limited;
- more constraining noise standards than those already provided for in the notified plan.

69. In reaching this conclusion, the Panel also considered the option of increasing the setbacks for buildings associated with industrial activity at the interface with residential zones. However, there was no submission that provided the Panel with scope to implement this response. The only option available to the Panel in these circumstances was site specific.

70. A precedent has previously been set for an increase in the buffer zone between residential and industrial areas at the Tremorne Ave locale. In that instance, a 12 metre buffer excluding habitable buildings has been scheduled in Appendix 19 and associated rule provided at 5.2.1.13. In that locality, the residential activity was proposed next to the existing industrial activity.

71. A similar approach in reverse, where industrial activity is proposed next to existing residential activity, would be effective on the Corlett block as no industrial development has occurred on this site to date. Any industrial development on this site in the future will be able to plan for compliance with any increase setback. At the same time, given the scale of the Corlett block (10.334 ha) the increase in buffer from 6 metres to the 12 metres is not considered to have a significant effect on the ability to develop and use the block for zoned purposes.

72. In addition to an increase setback for buildings, the Panel also had a residual concern about the ability to undertake industrial activity not contained in buildings in close proximity to the adjoining residential land. In order to effectively manage the potential for cross boundary effects the Panel also decided that a setback from the northern boundary of the Corlett block for industrial activity is warranted.

73. It is noted that the Corlett block is proposed to be zoned Industrial 1. That means that heavy industrial activity cannot occur on the land as a permitted activity. The setback set out above only therefore needs to apply to light industrial activity.

74. The PMEP has the specific policy that addresses the industrial/residential interface as follows:

*Policy 12.7.1 – Business and industrial activities are appropriately separated from the boundary of adjoining residential zones so that any adverse effects on residential activities are avoided, remedied or mitigated through:*

*(a) establishing setbacks for industrial activities from a residential boundary;*

*(b) screening of business or industrial outdoor storage areas from a residential boundary;*

*(c) restrictions on light spill;*

*(d) setting more sensitive noise limits at the boundaries between the Industrial 1 Zone and the Urban Residential 1 Zone; and*

*(e) standards for dust and odour.*

**Decision**

75. The submission from Colonial Vineyard seeking rezoning from Industrial to Rural is rejected.

76. A new standard setting out the revised buffer requirement is inserted in 12.2.1. as follows:

*12.2.1.X On Lot 2 DP 440534, or any record of title derived from that lot, a building must not be located within 12 metres of the property boundary as shown in Appendix 19.*

77. A new standard setting out the revised buffer requirement is inserted in 12.3 as follows:

*12.3.X Light industrial activity in the Industrial 1 Zone*

*12.3.X.1 Light industrial activity on Lot 2 DP 440534, or any record of title derived from that lot, must not be undertaken within 12 metres of the property boundary as shown in Appendix 19.*

**Zoning Map 172 – 16th Valley – Levide Capital Limited**

78. Levide Capital Limited (Levide) seeks to rezone part of the submitter's property from Rural Environment Zone to Rural Living, shown on Figure 47 of the Section 42A Report as 'Proposed Rural Living Zone'. It is over approximately 31 ha consisting of 27 residential sites. The site is located on the 16th Valley Wither Hills and is asserted suitable for its use because it will have limited visual impact and is seen as complementary to the existing rural production values on the land.

79. The location is essentially self-contained with access on to the site from a farm track across railway tracks from Cloudy Bay Drive and State Highway 1. An Indicative Rural Living Subdivision – Detail Plan[28] put in evidence indicates a proposed half circle layout of an asymmetrical settlement on the lower slopes and valley floor at the 16th Valley, flanked by subparallel, northeast to southeast ridges. The southern valley flanks slope at between $15^{o}$ and $25^{o}$, whilst the northern valley flanks slope at around $25^{o}$ to $30^{o}$.

80. A permanent water course/stream runs along the valley floor.[29] Adjacent to the northern aspect of the stream, a heavily wooded forest dominates the landscape rising sharply to the ridge line and down to the banks of the stream.

81. The minimum subdivision area for the Rural Living Zone is 7500 $m^2$.[30] While a geotechnical report for the site was included with the submission, the submission lacked an analysis of potential effects, difficulties with servicing, and the potential conflict with the provisions of the PMEP as notified.

82. The Section 42A report writer was consequently unable to recommend that rezoning proceed at the submission stage of proceedings.

**The Levide case**

83. At the hearing, Levide provided a number of witnesses – engineering, landscape, soil science, geology, planning – all of whom better informed the hearing of what Levide proposes. We note there are also the Afforestation Flow Sensitive Overlay, the Wairau Dry Hills Landscape Overlay, and the Soil Sensitive Areas Overlay. Threatened Environments and Water Use Unit Overlays apply to all or part of the land in question.[31]

84. The submitters' evidence responded to a number of matters initially raised in the Section 42A Report:[32]

- Wastewater is proposed to be disposed of on each site and water supply by roof collection. Provision of services required in terms of Rule 24.1.2 and .3.
- In terms of the Wairau Dry Hills Landscape Overlay there is only one small area located and it is adjacent to the area in question. Buffer and Conservation planting are proposed as part of the development.

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[28] Levide, Liz Gavin, Evidence, Appendix C Indicative Plan.
[29] Levide, Richard Justice, Evidence, paragraphs 12, 13.
[30] Section 42A Report, paragraphs 270, 275.
[31] Levide, Shane Hartley Evidence, paragraph 4, Attachment C.
[32] Section 42A Report, Summary of Evidence, Zoning Topic 21, page 5.

- Concerns about sporadic development and transition from urban to rural development in the Rural Living Zone 14.5.2(c), (i) and adverse effects on water and oil quality (e) remain. The report writer acknowledges not all Rural Living Zones are transitional and are often isolated.
- Concerns about soils on the site – it is partly located in Soil Sensitive Overlay loess soil. Policies 11.1.19 and 11.1.21 refer to controlling and avoiding structures on unstable land 'including by means of zoning'.

85. Mr Justice of ENGEO, an experienced engineering geologist, gave a brief outline of the predominant geological hazards that could affect the 16th Valley in the location of the site. Potential liquefaction is considered to be low because of its underlying geology. Historic evidence of shallow landsliding and debris flow is indicated on the flanks of the ridge lines of the adjacent 15th and 16th Valleys, but direct risk from this style of failure Mr Justice considers low in the area of the proposed plan change.

86. In relation to soil erosion, this area of the 16th Valley is identified as two types: rilling; where overland flow scours and cut rills that further concentrate runoff, and can then deepen with collapse of the sides of the rill; and tunnel gully erosion, where cracks in the surface of the soil allow water to penetrate into the subsoil resulting in the enlargement and interconnection of subsoil voids. Over time, interconnection and physical enlargement of the voids can occur, leading to tunnel development. Ongoing enlargement can lead ultimately to collapse and formation of a tunnel gully.

87. There is widespread evidence of loess erosion within the 15th and 16th Valleys of the Wither Hills.[33]

88. Reports on the valley soils in the 16th Valley were provided by Dr Iain Campbell who indicated that the soils are formed on landscapes that are different from most of the Wither Hills or terrace lands. He investigated how the Levide-proposed sites have properties that differ from those that are nearby formed from loess. He is of the opinion the valley floor soils on which the development is to be situated have a limited or negligible potential for tunnel gully erosion. Specifically, Dr Campbell's research indicated there was no tunnel risk on the areas to be rezoned below 100° slope and limited minimum risk between 10°-15° slope.

89. The soils at the site are a 'recent soil formed from multiple layers of stream deposits'. Bore hole (pit) testing carried out by ENGEO indicates that foot-slope deposits on lower valley side

[33] Levide, Richard Justice, Evidence, paragraphs 15-20.

surfaces are inherently variable, have intermittent layers of coarse or fine sediment and are younger than the soils on the slopes above since they are subject to periodic accumulation. This is illustrated here by the absence of a compact fragic horizon and the presence of more recently deposited surface materials. Earlier soil surveys have not been of a scale that would have allowed these foot-slope soils to be recognised as a separate entity.[34] The site is thus considered suitable for development.

**Marlborough District Council's Evidence**

90. Mr Matthew Oliver, an environmental scientist with MDC, provided evidence which was precautionary in its implications, while recognising the significance of Dr Campbell's findings and the soil pit investigations undertaken by ENGEO that the valley floors are not loessial but colluvial, and should not cause difficulty. Mr Oliver backgrounded his desktop analysis with a previous example of storm damage reports on the Wither Hills dated April 1980 and a more recent photograph of a home built in the centre of a depositional fan and another with sediment damage August 2008, together with 1948 aerial photographs of the location and the remedial work of loess soils undertaken across the Wither Hills.[35]

91. Mr Oliver is of the opinion that:

- Some of the deposition referred to by Dr Campbell appears to have occurred recently – erosion from the valley sides may be the greater risk posed from depositional events to future development.
- Flooding is a risk in the valleys with the Wither Hills prone to periodic heavy rainfalls. This risk has increased with the probabilities of climate change.[36]

92. Mr Oliver carried out a further update on the 16th Valley loess soils for inclusion in Topic 14 Soil Sensitive Areas: Waste Water. Mr Oliver attached his report to that topic marked Appendix 1 which Levide had also submitted on seeking the changes identified above.

93. Mr Oliver agrees that Dr Campbell's colluvial soils show clear evidence of recently deposited material on the surface layers, the deposition driven by gravity and usually mediated by water. He adds: 'To be clear colluvial soils form a material deposited by landslides or downslope erosion. Often these events occur following heavy rain.' These factors led Mr Oliver to think that erosion from the valley sides may be a greater risk posed to future development.

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[34] Levide, Ian Campbell Evidence, page 5.

[35] MDC, J Alwin Evidence *Report on Levide Capital Rezoning Request: reply to further evidence submitted* November 2018, Figures 2 and 1.

[36] MDC, Soil Disturbance, Matthew Oliver, Evidence, page 4

94. Mr Justice is cited as identifying 'risk' in his original evidence as 'the probability of an event occurring multiplied by the consequences of the event'. Mr Oliver in this context suggests that the probability of a large event occurring has increased with climate change, with the Wither Hills as subject to very high rainfall.

95. Levide seeks removal of part or all of its property from the SSA loess soils overlay. Campbell (2011) mapped to the mid-upper slopes of the area which indicates a mixture of Waihopai and Vernon soils, both erosion prone in their particular way. His work, according to Mr Oliver, did not map the lower slopes of this valley which are indicated in the ENGEO report as appearing to be underlain by variable thickness of loess and loess gravel colluvium.

96. Mr Oliver does not support the proposal that repair of tunnel gully erosion on slopes less than $25^{o}$ be a permitted activity. While repair of damaged areas is desirable, poorly timed and designed work could pose more risk to downslope landowners than currently exists.

