



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

Structure of Decisions

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

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

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

Changed resource management framework

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

8. The Plan in its Introduction² 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).
9. 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.
10. There were multiple submitters that challenged the relationship between the Regional Policy Statement (RPS) and plan provisions, given the proposed structure of the PMEP.
11. 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

12. 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

13. 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.
14. 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.³

² PMEP Volume 1 Introduction page 1-2.

³ Section 42A Report, pages 4-5.

15. 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 finalised⁴. 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.
16. 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.
17. 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

18. The Panel concluded given the integrated nature of the PMEP it was sufficient to only code provisions which are addressed in later decisions.
19. 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.
20. The submission from NZDF seeking page numbers in the contents section is rejected.

Legislative omissions

21. 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

⁴ Section 42A Report, page 13.

resources.⁵ It identifies the reference to ss 6, 7 and 8 in abbreviated form. Nelson Marlborough Fish and Game⁶ (Fish & Game) submit that ss 6 and 7 RMA in the Introduction should either be removed or quoted in full.

Section 42A Report

22. 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

23. 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

24. 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.

⁵ PMEPP Chapter 1 Introduction, page 1-1.

⁶ 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

25. 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.

26. 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.'⁷
27. The submissions of the Marine Farming Association (MFA) and Aquaculture New Zealand (AQNZ), and the submissions supporting them, specifically relate to the aquaculture provisions.
28. One hundred and fifty-eight submissions⁸ 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
29. 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.⁹
30. 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 Plan¹⁰ 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

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

⁷ Laurence Etheredge (879.3).

⁸ Section 42A Report, page 32. Austin Carolino and 157 others.

⁹ Section 42A Report, page 7.

¹⁰ 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

32. 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'.¹¹

Submissions

33. Numerous submissions variously support one or more of the principles, seek some amendments, or request that they be deleted.
34. 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.¹² Port Marlborough New Zealand Limited (PMNZ), in support of AQNZ¹³, 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'.¹⁴ 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.
35. A number of submissions from the forestry industry¹⁵ 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.

¹¹ PMEP Volume 1 Chapter 1 Implementation, Section 42A Report Submission Chapter 1 Introduction pages 1-2 to 1-3 Issue 1.

¹² Hort NZ (769.1).

¹³ PMNZ (433), Louise Elizabeth Robertson Taylor Statement of Evidence, 6 November 2017, paragraph 53, pages 16-18.

¹⁴ AQNZ (401.3).

¹⁵ 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

36. 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

37. 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.
38. 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'.¹⁶
39. 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.
40. 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'.

¹⁶ 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’.¹⁷
 - 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.
41. 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.
42. The Guiding Principles are furthermore largely retrospective and not forward-looking.
43. 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,¹⁸ 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.¹⁹

¹⁷ PMNZ (433) Louise Elizabeth Robertson Taylor, Statement of Evidence, paragraph 56, page 18.

¹⁸ Chapters 6, 7, 8.

¹⁹ Chapter 8.

Decision

44. The Guiding Principles are deleted from the Plan.

Structure of the MEP

45. 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.
46. 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.
47. 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.
48. Otherwise several submitters sought a number of amendments set out below.

Section 42A Report

49. 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).²⁰
50. 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.²¹ 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.²²
51. 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

²⁰ Beef + Lamb New Zealand (459.1).

²¹ Section 87A(5) RMA.

²² 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.²³ 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.22.²⁴

52. 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),²⁵ 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.²⁶
53. 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.²⁷
54. 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.²⁸

²³ The use of the term 'Munsell units' does not survive the submissions given in the later reports.

²⁴ Kevin Wilson (210.1).

²⁵ Chorus (464.1) and Spark NZ Ltd (1158.78).

²⁶ Section 42A Report, page 8. We note that the requirement for this amendment occurs throughout a number of chapters.

²⁷ NZTA (1002.289-293).

²⁸ Section 42A Report, pages 20-21.

55. 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.
56. 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 paragraph²⁹ 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.’
57. 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.
58. Rule 2.7 appears to be the only ‘regional rule’ that requires amendment.

Consideration

59. 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.
60. 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.
61. 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

²⁹ 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

62. 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.

63. 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.

64. 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

65. 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.³⁰

Section 42A Report

66. 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

67. 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

³⁰ (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

68. 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

69. FIS submission³¹ suggests that there should be reference to strategies prepared under the Fisheries Act 1996.
70. 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

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

³¹ (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

72. The EDS submission appeared to suggest a new section was needed to describe the relationship of the various component parts of the PMEP.³²

Section 42A Report

73. 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

74. 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.

