

Proposed Marlborough Environment Plan

Topic 13: Resource Quality – Water (Stock Crossing)

Hearing dates: 8 – 10 October 2018

S42A Report Writer: Rachel Anderson

Conflicts of Interest: None

Interim decision: None

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

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List of Abbreviations

MDC	Marlborough District Council
NZCPS	New Zealand Coastal Policy Statement
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
RPS	Regional Policy Statement

Submitter abbreviations

DOC	Department of Conservation
EDS	Environmental Defence Society Incorporated
MEC	The Marlborough Environment Centre Incorporated

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) – Stock Crossing

Policy 15.1.23

Avoid the discharge of animal effluent to fresh waterbodies and stock disturbance of river beds to the extent necessary to meet the management purposes established by Policy 15.1.1, by:

- (a) preventing the direct discharge of collected animal effluent to water; and
- (b) avoiding the access of intensively farmed stock to rivers.

8. Federated Farmers seeks amendments to the policy as follows:²

~~Avoid~~ Reduce the discharge of animal effluent to fresh waterbodies and stock disturbance of river beds to the extent necessary to meet the management purposes established by Policy 15.1.1, Policy 15.1.5 and Policy 15.1.6 by:

- (a) assessing causes of elevated E. coli levels and identifying the most appropriate and cost-effective solutions for restricting stock access; and
- ~~(a)~~(b) preventing the direct discharge of collected animal effluent to water; and
- ~~(b)~~(c) avoiding managing the access of intensively farmed stock to rivers to support achievement of Policy 15.1.5, and Policy 15.1.6.

9. It also seeks amendments to the second and third paragraphs of the explanation to the policy as follows:³

~~Stock can also access rivers when grazing riparian margins. While grazing of riparian margins is at times an important management tool, when on a continued basis in such circumstances, it is likely that there will~~ may be a discharge of animal effluent to water and the river bed ~~will~~ may be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality. The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. ~~Intensively farmed stock such as dairy cattle, pigs, or cattle or deer grazed on irrigated pasture or breakfed on winter crops create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively. This policy seeks to understand the cause of elevated E. coli level and identify the most appropriate and cost effective solutions for restricting access in catchments where there is an identified problem. This work will be completed through the Catchment Enhancement Plans, working collaboratively with landowners, industry, the community and Council to explore options.~~

² Federated Farmers (425.298).

³ Ibid.

Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, or where rainfall events can cause ephemeral rivers to flow, and in situations where the costs of fencing and designing stock crossings are prohibitive for limited use, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require ~~compliance with any relevant water quality standard set for the affected waterbody~~ that good management practice is followed to manage adverse effects on colour and visual clarity.

10. In terms of the amendments to the second and third paragraphs of the explanation, the submitter is of the opinion that this policy should focus on assessing the causes of elevated *E. coli* levels and identifying the most appropriate cost effective solutions where there is an identified problem. This is best implemented through Catchment Enhancement Plans that work with landowners, industry, community and Council for joint benefits.

11. Federated Farmers also seeks two new methods as follows:⁴

- *The assessment of causes of elevated *E. coli* levels and identification of the most appropriate and cost-effective solutions for restricting stock access.*
- *Work with landowners and industry to implement good management practice around stock access to waterways, through Catchment Enhancement Groups, based on a better understanding of the causes and solutions.*

12. Fonterra seeks an amendment to the policy as follows:⁵

~~Avoid~~ Manage the discharge of animal effluent to fresh waterbodies and stock disturbance of river beds to the extent necessary to meet the management purposes established by Policy 15.1.1, by:

- (a) *preventing the direct discharge of collected animal effluent to water; and*
- (b) ~~avoiding~~ managing *the access of intensively farmed stock to rivers; and*
- (c) managing the crossing of intensively farmed stock across rivers.

13. The submitter considers there are large tracts of productive land in Marlborough that stock cannot access without crossing the bed of a river – these blocks are often used for winter grazing stock which requires accessing a bed of a river only a couple of times a year. Given the

⁴ Ibid.

⁵ Fonterra (1251.46).

wide form of the rivers, stock crossings may not be viable to bridge or culvert, leaving this land inaccessible – ‘stock access’ should be managed separately from ‘stock crossings’.

14. NZ Deer Farmers supports deer exclusion from waterbodies where this is a cost-effective approach and exclusion would be justified by the degree of risk from the farming operation - preventing access of deer to rivers requires permanent deer fencing. As such, the submitter does not consider the proposed date of 9 June 2022 a well-considered time frame – 10 years would be a reasonable time frame to ensure that all intensively farmed livestock access to rivers and wetlands is avoided. The submitter seeks an amendment of the policy as follows:⁶

(b) avoiding the access of intensively farmed stock to rivers, unless the access is for the purposes of actively moving the farmed stock across the river.

15. Other submitters seek: to ensure that all intensively farmed livestock access to rivers and wetlands is avoided;⁷ to give effect to Policy 21 NZCPS;⁸ and amendments to Policy 15.1.23(b) are suggested as follows:⁹

(b) avoiding the access of intensively farmed stock to rivers, except in the following circumstances:

- Where the crossing is necessary for stock safety reasons or*
- The farm is already established prior to 9 June 2016 and crossing is necessary to farm operation; and*
- There are practical difficulties in constructing bridges or culverts; and*
- The crossing is over an ephemeral waterbody.*

16. And to the last paragraph of the explanation as follows:¹⁰

Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, or where intense rainfall events can cause ephemeral waterbodies to flow, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require ~~compliance with any relevant water quality standard set for the affected waterbody~~ good practices to be followed in order to avoid adverse effects on water quality.