**Site Visit**

97. The Panel visited the site with the permission of the owner.

**Consideration**

98. In the course of our deliberations we identified a number of issues:

- Each of the small sub catchments flowing down into the main stream conclude in colluvial fans with the flows being uncontrolled out onto those fans. That fact raises concerns about control of those flood flows and deposition accompanying them and possible rilling in extreme storm events.
- The large plantation forest opposite the site is a potential fire hazard with little setback from the stream and this area is likely to become desiccated in drought conditions.
- The main stream banks are deeply incised and it was asserted will not flood.
- Significant transmission power lines cross over the site.
- Standard 3.3.14.4 restricts excavation of loess soils. There are practical concerns about hazard mitigation works and maintaining them (by a corporate body).
- Mr Justice acknowledged that the probability of tunnel gully erosion on the hill slopes surrounding 16th Valley to be high.[37] Mr Oliver's evidence indicated some patches of loess remain on the slopes with the potential to create tunnel gully erosion on the

[37] Levide, Thomas Richard Justice, Evidence, paragraph 26.

slopes but in terms of soil erosion risk. According to Mr Justice this would be a relatively slow process.

- The access to the site involves traversing deposition from what appears to be an active loess soil gully.
- There is evidence at the western end of the proposed site of the potential effects of side stream flows.
- Fire fighting capacity is not identified in evidence and water supply appears insufficient, particularly in times of drought.
- In planning terms, there are concerns about soils on the site irrespective of the Levide evidence. The site is partly located in the Soil Sensitive Overlay (loess soils). Policies 11.1.19 and 11.1.21 refer to controlling and avoiding structures on unstable lands by means of zoning. Retaining the land as Rural Environment Zone is one method of achieving this.
- Rules restrict earthworks on loess soils (Rule 3.3.16.12). Practical concerns remain about implementing hazard mitigation works and maintaining them (by a corporate body).[38]

99. The chief concern of the Panel relates to the presence of loess soils on the property. While Dr Campbell's evidence promotes development on the grounds of the valley, this does not negate the issue that the loess soils exist on the slopes above the site where 27 residential sites are to be developed. Sporadic urban-type development, infrastructure servicing, waste water disposal on a site intersected by streams all remain in issue but the greatest of all are the potential adverse effects related to loessial soil movement.

**Decision**

100. Retain zoning as notified.

**Zoning Map 160 – 15th Valley – Levide Capital Limited**

101. Levide also requested Industrial 2 zoning for an area of 56.4 ha of its land in 15th Valley to the south of the existing industrial zone. Its evidence was that the building development could be achieved without exposure to instability of loessial soils, either as a result of run-off from slopes above or from under-runners and associated tunnel gulley erosion effects. Nor it was asserted was there any serious risk from inundation emanating from any of the watercourses flowing down into the mainstream in the valley below. The reasons for these assertions were

[38] Section 42A Report, Reply to Evidence, page 5.

particularly based on the relatively level land form as a result of the development of vineyards that had occurred in the floor of the valley over recent years.

102. The submitter's experts pointed to the works that had been undertaken to achieve management of erosion risk and floodwater collection systems by extensive open drainage to enable the vineyard development. They also emphasised what they asserted was the success of those management systems which had meant the vineyard operation had been carried on for some years without damage from those sources. In any event the submitter stressed that warehousing particularly for the wine industry was the most likely outcome and it requires uncomplicated land management systems.

103. As to the demand for industrial land Levide stressed that the uptake of industrial land has been rapid in recent years in Blenheim and its surrounds.

**Site visit**

104. A site visit was undertaken with the permission of the submitter landowner.

**Consideration**

105. A major concern as to integrated management of infrastructure in this area was the fact that there is a considerable area of land, land which has already been zoned industrial that has not yet been developed but which has been catered for in terms of Council infrastructure planning for water supply in particular but also in terms of roading patterns and drainage.

106. In terms of water supply, the Panel received a report from Mr Stephen Rooney, the MDC Operations and Maintenance Engineer. He advised that after taking into account the needs of the land already zoned industrial at this location there was no additional capacity from the existing water take and supply system. There is a serious problem in terms of supply in that the Riverlands aquifer is over-allocated already. If this land was to now be rezoned and developed ahead of the land already zoned then the existing zoned area for industrial development would be unable to proceed as there would be insufficient supply for both.

107. For those reasons the Panel is of the view the existing zoned land should be given priority for development over the Levide land.

108. The Panel was also not satisfied that it was appropriate to rely on the evidence of asserted lack of adverse effects of deposition and flood flows on a long term sustainable basis, and it was concerned that there was no long term proposal as to management of those issues if they were indeed to arise after the lots were sold off. The catchments involved are not insubstantial and much clearer evidence of a method of long term management of erosion risk and flow management would be needed before zoning was appropriate for this land.

109. That these are serious issues was stressed in Mr Oliver's memorandum included as Appendix 2 to the S42A Report which we have quoted in relation to the residential proposal for 16th Valley – (the underlining emphasis at the conclusion is the Panel's):

> *In reviewing all of this information, a number of points have become apparent to me. Firstly; the EnGeo report accompanying the Levide Capital submission in insufficient to provide any level of certainty regarding the stability of the soils, and the suitability of those soils for the intended purposes. There is a great deal of soil erosion risk that is not accounted for in this report. Secondly, the EnGeo report identifies similar landscape features as documented in the Riley and MWH reports. It is likely that very similar erosion issues would be identified if a more detailed study were carried out on the 15th and 16th Valley sites. Finally, given the scale of risks identified during the Plan Change 60 process and the fact that the zone change application was eventually declined despite a much more detailed geotechnical report being presented, this would lead me to feel that a precedent has been set. This precedent is that zone changes in these soils require an extraordinarily high standard of geotechnical planning and mitigation to prevent risks to property from erosion.*

110. In conclusion, then, while the Panel accepts that the rezoning as requested has potential if a more sophisticated long term engineering management package was developed, those concerns combined with the water supply problem, and the availability of other zoned land in the vicinity for which infrastructure was already available or planned, meant that that potential was not appropriate during the expected life of the PMEP. The issue of the appropriate zoning of this land could be reassessed at time of next plan review.

**Decision**

111. Retain the Rural Environment zoning in 15th Valley as notified.

**Zoning Map 13, - Waters Avenue Area**

**Section 42A Report**

112. The report writer noted the area encompassing the Waters Avenue area had formed part of the Marlborough Growth Strategy. The Strategy did not support a zoning change, stating:

113. Although there was some support for an expansion of the existing industrial zones, the Council decided that any such expansion would create additional conflict between industrial activity already in the vicinity and residential activity.

114. Since the growth strategy was finalised, the landowner has constructed a vegetated earth bund on the boundary between 30 and 34 Waters Avenue and the residential properties along

Birchwood Avenue. The earth bund was constructed to specifically manage cross boundary effects between residential activity on Birchwood Avenue and what the landowner clearly anticipated to be industrial activity on 30 and 34 Waters Avenue.

115. The notified zoning of the general area as specified in the PMEP is therefore consistent with the growth strategy.

116. The Growth Strategy did not support a zoning change.

**Site visit**

117. A site visit was undertaken by the Panel. The principle observation made by the Panel is that on 33 and 37 Waters Avenue the activity is light industrial pursuant to resource consent controls. The nature of those activities in the Panel's view was best retained subject to conditions because there is no bund to the west of them as there is now to the sites on the other side of the road.

**Consideration**

118. The potential of a rezone of 30 and 34 Waters Avenue was advanced by submission due to its proximity to the sawmill and the existence of the earth bund. The report writer agreed with this stance.

119. The earth bund development, in the Panel's view, resolved what had been a long standing issue in this area. The land adjacent to such a substantial industrial activity should not be zoned for residential purposes and light industrial as a transition to the residential zoning at Birchwood Avenue is the appropriate outcome.

**Decision**

120. Decline zoning change of 33 and 37 Waters Avenue.

121. Rezone 30 and 34 Waters Avenue from Urban Residential 3 to Industrial 1.

**Zoning Map 15 - Francis Street, Blenheim**

**Section 42A Report**

122. This issue relates to a property on the corner of Francis and Redwood Streets on the northern side of Francis Street. The report recited the recent history of a failed attempt to use a submission on a CBD Variation, with the submission seeking to rezone all of the northern side of Francis Street as Commercial, but which was defeated by residents' opposition. The report did point out, however, that the site is adjacent to a Business zone and that that provided opportunity for integration into that zone as the submitter S & J Saunders Trust sought.

123. However, the report also drew attention to the risk that rezoning of this property might be perceived as the PMEP recognising a shift of Francis Street northern frontage properties

becoming Commercial without there having been a strategic assessment of the appropriateness of that change. The report noted that there would be a potential effect on the residential amenity in Francis Street if that rezoning occurred.

**Consideration**

124. The Panel heard evidence from Mr Gavin Cooper stressing the practical benefits that arose from the combined ownership of adjacent properties by the Trust, the adjacent commercial environment, and what he asserted would be the limited amenity effects form a rezoning of this one property in an environment with heavy traffic volumes on Redwood Street and existing commercial activity immediately adjacent to the north. His evidence also stressed that any development could be carried out in a manner that did not impact adjacent residential amenity. After hearing that evidence the Panel undertook a site visit.

125. The Panel was not satisfied that the visual amenity effects on neighbours would be able to be protected if rezoning occurred. If a resource consent application was made those effects could be considered in more detail, and amenity effects more readily controlled by conditions of consent if a consent was seen as appropriate having regard to broader policy issues. In addition to the visual aspects, if rezoning was to occur the Panel had real concerns as to how vehicle access could be safely provided for on this corner site having regard to the heavy traffic flows on Redwood Street. Finally, the Panel was concerned that the policy implications for the Plan zonings on both sides of Francis Street had not been more broadly considered as the submission sought only one property being rezoned. The Panel felt a broader assessment of those zoning issues would be required before that could properly be done without undermining the general zoning on both sides of the eastern end of Francis Street which at present provides that eastern end of the street with a residential amenity.

**Decision**

126. The rezoning request to change the zoning of the property at the corner of Francis Street and Redwood Street from Urban Residential 1 to Business 1 Zone is rejected.

**Zoning Map 17 - Stubbs and Carre**

**Section 42A Report**

127. The Section 42A Report was negative in its response to the request of the submitters J.P Carre and D & J Stubbs to rezone this land near the fringe of the eastern side of central Blenheim from Rural Environment to Urban Residential 3 zone. The report pointed out inconsistencies with Policy 12.1.6 as to the purposes of the Urban Residential 3 Zone in that the subject land is not adjacent to Blenheim, the sites have direct access to SH 1 and that services would need

substantial upgrading to service residential development as to both water supply and sewerage servicing. Stormwater retention and disposal was also raised as an issue of difficulty.

**Consideration**

128. The submitters strongly stressed the heavy level of non-rural activity which had occurred and was being serviced across the State Highway as a result of resource consent applications for vineyard workers. They maintained that their properties were similar in nature and were so small as not to be capable of being utilised usefully for productive rural purposes. They also pointed to the reality of the residential development of land to the south east.

