

Proposed Marlborough Environment Plan

Topic 13: Resource Quality (Water)

Hearing dates: 8 – 10 October 2018

S42A Report Writer: Rachel Anderson, Peter Hamill and Peter Davidson

Conflicts of Interest: None

Interim decision: Yes

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

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List of Abbreviations

GPA	Groundwater Protection Area
PMEP	Proposed Marlborough Environment Plan
MDC	Marlborough District Council
NPSFM	National Policy Statement for Freshwater Management
PMEP	Proposed Marlborough Environment Plant
RMA	Resource Management Act 1991

Submitter abbreviations

AWUG	Awatere Water Users Group
BRIL	Blind River Irrigation Limited
DOC	Department of Conservation
MFIA	Marlborough Forest Industry Association Incorporated
Ngāti Kuia	Te Rūnanga O Ngāti Kuia
Ngāi Tahu	Te Rūnanga O Kaikōura and Te Rūnanga O Ngāi Tahu
Ngāti Toa	Te Rūnanga o Toa Rangatira
Oil Companies	Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited
PMNZ	Port Marlborough New Zealand Limited
Te Ātiawa	Te Atiawa o Te Waka-a-Maui

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.

Resource Quality – Water

Issue 15A

The discharge of contaminants to water can adversely affect the life supporting capacity and the community's use of Marlborough's coastal waters, rivers, lakes, wetlands and aquifers.

8. Federated Farmers' submission seeks the removal of notified Issue 15A and a new issue to be worded as follows:²

Meeting the needs of Marlborough's urban and rural economy whilst ensuring activities do not have adverse effects on water values and uses.

9. Federated Farmers also sought several other amendments, chief of which is to delete the entire last paragraph of the explanation and replace it as follows:

~~*The good state of water quality in Marlborough's coastal waters, rivers, lakes, wetlands and aquifers makes them more vulnerable to point source and non-point source discharges. Any deterioration in water quality would have dramatic implications for Marlborough's social, economic and cultural wellbeing, as good water quality is essential for a wide range of consumptive and non-consumptive uses. A reduction in water quality could also adversely affect freshwater and marine habitats. The main threats to water quality in Marlborough are described below. Urban and rural activities contribute to the social, economic and cultural well-being of people. Inappropriate land use and development can detract from the values and uses of water, including marine habitats. The MEP seeks to provide an enabling framework for development while prioritising and progressively reducing the adverse effects of discharges to water.*~~

10. The submitter considers the view expressed in this paragraph is that Issue 15A is a generalisation which is why it should be removed.

11. Nelson Forests Ltd seeks an amendment to the second sentence of the first paragraph of the explanation to read:³

~~*Any deterioration*~~ *Deterioration* *in water quality would have dramatic implications for Marlborough's social, economic and cultural wellbeing, as good water quality is essential for a wide range of consumptive and non-consumptive uses.*

12. The submitter considers that the text of the issue overstates the effect of contaminants and that some short-term adverse effects on water quality are inevitable in response to national events (such as storms) and may be necessary for the use of resources.

² Federated Farmers (425.273).

³ Nelson Forests Ltd (990.230).

13. MFIA and Nelson Forests Limited also seek an amendment to the first sentence of the explanation of Natural Processes under Issue 15A as follows:

In the context of the above, it is also important to note that natural processes ~~may~~ influence water quality;

And the second paragraph is amended to read:

~~Occasionally,~~ Natural processes will result in sediment reaching both fresh and coastal water, particularly during rainfall events. This affects the clarity and turbidity of water and the resulting ~~dirty~~ discoloured waters can have an impact on freshwater and marine life.⁴

14. The submitters are of the opinion that natural processes result in sediment reaching water and that the explanation downplays the significance of this.

Section 42A Report

15. The report writers consider that natural processes will not *always* result in sediment reaching water so they do not agree with the definitive nature of the submitters' views. While it could be argued that this situation may occur occasionally, it is not appropriate to amend the explanation to state it will always occur. Nor is there any discussion in submissions as to why change from 'dirty' to 'discoloured' is sought so this has not been considered further.
16. The report writers acknowledge that towards the end of the explanation, rainfall events do have an impact on water quality, but the issue is about discharge of contaminants caused by humans. If human activity that has had short term effects on water quality is provided for to enable resource use, then presumably this would be done in a manner that did not have unacceptable effects on water quality, causing deterioration (progressive decline). In the report writers' opinion, the amendments sought are unnecessary.⁵
17. Of overall concern to the report writers in this area of discussion is the significant change in focus of the parties, given the fact that this part of the PMEP is specifically about water quality and the discharge of contaminants. They do not agree with the amendments sought.
18. On further consideration the report writers commented that while they did not disagree that 'dirty' can have negative connotations, and that the word 'discoloured' may be used in its place, they were not of the opinion that the words 'dirty' and 'discoloured' mean the same thing and therefore are interchangeable.

⁴ MFIA (962.84) and Nelson Forests Limited (990.231).

⁵ Nelson Forests Limited (990.230).

Consideration

19. The Panel considered that the use of the word 'dirty' had negative connotations under the heading 'Natural processes'. We concluded that it is more appropriate to replace the word 'dirty' with 'sediment laden' in the second paragraph of the explanation.

Decision

20. The explanatory statement to Issue 5A, under the heading 'Natural processes' is to read:

... This affects the clarity and turbidity of water and the resulting ~~dirty~~ sediment laden waters can have an impact on freshwater and marine life. ...

Natural and human use values

Objective 15.1a

Maintain and where necessary enhance water quality in Marlborough's rivers, lakes, wetlands, aquifers and coastal waters, so that:

- (a) the mauri of wai is protected;**
- (b) water quality at beaches is suitable for contact recreation;**
- (c) people can use the coast, rivers, lakes and wetlands for food gathering, cultural, commercial and other purposes;**
- (d) groundwater quality is suitable for drinking;**
- (e) the quality of surface water utilised for community drinking water supply remains suitable for drinking after existing treatment; and**
- (f) coastal waters support healthy ecosystems.**

21. Ngāi Tahu seeks the addition of a reference to the importance of water as a taonga to connect back to Chapter 3 Marlborough's Tangata Whenua Iwi, but did not provide specific wording.⁶
22. Tanya Stevens in evidence explicitly laid out the values of Ngāi Tahu in relation to water as set out in the various planning documents it has already put in place.⁷ The witness identifies that from that body of evidence wai is taonga, that is, essential for life. From her perspective, the submission (water is taonga) is why it is so important to 'draw through' to the water chapter the themes and issues raised in Chapter 3 – the chapter relating to specific issues. Otherwise Ms Stevens considers that it is really difficult for plan users to understand how Chapter 3 and concepts like water are treasured. In her view, without that integration, the implementation of Chapter 3 can become difficult to the extent that it becomes a 'tick box' exercise.⁸
23. The text provided in evidence, however, considers that the following should be added to the explanation:

⁶ Ngāi Tahu (1189.101).

⁷ Ngāi Tahu, Tanya Stevens Evidence, paragraph 6.

