



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

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| 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 |

Structure of Decisions

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

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

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

Rural Environments

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.

8. 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.² 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.³

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9. 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.⁴

Consideration

10. 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

11. 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;

² Federated Farmers (425.240).

³ Fulton Hogan (717.43).

⁴ Section 42A Report, page 28.

- (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.**
12. 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.⁵
13. 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.*
14. Ngāi Tahu seeks the inclusion of the following subclause in Policy 14.1.4 because primary production can have an effect on cultural values:⁶
- 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

15. 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.⁷
16. 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.⁸

Consideration

17. 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'.
18. 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.

⁵ Fish and Game (509.154).

⁶ Ngāi Tahu (1189.99).

⁷ Section 42A Report, paragraph 160.

⁸ Section 42A Report, paragraph 160.

19. The report writer in response suggested an amendment to (e) as follows:

... the habitats of trout and salmon

20. 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

21. As recommended, Policy 14.1.4 is amended as follows:⁹

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.

⁹ Section 42A Report, Reply to Evidence, pages 11-12.

22. 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 land uses change away from rural use;¹⁰ 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;¹¹ 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:¹²

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.

23. 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’;¹³ 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).¹⁴

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24. The report writer agrees in part with The Fertiliser Association of New Zealand (FANZ), Ravensdown¹⁵ 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.¹⁶
25. 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’.

¹⁰ K Wilson (210.10).

¹¹ Fonterra (1251.100).

¹² Federated Farmers (425.248).

¹³ FANZ (1192.9).

¹⁴ Hort NZ (769.44).

¹⁵ Ravensdown (1090.15).

¹⁶ Section 42A Report, paragraph 192.

Manage the potential 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 their location adjacent to a primary production environment.

26. 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)¹⁷, 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.
27. 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.¹⁸ 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.
28. 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:¹⁹

Manage the potential 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.

Consideration

29. 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

¹⁷ Hort NZ, Rachel McClung Evidence, paragraphs 13-14.

¹⁸ Hort NZ, Lynette Wharfe Evidence, page 14.

¹⁹ 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

30. 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.**

31. Several submitters generally support the policy. Others request: that the policy should address the issue of rural subdivision causing reverse sensitivity issues;²⁰ that an amendment to the policy should ensure that subdivisions in the rural areas do not compromise their productive capability.²¹

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32. 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.²²

²⁰ Ravensdown Limited (1090.20), Lion - Beer, Spirits and Wine (NZ) Limited (908.14).

²¹ New Zealand Pork Industry (998.26).

²² Section 42A Report, paragraph 280.

33. After hearing the evidence of the other witnesses, however, the report writer reconsidered this position.
34. 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 14.4.3.²³
35. 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.
36. 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

37. This policy should recognise the potential for rural subdivision to create reverse sensitivity effects.²⁴ 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.

²³ 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).

²⁴ Section 42A Report, Reply to Evidence, page 24.

38. 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

39. 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.*

40. 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.

41. 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);²⁵ that the policy explicitly recognise the need to avoid reverse sensitivity effects in the rural environment;²⁶ that the term ‘control’ in the policy

²⁵ Hort NZ (769.56).

²⁶ Fonterra (1251.106), Pernod Ricard (1039.91).

should be replaced with 'constrain';²⁷ 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.²⁸

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42. 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.
43. 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.
44. 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.
45. 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).²⁹
46. The report writer's original recommendation was for the policy to be retained as notified.
47. 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 and managing reverse sensitivity effects on existing activities.

²⁷ New Zealand Pork Industry (998.28).

²⁸ Fulton Hogan (717.52).

²⁹ Section 42A Report, paragraphs 294-297.

48. 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.
49. 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.
50. 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.

51. 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.³⁰
52. 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.

53. 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.³¹ 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.

³⁰ Fulton Hogan, Tim Ensor Evidence, paragraph 22.

³¹ Section 42A Report, Reply to Evidence, page 28.

Consideration

54. 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.
55. 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.
56. 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

57. 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.

58. 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.**

59. 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;³² 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;³³ 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.³⁴

60. 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

³² R McLean (187.1), LA Smith and BJ Green (379.2).

³³ Simcox Construction Limited (1151.8).