⁶ NZ Deer Farmers (991.2).

⁷ Fish and Game (509.190).

⁸ EDS (698.103).

⁹ Dairy NZ (676.77).

¹⁰ Ibid.

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17. In terms of Federated Farmers' submission, the report writers concluded:
- that reference be made to the importance of assessing elevated *E. coli* levels and adopting the most cost-effective solutions where there is a problem;
 - that the solution is best addressed through Catchment Enhancement Plans with all interested parties and Council for joint benefit;
 - these are matters already addressed through Policies 15.1.5 and 15.1.6 and Method 15.M.5;
 - Policy 15.1.23 also seeks to prevent new adverse effects on water quality.
18. As to Federated Farmers being unable to support the prohibited status for access of intensively farmed livestock to rivers, the report writers consider it is important that any policies to manage stock access adequately reflect the size and scale of the problem, and this Policy 15.1.23(a) and (b) seeks to achieve.
19. In response to Fonterra's submission, the report writers consider the impact of these particular types of stock (intensively farmed stock) needs to be avoided, and there is nothing in the submission to demonstrate that those activities (discharge of animal effluent and stock disturbance) will **not** adversely affect water quality. With regard to managing stock 'access' separately from stock 'crossings', the rules refer to 'entering onto the bed' and 'passing across the bed' as separate activities - the policy covers both by using the word 'access' in (b).¹¹
20. The daily crossing of waterways by dairy cows is a very different issue from avoiding all access by intensively farmed stock to waterways. The report writers support the Council's approach of prohibiting intensively farmed livestock from entering onto or passing across a riverbed. Allowing intensively farmed livestock to enter or pass across a riverbed is an activity that would not comply with water quality standards.¹² But in terms of having to shift livestock across waterways in case of flood, fire and other emergencies, the report writers do not consider Council is going to prosecute farmers on these occasions.¹³
21. In terms of the NZ Deer Farmers' concerns, the report writers do not accept an amendment to clause (b) as it would enable an activity that would have a significant adverse effect on water quality, for example, the crossing of 400 dairy cows across the Wairau River twice a day (as one farmer sought to do). The content of the reasons in the submission are specific to deer

¹¹ Section 42A Report, paragraph 43.

¹² Section 42A Report, paragraph 40.

¹³ Section 42A Report, paragraph 55.

and, in the report writers’ opinion, they are appropriately dealt with in the rules and definitions, although there is a reference to deer in the explanation that may need to be reconsidered.¹⁴

22. In terms of Fish and Game’s submission which seeks to ensure that access by all intensively farmed livestock (including all lowland cattle) to rivers, lakes and wetlands is avoided, short of fencing which would be very expensive, the Council decided that non-regulatory approaches such as the Significant Natural Areas programme was the best approach to the issue, and this has been set out in the chapter on indigenous biodiversity.¹⁵
23. The report writers pointed out the exclusion of stock from Significant Wetlands was a matter considered carefully during the consultation process and the outcome was that it was a step too far. The wetlands that remain are there only because the current farming regime has allowed them to not be destroyed, so with identification of the Significant Wetlands in the PMEP and non-regulatory management provisions around them, the view was that that landowner management would allow them to continue to exist without the need for total stock exclusion.¹⁶
24. The EDS submission, with its concern for coastal waterbodies, could be introduced as ‘coastal waters’ as ‘waterbodies’ refers only to fresh water, but only if further information is produced at the hearing, as the submitter provided no adequate information to support the submission. Meanwhile, the report writers pointed out there are no areas identified in the coastal environment included in the PMEP with degraded water quality as the result of the discharge of animal effluent. The report writers do not share EDS’s view that the Plan needs to be amended to give effect to Policy 21 NZCPS because they do not consider the water quality of the coastal environment has so deteriorated.¹⁷
25. The report refers to the fact that Dairy NZ considers that 96% of the waterways on New Zealand dairy farms are now excluded from dairy cattle but there are still practical difficulties of fencing stock out of waterbodies, as captured by the third paragraph of the explanation. In the company’s opinion, there should therefore be more explicit allowance for crossings due to the large number of ephemeral rivers on some established farms as well as intense rainfall

¹⁴ Section 42A Report, paragraph 45.

¹⁵ Section 42A Report, paragraph 49.

¹⁶ Ibid.

¹⁷ Section 42A Report, paragraph 52.

events. Good practices should be followed in these instances to avoid adverse effects on water quality.¹⁸

26. The Section 42A Report also identifies that multiple submissions questioned the policy's intent, including as to whether stock access was a point source or non-point source discharge. The report writers are of the opinion that Policy 15.1.23 should be separated into two policies. The overall content will remain the same, but the split would see a policy as it relates to the activities under (a) remain as Policy 15.1.23 and stay in its current location, but a policy as it relates to the activities under (b) would become a new policy and be inserted into the section of Chapter 15 headed 'Management of non-point discharges'.
27. This new policy would more accurately reflect the Council's view that discharges directly from animals are a non-point source discharge that is an effect of a land use activity, that is, stock entering on to or passing across the bed of a river.
28. It is also proposed that paragraph one of the explanation would remain with the revised Policy 15.1.23, and paragraphs two and three of the explanation would be associated with the new policy. The report writers consider that as this is a reorganisation and no content is changed, it can be achieved as a minor amendment and is within scope.