⁸ Ngāi Tahu, Tanya Stevens Evidence, paragraph 100.

The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM ...

Section 42A Report

24. The report writers are comfortable with the recommended additional wording provided, but recommend that it be added to Objective 15.1a rather than Objective 15.1b so that the first paragraph of the explanation to Objective 15.1a reads:⁹

Marlborough's coastal waters, rivers, lakes, wetlands and aquifers contain a diverse range of natural and human use values and are used extensively by the community. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. The existing water ...

Consideration

25. The Panel agrees with the report writers' recommendation for the reasons given.

Decision

26. Amend the first paragraph of the explanation to Objective 15.1a to read as follows:

Marlborough's coastal waters, rivers, lakes, wetlands and aquifers contain a diverse range of natural and human use values and are used extensively by the community. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. The existing water quality in the majority of our waterbodies is sufficient to support these values, but it is important that no degradation of water quality is allowed to occur...

Objective 15.1b

Maintain or enhance freshwater water quality in each Freshwater Management Unit so that the annual median nitrate concentration is <1 milligram nitrate-nitrogen per litre and the annual 96th percentile concentration is <1.5 milligrams nitrate-nitrogen per litre, as measured by the Council's State of the Environment monitoring programme.

27. The Ngāi Tahu submission supports Objective 15.1b.¹⁰ The evidence suggests that as water is of such importance to Ngāi Tahu, the explanation is amended to reflect and assist the plan user and link the objective to the issue it relates to, as follows:

The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Under the NPSFM ...¹¹

⁹ Section 42A Report, Reply to Evidence, page 16. Ngāi Tahu, Tanya Stevens Evidence, paragraphs 49-50 (relating to Objective 15.1b).

¹⁰ Ngāi Tahu (1189.101).

¹¹ Ngāi Tahu, Tanya Stevens Evidence, paragraph 49.

Section 42A Report

28. Initially without detailed evidence, the report writers were of the opinion that as the objective is linked to the NPSFM in such a particular way, if such reference was to be made, it would be appropriate to add it to Objective 15.1a, especially given that Objective 15.1a refers to ‘the mauri of wai is protected’.¹²

Consideration

29. The Panel notes that the Section 42A Report, in addition to recommending rejection of Ngāi Tahu’s submission, stated that the rejection was ‘subject to reconsideration of the relief sought’.
30. The first line of the explanation to Objective 15.1b refers to ‘ecosystem health as a compulsory national value of freshwater’. The insertion sought by Ngāi Tahu identifies freshwater as taonga to all of Marlborough’s tangata whenua iwi. Given that significance which the Panel accepts it is appropriate to add as follows:

The NPSM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough’s tangata whenua iwi. Under the NPSFM ...

Decision

31. The explanation to Objective 15.1b is amended as follows:

The NPSM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough’s tangata whenua iwi. Under the NPSFM for rivers, nitrate concentrations are determined to be an attribute of ecosystem health...

Objective 15.1c

Maintain freshwater water quality in each Freshwater Management Unit so that the annual median ammonia concentration is < 0.03 milligrams ammoniacal nitrogen per litre and the annual maximum concentration is < 0.05 milligrams ammoniacal nitrogen per litre, as measured by the Council’s State of the Environment monitoring programme.

32. The Ngāi Tahu submission¹³ supports Objective 15.1c and, as for Objective 15.1.b, in evidence suggests that the explanation is amended to reflect the taonga status of freshwater for Ngāi Tahu as follows:

The NPSM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough’s tangata whenua iwi. Ammonia concentrations are determined ...

¹² Section 42A Report, paragraph 140.

¹³ Ngāi Tahu (1189.102), Tanya Stevens Evidence, paragraph 51.

Section 42A Report

33. The report writers, as they did with reference to Objective 15.1b, recommended that given the nature of this objective, linked as it is into the NPSFM in such a technical way, it may be more appropriate to add it to Objective 15.1a which states as a reference 'the mauri of the wai is protected'.¹⁴
34. It is recommended that the Ngāi Tahu submission is rejected, again subject to reconsideration of the relief sought relative to the writer's comments in the assessment of the point.¹⁵

Consideration

35. The holistic approach of Marlborough tangata whenua iwi to freshwater quality should again be recorded in the objective. The need to sustain the ecosystem health of freshwater complements the compulsory national value as measured in the Council's State of the Environment monitoring programme.

Decision

36. The explanation to Objective 15.1c is amended as follows:

The NPSFM identifies ecosystem health as a compulsory national value of freshwater. In addition to this, water is a taonga to Marlborough's tangata whenua iwi. Ammonia concentrations are determined to be an attribute of ecosystem health under the NPSFM for rivers...

Objective 15.1e

Maintain or enhance freshwater water quality in waterbodies valued for primary contact recreation so that the 95th percentile *E. coli* level is < 540 per 100 ml, as measured by the Council's State of the Environment monitoring programme.

37. The Fertiliser Association seeks to amend the objective so that it reads as follows:¹⁶

*Maintain or enhance the quality of freshwater water quality in waterbodies [sic] valued for primary contact recreation where the following attribute state is currently met: so that the 95th percentile *E. coli* level is >260 to ≤540 <540 per 100 ml, as measured by the Council's State of the Environment monitoring programme.*

Section 42A Report

38. Under the PMEP each FMU has an attribute state for secondary contact recreation (15.1d) and specific waterbodies can have attribute states for primary contact recreation (15.1e). The report writers identified Objective 15.1d was developed relative to all FMUs to implement the NPSFM, but Objective 15.1e was predominantly developed in relation to specific waterbodies

¹⁴ Section 42A Report, paragraph 158.

¹⁵ Section 42A Report, paragraph 165.

¹⁶ Fertiliser Association (1192.19).

to reflect the community's desire for water quality that would support primary contact recreation.

39. The report writers consider there is nothing in the submission to explain the requested change from '<540' per 100 ml to '>260 to ≤540' or why the reference to primary contact recreation is sought to be removed. The provisions of the PMP reflect the NPSFM at the time of drafting. If recent changes with regard to swimability lead to changes being required, the report writers consider this should be done through a future process.
40. It is recommended that the Fertiliser Association's submission is accepted in part if the Panel was of a view that the deletion from the first paragraph of the explanation to the objective is either within the scope of the submitter's submission, or could be considered a minor amendment, then the following deletion from the paragraph is recommended:

~~*The FMUs relevant to this objective are In Freshwater Management Unit – Map 5.*¹⁷~~

Consideration

41. Objective 15.1d reads as follows:

Maintain or enhance freshwater water quality in each Freshwater Management Unit so that the annual median E. coli level is <260 per 100 ml, as measured by the Council's State of the Environment monitoring programme.