129. After hearing the evidence of submitters the Panel carried out a site visit. While that visit visually supported the points made by submitters about other developments in the area, it also demonstrated that vehicle access safety issues for vehicles entering or leaving the subject land onto SH1 at this location were real. The sites lie in a location where SHI undertakes a sweeping bend raising visual field of sight limitation concerns. The Panel was not satisfied on the evidence it received that those concerns could be safely addressed.

130. The Panel noted that the Section 42A Report highlighted significant infrastructural constraints in respect of residential development of the site as to water supply and sewerage. Stormwater retention and disposal was also stressed in the report as a serious issue. The Panel was not satisfied that the submitters' evidence satisfactorily addressed the servicing limitations which had been described in the Section 42A Report.

131. As to plan policy provisions there were not only the concerns raised about inconsistency with Policy 12.1.6 which the Panel agreed were of substance, but the provisions of Policy 11.1.17 were also very relevant. That policy provides:

> *Policy 11.1.17 – Avoid locating residential, commercial or industrial developments on Rural Environment or Rural Living zoned land on the Wairau Plain east of State Highway 1/Redwood Street, unless remediation methods are to be used to reduce the level of liquefaction risk to an acceptable level.*

132. It is also apposite to quote from the explanatory statement to that Policy which states:

> *This policy signals that it would be unwise to allow any future commercial, industrial or multi-lot residential developments to occur on rurally zoned land underlain by the Dillons Point formation due to the high risk of liquefaction. Such liquefaction has the potential to cause significant damage to buildings and infrastructure and would therefore cause significant disruption to residential, commercial or industrial activity. A policy of*

*avoiding such development of land ensures that significant investments and community infrastructure is not subject to unnecessary risk.*

133. For all of those reasons the Panel did not agree with the re-zoning requested.

**Decision**

134. The request for rezoning of 3020 State Highway 1 and 3038 State Highway 1 from Rural Environment to Urban Residential 3 Zone is rejected.

**Zoning Map 76 - Rewa Rewa**

**Section 42A Report**

135. The request by Rewa Rewa Limited to rezone all of Lot 3 DP 403652 from Coastal Environment zone to Coastal Living Zone was initially described in the Section 42A Report and a specific landscape assessment accompanying it as being in conflict with a range of policies, and as being inconsistent in some respects, particularly as to the number of potential allotments, with the property's resource consent history.

136. As a consequence of the evidence presented at the hearing, however, which in particular significantly reduced the area sought to be rezoned so as to relate more appropriately with the resource consent history and the site specific development limitations, the Reply to Evidence supported the more limited request.

**Consideration**

137. The Panel noted that detailed consideration to appropriate levels of development of this land had occurred when resource consents for subdivision were approved and that it was only because of the downturn in market conditions that meant the subdivision did not proceed.

138. As with the report writer, the Panel was appreciative of the submitter's response to limit the area requested to be rezoned to reflect that resource consent history. The Panel had no reason to form a different view than was reached on the detailed subdivision proposal. This is one of those rare situations where the Panel was prepared to recognise the practicality of using scheduling of a particular property in Appendix 16 with appropriate site specific controls being available using that mechanism. That will enable effect to be given in a plan rezoning way to the past resource consent approvals.

**Decision**

139. Amend Planning Map 76 to show part of Lot 3 DP 4036523 as Coastal Living and Scheduled Activity.

140. Insert in Appendix 16 the following:

*Schedule 5 – Portage - Subdivision of part of Lot 3 DP 4036523*

*Where not otherwise provided for by, or limited by the rules in Schedule 5 of Appendix 16, the rules of the Coastal Living Zone apply to all activities on the Portage scheduled site.*

*5.1 Controlled activities*

*Subdivision of that part of Lot 3 DP 4036523 shown in the map below is a controlled activity subject to the following standards:*

*1. A maximum of 12 allotments.*

*2. A minimum net allotment area of 4,000m2*

*3. A maximum building height of 7.5m above ground level for any building within 50m of Kenepuru Road, and a maximum building height of 6m above ground level for any buildings more than 50m from Kenepuru Road.*

*4. A maximum building footprint of 300m$^2$ on each allotment.*

*5. A maximum area of the site that can be cleared for buildings and curtilage (excluding access) of 400m2.*

*6. Compliance with relevant subdivision standards of the Coastal Living Zone in Chapter 24 except that Standards 1-6 shall prevail if there is any conflict between these standards and the Zone Standards.*

*Matters over which the Council has reserved control:*

*The matters set out in Rules 24.3.1.9 - to 24.3.1.26 of Chapter 24.*

*5.3 Discretionary Activities*

*Application must be made for a discretionary activity for the following:*

*5.3.1 Any activity that does not meet Standards 1- 6 above.*

141. Insert a new Permitted Activity rules in Coastal Living Zone as follows:

*Specifically identified subdivision listed as controlled on sites contained in Schedule 5 in Appendix 16.*

142. Insert the following map in Appendix 16 under the heading Schedule 5 – Portage – Subdivision of part of Lot 3 DP 4036523.

**Zoning Map 136 - Nelson Forest**

**Section 42A Report**

143. Nelson Forests Limited submitted against the Coastal Environment zoning of parts of its landholdings in the vicinity of Linkwater and Havelock on the basis that their landholdings were part of a plantation forestry development which now faced the complication of having two differing zonings. The Coastal Environment zone provisions are potentially more restrictive in their controls than the Rural Environment zone on matters relating to forestry development and harvesting. The Section 42A Report stressed that the Coastal Environment zone boundaries had been fixed after assessment of the natural character report. The report writer considered that it was important that there are controls on effects on natural character in that Coastal Environment zone.

**Consideration**

144. The Panel considered that the Plan's protection of the coastal environment by means of the Coastal Environment zone objectives, policies and rules is appropriate and should not be

affected by property title boundary considerations. The zone's boundaries have been fixed in manner which relate to physical features such as the ridgelines which encompass both water and visual catchments forming the Sounds. That has been done purposefully for the very reason that effects of developments within those ridgelines can potentially impact on the natural character and other qualities of the Sounds' environment and amenity values, which the Plan seeks to protect. In particular, sediment deposition in the Sounds arising from land-disturbance activities is a serious adverse effect requiring controls, as are the potential adverse visual effects of some land based activities particularly involving roading and other land disturbance.

145. The submitter did not provide any logical reason for rezoning of its properties other than a desire to avoid having to cope with two differing sets of controls for the same activity depending on whether parts of the properties it occupies may be within a different zone. That approach misses the point that the Plan is addressing potential effects, and imposes controls where those potential effects may be adverse in terms of natural character impacts on indigenous biodiversity or in visual amenity terms. The Panel is satisfied the Marlborough Sounds is an iconic environment deserving of protection from potential sediment and/or visual effects through reasonable control mechanisms as are contained in the Coastal Environment zone within the Plan.

**Decision**

146. The rezoning request made opposing the Coastal Environment Zone in respect of land in the vicinity of Havelock and Linkwater areas is rejected.

**Zoning Maps 49 and 50 - North Renwick**

**Section 42A Report**

147. The Section 42A Report on the request by the NZIS to rezone large areas north of Renwick for residential development as Residential 3 or Rural Living zones was negative. The request had been made on the basis that the flooding risk on the lower floodplain had been mitigated or removed. However, the Section 42A Report clarified that Council's engineering staff report had still concluded a risk of flooding still existed form Ruakanakana Creek in major flood events. The report referred to four options being explored with the preferred option being to raise the level of an existing bridge over the creek. As that work had not been done yet the report did not recommend the rezoning sought at this stage and commented that if that and servicing issues were resolved in future a plan change process could occur.

**Consideration**

148. The Panel had no evidence before it that either the flood mitigation works necessary prior to rezoning were complete, or the servicing available as to water supply and sewage disposal. Until those aspects are in hand it would be quite inappropriate to rezone this land.

**Decision**

149. The request for rezoning of land immediately north of Renwick from Rural Environment Zone to Residential 3 or Rural Living as sought by NZIS is rejected.

**Zoning Map 53 - Renwick**

**Section 42A Report**

150. The Section 42A report on the rezoning request for 6 and 8 Alma Street from residential to Business was negative on the basis that while a resource consent had been granted to enable Business type activity on the allotments that enabled controls by way of conditions which would not exist if rezoning occurred. The report emphasised that rezoning would not be consistent with Policy 12.5.1 which aims to ensure that 'particular characteristics are maintained within the central business area of Renwick including "the core of an urban town, usually anchored around a main street of retail and premier business" and "a wide variety of activities including retail shops, offices, and community facilities". Reference was also made to policy 12.3.3 which states that business activities in the Urban Residential zones should be avoided unless the vibrancy and function of the Business zones is not detracted from; the site is adjacent to a Business zone; and provides opportunities for integration with a Business zone; and finally to Policy 12.2.1 which relates to the maintenance of the amenity and character residential areas.

**Consideration**

151. The Panel agreed with the assessment of the Section 42A Report that the effects of current use of 6 Alma Street is best controlled through resource consent processes and conditions. The rezoning requested would be inconsistent with a number of policies relevant to Renwick township and its residential amenity. The retention of controls through consent conditions will provide a buffer between the business zone and the residential zone.

152. However, 8 Alma Street is adjacent to an existing business zone and is part of the same operation and the Panel is comfortable that that property can be rezoned for business purposes.

**Decision**

153. The rezoning request of land at 6 Alma Street from Residential 2 to Business 1 Zone is rejected but the request for rezoning of 8 Alma Street from Residential 2 to Business 1 Zone is approved.

**Zoning Maps 60 and 61 - Wairau Valley Township**

**Section 42A Report**

154. A number of submissions were received seeking changes to the proposed zonings in the notified PMEP and the Section 42A Report assessment commenced by recording that the zoning in the WARMP is similar to the zoning adopted in the PMEP with a few changes. The principal change is an increase of residential land as Urban Residential 2 north of SH63 with less Rural Living/ Rural Residential zoning south of SH 63. In part the report says that outcome has stemmed from servicing limitations and flooding constraints.

155. After detailing the relevant policies for small townships in the PMEP the report writer recommended the following responses to the submission requests:

    i. Rezoning of the Wairau valley tavern to Business 2

    ii. That the current zonings for residential and rural purposes remain as notified in the Plan to accord with the Plan policies as to small townships.

    iii. Retention of Business 2 zoning for the sites containing existing commercial nature buildings such as the old garage and store notwithstanding that the businesses in those buildings no longer operate. The report suggests that the current Business 2 zoning leaves open the possibility of new commercial activities without those having to seek resource consent. That appears to the report writer to accord more closely to the Plan policy approach than a rezoning to rural.