Consideration

29. The Panel agrees with the report writers that:
 - It is not appropriate to amend provisions across the PMEP to provide for all types of emergencies for existing farms – it would not assist in remediating degraded water quality or preventing new degradation to provide an exception for all existing farms.
 - There are practical difficulties in constructing individual bridges and culverts to always prevent stock access.
 - With regard to amendments to the policy and explanation regarding ephemeral waterbodies, there is already an exception for entering on to or passing over a riverbed for livestock if there is no water flowing in the river. This would apply to both ephemeral and intermittently flowing rivers.
 - The amendment of Dairy NZ's reference to 'good practices' is also not supported as the report writers consider it does not reflect the approach taken in the Permitted Activity

¹⁸ Section 42A Report, paragraph 54.

rules nor would it provide plan users or the Council with certainty about the requirements for compliance with the applicable rule.¹⁹

30. In assessing the two (new) policies suggested by the report writers, we note that the change provides policy support for the proposed rules on stock access. We consider too that lakes and wetlands should be added to the new proposed policy for stock access, which was agreed to by the report writers in their Reply to Evidence.²⁰ We conclude that as the report writers have recommended, the policy may be addressed as set out below. Note that the new policy set out in the decision is based on the wording of the notified 15.1.23. There are also implications for changes to the definition of ‘intensively farmed livestock’ which re to be addressed later in this decision.

Decision

31. Policy 15.1.23 is separated into two policies and amendments made, as follows:

Policy 15.1.23 – Avoid the discharge of animal effluent to fresh waterbodies ~~and stock disturbance of river beds~~ to the extent necessary to meet the management purposes established by Policy 15.1.1, by preventing the direct discharge of collected animal effluent to water.

~~(a) — preventing the direct discharge of collected animal effluent to water; and~~

~~(b) — avoiding the access of intensively farmed stock to rivers.~~

Animal effluent can be discharged directly into rivers and wetlands through either the point source discharge of collected animal effluent (e.g. farm dairy effluent) ~~or through stock access~~ to waterbodies. At the date of notification of the MEP, there were no authorised discharges of animal effluent into water. This policy seeks to avoid the significant risk posed to surface water quality by discharges of collected animal effluent. This will be implemented through a prohibited activity rule.

~~Stock can also access rivers when grazing riparian margins. In such circumstances, it is likely that there will be a discharge of animal effluent to water and the river bed will be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality. The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. Intensively farmed stock such as dairy cattle, pigs, or cattle or deer grazed on irrigated pasture or breakfed on~~

¹⁹ Section 42A Report, paragraph 55.

²⁰ Section 42A Report, Reply to Evidence, pages 7-8.

~~winter crops create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively.~~

~~Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require compliance with any relevant water quality standard set for the affected waterbody.~~

32. And a new policy be added in the 'Management of non-point source discharges' section in Chapter 15.²¹

[R]

Policy 15.1.35 - Avoid stock disturbance of river beds, lakes and Significant Wetlands and the associated discharge of animal effluent to those water bodies to the extent necessary to meet the management purposes established by Policy 15.1.1 by avoiding the access of intensively farmed stock to rivers, lakes and Significant Wetlands.

Stock tend to access rivers, lakes and wetlands when grazing riparian margins. In such circumstances, it is likely that there will be a discharge of animal effluent to water and the river or lake bed, or wetland, will be physically disturbed. The resulting increase in bacteria and turbidity in the receiving waters have the potential to reduce water quality.

The adverse effects of casual access on water quality are dependent on a number of factors, including the type and density of stock. Intensively farmed stock create a significant risk of adverse effects on water quality. For this reason, the policy seeks to avoid stock access where stock is farmed intensively.

Due to the practical difficulties in some situations of fencing stock out of waterbodies, particularly where stock are grazed extensively, the Council has also adopted an approach of using permitted activity rules for managing the adverse effects of stock access not covered by this policy. The permitted activity rules will require compliance with any relevant water quality standard set for the affected waterbody.

Prohibited Activity Rules 2.11.4, 3.7.4 and 4.7.4

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river.

²¹ Section 42A Report, Reply to Evidence, page 7.

33. The EDS submission on Rule 2.11.4 seeks that its operation be brought forward because stock will not be excluded until then from the active bed and riparian areas of main-stem rivers or other ephemeral rivers where they are important habitat or breeding areas or important to the hydrological functions of the waterbody.²²

34. DOC seeks amendments to all three rules as follows:²³

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, or to enter water in lakes or Significant Wetlands.

35. The Marlborough Environment Centre seeks a similar addition to the provision although it frames it as new Prohibited Activities in the Rural and Coastal Environment Zones.²⁴

36. Dairy NZ seeks the following amendments to Rule 3.7.4:²⁵

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, except in the following circumstances:

- where the crossing is necessary for stock safety reasons; or
- the farm is already established prior to 9 June 2016 and crossing is necessary to farm operation; and
- there are practical difficulties in constructing bridges or culverts; and
- the crossing is over an ephemeral waterbody.

37. Dairy NZ supports stock exclusion from waterways but there are practical difficulties of fencing stock out of waterbodies. Some explicit allowance for crossings due to the high amount of ephemeral rivers on some established farms should be made and good practices should be followed in this instance to avoid adverse effects, as well as an allowance for effects of intense rainfall events.²⁶

38. D and C Robbins, M Robb and G Robb seek that the status of the activity is changed from Prohibited to Discretionary as they consider that accidents or incidents can happen and livestock can get through fences and gates. This should not warrant a conviction.²⁷

²² EDS (698.115).

²³ DOC (479.177, .179, .214 and .237).