42. The Panel's assessment of both Objectives 15.1d and 15.1e is that there is a contradiction between the intent of the two objectives. We consider there is scope to remove the reference to Map 5 in the explanation to Objective 15.1e for Objective 15.1d requires freshwater quality in all FMUs to meet the annual median E. coli level of <260 per 100 ml and that Objective 15.1e provides for water quality in waterbodies valued for primary contact recreation so that the 95th E. coli level is <540 per 100 ml. The Fertiliser Association rightly sees this as a contradiction. At the time the PMP was drafted and notified, secondary contact recreation was a compulsory value under the NPSFM but primary contact recreation was not.
43. The report writers' opinion is that the explanation to the objective could benefit from the deletion of one sentence that could be contributing to the Fertiliser Association's view of there being a contradiction, and we agree with that. The last sentence of the first paragraph reads:

'The FMUs relevant to this objective are in Freshwater Management Unit – Map 5.'

¹⁷ Section 42A Report, paragraph 193.

44. This sentence has been copied over from the explanations to Objectives 15.1b-d in error. Those provisions relate to FMUs, Objective 15.1e does not. The fact that the relevant part of the explanation to Objective 15.1e is an error provides the way for the Panel to delete the erroneous sentence.¹⁸

Decision

45. The reference to Map 5 is deleted from the explanation to Objective 15.1e as follows:

... The numeric attribute states for B are specified in Objective 15.1e. ~~The FMUs relevant to this objective are in Freshwater Management Unit – Map 5.~~

Policy 15.1.1

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

...

(d) Wetlands: protection of aquatic ecosystems and the potential for food gathering.

46. Numerous submissions to this subsection of Policy 15.1.1 request: amendments to the wording such as qualifying the word ‘wetlands’ as ‘Significant wetlands’, and substitution of the word ‘protection’ with the word ‘management’;¹⁹ an amendment to the policy/explanation to recognise that food gathering will not always be appropriate in all wetlands;²⁰ an amendment to the wording as follows: *(d) Wetlands: protection of wetland ecosystems and the potential for food gathering* – this would better reflect the diverse nature of wetlands.²¹

Section 42A Report

47. The report writers agree in part with PMNZ as throughout the PMEP policies and rules have focused on ‘significant wetlands’. These have been emphasised to provide certainty to landowners as to what area of their property is a wetland with significant values when assessed against the ‘significant’ criteria in Appendix 3. Therefore, it would be appropriate to amend the policy so that it aligns with other wetland provisions.²²
48. In terms of the relief sought by Messrs Hickman and Mehlhopt and the use of the word ‘potential’ in the criteria reflecting community expectations that food gathering should always be undertaken safely in wetlands, this assumption is not a realistic expectation for all wetlands, especially in times of low flow and drought. The report writers support the submission of PMNZ to the extent that Policy 15.1.1(d) should apply only to ‘significant

¹⁸ Section 42A Report, paragraph 186.

¹⁹ PMNZ (433.83).

²⁰ J Hickman (455.56) and G Mehlhopt (456.56).

²¹ Fish and Game (509.172 - part).

²² Section 42A Report, paragraph 203.

wetlands’ for this reference and as a consequence would mean that the text ‘potential for food gathering’ would be confined to significant wetlands only.

49. In terms of these submitters and also for DOC and Fish and Game, the report writers consider that the explanation to the policy assists plan users with the understanding of the word ‘potential’ in its context:

- Food gathering is not a realistic expectation for all wetlands particularly in times of low flow and drought – wetlands need to be managed for appropriate purposes.
- The policy in no way signals that food will always be able to be gathered – just that if it is able to be gathered, it will be done safely.

50. In terms of Fish and Game’s submission, the report writers consider this amendment may be supported for the reasons given in the submission. The following amended wording better reflects the diverse nature of wetlands: *(d) Wetlands: protection of ~~aquatic~~ wetland ecosystems and the potential for food gathering.*

Consideration

51. Policy 15.1.1(d) should refer to ‘Significant’ wetlands for the reasons recommended by the report writers.²³ However, the word ‘aquatic’ ecosystems should be deleted and replaced with ‘wetland’ ecosystems as a broader, more relative term given the values of wetlands signalled in PMP Appendix 3.

Decision

52. Policy 15.1.1(d) is amended as follows:

(d) ~~Significant w~~Wetlands: protection of ~~aquatic~~ significant wetland ecosystems and the potential for food gathering.

Policy 15.1.2

Apply water quality classifications (and water quality standards) to all surface water, groundwater and coastal water resources, which reflect:

- (a) the management purposes specified in Policy 15.1.1; and**
- (b) other uses and values supported by the waterbody or coastal waters; or**
- (c) where water quality has already been degraded, the uses and values that are to be restored.**

53. Ngāi Tahu seeks an amendment to subsection (b) as follows: *(b) other uses and values, including Tangata Whenua Iwi values, supported by the waterbody or coastal waters; or ...*²⁴

²³ Section 42A Report, paragraphs 203, 218.

²⁴ Ngāi Tahu (1189.104).

54. The submitter is of the view that it is appropriate and in accordance with ss 6(e), 7 and 8 RMA to specifically highlight within this policy that water quality standards should be set so that tangata whenua iwi values are appropriately reflected.

Section 42A Report

55. The report writers are of the opinion that cultural values are already provided for in subsection (a) of the policy, given its link back to Policy 15.1.1 which specifically references management for cultural purposes in (a) and (b), and the management for food gathering in (a) and (d), and where that does not cover all iwi values, preference would be given for those to be specifically referenced in Appendix 5 (and therefore referred to in subsection (b) of Policy 15.1.2 as notified.
56. It is recommended that Ngāi Tahu's submission is rejected as the matters raised are either covered in Policy 15.1.1(a) or they are (should be) picked up through values in Appendix 5 and therefore covered by Policy 15.1.1(b).²⁵

Consideration

57. The Panel considers that 'waterbodies and coastal water values' have particular significance for Marlborough's tangata whenua iwi, and the reference should be included in Policy 15.1.2(b). It is also unknown at this point in time whether these values may be specifically identified by iwi for inclusion in Appendix 5 Schedule 1.²⁶

Decision

58. The following amendment is made to Policy 15.1.2(b):

(b) other uses and values, including the values of Marlborough's tangata whenua iwi, supported by the waterbody or coastal waters; or ...

Appendix 5 Schedule 1 – Waikawa Stream

59. Te Ātiawa lodged a submission seeking the insertion of cultural water quality indicators in Appendix 5 Schedule 1. The submission contained no further information and initially was recommended to be rejected by the report writers.²⁷ In evidence, however, Te Ātiawa clarified its position by seeking a C classification (C for cultural practices) for the following water resource units (WRUs): Kaituna, Rai, Tuamarina, Small Coastal Complex, Small Sounds Streams, Waitohi and Wakamarina. This series of rivers was eventually amended to seek the same classification but limited to the Waitohi River and Waikawa Stream.

²⁵ Section 42A Report, paragraph 235.

²⁶ Section 42A Report, paragraph 243: Appendix 5 is headed 'Water Resource Unit Values and Water Quality Classification Standards', and includes Schedule 1 – Water Resource Unit Values and Schedule 2 – Water Quality Classification Standards.

²⁷ Te Ātiawa (1186.221).