**Consideration**

156. The Panel formed the view that the zoning situation in Wairau Valley largely reflected historical patterns of development and use which have been limited in density and somewhat sporadic, although more concentrated around the State Highway and the township. That has resulted in a small Business 2 Zone, a residential provision which largely reflects current development but with some limited room for expansion particularly to the north of the township and SH 63. The policies in the PMEP which apply to such small townships tend to emphasise recognition and support of existing low intensity development, an informal appearance and services and facilities for both locals, visitors and the wider rural population. The Panel is satisfied that when assessed against those policies the PMEP zonings proposed

are consistent with that policy approach and it did not receive sufficient evidence to warrant any general change.

157. The sites of the defunct petrol station and associated store are not straightforward in terms of those policies as they have not operated for a long period. Moreover, the buildings are commercial in nature and still exist. Rural zoning, therefore, does seem more appropriate than Business 2 zoning as it would still enable some form of light industrial/commercial use of the buildings to be considered in future but in a manner controlled by resource consent conditions.

158. The Wairau Valley Tavern site it is agreed should be zoned in a manner which better reflects its actual business use and longstanding existence, rather than the notified Rural zoning.

**Decision**

159. Rezone the Wairau Valley Tavern site (Part Lot 1 DP 3204) from Urban Residential to Business 2 Zone.

160. Rezone the old petrol station and associated store sites from Business 2 to Rural Environment.

161. Otherwise retain zonings in and around Wairau Valley township area as notified.

**Zoning Map 64 - Sanford - Okiwi Bay**

**Section 42A Report**

162. The Section 42A Report on Sanford's request to rezone its site at Okiwi Bay from Residential zoning to Business zoning to reflect the actual commercial activity carried on, was negative.

163. The reasons for that negative response were that effectively a rezoning would be 'micro-zoning' for one site in a large residentially zoned area; that outcome was not desirable if it could give rise to other potential adverse effects from future permitted activities inconsistent with the amenity provided by the surrounding zone; the activity operated at present under resource consent controls which were the best way of controlling effects of the activity.

**Consideration**

164. The Panel was concerned that if the property was rezoned that would enable other activities to possibly commence on part or all of the site which might have significant uncontrollable amenity effects on the surrounding residential zoned land. Given the surrounding residential use, the Panel agreed with the report writer's view that the present method of control of effects of activities through tight resource consent conditions was the best way to enable the activity to continue while protecting the zoning amenity in the surrounding residential zone.

**Decision**

165. The request for the Sanford site to be rezoned Business zone is rejected.

**Zoning Maps 6, 7, 12 and 13 - David Street**

**Section 42A Report**

166. The Section 42A Report provided a detailed background to the conflict in views between submitters as to whether the proposed PMEP zoning treatment of this area predominantly for lower density residential development should be upheld. That background is complex and does not need repetition in this decision as the thrust of the report was to emphasise that the physical constraints of the past centred on land stability, servicing, stormwater disposal issues have been practically and effectively addressed in the PMEP by the development of a planning mechanism through specific policies and rules which apply to Appendix 23 areas. That approach has ensured that subdivision of this potentially difficult land is made a discretionary activity with Council having no restrictions on the matters it can consider. All the physical constraint issues are specifically identified in the policies and/or rules coupled with Appendix 23 and are required to be addressed by any potential developer a part of the consenting process.

167. As a consequence the report writer recommended the policies, rules, and zonings for the Appendix 23 areas provided sufficient safeguards to enable integrated development of infrastructure to enable the rezonings proposed in the PMEP to stand.

168. As for the concerns expressed by some submitters that they wished to continue their horticultural activities on their larger allotments the report writer pointed out existing use rights provided the protection the submitters desired.

**Consideration**

169. The Panel was concerned to ensure that physical limitations which had historically restricted the ability of these areas to develop had been properly addressed in the PMEP. The Panel is satisfied that the policies referred to by the report writer when coupled with the site specific controlled approach in the policies and rules applying to the Appendix 23 areas enables use for future residential purposes of land relatively close to the town centre.

170. The Panel has heard evidence on the high level of demand for residential land close in to the centre of town in Blenheim and the rapid rate at which existing residentially zoned land has been developed over the last one to two years. This is a large area of land which given proper development methods can be utilised for residential purposes, with existing users having existing use rights at law to continue their horticultural activities.

**Decision**

171. The Urban Residential 2 zoning provisions coupled with Appendix 23 as notified in the Plan are to be retained as notified.

**Zoning Map 140 - Opihi Bay**

**Section 42A Report**

172. A submission had been made by New Zealand Forest Products Holdings Limited opposing the Coastal Living zoning on the basis that the present use of the land was for commercial forestry. The submission also sought removal of protection for a significant ecological area which the report assumed related to the identification of W1044 on the overlay maps. The report drew attention, however, to the fact that the land owner held a subdivision consent granted in 2016 (U160023.1) which enabled subdivision of the property into 25 allotments one of which was intended to protect the wetland area as a reserve.

173. The report writer did not recommend the deletion of the wetland identification, but did recommend a change in zoning from Coastal Living to Coastal Environment zone.

**Consideration**

174. The Panel was concerned that when an active subdivision consent was still extant, (lapse date being 10 June 2021), the change in zoning would mean lesser standards would apply if the subdivision proceeded under the new zoning requested. The Panel, therefore, issued Minute No. 60 on 2 May, 2019 requesting that the submitter make it clear if it intended to surrender the subdivision consent and if so when. No response was forthcoming.

175. The Panel was not satisfied that appropriate controls would exist for the allotments on the subdivision if a rezoning occurred. Given the fact that the Council could not compel the surrender of that consent, and given its continued existence, the Panel decided the only way to control effects for each allotment on the subdivision was to retain the proposed zoning.

**Decision**

176. The requests for rezoning from Coastal Living Zone to Coastal Environment Zone on Lot 1 DP467695 and for removal of W1044 are rejected.

## Definitions

**Key Matter – General**

177. The Section 42A Report identifies that the Ministry for the Environment was in the process of preparing mandatory National Planning Standards which Councils will be required to adopt. The National Planning Standards came into effect on 3 May 2019, however these have not been adopted by the PMEP Panel because a major alignment exercise is required. This will need to take into account the decisions of the Panel.

178. Instead the Panel has relied on evidence from submitters on the notified definitions which were notified prior to the proposed National Planning Standards. Where the definitions in the

PMEP are different to those in the NPS the Council will have to align those definitions to the standards within the next 10 years.

179. NZTA requested that in every case the National Planning Standard definitions be adopted.

**Decision**

180. Except to the extent recorded in particular topic decisions by the Panel, it decided not to adopt in every case the National Planning Standard definitions and leave that to the alignment process which, as a matter of statute, Council will be required to follow over the next ten years.

181. Defined terms are hyperlinked to the appropriate definition in the MEP EPlan.

**Key Matter – Height**

182. Spark and Chorus disagree with the Section 42A Report recommendation on height and seek that GPS and lightning rods be excluded from its definition.[39]

183. The report writer considers that amending the definition so that GPS units and lightning rods will enable consistency for situations when GPS units and lightning rods are placed on structures in situations not covered by the NES for telecommunications. He is satisfied that the additional information provided by Mr McCarrison demonstrates that these units are small and will not give rise to any adverse effects on the environment, and in many cases will be indiscernible. The Panel agrees.

**Recommendation and decision**

184. 'Height' is amended as follows:

*Height in relation to a building or structure, means the vertical distance between the natural ground level at any point and the highest and best use part of the building or structure immediately above that point as shown in Figure 2 of Appendix 26. This definition does not apply to lightning rods or GPS equipment units affixed to the highest and best use part of a network utility or radiocommunication or meteorological or telecommunication building or structure.*

185. The definition of 'Telecommunication facility' is amended as follows:

*…facility, ~~or~~ apparatus, GPS equipment units and lightning rods intended for the purpose…*

[39] Spark (1158.68) and Chorus (464.76), Graeme McCarrison, Joint Statement of Evidence, paragraph 3.3.

186. Insert new standards in network utilities 2.39.X as follows:

*2.39.1.15. Any GPS unit associated with the network utility infrastructure must not exceed 300mm in height or 130mm in diameter*

*2.39.1.16. Any lightening rod associated with the network utility infrastructure must not exceed:*

*(a) In residential zones, 650mm in height or 60mm in diameter; or*

*(b) In all other zones, 1500mm in height and 60mm in diameter.*

187. The definition of telecommunication facility is amended to read:

*Telecommunication facility means any telephone exchange, telephone booth, telephone cabinet or pay phone, or any other structure, facility or apparatus intended for the purpose of effecting telecommunication,* and includes any associated GPS unit or lightening rod.

**Key Matter – Site**

188. Several submitters have all submitted in relation to the definitions of 'Site', and seek that there only be one definition, rather than the four which were notified in the MEP. The submitters generally all seek the rationalisation of the definitions and that there be one clear and concise definition.[40]

189. Specifically, Fonterra Co-operative Group Limited seek to delete the following definitions of site:

*Site - 'where in the context it is appropriate, includes an area or place or river reach.'*

*Site 'means a place or area where an activity takes place.'*

*Site 'in relation to frost fans, has the meaning of single land holding.'*

**Section 42A Report**

190. Having reviewed the PMEP and the relevant definitions, the report writer that it is unnecessary to have numerous definitions, when they can be combined.

191. He considers that the definition for 'Site' in relation to frost fans should be deleted and instead, the provisions should refer to 'Single Land Holding'. This is already defined (as shown below), and achieves the intent of the present definition of 'Site' as it relates to frost fans.

192. Single land holding means an area of land held in either:

[40] Chorus New Zealand Limited (464.81), KiwiRail Holdings Limited (873.182), Spark New Zealand Limited (1158.73), Fonterra Co-operative Group Limited (1251.154, 155, .156 and .157) and Federated Farmers of New Zealand (425.423).

*(a) One Computer Register; or*

*(b) More than one Computer Register where*

- *the land in the various Computer Registers are held in common ownership or leased under the same lease; and*
- *the land in the Computer Registers or lease are contiguous to each other; or*
- *the Computer Registers are held together by a covenant under Section 220 RMA.*

**Consideration**

193. The report writer considers that the remaining definitions of 'Site' can be deleted, and replaced with a single definition that captures the intent of the notified versions. He notes that the definition of 'site' is also included in the draft National Planning Standards, with minor modifications. This definition follows, with an additional clause (f) to capture issues around Right of Way boundaries (which is part of the existing definition of site in the PMEP) and clause (g) to cover situations where there may not be a Title for the property (which is also referred to in existing definitions of site).

194. The report writer acknowledges that this definition has similarities to the PMEP's definition of 'Single Land Holding'. However, that definition is specific to frost fans and he is comfortable that it remains for that purpose.