³⁴ 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.³⁵

61. 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.³⁶
62. 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’.
63. 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’.
64. 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

³⁵ Omaka Valley Group (1005.1). Philippa Margaret Black, Emeritus Professor of Geology, University of Auckland, Evidence, paragraph 3.1.

³⁶ 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.

65. 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.
66. 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.
67. 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.
68. 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.

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69. 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.
70. 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 14.4.³⁷

71. 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.
72. 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).³⁸

Consideration

73. 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.
74. 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.

³⁷ Section 42A Report, paragraphs 300-304.

³⁸ 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.

75. 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 policies 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.
76. 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.
77. 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.
78. 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.

79. 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.
80. 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.
81. 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.
82. 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.

83. 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

84. 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.*

85. 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.*

86. 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; ...

87. 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.
88. 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.
89. 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).
90. 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

91. 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.

92. 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.’;³⁹ the defined term is ‘worker accommodation’ and the word ‘seasonal’ should be removed from the policy⁴⁰ and further, worker accommodation should not be limited to ‘remote locations’ as it is required throughout the district;⁴¹ 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;⁴²
93. 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.
94. 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.⁴³
95. 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:⁴⁴

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.~~

³⁹ Federated Farmers (425.270).

⁴⁰ Horticulture New Zealand (769.59).

⁴¹ Marlborough Chamber of Commerce (961.49).

⁴² Fonterra (1251.33).

⁴³ Flaxbourne Settlers Association (712.38).

⁴⁴ Federated Farmers (425.610).

96. 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.⁴⁵

Section 42A Report

97. 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.
98. As to the relief sought by the Flaxbourne Settlers 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.⁴⁶
99. 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.

100. 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.⁴⁷

⁴⁵ Hort NZ (769.134).

⁴⁶ Flaxbourne Settlers Association (712.38).

⁴⁷ Section 42A Report, paragraph 518.

101. 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

102. 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.
103. The rules apply to 'worker accommodation' not 'seasonal worker accommodation'. The word 'seasonal' should be deleted from the policy and the explanation.
104. 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

105. 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.

106. 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.

107. 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.

108. 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.

109. 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.⁴⁸ Egg Producers seeks a residential setback standard to be added to the PMEP.⁴⁹

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110. 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.
111. 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

⁴⁸ FANZ (1192.10).

⁴⁹ 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.⁵⁰

112. 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

113. 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

114. 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

115. 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

⁵⁰ 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

116. The report writer was supportive of that request in the original report⁵¹ and in the Reply to Evidence report supported that standard also being included in the Rural Living and Coastal Living zones.

Consideration

117. 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.
118. 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.
119. 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.
120. 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.
121. 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.

⁵¹ pp. 111-112

Decision

122. Insert a new method in Chapters 13 (new 13.M.2) and 14 (new 14.M.8) as follows:

XX.M.XX Information

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.

Rules**Reverse sensitivity setbacks****Standard 3.2.1.12**

For a site larger than 4000m², 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.**

123. 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.

124. Hort NZ considers that the following adequate setbacks for habitable buildings are essential for managing the potential for reverse sensitivity effects.⁵²

Habitable buildings:

8 m for the front boundary

25 m for the rear boundary

25 m for the side boundary

⁵² 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

125. 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:⁵³

20m for dwellings and their accessory buildings

8m for all other rural buildings

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126. 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.⁵⁴
127. 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).⁵⁵
128. 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.
129. 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 buildings in the rural and coastal zones. The key restrictions relate to:

⁵³ New Zealand Pork (998.49).

⁵⁴ Section 42A Report, paragraph 605.

⁵⁵ 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.

130. 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.

131. 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.⁵⁶ 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

132. 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 m², the following minimum setbacks are agreed by the Panel for the Rural Environment:⁵⁷

3.2.1.12. For a site larger than 4000 m², 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

⁵⁶ Section 42A Report, Reply to Evidence, pages 52-53.

⁵⁷ Section 42A Report, page 112.

(b) 5m for the rear boundary

(c) 5m for the side boundary

133. 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.

134. 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 10m² in gross floor area, and excludes any earth bund or stockpiled materials.

135. The Panel agrees that for this standard only, this explanatory definition is helpful and should be inserted at the foot of the new standards.

136. 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).

137. And as a consequence, include a definition of 'greenhouse':⁵⁸

Greenhouses are a structure where plants are grown in a controlled environment.