²⁴ MEC (1193.126 and .127).

²⁵ Dairy NZ (676.124).

²⁶ Section 42A Report, paragraph 122.

²⁷ D and C Robbins (640.22, .45 and .57), M Robb (935.22, .45 and .57), G Robb (738.26, .45 and .57).

39. K Register seeks the removal of Rules 2.11.4 and 3.7.4 in their entirety – without crossing the river at three points on their farm, they cannot access parts of the farm, as the cattle are moved to these paddocks through the river then remain in their paddocks some months before necessitating another move across a waterbody.²⁸ The submitter experiences several water restrictions in summer and is unable to water stock because undergrounding a waterpipe 2 kilometres through three river crossings is not possible. Obtaining a Discretionary Activity would not change matters as the farm would be unable to meet water quality standards.
40. Other submitters echoed these concerns in similar vein with others seeking amendments to ‘intensively farmed livestock’.²⁹
41. In relation to the three rules, Beef and Lamb seek that the status of this activity is changed from Prohibited to Discretionary. In some of Beef and Lamb’s submissions, some of the prohibited activities used within the PMEP appear as unnecessarily restrictive. The submission argued that Non-Complying or Discretionary status would provide the same environmental benefits while allowing for exceptions if they were required.³⁰
42. The S MacKenzie submissions in relation to Rules 2.11.4 and 3.7.4 seek that the status of this activity is changed from Prohibited to Controlled, as this change would allow for infrequent crossings in appropriate circumstances.³¹
43. Fonterra’s submissions seek the removal of Rules 2.11.4, 3.7.4 and 4.7.4 in their entirety. While the submitter supports the exclusion of stock from waterbodies, it is concerned about the potential for the rules to impose impractical expectations on fencing of water courses that are merely flow paths across paddocks that have no characteristics or values of a watercourse outside of heavy rain events.³²
44. Another option identified by the submitter is to direct the rule to exclude stock from active stream beds, and this will require a new definition of ‘active bed of a river’. The submitter proposes that the meaning be as follows:

²⁸ K Register (147.1 and 3).

²⁹ G Barnett (1258.3, .4, .7, .8), S and S Leov (326.4, .5), H Thomson (119.1), K Loe (454.67, .77, .121, .122), Flaxbourne Settlers Association (712.15, .16, .19, .20), C Bowron (88.6, .11, .16, .18), Hall Family Farms (141.12, .13), ME Taylor Ltd (472.24, .25), Landcorp (294.2, .3), Mt Zion (515.20, .19).

³⁰ Beef and Lamb (459.4, 459.5, .6, .37, .38 and .39)

³¹ S MacKenzie (1124.14 and .18).

³² Fonterra (1251.63, .67 and .71).

Means the bed of a river (including any modified river) or artificial watercourse or that is permanently or intermittently flowing and where the bed is predominantly unvegetated and comprises sand, gravel, boulders or similar material.

45. Fonterra also identifies that there is privately owned land in Marlborough that can only be accessed by crossing a river and that the rules proposed prevent the option of allowing such crossings, even where the effects are less than significant. It seeks provision for periodic stock crossings as a Restricted Discretionary Activity. This will enable controls to be assigned to ensure the effect of the crossing is not significant.

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46. All submissions were recommended to be rejected for the reasons given. We note that the prohibition of stock crossing remains in force from 2022, the delay of which allows for upgrades of water systems and future-proofing productive measures if necessary. Further amendment of the term ‘intensively farmed livestock’ may also assist (see below). The prohibition on emergency situations is not likely to be enforced, given the report writers’ recommendations.³³
47. The report writers’ initial recommendation was to make no changes to Rules 2.11.4, 3.7.4 and 4.7.4.
48. In the Reply to Evidence the report writers’ recommendations did not change in response to the evidence of Federated Farmers, Fish and Game, Flaxbourne Settlers Association, Marlborough Environment Centre (verbal evidence), S MacKenzie, Landcorp, Hall Family Farms, H Thomson, EDS, Beef and Lamb, while D and C Robbins and G Robb provided no evidence and did not attend the hearing.
49. In response to Forest and Bird,³⁴ the report writers noted that while the preference for shorter time frames for the introduction of the 2022 prohibition is supported, it was noted by the submitter that the prohibition is fast approaching and that may now be considered reasonable.
50. With regard to DOC’s submissions, the recommendation of the report writers was that as the Council’s approach to wetlands was purposeful and the result of a consultative process, and the submitter provided no information to counter the Council’s approach, therefore the submission was recommended to be rejected.

³³ See for example Section 42A Report, paragraphs 41, 60, 73, 121.

³⁴ Forest and Bird, D Martin Evidence, paragraph 16.

51. With regard to lakes, the report writers consider there may be some benefit to lakes from full stock exclusion but it is a significant change in the rules and with a potentially associated significant cost. As the submitter did not provide any supporting information for the change, the report writers did not recommend lakes are added to the rules unless there was sufficient evidence to do so.

52. In their Reply to Evidence the report writers critiqued the various evidential matters identified from some of the submitters. They acknowledged they were confused by the evidence of Federated Farmers³⁵ which sought the removal of the Prohibited Activity rules from the PMEP, but also sought to adopt with amendments the relief originally sought by Dairy NZ as follows:

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, except in the following circumstances:

- Where the crossing is necessary for stock safety reasons;
- There are practical difficulties in constructing bridges or culverts; and
- The crossing is over an ephemeral waterbody.