195. The report writer notes that 'Single Land Holding' is currently only used in two bird scaring device provisions and is not used in Volume 1 of the PMEP. Deleting the use of frost fan 'site' and using 'single land holding' will necessitate changing of six provisions in Volume 2, as follows:

*Rural Environment Zone*

*3.2.4.1 Any new noise sensitive activity located within 300m of any frost fan not within the same ~~site~~ single land holding must be designed and constructed….*

*3.2.4.4 For the purposes of Standards 3.2.4.1, 3.2.4.2 and 3.2.4.3, 'frost fan' includes any lawfully established frost fan, and includes a proposed frost fan for which a resource consent has been granted ~~and 'site' has the meaning of 'single land holding~~'.*

*Coastal Environment Zone:*

*4.2.3.1 Any new noise sensitive activity located within 300m of any frost fan not within the same ~~site~~ single land holding must be designed and constructed…'*

*4.2.3.4. For the purposes of Standards 4.2.3.1, 4.2.3.2 and 4.2.3.3, 'frost fan' includes any lawfully established frost fan, and includes a proposed frost fan for which a resource consent has been granted ~~and 'site' has the meaning of 'single land holding~~'.*

*Rural Living Zone:*

*8.2.3.1. Any new noise sensitive activity located within 300m of any frost fan not within the same ~~site~~ single land holding must be designed and constructed…*

*8.2.3.4 For the purposes of Standards 8.2.3.1, 8.2.3.2 and 8.2.3.3, 'frost fan' includes a lawfully established frost fan, and includes a proposed frost fan for which a resource consent has been granted ~~and 'site' has the meaning of 'single land holding~~'.*

**Amended definition**

196. The proposed definition as contained in the draft National Planning Standards, however, removes references to front and corner sites, as these are not utilised in the PMEP and are commonly understood.

*Site means:*

*a) an area of land comprised in a single record of title as per Land Transfer Act 2017; or*

*b) an area of land which comprises two or more adjoining legally defined allotments In such a way that the allotments cannot be administered separately without the prior consent of the council; or*

*c) the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate computer freehold register could be issued without further consent of the Council; or*

*d) in the case of land subdivided under the Unit title Act 1972 or the cross lease system, a site is deemed to be the whole of the subject land to the unit development or cross lease; or*

*e) an area of land comprised in two or more records of title adjacent to each other where an activity is occurring or proposed; or*

*f) where a right of way is employed, the line(s) defining the extent of that right of way on a survey plan must be treated as a legal boundary for the purpose of bulk and location controls for buildings; or*

g) *where there is no computer freehold register for a property, the place or area where the activity takes place.*

197. Some other minor amendments are required in the Panel's view which will become clear below in the Panel's decision.

**Decision**

198. The definition of 'site means' is replaced with the following:

*Site means:*

a) *an area of land comprised in a single record of title (as per Land Transfer Act 2017); or*

b) *an area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be administered separately without the prior consent of the council; or*

c) *the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate record of title could be issued without further consent of the Council; or*

d) *in the case of land subdivided under the Unit title Act 1972 or the cross lease system, a site is deemed to be the whole of the land subject to the unit development or cross lease; or*

e) *an area of land comprised in two or more records of title adjacent to each other where an activity is occurring or proposed; or*

f) *where a right of way is employed, the extent of that right of way on a survey plan shall not be included as the legal boundary but instead the inner boundary of the right of way closest to the building shall be treated as a legal boundary for the purpose of bulk and location controls; or*

g) *where there is no record of title for a property, the place or area where the activity takes place.*

199. As a consequential change amend the rules 3.2.4.1, 3.2.4.4, 4.2.3.1, 4.2.3.4, 8.2.3.1 and 8.2.3.4 as follows:

*3.2.4.1 Any new noise sensitive activity located within 300m of any frost fan not within the same ~~site~~ single land holding must be designed and constructed….*

*3.2.4.4 For the purposes of Standards 3.2.4.1, 3.2.4.2 and 3.2.4.3, 'frost fan' includes any lawfully established frost fan, and includes a proposed frost fan for which a resource consent has been granted ~~and 'site' has the meaning of 'single land holding~~'.*

*Coastal Environment Zone:*

*4.2.3.1 Any new noise sensitive activity located within 300m of any frost fan not within the same ~~site~~ <u>single land holding</u> must be designed and constructed…'*

*4.2.3.4. For the purposes of Standards 4.2.3.1, 4.2.3.2 and 4.2.3.3, 'frost fan' includes any lawfully established frost fan, and includes a proposed frost fan for which a resource consent has been granted ~~and 'site' has the meaning of 'single land holding~~'.*

*Rural Living Zone:*

*8.2.3.1. Any new noise sensitive activity located within 300m of any frost fan not within the same ~~site~~ <u>single land holding</u> must be designed and constructed…*

*8.2.3.4 For the purposes of Standards 8.2.3.1, 8.2.3.2 and 8.2.3.3, 'frost fan' includes a lawfully established frost fan, and includes a proposed frost fan for which a resource consent has been granted ~~and 'site' has the meaning of 'single land holding~~'.*

# Proposed Marlborough Environment Plan

# Topic 22: Forestry

**Hearing dates:** 3 – 4 December 2018

**S42A Report Writer:** Liz White

**Conflicts of Interest:** None

**Interim decision:** None

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

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## List of Abbreviations

| | |
|---|---|
| ETS | Emissions Trading Scheme |
| MDC | Marlborough District Council |
| NESPF | National Environmental Standard for Plantation Forestry |
| NZCPS | New Zealand Coastal Policy Statement |
| PMEP | Proposed Marlborough Environment Plan |
| RMA | Resource Management Act 1991 |

**Submitter abbreviations**

| | |
|---|---|
| DOC | Department of Conservation |
| MFIA | Marlborough Forest Industry Association Incorporated |

## National Environmental Standard for Plantation Forestry (NESPF)

### Aligned rules/standards

1. On 1 May 2018, the NESPF came into effect. It provides a set of rules that apply nation-wide to the following activities relating to plantation forestry:

   - afforestation
   - pruning and thinning to waste
   - earthworks
   - river crossings
   - forestry quarrying
   - harvesting
   - mechanical land preparation
   - replanting
   - other ancillary activities.

2. The NESPF is directly relevant to the PMEP, because a number of provisions within the PMEP have now been superseded by the NESPF and consideration of other provisions should be made in the context of the regulations in the NESPF. The RMA sets out the relationship between the regulations and standards in the NESPF and district and regional plan rules. This includes the requirement under s 44A RMA for the Council to identify where plan rules duplicate or conflict with the NESPF and remove the duplication or conflict. Section 43B RMA allows for district or regional rules to be more stringent in cases where an NES explicitly states this. In this instance, the NESPF provides for plan rules to be more stringent in a number of circumstances.

3. The forestry provisions of the PMEP were publicly notified on 9 June 2016. The NESPF was signed by Order of Council on 31 July 2017 and commenced on 1 May 2018. This made the process of considering the relief requested in submission more complicated than would have normally been the case. The Council undertook an alignment exercise to remove rules in the PMEP that duplicated or conflicted with the NESPF. It also determined which rules were to be retained on the basis of stringency. These processes are clearly set out in the Topic 22 Section 42A Report. The effect of these provisions were that there were rules that received submission that were removed from the PMEP. The submissions on those rules therefore became invalid. Helpfully, the results of the alignment exercise were appended to the Section 42A Report. The specific submission points affected in this way were also identified. This

matter is highlighted to reflect the additional complexity involved in determining this topic. The Panel thanks the report writer for her assistance on this matter and also thank submitters for their perseverance.

### Matters over which the Council has restricted its discretion

4. As background information, as of 1 February 2019 two new rules provide MDC with stringency with the following directions as a result of alignment with NESPF:[1]

   *4.5.3 Plantation forestry planting*

   *Matters over which the Council has restricted its discretion:*

   *4.5.3.1 Effects on Significant Wetlands*

   *4.5.3.2 Effects of sedimentation*

   *4.5.3.3 The effects on the values of the Marlborough Sounds Outstanding Natural Feature and Landscape.*

   *4.5.3.4 Effects on any drinking water supply registered under Section 69J of the Health Act 1956.*

   *4.5.4 Plantation forestry harvesting*

   *Matters over which the Council has restricted its discretion:*

   *4.5.4.1 Effects on Significant Wetlands*

   *4.5.4.2 Effects of sedimentation*

   *4.5.4.3 The effects on the values of the Marlborough Sounds Outstanding Natural Feature and Landscape.*

   *4.5.4.4 Effects on any drinking water supply registered under Section 69J of the Health Act 1956.*

**Minute 52 Requests for clarification**

5. The Panel had a number of questions upon which it sought further response from the report writer arising from our initial consideration of Forestry, Topic 22 issues.

6. We queried in Panel Minute 52, Matter A, if any purpose was served by the inclusion of the phrase 'National Environmental Standards for Plantation Forestry 2017' in Standard 3.3.6 and other provisions as recommended to be amended in the Section 42A Report.[2]

[1] Update 5 Plan Change NES Plantation Forestry, Volume 2, Chapter 4, page 6.
[2] Section 42A Report, paragraph 124.

7. Rule 3.1.6. provides a permitted activity for '*Commercial forestry planting and carbon sequestration forestry planting (non-permanent*).' Standard 3.3.6 sets out the permitted activity standards for those activities.

**Consideration**

8. The Panel considered that as a matter of law all plantation forestry is to be managed by NESPF 2017 which has the status of statutory regulation. We believe that the report writer's reference to NESPF in the rules and standards does not add to the effect of the rules when stringency is being exercised.[3]

9. The report writer responded to Minute 52:

- The addition of the wording is not part of the changes recommended through the Section 42A Report. Rather, it reflects the wording as amended through the NESPF alignment process.
- The firm engaged to undertake the alignment exercise sought to make it clear that the rule continued to apply to plantation forestry planting activities as identified in the provisions of the PMEP *in addition* to NESPF. The advice from MDC officers was that it was important to make the distinction to provide clarity to users.
- The need for the phrase in this particular rule (and other rules) that specifically manage plantation forestry may not be necessary but there is benefit in ensuring that the proposed rules that apply more broadly such as Rule 3.1.13 (Cultivation) and Rule 3.1.14 (Excavation) are examples which continue to apply *in addition* to NESPF.
- Nevertheless, given the 'Note' introduced through the final NESPF alignment exercise to the standards for these activities, the distinction between the Plan provisions and the alignment with the provisions of the NESPF is now sufficiently clear. The phrases referred to in the rule headings that specifically manage forestry activities are no longer necessary. The report writer advised as a result she is therefore comfortable with their removal.[4]

10. The Panel decided that, due to the fact that NESPF was published after the PMEP was advertised and the submission dates identified, it is clear that the time difference between when the two documents were published (PMEP and NESPF) meant that the notice of the alignment provisions as a regulation would subsume the recommended amendments to the Rule 3.3.6 and other provisions.

[3] Minute 52, page 1.
[4] Memorandum in response to Minute 52, Matter A, page 1.

**Decision**

11. Given the statutory recognition of the NESPF and as part of the alignment process, remove the reference to the NES in the provisions described in schedule 22.1 attached to the decision on this topic.

12. Retain the references to the NES in the provisions described in schedule 22.2 attached to the decision on this topic.