60. In a further submission, Te Ātiawa sought the addition of cultural and aesthetic values and the 'C' and 'A' classifications to WRU (Small Sounds Streams) in relation to the Waikawa Stream.²⁸ In evidence, the submitter accepts the addition of 'C' to WRU 57 in relation to the Waikawa Stream. The report writers made no change to their further recommendations in response.
61. In a third submission Te Ātiawa no longer sought actual indicators to be added but that a placeholder be included to signal the intention to add them at a later time to affirm Council's intention to work collaboratively with iwi to develop cultural indicators.²⁹

Section 42A Report

62. The report writers accepted the submitter's concerns and amended their original recommendation from the Section 42A Report as follows:³⁰

In relation to WRU59 (Waitohi) in Schedule 1, in the column headed 'Water Quality Classifications' make the following addition 'AE, FS, C (Waikawa Stream)'.

63. The report writers considered the placeholder approach was less than ideal and unnecessary as the relief sought is specifically provided for in the existing Method 3.M.5 in Chapter 3 Marlborough's Tangata Whenua Iwi.

Consideration

64. In the course of deliberations, a technical aspect of the recommendations in the Section 42A Report prompted the Panel to seek further guidance from its co-authors relating to a possible outcome for Te Ātiawa in Appendix 5 as to the Waikawa Stream.
65. In deciding whether to grant the relief sought, the Panel considered whether a better outcome may be to define the Waikawa Stream catchment as a separate WRU on the Water Resource Unit Map in Volume 4. Waikawa Stream would then be able to have its separate stream values identified rather than being combined with other Small Sounds Streams but recording a particular different value ascribed for Te Ātiawa.
66. The guidance the Panel sought from the report writers is that, if that course was the one decided, what other values should be identified for the Waikawa Stream in addition to the 'C' for cultural values?³¹

²⁸ Te Ātiawa (1186.222).

²⁹ Te Ātiawa (1186.223).

³⁰ Section 42A Report, Reply to Evidence, page 40.

³¹ Minute 41, Section 42A Report, paragraph 30.

67. The report writers responded that, if the Panel agreed, it would be a better outcome if the Waikawa Stream was identified as its own WRU on the Water Resource Unit Map in Volume 4. In their opinion the following note would be appropriate to be included:

No	Water Resource Unit	Values	Water Quality Classifications
x	Waikawa	<p>Fish Habitat Banded kokopu, koaro, bluegill bully, redfin bully, common bully, inanga, shortfin eel and longfin eel habitat.</p> <p>Riparian Habitat Intact indigenous forest in upper catchment.</p>	AE, FS, C

68. The Panel reflected that the attributes identified by the report writers better reinforced the cultural values recognition sought by Te Ātiawa. Both the indigenous fish species listed by the report writers, together with the fact that the forest in the upper catchment is intact, emphasise the stream’s value to iwi as a place of cultural significance.
69. The term ‘Water Resources Unit’ is very neutral, implying the Waikawa Stream is a general resource along with many others, whereas the approach suggested gives it a particular cultural distinction.

Decision

70. The decision is to insert a ‘C’ classification for cultural purposes in relation to the Waitohi River (WRU59)
71. Create a new WRU in Appendix 5 for the Waikawa Stream as identified by the report writers, as shown above.
72. As a consequential change, insert a new a map for the Waikawa Stream catchment on the map of Water Resource Units.

Appendix 1 Schedule 1 – Lake Argyle

73. Trustpower lodged a submission seeking that the WRU 13 (Branch, including Lake Argyle) be removed.³² The submitter considers that Lake Argyle is an out of river, artificial storage reservoir, which is fed by a canal as part of a hydro electric scheme. And further, that Lake Argyle does not provide all of the values listed in the schedule.

³² Trustpower (1201.156).

Section 42A Report

- 74. The report writers agree with the amendment sought for the reasons outlined in the submission. But the report writers also suggested a consequential change that ‘water skiing’ and ‘model boating’ are deleted from the recreation values for the Branch River as they are values specific to Lake Argyle.
- 75. The report writers recommend that the water quality classification for WRU 13 in Schedule 1 of Appendix 5 is amended as follows:

Branch (including Lake Argyle)

- 76. The writers also recommend the following amendments to recreation values for the Branch River:

~~Waterskiing, fishing and model boating³³~~

Consideration

- 77. The Panel agrees in part with the report writers’ recommendations to remove the reference to Lake Argyle as it is an out of river artificial storage reservoir.
- 78. A consequential change is to include specific reference in WRU 13 for Lake Argyle only, as set out in the Section 42A Report. However, it is important to retain reference to ‘water skiing’ and ‘model boating’ for the recreational values of Lake Argyle as this is a public interest issue and was not submitted on due to the fact that taking these values away is out of scope. The Panel also notes that Lake Argyle is an important trout fishery and this value should be recognised in the appendix as well.

Decision

- 79. Amend WRU 13 (Branch River) as follows:

No.	Water Resource Unit	Values	Water Quality Classifications
13	Branch (including Lake Argyle)	<p>Fish Habitat Alpine galaxias, dwarf galaxias, koaro, northern flathead galaxias, upland bully, longfin and shortfin eel habitat. Brown and rainbow trout habitat. Brown trout spawning.</p> <p>Bird Habitat Black-fronted tern feeding habitat. Shag and waterfowl habitat.</p> <p>Riparian Habitat Intact indigenous forest in upper catchment.</p>	AE, FS, F

³³ Section 42A Report, paragraph 303.

		<p>Recreation Highly valued trout fishery. Back country experience. Waterskiing, fishing and model boating</p> <p>Natural Character Very high (Leatham River and Branch River upstream of weir).</p> <p>Hydro Electric Generation</p>	
	<u>Lake Argyle only</u>	<p>Recreation <u>Highly valued trout fishery. Waterskiing, and model boating.</u></p>	<u>CR, F</u>

Cumulative contaminant limits

Policy 15.1.3

To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having regard to the management purposes established by Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.

80. Ngāi Tahu seeks the policy be replaced with the following:³⁴

In consultation with Tangata Whenua Iwi, establish cumulative contaminant limits by 2024 having regard to the management purposes established by Policy 15.1.1.

81. Ngāi Tahu considers that consideration of cumulative effects is consistent with the ethic of ki uta ki tai waterbodies but the current wording of the policy could be interpreted to imply a presumption that waterbodies serve a network-type purpose in receiving contaminants. This is inconsistent with the NPSFM and the values set out in Chapter 3, specifically Objectives 3.1, 3.2, 3.3 and 3.5. Ngāi Tahu’s amendments, however, seek to remove that ambiguity and specifically seek that consultation with iwi is undertaken as part of this work to ensure that cumulative contaminant limits are consistent with iwi values and use of waters.

Section 42A Report

82. The report writers were unconvinced that the submitter’s interpretation was inconsistent with the NPSFM as in Marlborough which has good quality water (due in no small part to previously setting cumulative limits on contaminants in discharge to water).

83. The National Objectives Framework in the NPSFM sets out the future expectations for setting limits to implement the NPS, which includes ‘discussion with communities, including tangata whenua’. The Iwi Working Group meanwhile is an established entity with which the Council works in policy matters related to the PMEP, and the limits could also be added to the PMEP through a formal process under the RMA.