53. The report writers did not support Dairy NZ's submission point which was called in aid by Federated Farmers. Dairy NZ had sought an amendment to Rule 3.7.4 as follows:³⁶

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a river when there is water flowing in the river, except in the following circumstances:

- where the crossing is necessary for stock safety reasons; or
- the farm is already established prior to 9 June 2016 and crossing is necessary to farm operation; and
- there are practical difficulties in constructing bridges or culverts; and
- the crossing is over an ephemeral waterbody.

54. The report writers had earlier recommended rejection of Dairy NZ's submission 'as it is not necessary or appropriate to amend provisions across the PMEP to provide for all types of emergencies; it would not assist in remediating degraded water quality or preventing new degradation to provide an exception for all existing farms and situations where there are practical difficulties in constructing bridges or culverts, and there is already an exception for

³⁵ Federated Farmers (425.76, .619 and .702).

³⁶ Dairy NZ (676.124).

entering onto or passing across a riverbed for livestock if there is no water flowing in the river that is sufficiently enabling.

55. The submitter conceded at the hearing, following questioning from Commissioner Faulkner, that the relief sought by Dairy NZ was not appropriate in the context of a rule about **entering onto** the bed as all the amendments related to **crossing over** the bed.³⁷
56. Overall, it was the report writers' conclusion that if the exceptions to the exclusion of stock from riverbeds are allowed, the notified provisions would become essentially redundant and the protections for water quality they seek to provide would be lost'.³⁸
57. The report writers, however, reconsidered their view of DOC's submission that lakes and Significant Wetlands are added to the Prohibited Activity rules.³⁹ On the basis that if sheep are not to be included in the definition of 'intensively farmed livestock' (except where breakfed), they recommended that Significant Wetlands and lake beds may be added to the rules in the Rural and Coastal Environment Zones, but only lake beds be added to the General Rules as the relevant section as activities relating to wetlands are not regulated through the general rules. These rules relating to wetlands, which are identified on the zone maps, appear in the relevant zone provisions.⁴⁰

Consideration

58. The Panel reassessed the report writers' recommended rejection of DOC's (and MEC's⁴¹) submission points which stated that Council's approach to wetlands was 'purposeful' and the result of a consultative process (with the submitter DOC originally providing no information to counter the Council's approach). The report writers had previously acknowledged there may be some benefit to lakes if stock are excluded fully, but there would be a significant change in the rules as a result, with potentially significant associated costs.⁴²
59. We note that the report writers had earlier acknowledged in addressing DOC's submission that 'Marlborough does not have many lakes'⁴³ and given that reality, expensive fencing may not be an issue, provided native plant screening as another screening method may be available.

³⁷ Section 42A Report, Reply to Evidence, page 20.

³⁸ Section 42A Report, paragraph 142.

³⁹ DOC (479.177, .179, .214 and .237).

⁴⁰ Section 42A Report, paragraph 117 and Reply to Evidence, page 21.

⁴¹ MEC (1193.126 and .127).

⁴² Section 42A Report, paragraph 137.

⁴³ Section 42A Report, paragraph 49.

60. As lakes and Significant Wetlands both require protection from the effects of stock access because of the adverse effects on water quality and sediment effects from the disturbance to the beds the Prohibited Activity rules should apply. Accordingly, we adopt the report writers' recommendation to include Significant Wetlands and lake beds in Rules 3.7.4 and 4.7.4 and include lakes in Rule 2.11.4, as set out in the Reply to Evidence.
61. As to Fonterra's request to introduce a new definition of an 'active bed of a river', the Panel was not persuaded that that was necessary and agreed with the report writer that it could result in ambiguity.

Decision

62. Rule 2.11.4 is amended as follows:

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a lake or the bed of a river when there is water flowing in the river.

63. Rules 3.7.4 and 4.7.4 are amended as follows:

From 9 June 2022, permitting intensively farmed livestock to enter onto the bed of a lake, into a Significant Wetland, or onto the bed of a river when there is water flowing in the river.

Prohibited Activity Rules 2.11.5, 3.7.5 and 4.7.5

From 9 June 2022, permitting intensively farmed livestock to pass across the bed of a river when there is water flowing in the river.

64. Most of the submissions on Rules 2.11.5, 3.7.5 and 4.7.5 are exactly the same as submissions on Rules 2.11.4, 3.7.4 and 4.7.4 so, for efficiency, they have been referenced in the section above on Rules 2.11.4, 3.7.4 and 4.7.4, and not repeated again here. The submissions below are the ones lodged that were different but from the same submitters on Rules 2.11.4, 3.7.4 and 4.7.4, or from submitters who did not lodge submissions on Rules 2.11.5, 3.7.5 and 4.7.5.
65. NZ Deer Farmers lodged submissions on 2.11.4, 3.7.4 and 4.7.4 but its submissions lodged under Rules 2.11.5, 3.7.5 and 4.7.5 are different.⁴⁴ It seeks the removal of the rules relating to their submissions in their entirety. This approach is taken on the grounds that where livestock need to be shifted from one paddock to another and this requires crossing a waterbody, the level of risk is much lower, particularly for deer. Under the water quality guidelines for *Escherichia coli* and Dissolved Reactive Phosphorus,⁴⁵ the submitters submitted that a mob of 400 deer took only 3 minutes to cross the Waimea Stream in Southland. This exercise caused the water quality guidelines to be exceeded but over the course of the day, as suspended

⁴⁴ NZ Deer Farmers (991.6, .7 and .8).