75. 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

76. 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

³² (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

77. 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

78. This issue relates to the nine submissions on the use of an RMA term 'avoid'.³³

Section 42A Report

79. 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.³⁴ 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.
80. 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'³⁵.
81. Subsequently, PMNZ raised its concern about the use of the terms 'avoid' and 'prohibit', both in evidence³⁶ and legal submissions.³⁷ 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

³³ PMEP Issue 7 How to use the MEP Chapter 2, pages 2-12-2-13.

³⁴ *Environmental Defence Society Inc v King Salmon Company Limited* (2014) NZSC at [24].

³⁵ Section 42A Report, page 30.

³⁶ PMNZ Louise Taylor Statement of Evidence, paragraphs 35-44.

³⁷ 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.

82. 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’³⁸.

Consideration

83. 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’.³⁹
84. The issue arose in *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd*⁴⁰ (*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).
85. 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.**

³⁸ This terminology is used in s 5(2)(c) RMA (‘avoiding, remedying or mitigating any adverse effects of activities on the environment’).

³⁹ PMEP Chapter 6, pages 6-7.

⁴⁰ [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

86. 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.

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

88. 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.

89. Thus one of the requirements for determination is whether the development, use or subdivision of land is inappropriate in its legal and factual context.

90. 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.⁴¹

91. 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.'⁴²

⁴¹ See ss 58(1)(a), s 59, s 61(1)(b) s 61(1)(da) RMA for relevant legislation.

92. 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.
93. 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.
94. 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'.⁴³
95. 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.⁴⁴

⁴² *King Salmon* at [77].

⁴³ *King Salmon* at [62]

⁴⁴ *Ibid* at [62].

96. The word ‘avoid’ must also be informed by the specific legislative requirements that surround it.⁴⁵ 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.⁴⁶
97. 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.⁴⁷
 - 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).
98. 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

⁴⁵ Section 6 RMA and the NZCPS policies.

⁴⁶ See *Man O War*.

⁴⁷ *Man O War*, page 8.

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

99. 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.
100. 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.
101. 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

102. The ‘Use of RMA terms’ section in the Plan is deleted.

Volume 2 Introduction: Structure of Rules

103. This issue relates to the submissions on the structure of the rules including activity status and classification, layout and legal effects.
104. Submissions on this subject⁴⁸ 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.⁴⁹
 - 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.

⁴⁸ Department of Conservation, the Oil Companies, Fulton Hogan, EDS, Federated Farmers, NMSF, NZDF, NZTA, Forest & Bird.

⁴⁹ 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

105. The Section 42A Report acknowledges there will always be variations in the way plans are presented.⁵⁰ 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.
106. 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.

⁵⁰ Section 42A Report, page 13

107. 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.
108. 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.
109. 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

110. 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.
111. 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.

112. 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 is described 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)

113. 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.
114. 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.
115. A decision on status in a general sense is not required at this stage.
116. 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.
117. 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 ...’⁵¹

118. 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.’

119. 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,

⁵¹ NZTA (1002.295)

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

120. 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.
121. Further, many of the submissions lack specificity and the rules (so far identified) comply with the provisions of the RMA apart from cross-referencing.⁵²
122. The submissions seeking non-complying activity status as a general matter throughout the Plan are rejected.
123. Other than indicated in previous decisions, all other submissions on the Structure of Rules are rejected.

Mapping

124. 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

125. 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

⁵² 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.⁵³

126. The accuracy of the overlay maps will be addressed in response to the individual submissions that are made.
127. 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).
128. 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

129. 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.
130. 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 development⁵⁴ (either through infill or new development).
131. 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.
132. 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.

⁵³ MEP Volume 1 Introduction; Volume 4, page 1-5.

⁵⁴ Section 32 Report, page 25.

133. 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).
134. 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.
135. 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

136. The submissions by the Chamber of Commerce seeking additional business land are rejected.
137. The planning maps are to be amended by making the colours/shadings more distinctive when the maps are finalised.⁵⁵
138. The planning maps are to be amended by providing for tabs to identify overlays when the maps are finalised.⁵⁶

⁵⁵ GDC Consulting (2010) Limited (410.1).

⁵⁶ NZTA (1002.278).