³⁴ Ngāi Tahu (1189.105).

84. The report writers consider all these processes involved in establishing limits will provide an opportunity to consider how they interact with other plan provisions, Chapter 3, Volume 1 and national directives.³⁵
85. Ngāi Tahu's initial submission was rejected as the report writers as noted above do not necessarily agree with the submitter's opinion that the policy is inconsistent with the NPSFM and do not see the policy limiting consultation with iwi as this will occur under the NPSFM.
86. Ngāi Tahu's evidence amended subsequently is as follows:³⁶

Establish limits by 2024, in consultation with Tangata Whenua, that avoid or mitigate the effects of cumulative contamination on freshwater bodies and ~~To investigate the capacity of fresh waterbodies to receive contaminants from all sources, having~~ have regard to the management purposes established by of Policy 15.1.1 in order to establish cumulative contaminant limits by 2024.

Consideration and decision

87. The submitter seeks to change the emphasis in the policy from investigations to setting limits. The Panel considered in the light of these submissions and the recommendations in the reports that the issue may be resolved by adding a new sentence to the explanation to Policy 15.1.3 after the first sentence of paragraph 4 as follows:

This policy establishes a commitment to commence collecting and analysing resource use and environmental data required to establish cumulative contaminant limits. The collection and analysis will include identifying the significance of taonga to Marlborough's tangata whenua iwi and use of water by landowners and the remainder of the community. The use of limits could constrain the land uses that could occur in a catchment (existing and potential) or at least the way in which those land uses are managed. For these reasons, care needs to be exercised in establishing cumulative contaminant limits in respect of water quality. It is also important that the limits reflect the management purposes established by Policy 15.1.1, otherwise Objectives 15.1a to 15.1e will not be achieved. The cumulative limits will be added to the MEP by plan change or upon review.

³⁵ Section 42A Report, paragraph 322.

³⁶ Section 42A Report, Reply to Evidence, page 45.

Standard 2.17.3.5 [sic]

2.17.3.5 [sic]³⁷ The discharge must not contain stormwater from an area where a hazardous substance is stored unless:

- (a) the hazardous substance cannot enter the stormwater;**
- (b) there is an interceptor system in place to collect any hazardous contaminant or diverted contaminated stormwater to a trade waste system.**

88. The Oil Companies submitted on the above standard which applies to the discharge of stormwater to water. In essence the submitter sought an exemption to the standard where the discharge is from a Petroleum Industry Site that meets the design requirements of the Ministry for the Environment Environmental Guidelines for Water Discharges from Petroleum Industry Sites.

Section 42A Report

89. The report writers agreed with the intent of the relief requested but considered that there needed to be more specificity provided. Their preference was to include the treatment standard contained in the Ministry for the Environment Guidelines in the standard, i.e., hydrocarbons must not exceed 15mg/l. In evidence, the Oil Companies modified the nature of the exemption in response to this recommendation, as follows:

The discharge must not contain stormwater from an area where a hazardous substance is stored unless:

- (a) the hazardous substance cannot enter the stormwater system; or*
- (b) there is an interceptor system in place to ensure that total petroleum hydrocarbons entering the stormwater system must not exceed 15mg/l; or*
- (c) there is an interceptor system in place to collect any hazardous contaminant or diverted contaminated stormwater to a trade waste system.*

90. The report writers adapted this wording in their Right of Reply. This would see an exemption included in (a) of 2.17.3.5, as follows:

- (a) The hazardous substance cannot enter the stormwater. This does not apply to petroleum hydrocarbons where the total petroleum hydrocarbon concentration does not exceed 15mg/l.*

³⁷ There was a numbering error in the standards in 2.17.3 highlighted by NZTA in their submission. The relevant standard should therefore be 2.17.3.9. This numbering error will be remedied as an outcome of the decision.

Consideration

91. Except for the way in which the exemption is incorporated into 2.17.3.5, the submitter and the report writer are in agreement. The Panel favours the evidence of the submitter simply because 15mg/l of hydrocarbon in the stormwater would still represent a hazardous substance being present in the stormwater (albeit meeting the guideline value). Interceptor systems are put in place to reduce the presence of hydrocarbons in stormwater, so it is more logical for the standard of 15mg/l to be added to (b). The submitter's wording establishes three clear options: hydrocarbons should not enter the stormwater; or should be diverted to trade waste; or, if discharged to water, should meet the guideline value following treatment.
92. In hearing the Oil Companies and other submitters³⁸ on either Rule 2.16.3 and Standard 2.17.3, it was clear to the Panel that there is still confusion over the status of stormwater inputs into the Council's reticulated stormwater network.
93. The Panel's view is that the discrete inputs into the reticulated networks are not discharges to water controlled by Section 15 of the RMA. That discharge occurs at outfall into the surrounding receiving environment, typically a river or the coastal marine area.
94. In considering this issue, the Panel noted the Wairau/Awatere Resource Management Plan contains a note after the rules regulating the discharge of stormwater to water, as follows:

Note:

The rule above regulates stormwater discharges at the point of entry into the environment. Managing inputs into the Council's stormwater infrastructure is still a function of the Council, but under other legislation. For this reason, this Plan does not regulate individual stormwater inputs into the infrastructure. However, the Council can exercise its enforcement powers when contaminants (as opposed to stormwater) are discharged into the stormwater infrastructure and subsequently contaminate a water body.

95. Given the confusion over this very issue evident during the hearing, The Panel's view is that the Plan would also benefit by the inclusion of this note so that it sits with the rules controlling stormwater discharges to water.

Decision

96. Amend Standard 2.17.3.5 [sic]³⁹ as follows:

³⁸ Mr David Wilson provided considerable evidence to the Panel on the stormwater provisions of the Plan.

The discharge must not contain stormwater from an area where a hazardous substance is stored unless:

- (a) the hazardous substance cannot enter the stormwater system; or*
- (b) there is an interceptor system in place to ensure that total petroleum hydrocarbons entering the stormwater system must not exceed 15mg/l; or*
- (c) there is an interceptor system in place to collect any hazardous contaminant or diverted contaminated stormwater to a trade waste system.”*

97. Insert the following note after Standard 2.17.3 and Rule 2.18.1.

Note:

The standards above regulate stormwater discharges at the point of entry into the environment. Managing inputs into the Council's stormwater infrastructure is still a function of the Council, but under other legislation. For this reason, this Plan does not regulate individual stormwater inputs into the infrastructure. However, the Council can exercise its enforcement powers when contaminants (as opposed to stormwater) are discharged into the stormwater infrastructure and subsequently contaminate a water body.

Excavation rules

Standards 5.3.10.6 and 6.3.3.5

There must be no excavation in excess of 10 m³ within a Groundwater Protection Area.