⁴⁵ Australian and New Zealand Guidelines for Fresh and Marine Water Quality - October 2000.

sediment and ammonium nitrogen did not exceed the guidelines, the increase was negligible.⁴⁶

66. NZ Deer Farmers asserted that where deer were not excluded from waterways, the activity had a transient environmental impact on water quality. The submitter identified that deer farming does not rely on frequent (daily) stock movements along dedicated routes. Stock movement tends to be actively managed for the purposes of feeding (movement between paddocks) or annual or infrequent movements to the deer shed (for example, for velveting, Tb testing if required, pregnancy scanning, sorting stock for slaughter). In these cases, deer move quickly through waterways (typically at set crossing points).⁴⁷
67. With regard to the removal of rules 2.11.5, 3.7.5 and 4.7.5, the submitter is of the opinion that this matter needs to be addressed in relation to the definition of ‘intensively farmed livestock’.

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68. The report writers agree the matters raised by NZ Deer Farmers are best dealt with in relation to the definition of ‘intensively farmed livestock’.⁴⁸
69. The other submissions, from S Tripe, Beef and Lamb and P Bown⁴⁹ are recommended to be rejected for the following reasons:
- The submitter S Tripe has not provided any evidence to support his assertions that his activity minimal impact or his inference that there is no difference between farming beef cattle and farming dairy cattle. It would not be appropriate for Rule 2.11.5 to be removed from the PMEP as that would not give effect to the higher provisions of the PMEP, national directions relating to freshwater quality nor the relevant provisions of the RMA.
 - The definition for ‘intensively farmed livestock’ provides for the differences between beef and dairy cattle, and Beef and Lamb’s statement that these Prohibited Activity rules will provide no environmental benefit is not substantiated by any evidence. The relief sought by P Bown would not give effect to the higher provisions of the PMEP,

⁴⁶ Section 42A Report, paragraph 156.

⁴⁷ Ibid.

⁴⁸ Section 42A Report, paragraph 160.

⁴⁹ S Tripe (132.1), Beef and Lamb (459.40, .41 and .42), P Bown (299.1).

national directions relating to freshwater quality nor the RMA, and it is not appropriate to amend any provisions in the PMEP to provide for emergency situations.⁵⁰

70. The evidence provided by Federated Farmers, Forest and Bird, Fish and Game and many others named in the Reply to Evidence provided no reason for change to recommendations originally set out in the Section 42A Report.⁵¹ DOC's evidence was the same as earlier provided for rules 2.11.4, 3.7.4 and 4.7.4.
71. In the amended Reply to Evidence the report writers again reconsidered their evidence and again included lakes and Significant Wetlands for the Rural and Coastal Environment Zones in the Prohibited Activity rules as a result of DOC's evidence.

Consideration and decision

72. Rules 3.7.5 and 4.7.5 are amended as follows:⁵²

From 9 June 2022, permitting intensively farmed livestock to pass across the bed of a lake, a Significant Wetland or the bed of a river when there is water flowing in the river.

73. Rule 2.11.5 is amended as follows:⁵³

From 9 June 2022, permitting intensively farmed livestock to pass across the bed of a lake or the bed of a river when there is water flowing in the river.

Standards 2.9.9.1, 3.3.21.1 and 4.3.20.1

The entering onto or passing across the bed of a river of livestock must not involve intensively farmed livestock if there is water flowing in the river.

74. The submissions to these rules were similar to the earlier DOC submissions where the submitter sought the addition of lakes and wetlands but also the coastal marine area to be included for the exclusion of intensively farmed livestock in 3.3.21.1 and 4.3.20.1.
75. In submissions, Forest and Bird seeks to reword the standards for clarity, and to add lake, wetlands and coastal marine area to the standards. The report writers recommended rejection of all submissions, including Forest and Bird, for not providing information in support, or identifying the reasons for broadening of the provisions.⁵⁴

⁵⁰ Section 42A Report, paragraphs 160-163.

⁵¹ Section 42A Report, Reply to Evidence, page 26.

⁵² Section 42A Report, Reply to Evidence, page 25.

⁵³ Section 42A Report, Reply to Evidence, page 26.

⁵⁴ Section 42A Report, paragraph 245.

76. Forest and Bird in evidence again sought the addition of lakes and wetlands and any part of the coastal marine area to standards 3.3.21.1 and 4.3.20.1.⁵⁵ The submitter also seeks the retention of Standard 2.9.9.1 as notified.

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77. The report writers identify the submitter did not seek the addition of wetlands, lakes and CMA to the Prohibited Activity rules that apply to intensively farmed livestock, so on that basis, if the amendments sought by Forest and Bird were granted, then non-compliance with the relevant standards with regard to wetlands, lakes and coastal marine areas would be a Discretionary Activity.
78. The rules these standards are associated with, however, enable stock access to rivers only, they do not enable stock access to wetlands, lakes or the CMA. And, there are no other Permitted Activities in the PMEP that do. Therefore, under the default rules 2.10.2 (lake), 3.6.11 and 4.6.12 (wetlands), and 16.6.7 (coastal marine area), stock access to lakes, wetlands and coastal marine areas is a Discretionary Activity.
79. On this basis, the ultimate relief sought by the submitters is already provided for in the PMEP, in fact the PMEP goes further and does not permit **any** stock access to a lake, wetland or coastal marine area.⁵⁶
80. The Panel also notes that stock access to wetlands through or on land zoned Open Space 3 has not been addressed by the submitter or the report writer. However, the need for controls on stock access on land zoned Open Space 3 was addressed in Topic 7 (see later in this decision). It is appropriate there is a consistent approach to managing stock access regardless of tenure/management. For this reason, the Panel has made a consequential change to also include a discretionary activity rule in Chapter 19 of Volume 2.