13. 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.[5]

## Commercial Forestry

### Request for combination of forestry terms

14. Ernslaw One seeks to combine the definitions of 'commercial forestry planting', 'carbon sequestration planting (permanent)' and 'carbon sequestration forestry planting (non-permanent)' as it is difficult to differentiate between their purpose at the time of planting.[6]

**Section 42A Report**

15. In terms of combining all the terms as suggested by Ernslaw One, the report writer advised:

> *I tend to agree with the submitter that it is difficult to include rules relating to the **planting** of carbon sequestration forestry that differentiate between whether it is permanent or nonpermanent, because this may change after the forestry has been planted. There is also a tension with linking the rules pertaining to carbon sequestration planting with those relating to commercial forestry, because the NESPF applies to the latter but not the former. In my view, it would be more appropriate to delete reference to carbon sequestration forestry planting within the rules applying to commercial forestry and instead amend the permitted rule currently applying to permanent carbon sequestration forestry, [and instead] to remove reference to 'permanent', and similarly - shift reference to carbon sequestration forestry from Rule 3.7.1(a) to 3.7.1(b).*[7] [Emphasis added]

16. The report writer's recommendations relating to these opinions are to amend Rule 3.1.6 (and the heading of 3.3.6) as follows:

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[5] Section 42A Report, paragraphs 123-126. Panel Minute 52.
[6] Ernslaw One, Peter Weir Evidence, page 3.
[7] Section 42A Report, Reply to Evidence, Definitions, page 1.

*3.1.6. Commercial forestry planting including where managed by the National Environmental Standards for Plantation Forestry 2017~~, and carbon sequestration forestry planting (non-permanent)~~*

17. Amend Rule 3.1.10 (and the heading of 3.3.10) as follows:

*3.1.10. Conservation planting and carbon sequestration forestry planting ~~(permanent)~~*

18. Amend Rule 3.7.1 as follows:

*3.7.1(a) Commercial forestry planting~~, and carbon sequestration forestry planting (non permanent)~~ within the coastal environment on land identified as Steep Erosion-Prone Land, that has not previously been planted in lawfully established commercial ~~or carbon sequestration (non-permanent)~~ forestry.*

*3.7.1(b) Woodlot forestry planting and carbon sequestration forestry planting on land identified as Steep Erosion-Prone Land, that has not previously been planted in lawfully established woodlot forestry or carbon sequestration forestry planting.*[8]

**Consideration**

19. The Panel is in agreement with the report writer that the submission raises valid issues for consideration. However, the option requested by the submitter of amalgamating definitions is not the preferred option of either the Panel or the report writer. The Panel prefers the approach recommended by the report writer that the relevant rules are amended to ensure that unnecessary complications raised by phraseology such as 'permanent' and 'non permanent' are removed. The Panel considered the distinction unnecessary. It understood that the distinction was made in an attempt to ensure that people did not use the carbon sequestration forestry enabling rules to effectively plant commercial forestry. The Panel believes that this reflects the purpose and intent of the rules and the circumstances above are a compliance matter.

20. The Panel therefore concluded it was appropriate to remove sequestration from rules managing commercial forestry to avoid confusion between the various activities as follows:

- Remove 'carbon sequestration forestry (non permanent)' from 3.1.6, 3.3.6, 3.7.1, 4.7.1, 7.5.1 and 8.5.1 as set out in the Reply to Evidence.[9]
- Remove '(permanent)' from Rule 3.1.10 as set out in the Reply to Evidence.[10]

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[8] Section 42A Report, Reply to Evidence, Definitions, pages 2-3.
[9] Section 42A Report, Reply to Evidence, Definitions, pages 1-2.
[10] Section 42A Report, Reply to Evidence, page 1.

- Do not add 'carbon sequestration forestry planting' to 3.7.1 as this would prevent planting of steep erosion-prone land that would have soil conservation benefits.

**Decision**

21. Amend the rules as set out in the consideration above.

22. As a consequence, the definitions of Carbon sequestration forestry planting (permanent) and Carbon sequestration forestry planting (non-permanent) are deleted and the following definition of Carbon sequestration forestry planting is inserted as follows:

    ***Carbon sequestration forestry planting*** *means the planting and management of areas of shrubs and vegetation the purpose of which is only for carbon sequestration.*

## Definition of Commercial Forestry

23. Several submissions request that 'commercial' forestry be replaced with 'plantation' forestry.

24. Nelson Forests seeks that all reference to 'commercial forestry/forests' be changed to 'plantation forestry/forests', identifying that this is the recognised terminology for planted forests and is consistent with the NESPF[11]. The company states there is no overriding definition of commercial forestry in the PMEP and seeks that 'plantation forestry' is defined as follows:[12]

    *Growing trees and removing them from the land, to produce timber and/or fibre, or where the land cover is principally timber tree species. Forest has a corresponding meaning. It includes:*

    - *Accessory land preparation*
    - *Accessory tracking or roads, landings or other accessory earthworks*
    - *Clearing understorey*
    - *Harvesting trees (including de-limbing, trimming, cutting to length, and sorting and grading of felled trees*
    - *recovery of windfall and other fallen trees*
    - *Planting trees*
        - *Replanting trees*
        - *Tree alteration*

[11] Federated Farmers (425.386, 425.387). Nelson Forests Ltd, Heather Arnold Evidence, paragraphs 6-8.
[12] Nelson Forests Ltd (990.5, .7). Section 42A Report, paragraph 71.

- *Replanting trees*
- *Thinning trees*
- *Accessory vegetation removal*

25. Federated Farmers seeks that the definition of commercial forestry be amended to exclude (inter alia) 'trees planted for amenity purposes, such as landscape enhancement and animal shelter; all farm shelter belts; erosion control, riparian margin strips; for scientific or research purposes; or where the trees are intended to remain in perpetuity, such as trees contained within a QEII covenant or similar' and that small scale farm forestry also be excluded.[13]

26. D Hemphill requests that the definition of 'commercial forestry' and 'forestry road' be aligned with those of the NESPF.[14]

**Section 42A Report**

27. In terms of replacing the term 'commercial forestry' with 'plantation forestry', the report writer was 'fairly neutral' but nevertheless accepts there may be benefit in aligning the terminology used in the NESPF to avoid any doubt as to which document may apply. The report writer's final recommendation is to amend 'commercial forestry' to 'plantation forestry'.[15]

28. The report writer notes that the PMEP already includes a definition of 'commercial forestry' ('*Means indigenous or exotic tree species deliberately established for wood production'*) … ,[16] so there is no need to provide the extensive, new definition sought by Nelson Forests Ltd.

29. The definition of 'plantation forest' in the NESPF is much more expansive than that of the PMEP:

> ***plantation forest*** *or* ***plantation forestry*** *means a forest deliberately established for commercial purposes, being –*
>
> *(a) at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted; and*
>
> *(b) includes all associated forestry infrastructure; but*
>
> *(c) does not include—*

[13] Federated Farmers (425.385).
[14] D C Hemphill (648.46).
[15] Section 42A Report, Reply to Evidence, page 1.
[16] Section 42A Report, paragraph 74.

*(i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 m; or*

*(ii) forest species in urban areas; or*

*(iii) nurseries and seed orchards; or*

*(iv) trees grown for fruit or nuts; or*

*(v) long-term ecological restoration planting of forest species; or*

*(vi) willows and poplars space planted for soil conservation purposes*[17]

30. Nevertheless, the report writer agrees, despite stating that the NESPF and PMEP definitions encompass the same matters, that there is benefit aligning the definitions within the PMEP with those used in the NESPF to avoid doubt. She recommends there are several options available to the Panel to achieve the alignment exercise:

- Replace all references within the MEP from 'commercial forestry' to 'plantation forestry' (including in objectives, policies, methods and explanations), delete the definition of 'commercial forestry' from the MEP and replace with the above NESPF definition (or reference to it); or
- Retain references to 'commercial forestry' but amend the definition of 'commercial forestry' to either replicate the NESPF definition above or refer to it.[18]

31. The report writer's preference, however, is to refer to 'commercial forestry' instead of 'plantation forestry' throughout the rest of this topic.

**Consideration**

32. The Panel considered that the definition of 'commercial forestry' is appropriate to be aligned with the NESPF definition of 'plantation forestry'. We also considered that the words 'commercial forestry' should be replaced with 'plantation forestry' throughout the PMEP to avoid confusion.

**Decision**

33. The definition of 'commercial forestry' is deleted and a new definition of 'Plantation forestry inserted' as follows:[19]

*Plantation forestry means ~~indigenous or exotic tree species deliberately established for wood production~~a forest deliberately established for commercial purposes, being –*

[17] NESPF 2017, pages 10-11.
[18] Section 42A Report, paragraph 75.
[19] Section 42A Report, paragraph 78.

*(a) at least 1ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted; and*

*(b) includes all associated forestry infrastructure; but*

*(c) does not include—*

*(i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 m; or*

*(ii) forest species in urban areas; or*

*(iii) nurseries and seed orchards; or*

*(iv) trees grown for fruit or nuts; or*

*(v) long-term ecological restoration planting of forest species; or*

*(vi) willows and poplars space planted for soil conservation purposes*

34. All references to 'commercial forestry' and 'commercial forest' in the PMEP must be changed to 'plantation forestry' and 'plantation forest' respectively.

## Definition of 'Commercial forestry planting'

35. The definition of 'Commercial forestry planting' within the PMEP is:

> *'means indigenous or exotic tree species deliberately established for wood production. Includes the planting, management and replanting of trees, and the preparation of land for planting.'*

36. Windermere Forests Ltd and Warren Forests Ltd seek that 'replanting' is removed from the definition.[20] MFIA requests similarly, stating the definition provides protection of existing use rights under s 10 RMA.[21] MFIA also seeks that the definition be amended to add 'including excavation' so that it also provides for excavation as a land preparation tool. Nelson Forests seeks similarly, including an amendment to identify 'land disturbance' and 'excavation'.[22]

37. P G Gilbert raises concerns that as the definition of commercial forestry planting includes replanting, and planting is listed as a discretionary activity within the Coastal Environment Zone, while replanting is listed as permitted, it is not clear if replanting is permitted or discretionary. He therefore seeks that the definition of planting deletes the reference to replanting. In addition, he notes that the definition does not include formation of 'tracks and

[20] Windermere Forests Ltd (1238.28), Warren Forestry Ltd (282.3).
[21] MFIA (962.121).
[22] Nelson Forests Ltd (990.12).

roads' to provide access to undertake the planting, and seeks that the definition is extended to include: '*and the excavation or filling, or both, to prepare the land for planting or replanting (for example forestry road or forestry track construction or maintenance)*'.[23]

38. Federated Farmers initially sought that the definitions of 'commercial forestry planting' (and 'commercial forestry harvesting') are deleted on the basis that there is no need to have separate definitions for these two activities – rather there should only be one definition of one activity, being 'commercial forestry'.[24] Federated Farmers in evidence reconsidered the request for the deletion of replanting and requested the inclusion of replanting within the commercial forestry planting definition as it does not allow for a case by case assessment in line with existing use rights consideration.[25]

39. Nelson Forests Ltd considers that bundling of replanting and afforestation activities within the PMEP as 'planting' results in the PMEP being difficult to interpret and does not align with the separate management applied to each within the NESPF.[26]

40. Ernslaw One Ltd also considers that the 'planting' rules in the PMEP mix two separate activities of 'afforestation' with 'replanting'. 'Planting' should be replaced with 'afforestation' throughout the rules.[27]

**Section 42A Report**

41. The report writer identified the NESPF definition of 'afforestation':

    *(a) means planting and growing plantation forestry trees on land where there is no plantation forestry and where plantation forestry harvesting has not occurred within the last 5 years; but*

    *(b) does not include vegetation clearance from the land before planting.*

42. In response to Federated Farmers, the report writer does not agree that it is necessary to remove 'replanting' from the definition of 'planting', nor has the Environment Court (to her knowledge) confirmed that replanting falls within existing use rights (which in any case would only apply to land use under a district rule).