98. Several submitters request: the ability to undertake excavation in excess of 10 m³ and if underground water is struck, compaction is undertaken to reduce leaching – they state that excavations in excess of 10 m³ but not intercepting groundwater would not lead to adverse effects on the Groundwater Protection Area (GPA); it is implied that the relief sought is for the standard to be deleted so there is no volumetric limit in a GPA;⁴⁰ the removal of the standard (without giving reasons);⁴¹ amendments to both Standards 5.3.10.6 and 6.3.3.5 on the grounds that the notified wording of those standards may act as an unnecessary constraint to residential development which can involve the scraping of the ground surface to construct a foundation, which is not anticipated to risk groundwater contamination;⁴² an exclusion to

³⁹ There was a numbering error in the standards in 2.17.3 highlighted by NZTA in their submission. The relevant standard should therefore be 2.17.3.9. This numbering error will be remedied as an outcome of the decision.

⁴⁰ P Wilhelmus and Ormond Aquaculture Limited (1035.3) and J Timms (475.6).

⁴¹ Federated Farmers (425.547).

⁴² MDC (91.241, .242).

Standard 5.3.10.6 providing for excavation for the purpose of constructing a domestic swimming pool, or alternatively that the limit is increased from 10 m³ to 30 m³ or 40 m³.⁴³

Section 42A Report

99. Peter Davidson for MDC, on behalf of the report writers, provided advice as follows:

- The water quality and chemistry of Mill Stream at Wairau Valley is affected by contaminants from both diffuse and point sources. Mill Stream gains flow through the base of its channel from groundwater and brings with it diffuse contaminants generated over large areas of land upstream in the catchment as well as tributary flow from riparian margins.
- Exposing the groundwater table provides a rapid flow-path for land surface pollutants to contaminate groundwater.
- Excavations expose the water table and limiting the excavated volume to what is reasonable for individual landowners is prudent where an aquifer is used for rural drinking water and there is a risk to human health, specially a municipal water supply where a large population could be affected.
- Of particular concern are pollutants that won't be treated at the Wairau Valley municipal supply wellfield.⁴⁴

100. MDC submitted a suggested amendment which was accepted by the report writers who recommended that the amendments sought by MDC would not adversely affect water quality in community drinking water supplies within the Urban Residential 1, 2 and 3 Zones that are protected by GPAs.

101. In terms of the Aquanort Pools and R Post submissions, that are unintentionally caught up in this submission, the wording in the notified plan of a volume of 10 m³ is mentioned, as is capturing any activity (with the exception of building foundations) that will excavate in excess of that volume. The submitters have not provided any evidence that the excavations of 30 m³ or 40 m³ within a GPA would not adversely impact on community water supplies. Without the evidence to counter the argument that 10 m³ is a safe limit, the report writers are unable to support the submission.⁴⁵

⁴³ Aquanort Pools (1254.1) and R Post (1255.1).

⁴⁴ Section 42A Report, paragraph 741.

⁴⁵ Section 42A Report, paragraph 744, 748.

Consideration

102. The existing standards may act as an unnecessary constraint to residential development with a low risk of groundwater contamination.
103. The report writers accept MDC's submission on the grounds that the amendments would not adversely affect water quality in community water supplies within the identified residential zones protected by GPAs.
104. The Panel, however, is satisfied that pool owners should be included in the standard. We note the report writers consider that those affected residents have been unfairly caught up in the exclusion. Pool excavations are a legitimate residential building use and need to be further amended within the standard. The inclusion of an exemption for the construction of swimming pools is required. A pool structure is generally made from an inert impermeable material and the Panel considered the risk to groundwater to be minor. Moreover, there is an inbuilt limitation in the Urban Residential 1, 2 and 3 zones in the Plan of 50m³ excavation.
105. Although not originally sought by the submitter, the exemption should equally apply to the equivalent standard in the Rural Zone for the same reasons as set out above.

Decision

106. Standards 3.3.14.5, 5.3.10.6 and 6.3.3.5 are amended as follows:

There must be no excavation in excess of 10m³ within a Groundwater Protection Area, unless the excavation is to establish a foundation for a building or a swimming pool permitted in this zone.

Methods

Method 15.M.18

Liaison

Work with established rural industry groups to develop and implement sustainable land management programmes. The initial focus will be on viticulture, pastoral farming (especially dairy and intensive beef farming), arable farming and forestry, but may be expanded to other rural activities if the need arises.

Rural land uses upstream of or adjacent to rivers that have degraded water quality and rural land uses in groundwater protection areas are a priority for sustainable land management programmes.

Work with landowners and community groups to establish and enhance riparian margins and improve water quality.

107. Several submitters request the following additions to the method: *Work with water user groups and other agencies to develop riverbed activity guidelines*;⁴⁶ the inclusion of iwi within the liaison framework and amend the existing text of the method to read *Work with landowners, iwi and community groups to establish and enhance riparian margins and improve water quality*;⁴⁷ amend the method by inserting a sentence into the method as follows: *Engage with water user groups when determining the need for research, the design and implementation of research projects*.⁴⁸

Section 42A Report

108. The report writers are supportive of community involvement in the development of riverbed activity guidelines as documents of this nature are useful when there is potential conflict between resource users. There is a preference for limiting the development of guidelines to a purpose so as not to establish an expectation that the guidelines will be developed for all rivers as they may not be necessary everywhere. The report writers also touched upon the many parties who may be appropriate to be involved in developing the guidelines for riverbed activities and their additions to the method should include them.⁴⁹
109. With respect to AWUG's submission, there is nothing in the report writers' opinion that explains the addition or its context. Presumably given who the AWUG represent – a water user group involved with the Awatere River interested in research and design – this is not something that should be entrenched in the PMEP, in the opinion of the report writers. In the PMEP already there is a method in Chapter 5 Allocation of Public Resources providing the purpose of water user groups is to assist the Council in managing resources.⁵⁰
110. The recommendation of the report writers is to support the submission in part of those user groups identified at the outset of their analysis.

Consideration

111. We accept the community's desire for management or guidelines for riverbed activities and we also accept that iwi should be involved in the process of establishing and enhancing riparian margins, given their especial cultural and historical affiliations we have heard of throughout this planning process.
112. We therefore accept both the report writers' recommendations in this matter.

⁴⁶ Villa Maria (1218.69), Accolade (457.77), BRIL (462.32), AWUG (548.89), Wine Marlborough (431.76) and Pernod Ricard (1039.99).

⁴⁷ Te Ātiawa (1186.91).

⁴⁸ AWUG (548.89).

⁴⁹ Section 42A Report, paragraph 811.

⁵⁰ Section 42A Report, paragraph 813.

Decision

113. The following sentence is added to the end of Method 15.M.18:

Work with resource users, community groups, agencies and Marlborough's tangata whenua iwi to develop riverbed activity guidelines where potential conflict between river users is identified.

114. A further amendment to the existing text of the method is as follows:

Work with landowners, Marlborough's tangata whenua iwi and community groups to establish and enhance riparian margins and improve water quality.

Method 15.M.21

Information

Provide information, including guidelines, to landowners, resource users and the public:

- to generally promote awareness of water quality issues; and
- to encourage the adoption of appropriate land management practices to minimise non-point source discharges.