Consideration and decision

81. The relief sought is ultimately already provided for through the default Discretionary Activity provisions. Notwithstanding the implicit legal position by virtue of the cascade of rules, the very fact of this submission being made, leads the Panel to conclude the explicit rules should be included in the Plan for clarity.
82. In Topic 7 the report writer recommended the addition of a new permitted activity rule and associated standards to regulate stock access to rivers in Open Space 3 Zone. The Panel has adopted that recommendation. As a consequence of considering the matter above, it is clear

⁵⁵ Forest and Bird (715.394 and .436).

⁵⁶ Section 42A Report, Reply to Evidence, page 32.

to the Panel that an equivalent discretionary activity rule is also warranted for the Open Space 3 Zone for consistent management and to manage the potential adverse effects on water quality.

83. A new Discretionary Activity rule is inserted under heading 2.10as follows:

[R]

2.10.3 Livestock entering onto or passing across the bed of a lake.

84. A new Discretionary Activity is inserted as 3.6.13, 4.6.14 and 19.4.2 as follows:

[R]

Livestock entering into or passing across a Significant Wetland.

85. A new Discretionary Activity rule is inserted under heading 16.6 as follows:

[C]

16.6.12 Livestock entering into the coastal marine area.

Open Space 3

86. In Topic 7, the request made by the Council to add livestock access provisions in the Open Space 3 Zone was considered. The decision on this submission point is addressed in this decision for completeness.

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87. The report writer recommended a permitted activity rule and corresponding standards regulating livestock access to rivers flowing through land zoned Open Space 3.

Consideration

88. On reference to the zoning maps in Volume 4 it is common for public land adjacent to rivers⁵⁷ to be zoned Open Space 3. These areas can be extensive in a South Marlborough context running along many of the larger river systems. And typically the land bordering the Open Space 3 is farmland. It is therefore reasonable to assume that stock could access rivers via land zoned Open Space 3. The recommendation of the report writer is therefore appropriate in order to ensure a consistent approach to managing the effect of stock access to rivers.

Decision

89. Insert a new Permitted Activity rule:

[R]

3.1.21. Livestock entering onto, or passing across, the bed of a river.

⁵⁷ Crown land administered by LINZ or DOC or land administered by the Council

3.3.21. Livestock entering onto, or passing across, the bed of a river.

3.3.21.1. The entering onto or passing across the bed of a river of stock must not involve intensively farmed livestock if there is water flowing in the river.

3.3.21.2. After reasonable mixing, the entering onto or passing across the bed of a river by livestock must not cause any conspicuous change in the colour or natural clarity of a flowing river due to sediment or sediment laden discharge originating from the activity site.

3.3.21.3. After reasonable mixing, the entering onto or passing across the bed of a river by livestock must not result in the water quality of the river exceeding the following:

(a) 2mg/l carbonaceous BOD₅;

(b) 260 Escherichia coli (E. coli)/100ml

Definitions

Intensively farmed livestock

90. The definition of 'Intensively farmed livestock' in the notified plan is as follows:

Intensively farmed livestock means:

(a) *cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops;*

(b) *dairy cattle;*

(c) *farmed pigs.*

91. There have been many submissions received on this definition and the content of this definition is significant as it determines what for some is the difference between a Permitted and a Prohibited Activity.⁵⁸

92. Two submissions support the definition and seek its retention as notified.⁵⁹

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93. While the report writers have individually assessed the submissions on the definition of 'intensively farmed livestock', given the divergent views on the matter, a summary seems appropriate, along with their overall view on the definition. No single submission sought

⁵⁸ S and R Adams (321.4), BRIL (462.41), Willowgrove Dairies Ltd (1237.5), Middlehurst Station Ltd (970.24), Beef and Lamb (459.68), Federated Farmers (425.404), G Barnett (1258.1), Flaxbourne Settlers Association (712.21), S MacKenzie (1124.20), NZ Deer Farmers (991.1), V and D Wadsworth (201.4), J Stevens (256.1 and .3), K Loe (454.64), Fonterra (1251.91), Fish and Game (509.4), J Hickman (455.68), G Mehlhopt (459.68), Landcorp (294.1), B and C Leov submissions (340.1, .2 and .3).

⁵⁹ Wilhelmus/Ormond (1035.2) and Forest and Bird (715.424).

specific relief that the report writers recommend should be accepted as a result of submissions.

94. The submissions on '(a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops' seek the following:
- removal of (a) entirely;
 - removal of 'grazed on irrigated land or';
 - removal of 'deer; and
 - an exclusion in (a) for short-term breakfeeding.
95. The submissions on '(b) dairy cattle' seek the following:
- amend to read '(b) dairy cattle located on milking platforms';
 - amend to read '(b) lactating dairy cattle; and
 - amend to read '(b) dairy cattle (excluding adult cattle).
96. There are no submissions seeking change or removal of '(c) farmed pigs' from the definition.
97. Other submissions sought the following changes:
- essentially remove the definition as the provisions should apply to all stock;
 - add all stock except low density sheep;
 - add sheep;
 - add lowland beef cattle.
98. After assessing the submissions, the report writers did not provide a firm recommendation on what the definition for 'intensively farmed livestock' should be at the time of writing the Section 42A Report. However, the following views were expressed at the outset of the Reply to Evidence when the definition of 'intensively farmed livestock' was again addressed:
- The general consensus seems to be that (a) as it relates to breakfeeding for beef cattle should remain and the writers agree with this.
 - With regard to deer, the writers are of a view that in higher densities and where wallowing may occur there are concerns that need to be addressed, but perhaps there are alternatives to the current provision in (a).