43. Nevertheless, the report writer considers there are some cases where standards applicable to the new planting and replanting should be distinguished as there is a difficulty with the current definitions as they apply within the Coastal Environment Zone rules (discussed

[23] P G Gilbert (1017.1).
[24] Federated Farmers (425.386, .387).
[25] Federated Farmers, Kim Reilly, Reply to Evidence, page 2.
[26] Nelson Forests, Heather Arnold, Reply to Evidence, page 2.
[27] Ernslaw One Ltd, Peter Weir, Reply to Evidence, page 2.

elsewhere). The report writer also disagrees with deleting the definitions of both 'commercial forestry planting' and 'commercial forestry harvesting' relying only on the definition of 'commercial forestry'. This does not align with the way the rules in the PMEP manage the two as separate activities, nor would that approach be consistent with the NESPF which similarly manages the two activities separately. The NESPF also includes separate definitions for each – 'harvesting' and 'afforestation'.

44. In her reply to evidence and in response to the evidence of Federated Farmers, Nelson Forests and Ernslaw One Ltd, the report writer was relatively neutral for change as long as the two activities are separated out, with appropriate standards applied to replanting. She does not agree that references to planting should be replaced with 'afforestation' as then no standards would apply to replanting.

45. Similarly, because existing use rights only apply to district plan rules, the report writer does not agree that simply removing the reference to replanting from the definition of planting is appropriate, as to do so would remove the regional plan rules applicable to replanting (and the district rules as they apply to replanting activities that do not have existing use rights).

46. Nevertheless, the report writer does accept that there is an advantage in aligning the management of these activities with that used in the NESPF, i.e. treating them as two separate activities as in reality, plan users referring to these rules are likely to be familiar with the distinction in the NESPF.[28]

47. The report writer recommended this be achieved by an amended version of the NESPF definition which combined paragraphs (a) and (b) of that definition into a new paragraph (a) with a suggested further new paragraph (b), as follows:

> *Means: (a) planting and growing commercial forestry trees on land where there is no commercial forestry and where commercial forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting; and*
>
> *(b) replanting commercial forestry*

**Consideration**

48. In Minute 52 the Panel noted that the report writer recommended the adoption of the NESPF definitions for each of 'planting' and 'replanting' as separate activities, but has included in the

[28] Section 42A Report, Reply to Evidence, page 2.

recommended wording for the definition of 'planting' to include 'replanting commercial forestry' at paragraph 126 of the Section 42A Report.

49. We also considered in Minute 52, identified earlier, that the discussions of the report writer identified a number of provisions and several inconsistencies in the recommendations under the heading 'Definition – Commercial Forestry Planting', namely between paragraphs 119 and 121 and the recommendation (b) in paragraph 126.

50. There appears to be an inconsistency in those two approaches and the Panel sought the report writer's clarification as to whether her analysis overlooked something.

51. The report writer's reply to the question in the minute was 'to ensure that the definitions within the PMEP and those within the NESPF aligned in a broad sense'. The recommendation at the stage it was made (before the NESPF was finalised) did not extend to amending the approach taken in the PMEP to having rules that both manage what 'afforestation' is in the NESPF, as well as 'replanting' within the same rule. In order to continue this management approach the definition of planting in the PMEP was recommended to apply to afforestation as well as replanting.[29]

52. Notwithstanding this, following various discussions by submitters on this matter, the report writer recommended separating out the management of these two activities.[30] As a result of this, a consequential change should be made wording for the definition of plantation/commercial forestry planting to remove part (b) from the report writer's recommended version. The definition would therefore only read as follows:

> *Means: planting and growing commercial forestry trees on land where there is no commercial forestry and where commercial forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting*

53. The issue of replanting as a consequence will require a separate definition for 'plantation forestry replanting'.

54. As a result of these interchanges the Panel considered it was appropriate to amend the definition of 'commercial forestry planting' to:

[29] Response to Minute 52, pages 1-2.
[30] Section 42A Report, Reply to Evidence, pages 2-3.

- Align with the NESPF[31] but not to include the recommended (b) as set out in response to Minute 52 and to replace the term 'commercial forestry planting' with 'plantation forestry afforestation'.
- Introduce a new definition of 'plantation forestry replanting' to reflect the NESPF definition.

**Decision**

55. Delete the definition of 'commercial forestry planting' and insert a new definition of 'plantation forestry planting' as follows:

    ***Plantation forestry afforestation*** *means planting and growing plantation forestry trees on land where there is no plantation forestry and where plantation forestry harvesting has not occurred within the last 5 years; but does not include vegetation clearance from the land before planting.*

56. Delete the definition of 'commercial forestry replanting' and insert a new definition of 'plantation forestry replanting' as follows:

    ***Plantation forestry replanting*** *means the planting and growing of plantation forestry trees on land less than 5 years after plantation forestry harvesting has occurred*

## Standard 3.3.6

**Commercial forestry planting and carbon sequestration planting (non-permanent)**

**Consideration**

57. 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.[32]

58. The Panel considered that reference to the NESPF was unnecessary. The prefix 're' should be inserted before 'planting' in the two recommended standards.

59. This standard requires a corresponding rule in 3.1.

**Decision**

60. Insert a permitted activity rule in 3.1.x as follows:

    *3.1.x Plantation forestry replanting*

61. Insert a new standard for replanting is as follows:[33]

[31] As set out in the S42A Report.
[32] Section 42A Report, Reply to Evidence, page 3.
[33] Section 42A Report, Reply to Evidence, page 3.

*3.3.x Plantation forestry replanting*

*3.3.x.1 Replanting must not be in, or within:*

*(a) 8m of a Significant Wetland;*

*(b) an Afforestation Flow Sensitive Site.*

*3.3.x.2 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.*

**Prohibited Rule 3.7.3 – Carbon sequestration forestry (permanent) harvesting**

62. PF Olsen Ltd considers that the rule is out of scope as the decision to harvest what was intended to be permanent carbon sequestration forestry has two components:

- The first being the Emissions Trading Scheme (ETS)/Afforestation Grant Scheme rules or other covenants, 'none of which are the Council's business and are covered by comprehensive legal rule structures.'
- The second component is the other environmental effects, which they consider should be aligned with the other forestry rules within the PMEP and the NESPF.[34]

63. Federated Farmers also opposes the rule, stating that it is inconsistent with the ETS, which provides for harvesting and replanting, or harvesting and not replanting but incurring a deforestation liability. Federated Farmers consider that they should not be prohibited from harvesting by the PMEP when they are allowed to do this (subject to conditions) under the ETS.[35]

64. Nelson Forests Ltd also opposes the rule, as it considers there may be times when it is desirable or necessary to harvest this type of forest in response to force majeure events. The company considers this is a commercial decision whether to harvest these forests, not a resource management issue.[36]

**Section 42A Report**

65. The report writer agrees with the submitters that this rule does not appear to be addressing a resource management issue, in that the effects relating to harvesting should be managed in the same way, regardless of the reasons for which the planting was established.

[34] PF Olsen Ltd (149.44).
[35] Federated Farmers (425.618).
[36] Nelson Forests Ltd (990.120).

66. The report writer also noted the distinction between carbon sequestration forestry definitions is:[37]

> *Carbon sequestration forestry planting (permanent) means a planting that will never be harvested.*
>
> *Carbon sequestration forestry planting (non-permanent) means a planting that may be harvested. For clarity, a carbon sequestration forestry planting (non-permanent) becomes commercial forestry harvesting when it is harvested.*

67. In the report writer's opinion the difficulty with these definitions in that at the point where harvesting is contemplated, it could be argued that the planting is therefore not permanent and is instead non-permanent, making the rule somewhat 'null in effect'. Her recommendation is that the rule be deleted.[38]

**Consideration**

68. To provide some insight into the background of what the Panel considered with respect to Rule 3.7.3, we note that Rule 3.7.1 prohibits plantation forestry or carbon sequestration forestry where it is on land identified as steep erosion-prone land that has not previously been planted in lawfully established forestry. The application of this rule has been reduced as a result of alignment with the NESPF so that it applied only to the coastal environment in relation to giving effect to Policy 22 of the NZCPS (which relates to sedimentation in the coastal marine environment) that the rule can be more stringent in the NESPF.

69. The Panel considered that effects of harvesting are the same regardless of why the planting was established. The deletion is also inconsistent with the ETS.

70. We consider the appropriate amendment is to apply the prohibited activity rule to harvest on steep erosion-prone land to avoid erosion effects that potentially arise from forestry tracking and land clearance involved in harvesting.

**Decision**

71. Rule 3.7.3 is amended to read:

> *3.7.3 - Carbon sequestration forestry ~~(permanent)~~ harvesting <u>on steep erosion prone land.-</u>*

[37] Section 42A Report, paragraph 190.
[38] Section 42A Report, paragraphs 181-191, 208.

## Definition of 'Commercial forestry harvesting'

72. 'Commercial forestry harvesting' is defined in the PMEP as follows:

    *means the felling and removal from the land of trees, for the purposes of commercial forestry, and includes:*

    *(a) excavation or filling, or both, to prepare the land for harvesting (for example, skid, forestry road or forestry track construction or maintenance);*

    *(b) de-limbing, trimming, cutting to length, and sorting and grading of felled trees;*

    *(c) recovery of windfall and other fallen trees;*

    *but does not include the transportation of the trees from the land or the processing of timber on the land.*

73. A number of submitters seek that the definition of commercial forestry harvesting is amended so that it does not exclude the transportation of trees from the land, or raise more general opposition that the current PMEP framework currently requires resource consent for carting of logs. Reasons for this include that the exclusion negates the over-riding part of the definition which relates to removal of trees from the land.[39]

74. Two submitters seek that the definition be amended to include the management of the forest over the harvesting period (as included in the definition of commercial forestry planting) and seek that it provides for the maintenance of infrastructure post-harvest.[40] Nelson Forests also seeks that the definition be amended to clearly state that the activity is provided for under regional council functions.