Although the focus of this method will be on rural resource users, the information will also be applicable to residential situations (in both rural and urban environments).

Provide information on the benefits of retiring and planting riparian margins. This will include information on the appropriate width of riparian margins and suitable plant species, taking into account the variation in the nature of waterbodies/coastal waters and the adjoining rural land uses. Information on options for formally protecting retired riparian margins can also be provided.

115. Several submitters seek that the first paragraph of Method 15.M.21 is amended as follows:⁵¹

Method 15.M.21 Information

Provide information, including guidelines, to landowners, resource users and the public:

- *to generally promote awareness of water quality issues; and*
- *to encourage the adoption of appropriate land management practices to minimise any adverse effects of non-point source discharges. This includes promoting industry Codes of Practice and industry guidelines and encouraging the adoption of Agreed Good Management Practices. (Industry Agreed Good Management Practices, Sept 2015 have been developed and documented by the Primary industry sector groups in conjunction with Canterbury Regional Council.)*

Although the focus of this method ...

and on that basis the deletion of Method 15.M.24 is also required.

⁵¹ Ravensdown Limited (1090.48) and the Fertiliser Association (1192.38).

116. The submitters are of the opinion that the method should be providing information and increased awareness, supporting the adoption of appropriate land management practices to minimise any adverse effects of non-point discharges. This includes support for following Industry Agreed Good Management Practices.

Section 42A Report

117. The report writers disagree with the submitters' amendments and are of the opinion that it is not the role of Council to promote any particular industry product. Under Method 15.M.24 the Council advocates for industry groups to be involved.

Consideration

118. The Panel agrees with the report writers that the method is solely about the provision of information. However, that information can include industry developed information if it assists with achieving the objective of minimising the adverse effects of point-source discharges. For this reason, the Panel is comfortable, to an extent, with the addition sought and as set out on paragraph 820 of the Section 42A Report. The Council has the discretion to determine whether that industry information is relevant and accurate for the circumstances. In other words, the Council can decide whether to share the information with others.
119. However, the Panel does agree with the report writers that the method should not reference a specific document. The document cited in the submission and sought to be included in the method was developed in Canterbury. The Panel has received no further evidence on the nature of those agreed good management practices, the process used to develop them or their relevance in a Marlborough context. In these circumstances, it would be inappropriate for the Panel to include the last sentence of the relief requested.
120. On assessing what the method provides and whether changes should be made to Method 15.M.21 as set out in the submitters' requests, we consider that the last three sentences of the second bullet point should be deleted from the submitters' request but the first suggested amendments provide positive information to reinforce the intent of the method. The Panel sees value in retaining 15.M.24 as it advocates for the preparation and adoption of codes of practice and other guidelines

Decision

121. Method 15.M.21 is amended as follows:

Method 15.M.21 Information

Provide information, including guidelines, to landowners, resource users and the public:

- *to generally promote awareness of water quality issues; and*

- *to encourage the adoption of appropriate land management practices to minimise any adverse effects of non-point source discharges. This includes promoting industry Codes of Practice and industry guidelines and encouraging the adoption of Agreed Good Management Practices.*

Although the focus of this method will be on rural resource users, the information will also be applicable to residential situations (in both rural and urban environments). ...

Method 15.M.25

122. The report writer recommended the addition of a new method to 15.M.25 as follows:

Water Quality Management Plans and/or Nutrient Management Plans prepared and provided in accordance with this method may be contained within or form part of Farm Environment Plans prepared as a farm specific tool to identify on-farm environment risks and the methods and/or programme for managing those risks.

123. The report writer also recommended two new definitions for Water Quality Management Plans and Nutrient Management Plans.

124. The Panel has adopted the recommendation with respect to the method. However, the Panel does not consider the definitions sought by the submitter and recommended by the report writer are necessary. There are already detailed descriptions of both types of plan in the method and these are considered to be adequate. The definitions recommended will not assist in the implementation of the methods.

General rules

[New] Permitted Activity

125. NZTA seeks the addition of a new permitted activity and associated standard either in the Transportation chapter or a new section applying to unzoned land, of which roads would form part.⁵² The requested wording is as follows:

Earthworks within the legal road and associated sediment discharge to water or to land where it may enter water.

Earthworks shall not, after the zone of reasonable mixing, result in any of the following effects in receiving waters:

- (i) the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or*

⁵² 1002.144

- (ii) any conspicuous change in colour or visual clarity, or any emission of objectionable odour, or*
- (iii) the rendering of fresh water unsuitable for consumption by animals, or*
- (iv) any significant adverse effect on aquatic life.*

Section 42A Report

126. The report writers recommended the standards are included in Chapter 2, under 2.31 and 2.32 respectively, as they provide additional protections against water quality degradation in the road reserve. However, to provide consistency with other provisions in the PMEP, the report writer suggested amendments to the wording as follows:⁵³

Excavation and filling within the legal road.

Excavation and filling must not, after reasonable mixing, result in any of the following effects in receiving waters:

- (i) the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or*
- (ii) any conspicuous change in colour or visual clarity, or*
- (iii) any emission of objectionable odour, or*
- (iv) the rendering of fresh water unsuitable for consumption by animals, or*
- (v) any significant adverse effect on aquatic life.*

Consideration

127. The Panel agreed with the content of the report writers' suggestion and as a result confirmed the inclusion of the wording in the Plan. There was no submission seeking a similar amendment in relation to the rail corridor so that the granting of the relief sought by NZTA results in an anomaly between the road and rail corridor activities. However, as KiwiRail is a requiring authority it has substantial activity rights. Consideration was also given to the placement of these rules.

128. The submitter sought that excavation and filling be provided for as a permitted activity in the road corridor. These are land use activities controlled under Section 9 of the RMA. As notified, Rules 2.21, 2.22 and 2.23 control the discharge of contaminants to air only.

129. In the Topic 14 decision, the Panel considered requests to convert this section of general rules into rules managing the discharge of contaminants to land in the road and rail corridor and to

⁵³ Section 42A Report, pages 136 and 137

convert the existing Rule 2.21.1 into a discharge to land rule. There were also requests to add additional activities to the notified permitted activity rule section (2.21) in Topics 13 - Air Quality, 14, 15 and 18 to enable other discharges to land or to air.

130. The Panel was in agreement with the above requests for the reasons set out in those topic decisions. However, these decisions present somewhat of a structural conundrum in the context of NZTA's request to enable excavation and filling in the road corridor. This is because these activities, unlike all of the other requests identified above, are not discharges of contaminants into the environment controlled by Section 15 of the RMA.
131. Fortunately, there is a relatively straight forward solution to this conundrum. The solution involves the expansion of this section of the general rules so that it applies to any activity in the road and rail corridor. This can be achieved by simply changing the heading on page 2-28 to "Activities in the Road and Rail Corridor". The permitted activity rules and standards agreed to via the various topic decisions can then be inserted into 2.21 and 2.22.
132. There is a consequential change required to allow this structure to operate effectively and that is a corresponding expansion of the discretionary activity rules so that:
- (a) Non-compliance with the relevant standards for any of the permitted activity rules triggers a discretionary activity resource consent; and
 - (b) Activities not provided for in the road and rail corridor by way of Rule 2.21 trigger discretionary activity resource consent.⁵⁴

Decision

133. Amend the heading on page 2-28 as follows:

Discharges to Air Activities in the Road and Rail Corridor

134. A new permitted activity to be added to 2.21 as follows:

2.21.x Excavation and filling within the legal road by the Road Controlling Authority

135. A new standard to be inserted at 2.22 as follows:

2.22.x Excavation and filling within the legal road by the Road Controlling Authority

2.22.x.1 Excavation and filling must not, after reasonable mixing, result in any of the following effects in receiving waters:

⁵⁴ Notwithstanding that many land use activities undertaken by NZTA or KiwiRail are likely to be enabled by designations in Appendix 14 of this Plan.