- The writers do not agree with the removal of the term ‘grazed on irrigated land’ unless it is replaced by some alternative method of capturing higher density stock numbers.
- With regard to (b), the writers do not agree with adding ‘lactating’ or excluding adult dairy cattle. The writers may be open to relating (b) to a milking platform, if dairy cattle that are off the milking platform are still picked up where in higher densities.
- The report writers do not agree with the provisions applying to all stock, however consider that there may be some merit in including sheep in some manner and potentially all beef cattle (not just on irrigated land) in lowland areas.⁶⁰

99. Multiple submitters presented on the relative effect on water quality of different livestock managed under different circumstances. In the Reply to Evidence post hearing summary, the report writers provided the following:⁶¹

- *No specific recommendation was given in the s42a, however after hearing the evidence we offer the following –*
 - (a) is amended to remove deer on irrigated land;*
 - (a) is amended to separate out the break fed component, which remains applicable to beef and deer for winter feeding but also has sheep added for breakfeeding at any time;*
 - The remainder of (a) is either retained as beef grazed on irrigated land but ‘irrigated land’ is defined, or ‘on irrigated land’ is replaced with beef grazed on ‘lowland areas’ and lowland areas are mapped in the MEP;*
 - (b) is retained as notified;*
 - (c) is amended to add waterfowl.*
- *With all the above taken into account, the amended definition for Intensively Farmed Livestock would be –*
 - means:*
 - (a) cattle grazed on irrigated land [defined] OR cattle grazed on lowland areas [mapped];*
 - (b) dairy cattle;*
 - (c) farmed pigs, and waterfowl;*

⁶⁰ Section 42A Report, paragraphs 92, 95-99.

⁶¹ Section 42A Report, Reply to Evidence, pages 16-17.

(d) cattle and deer contained for breakfeeding of winter feed crops;

(e) sheep contained for breakfeeding.

- *Changes to other provisions to reflect the above –*

A new Discretionary Activity in Chapters 2 (riverbed rules), 3 and 4 – Deer entering onto, or passing across, the bed of a river.

Amend Standards 2.9.9.1, 3.3.21.1 and 4.3.20.1 as follows – The entering onto or passing across the bed of a river of ~~by~~ stock must not involve intensively farmed livestock or deer if there is water flowing in the river.

Consideration

100. After considering the recommended options provided by the report writers, (which inter alia involved suggestions of considering a definition of ‘irrigated land’ or use of ‘lowland areas’ with those being mapped in the PMEP), the Panel concluded those were not workable outcomes for a definition to be used in a prohibited status activity rule. Such rules require clear unambiguous language so that farmers have clear direction as to what they are prohibited from doing with their stock, and are not placed at risk through ambiguity.
101. The Panel is concerned that if it now attempted such a definition of ‘irrigated land’, or attempted to map ‘lowland areas’, (which at this late stage could only be done at a broad scale), each of those alternatives could result in ambiguity or uncertainty when applied in the field in particular situations or particular locations.
102. Furthermore, no suggested wording has been provided for a definition of ‘irrigated land’, and no indicative mapping of ‘lowland areas’ has been provided in the original s.42A report or the notified Plan upon which submitters could have responded.
103. The final point in those recommended options for consideration which the Panel does not accept relates to the suggested inclusion of ‘waterfowl’. The Panel did not receive any detailed evidence as to that activity sufficient to warrant trying to analyse its effects, or the practical workability of fencing of waterfowl out of waterbodies, so it decided not to include them in the definition.
104. The Panel concluded, however, that parts of the suggested changes by the report writers required further consideration as to each type of stock involved:

Beef cattle, deer and sheep – recommended to be included but only if being breakfed

Dairy cattle – recommended to be included at any time

Farmed Pigs – recommended to be included at any time

105. It is timely at this stage to once again set out the notified version of the definition in the Plan which was:

Intensively farmed livestock means:

- (a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops;*
- (b) dairy cattle;*
- (c) farmed pigs.*

106. The final recommended version in the Reply to Evidence, therefore, no longer retains reference to breakfeeding on ‘winter feed crops’. We accept that the key point is that it is the activity of ‘containing’ stock for ‘breakfeeding’ which causes the intensification of stock at a particular location. It is that intensification of beef cattle, deer or sheep, which increases the adverse effects on water quality if stock have access to water bodies, as compared to extensive grazing of those classes of stock. So we accept that change because the actual nature of the breakfeed crop is not the determining factor.

107. Two further minor drafting matters need attention. The recommended version in error has transposed the ‘breakfeeding’ to a location at the front of the definition –

- (a) breakfeeding of cattle, deer or sheep;*

108. The definition is one of stock, not breakfeeding, so the Panel has reverted to the notified wording which correctly addresses the type of stock being ‘contained for breakfeeding’. The final point to be made is that the word ‘farmed’ is unnecessary before ‘pigs’, as the phrase ‘intensively farmed livestock’ already has that word ‘farmed’ in it.

Decision

109. The definition for ‘Intensively Farmed Livestock’ is amended as follows:

Intensively farmed livestock means:

- ~~*(a) cattle or deer grazed on irrigated land or contained for breakfeeding of winter feed crops;*~~
- (a) breakfeeding of cattle, deer or sheep which are contained for breakfeeding;*
- (b) dairy cattle;*
- (c) farmed pigs.*