75. Windermere Forests Ltd also seeks that clause (a) of the definition is deleted so that earthworks are uncoupled from harvesting.[41]

**Section 42A Report**

76. It is not clear to the report writer what the management of the forest over the harvesting period related to in terms of the Council's functions under the RMA that is not otherwise covered in the definition, nor does she consider that it is appropriate to include the maintenance of infrastructure after harvesting, given that this does not relate to the actual activity of harvesting trees. Further, the report writer does not agree that it is appropriate for a definition to state that it relates to a Council function, as the relevant rules identify whether the rule controlling the activity is a regional or district council rule (or both). Her

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[39] Section 42A Report, page 38.
[40] MFIA (962.118, 962.119), Nelson Forests Ltd (990.8, 990.10).
[41] Windermere Forests Ltd (1238.28).

recommendation is the definition of 'commercial forestry harvesting' is amended to refer to or replicate the NESPF definition.[42]

**Consideration**

77. The Panel considers it is appropriate to align with the NESPF definition of 'harvesting' rather than simply refer to the definition because of the importance of the activity to Marlborough at large. Its inclusion here provides ease of reference to the user.

**Decision**

78. The definition of 'commercial forestry harvesting' is deleted and a new definition for 'plantation forestry harvesting' is inserted as follows:

***Plantation forestry harvesting*** *means felling trees, extracting trees, thinning tree stems and extraction for sale or use (production thinning), processing trees into logs, or loading logs onto trucks for delivery to processing plants; but does not include:*

*(i) Milling activities or processing of timber; or*

*(ii) Clearance of vegetation that is not plantation forestry trees.*

## Rule 4.5.5

## Restricted Discretionary Activities – consequential change

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

80. '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*

81. MFIA[43] and Nelson Forests Ltd[44] seek that the definition of 'commercial forestry harvesting' be amended to include the management of the forest over the harvesting period (as included in

[42] Section 42A Report, page 41.

the definition of '~~commercial~~ plantation forestry planting'). Windermere Forests Ltd seeks that (a) is deleted so that earthworks are uncoupled from harvesting.[45]

82. 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.[46]

**Section 42A Report**

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

84. 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.[47]

85. 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.

86. 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 PMEP specific to managing earthworks associated with forestry.[48]

**Consideration**

87. 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

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[43] MFIA (962.118).
[44] Nelson Forests Ltd (990.8, .10).
[45] Windermere Forests (1238.28).
[46] Ernslaw One Ltd, Peter Weir Evidence, Definitions 3, page 5.
[47] Nelson Forests Ltd, Heather Arnold Evidence, paragraphs 43-49.
[48] Section 42A, Reply to Evidence, pages 3-4.

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.

88. 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.

89. 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.

90. 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.

**Decision**

91. A new Restricted Discretionary Activity is inserted as 4.5.5 as follows.

*Rule 4.5.5 – Excavation and filling to construct or maintain forestry roads, forestry tracks or skid sites.*

*Matters over which the Council has restricted its discretion:*

*a) effects of sedimentation;*

*b) reduction of sediment loadings in runoff;*

*c) effects on the values of Outstanding Natural Features and Landscape*

*d) effects on Significant Wetlands;*

*e) effects on any drinking water supply regulation under Section 69J of the Health Act 1956.*

92. Add standard 4.3.13.x, as follows:

*Excavation must not be associated with the construction or maintenance of forestry roads, forestry tracks or skid sites.*

93. Add standard 4.3.15.x as follows:

*Filling must not be associated with the construction or maintenance of forestry roads, forestry tracks or skid sites.*

## Replanting adjacent to the coastal marine area in the Marlborough Sounds

## Rule 4.1.6 and Standard 4.3.6

### Commercial forestry replanting

94. DOC[49] and other submitters oppose the permitted status for replanting in the Marlborough Sounds' coastal environment, with DOC stating that '*appropriate buffers should be required to ensure sedimentation effects of future harvesting activities on adjacent waterways and the CMA is not significant. DOC considers it appropriate that the activity requires resource consent as a discretionary activity so that the potential for rivers to be used as conduits for sediment …'*. Other submitters from a similar view point sought prohibited activity status. At the other end of the spectrum forestry industry submitters supported permitted activity status.

**Section 42A Report**

95. The report writer recommended that a controlled activity status from 30 metres to 200 metres was appropriate to ensure control measures by way of condition could be imposed to manage any potential adverse effects of sedimentation. Beyond 200 metres permitted activity status would apply. Within 30 metres of the coastal marine area the activity status would be discretionary under Rule 4.6.12.

**Consideration**

96. The Panel noted the report writer's concern that permitted activity status did not adequately address in all cases the risk of potential adverse effects of sedimentation in the Sounds, which the Panel has in various places in its decisions identified as being a major concern.

97. The Panel acknowledges that existing use rights do exist for replanting but they do not override the obligation to control specific identified adverse effects such as sedimentation effects on the ecology of the Marlborough Sounds. Nelson Forests[50] acknowledged '*that forests that were legally established have existing use rights under Section 10. Regional rules may impact on these rights only when there is an evidence issue to address.'* The evidence

[49] 479.220, 479.221
[50] 990.129

relevant to this issue is the sedimentation effect that the Panel considers is significantly adverse to the ecology of the Marlborough Sounds. The Section 42A Report identifies that the report of Dr Urlich[51] outlined *'that sedimentation arises from harvesting activities (and in particular, after harvesting and before the establishment of new planting) and identifies the subsequent ecological effects of fine sediment on coastal ecosystems.'*

98. Policy 22(3) NZCPS requires:

> *Control the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry.*

99. The Panel accepts the recommendations of the report writer for a gradation in activity status from the coastal marine area inland for a distance of 200 metres and beyond. The proposed controlled activity rule is determined to be a district and regional rule. The regional rule is imposed under Section 30(1)(c)(i)), (ii) and (iiia) RMA.

**Decision**

100. Insert a new Controlled Activity rule as follows:

*[R, D]*

*4.4.3 Plantation forestry replanting between 30 metres and 200 metres of the coastal marine area*

*Matters over which the Council has reserved control:*

*4.4.3.1 The location of planting, including areas of permanent planting*

*4.4.3.2 Effects of sedimentation, including those likely to arise from harvesting, and measures proposed to avoid or mitigate these effects*

101. Amend Standard 4.3.6.1(c) by deleting '30' and replacing with '200' so that the standard reads as follows:

*4.3.6.1. Replanting must not be in, or within:*

*(a) 8m of a river (except an ephemeral river) or lake;*

*(b) 8m of a Significant Wetland;*

*(c) ~~30~~200m of the coastal marine area.*

[51] Urlich, S. C. (2015). Mitigating Fine Sediment from Forestry in Coastal Waters of the Marlborough Sounds. MDC Technical Report No: 15-009, ISBN: 978-1-927159-65-1.

## Rule 4.5.3 (Post NESPF alignment)

**Commercial forestry planting**

102. The Section 42A Report recommends that Rule 4.5.3 as inserted in the alignment exercise in respect of restricted discretionary activity standards and is amended to include in parentheses the words '(*excluding commercial forestry replanting that meets permitted activity standards)'.*

103. The Panel however concluded in Minute 52, Matter C, to the report writer[52] that, as the matters applied by Rule 4.5.3 are restricted discretionary activity matters only, then as a matter of law it would seem that these matters cannot apply to permitted activities. We questioned that if that is correct it would appear the words in parentheses serve no purpose.

**Section 42A Report**

104. The report writer identified in her response that the words in the restricted discretionary rule 'cannot apply to permitted standards, [that this] is not the intention of the wording'. Its purpose was to make clear that Rule 4.5.3 would not apply to planting (which at that time was recommended to include both afforestation and replanting and met the permitted standards in the rule). Without that phrase, the restricted discretionary activity Rule 4.5.3 would have applied to replanting making Rule 4.3.6 redundant. Regardless, as a consequence of separating out afforestation and replanting, the definition of plantation/commercial forestry planting should also exclude replanting. Therefore, Rule 4.5.3 would no longer apply to replanting in any case. If the Panel agrees with the recommendation to separate the activities and to subsequently amend the definition it follows that Rule 4.5.3 should be amended to remove the words in parentheses (commercial forestry replanting) – that activity does not meet the standards in 4.3.6. Non-compliance would then default to a full discretionary activity under Rule 4.6.1.

105. But this does not meet applicable standards in the NEPSF. This development would extend the Council's consideration to matters beyond those for which the Council can exercise stringency under the NESPF Regulation 6 (that is, the same for which the NESPF alignment exercise amended Rules 4.6.3 to 4.6.4 to be restricted discretionary rather than full discretionary).

106. Therefore, if the Panel agrees with the other recommendations, it follows that post alignment a fully consequential change to Rule 4.5.3 should read as follows:[53]

> *Plantation forestry planting or plantation forestry replanting that is not provided for as a Permitted Activity.*

[52] Minute 52, page 2.
[53] Response to Panel Minute 52, Matter C, page 2.

**Consideration**

107. The consequential effect of separating planting and replanting is that non-compliance should not default to full discretionary due to Regulation 6. The wording should be consistent with the default discretionary rule that does not meet applicable standards.

**Decision**

108. Add reference to plantation forestry replanting in Rule 4.5.3 as follows:

*~~Commercial~~ Plantation forestry planting or plantation forestry replanting that is not provided for as a Permitted Activity or a Controlled Activity.*

| Schedule 22.1 | |
|---|---|
| Rule 3.1.6 | 3.1.6 Commercial forestry planting including where managed by the National Environmental Standards for Plantation Forestry 2017, and carbon sequestration forestry planting (non-permanent). |
| Rule 3.1.7 | 3.1.7 Commercial forestry harvesting including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 3.1.11 | 3.1.11 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017 |
| Rule 3.1.13 | 3.1.13 Cultivation including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 3.1.14 | 3.3.14. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 4.1.10 | 4.1.10. Indigenous vegetation clearance, including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 4.1.12 | 4.1.12 Cultivation including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 4.1.13 | 4.1.13. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 7.1.9 | 7.1.9 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 7.1.11 | 7.1.11. Excavation or Filling, including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 8.1.12 | 8.1.12. Excavation or filling, including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 19.1.5 | 19.1.5 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 19.1.7 | 19.1.7. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017 as earthworks. |
| Rule 20.1.5 | 20.1.5. Excavation or filling, including where managed by the National Environmental Standards for Plantation Forestry 2017 as earthworks. |
| Rule 22.1.9 | 22.1.9 Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |

| Schedule 22.2 | |
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| Rule 3.1.12 | 3.1.12 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 4.1.11 | 4.1.11. Non-indigenous Vegetation Clearance, including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 7.1.10 | 7.1.10 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 19.1.6 | 19.1.6 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 20.1.7 | Vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |
| Rule 22.1.7 | 22.1.7. Excavation, including where managed by the National Environmental Standards for Plantation Forestry 2017 as earthworks. |
| Rule 22.1.10 | 22.1.10 Non-Indigenous vegetation clearance including where managed by the National Environmental Standards for Plantation Forestry 2017. |