- (i) the production of conspicuous oil or grease films, scums of foams, or floatable or suspended materials, or
- (ii) any conspicuous change in colour or visual clarity, or
- (iii) any emission of objectionable odour, or
- (iv) the rendering of fresh water unsuitable for consumption by animals, or
- (v) any significant adverse effect on aquatic life.

136. Insert a new Discretionary Activity Rule as 2.23 as follows:

Any use of land not provided for as a permitted activity.

Munsell Scale

137. The Munsell Scale is commonly used in PMEP permitted activity standards to manage the adverse effects of activities on water quality, and specifically water colour. For example, the standard applies to discharges to water, activities in lake and river beds, specific activities in the Floodway Zone, and, in multiple zones, the activity of non-indigenous vegetation clearance, cultivation, excavation and filling.

138. There were a large number of submitters that sought the deletion of the Munsell Scale from the standards in the Plan. The main reason for doing so related to the practicality and effectiveness of using the Munsell Scale. In some cases submitters sought an alternative method of measurement.

Section 42A Report

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

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

Consideration

141. As Wilkes RM set out in their submission, the Munsell Scale is currently used to manage adverse effects on water colour in the operative resource management plans. The Panel

understands that the ongoing use of the Munsell Scale was recommended to the Council by the Cawthron Institute through the review of the operative water quality standards.

142. The Panel understands and accepts the issues of practicality raised by submitters. It is important that compliance with permitted activity standards is able to be measured.
143. Nobody at the hearing directly sought the retention of Munsell Scale in permitted activity standards.
144. Peter Hamill, Team Leader Land and Water, was one of the report writers. He has considerable experience at the Council with water quality measurement in Marlborough's lakes and rivers. Mr Hamill recommends against the use of the Munsell Scale from a technical perspective. The Panel relies upon his expert opinion on this matter. For this reason, the recommendations of the report writers are adopted.
145. In doing so, the Panel notes that the recommendation at paragraph 882 of the report did not show the use of "natural" in the standard as an addition (i.e., it was not underlined). The decision below clearly records the use of "natural" as an addition to the notified provisions.
146. In considering the Section 42A Report, the Panel has identified that there are other provisions that utilise the Munsell Scale that are not included in the report (presumably because the provisions did not receive submissions). These are Standard 2.3.23.7 and Appendix 5, Schedule 2. For the same reasons as above, it is appropriate to remove the reference to the Munsell Scale from these provisions also and the Panel makes this decision as a consequential change.

Decision

147. Standard 2.17.1.5 is amended as follows:

After reasonable mixing, the discharge must not cause any conspicuous change in the colour or visual clarity of any waterbody, measured as follows:

~~*{a} hue must not be changed by more than 10 points on the Munsell scale;...."*~~

148. Standards 2.8.1.4, 2.14.5.7, 21.3.6.5, 21.3.7.6 and 21.3.9.10 are amended as follows:

Any discharge of sediment into water [associated with the activity/shaping and beaching/land disturbance/removal] must not, after reasonable mixing, cause a conspicuous change in colour of ~~more than 5 Munsell units or a decrease in~~ clarity of more than 20% for more than 8 hours in any 24 hour period and more than 40 hours in total in any calendar month.

149. Standards 3.3.9.11, 4.3.8.11, 8.3.8.11, 3.3.12.11, 4.3.11.11, 7.3.8.11, 19.3.4.6, 22.3.9.8, 3.3.13.6, 4.3.12.6, 3.3.14.12, 4.3.13.10, 19.3.6.15, 22.3.7.8, 22.3.6.6, 3.3.16.11, 4.3.15.11, 19.3.5.15 and 20.3.3.8 are amended as follows:

[Harvesting/Vegetation clearance/Cultivation/Excavation/Filling/Excavation or filling] must not cause any conspicuous change in the colour or natural clarity of a flowing river after reasonable mixing, or a Significant Wetland, lake or the coastal marine area, ~~as measured as follows:~~

~~*(a) hue must not be changed by more than 10 points on the Munsell scale.*~~

~~*(b) the natural clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the [harvesting/vegetation clearance/cultivation/excavation /filling/excavation or filling] site.*~~

~~*(c) the change in reflectance must be <50%*~~

150. The water quality classifications for AE and FS in Appendix 5, Schedule 2 are amended as follows:

Colour or visual clarity	<p>Hue must not be changed by more than 10 points on the Munsell scale.</p> <ul style="list-style-type: none"> - The natural <u>colour</u> or clarity must not be conspicuously changed due to sediment or sediment laden discharge originating from the site of a land disturbance operation. - The change in reflectance must be <50%. - Measurements are to be made immediately upstream of the discharge and below the discharge after reasonable mixing. 	AE, FS
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151. The water quality classifications for A in Appendix 5, Schedule 2 are amended as follows:

Colour or visual clarity	<p>Measurements are to be made immediately upstream of the discharge and below the discharge after reasonable mixing.</p> <p>Hue must not be changed by more than 5 points on the Munsell scale.</p> <ul style="list-style-type: none"> - Turbidity must be no greater than 1.5 Nephelometric Turbidity Units. 	A
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152. The definition of “Munsell Scale” in Chapter 25 is deleted.

Minor amendments to report writer recommendations

153. There were several instances where the Panel adopted the recommendation of the report writer but made a very minor change to the text recommended for the relevant provision. These are listed below:

Discharge of Tracer Dye

Standard 2.17.9.1

154. The report writer⁵⁵ recommended that the standard be added to as follows:

The discharge must be conducted by the Marlborough District Council or by another party if in relation to regionally significant infrastructure.

155. The Panel preferred the use of 'or by the operator of regionally significant infrastructure'. To provide certainty as to who could undertake the discharge.

Preparation of stormwater management plans

Method 15.M.9

156. The report writer recommended that the following sentence be inserted into the method⁵⁶:

The preparation of these Plans will include consultation and discussion with Tangata Whenua iwi.

157. Reflecting other decisions, the Panel has inserted 'Marlborough's' prior to 'tangata whenua iwi'. It has also chosen to delete 'and discussion' as meaningful dialogue is implicit within the term 'consultation'.

⁵⁵ (See page 93 of Right of Reply)

⁵⁶ Right of Reply, page 117