138. 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 4000m², 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

139. As set out above, Mr P Gilbert⁵⁹ 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

⁵⁸ Hort NZ, Lynette Wharfe Evidence, page 17.

⁵⁹ (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

140. The rear boundary for Coastal Environment Standard 4.2.1.10 is reduced from 8m to 5m.

Standard 3.3.12

141. 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

142. 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.⁶⁰ 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.

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.

3.3.12.6. Except for trees felled in accordance with 3.3.12.5(a), 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

143. 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

⁶⁰ 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

144. 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.⁶¹
145. 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.⁶²

Section 42A Report

146. 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’.⁶³

Consideration

147. 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.
148. 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

⁶¹ KiwiRail (873.120 and .125).

⁶² KiwiRail (873.167 and .170).

⁶³ 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).

149. 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 m³ out of a 600 m³ allotment). He suggests excluding fences from the setback providing the palings or main fence elements can be replaced within the owner's property.⁶⁴
150. 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.⁶⁵
151. 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.
152. 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

153. 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

154. 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

⁶⁴ Section 42A Report (Urban Environments), paragraph 199.

⁶⁵ 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).⁶⁶

155. 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

156. 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.⁶⁷
157. 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.⁶⁸ If this standard was not included, these activities would be considered a commercial activity and require a discretionary activity.
158. 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 m².

Consideration

159. For the reasons recommended, the Panel agrees to the structure being contained within an area of less than 10 m². 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 m².

Decision

160. As recommended, Rules 3.4.2.3 and 4.4.2.3 are amended as follows:

⁶⁶ NZTA (1002.186, .188).

⁶⁷ Section 42A Report, page 114.

⁶⁸ 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 m².*

New definition – Primary Production

161. MFA and AQNZ seek a new definition of ‘Primary Production’ which reads as follows.⁶⁹

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

162. 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.

163. He referred to Hort NZ’s reference to the draft planning standards definition of primary production activity and provided its context as follows:⁷⁰

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.*⁷¹

Decision

164. 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:

⁶⁹ MFA (426.237) and AQNZ (401.241)

⁷⁰ Hort NZ, Lynette Wharfe Evidence, page 2, paragraph 2.6.

⁷¹ 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.

165. 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

166. Fulton Hogan seeks a new definition for ‘Quarrying’ be added to the Plan which reads as follows:⁷²

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.*

167. 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

⁷² 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.⁷³

Section 42A Report

168. 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.

169. 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.⁷⁴

170. 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

171. 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.

⁷³ Forest and Bird (715.416).

⁷⁴ Section 42A Report, paragraph 660.

172. 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.

173. As a consequential change, however, we have replaced 'mineral extraction' in Rules 3.6.6 and 4.6.6.

Decision

174. 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.*

175. Rules 3.6.6 and 4.6.6 are amended as follows:

3.6.6 Quarrying and ~~mineral extraction~~ mining.

176. A new definition is added as follows:

Mining as defined in Section 2 of the Crown Minerals Act 1991.

New Policy

177. Fulton Hogan Limited sought a new policy to be added to the PMEP to manage quarrying activity in the rural environment ⁷⁵

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

⁷⁵ (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

178. 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).

179. 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

180. 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.
181. 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.

182. 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.
183. 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

184. 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

185. 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.

186. T Marshall sought an exclusion to the above definition to enable use of trees for domestic purposes.

Section 42A Report and consideration

187. 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

188. 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.⁷⁶

189. On 1 May 2018, the NESPF came into effect.

190. 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).

191. The hearing of the Forestry topic (Topic 22), which included plantation forestry, followed in December 2018.

⁷⁶ Supplementary Report, paragraph 15.

192. 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.
193. This review was documented in the report writer’s Supplementary Report dated 21 March 2019, which was heard in April 2019.

Consideration

194. The Panel has considered the recommendations contained in the Supplementary Report along with the evidence heard on the topic.
195. 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

196. 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.*⁷⁷

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.**

197. 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.”

198. 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:

⁷⁷ 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

199. 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.

200. As a consequence the report recommended the definition of 'rural industry' was retained as notified.

Consideration

201. 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

202. The rural industry definition is amended as follows:

means an ~~industry~~ industrial process, constructional engineers and roading and cartage contractors workshops or yards where either: ...