Proposed Marlborough Environment Plan

Topic 17: Subdivision

Hearing dates:	30 April 2018 – 2 May 2018
S42A Report Writer:	Ian Sutherland
Conflicts of Interest:	Commissioners Shenfield, Arbuckle and Crosby
Interim decision:	None

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

List of Abbreviations

MDC	Marlborough District Council
MSRMP	Marlborough Sounds Resource Management Plan
NZCPS	New Zealand Coastal Policy Statement
PMEP	Proposed Marlborough Environment Plan
RMA	Resource Management Act 1991
WARMP	Wairau/Awatere Resource Management Plan

Submitter abbreviations

KiwiRail	KiwiRail Holdings Limited
NZIS	New Zealand Institute of Surveyors
NZTA	New Zealand Transport Agency

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 Panel[1].

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.

Subdivision

[New] Rule 24.3.1.

8. One submitter opposes the subdivision rules as there is no reference to landscaping requirements for subdivision.[2] She requests that a rule be included which requires a street tree to be planted on the berm adjacent to a new allotment, or a dedicated grass berm or street trees with a minimum area of $9m^2$ be provided within urban residential, business and industrial developments with no intrusion of underground or overhead services within that space. A related submission also requests that an additional matter of control be added:

> *4.3.1.27. Landscape planting and development including land shaping and tree species and location and ornaments, street furniture and pathways and other structures within the road reserves and other part of the subdivision proposed to be vested in Council or held under corporate body or other community ownership and administration within the subdivision that are required by Rule 24.1.*

9. Another submitter expresses similar concerns to Helen Ballinger, but goes further in also requesting that a provision be included that any trees removed as part of a subdivision, shall be valued using a nationally recognised standard valuation method with compensation paid for the loss of the tree and the costs for a replacement tree.[3] He also refers to a 'Code of Practice for subdivision' (presumably referring to MDC's Code of Practice for Subdivision and Land Development) which relates to landscaping, design and practice.

10. Another submission includes matters relating to the subdivision rules and expresses similar concerns about the lack of matters of control relating to landscape quality, urban design or public safety.[4] Of the list of matters he refers to, the only matter that is relevant to the subdivision chapter is: *Any new subdivisions shall include trees planted within the road reserves and the applications for consent to subdivide shall include a landscape planting and land shaping plan including street trees at a minimum of one tree located within the area of the road reserve that is adjacent to each lot within the subdivision.*

Section 42A Report

11. The report writer responds to the following issues raised by submitters relating to landscape:

    - Landscaping on new roads, reserves and esplanade areas created as part of a subdivision is much easier to control than the landscaping of new allotments or existing

[2] Helen Ballinger (351.25, .26).
[3] Robin Dunn (352.1).
[4] Mark Bachelor (263.2).

roads because the subdivider does not know where any future dwellings would be placed on new allotments.

- Landscaping on existing road frontages makes a little more sense but this would only apply to infill subdivision and it is not often possible to locate trees in the road reserve adjacent to new lots due to underground services or lack of space.
- The PMEP already contains some provisions relating to landscaping. These are in the Business and Industrial Zones and supported by policy 12.6.2(c) '*providing planting on road reserve*' and 12.6.2(d) '*requiring integration of landscaping on individual allotments to soften the appearance of buildings fronting the road in areas outside the streets identified in Appendix 18'*.
- The Use of the Coastal Environment (13), Use of the Rural Environment (14), and the Residential section within Urban Environment (12) refer to the need to '*maintain and enhance character and amenity values*' but do not specifically refer to landscaping as being required.
- In relation to Chapter 7 of the Code of Practice for Subdivision and Land Development, as a result of its requirements, Appendix 7 PMEP requires landscape works proposed on road reserves to be provided with subdivision applications.
- As a result, it is practical to require the subdivision rules to include a matter of control requiring landscaping to be compulsory on new roads rather than the current voluntary requirement under the MSRMP and WARMP. However he had reservations about including specific design parameters in Chapter 24 where design conflicts may arise from the specificity and default to discretionary activity.
- To support the recommended new landscaping matter of control, it is appropriate to have additional policies in the Urban Environment, Coastal Environment Rural Environment chapters of the PMEP, and each new policy may need an explanation to help inform sustainable management.[5]

Consideration

12. The Panel has decided that appropriate landscaping of new roads, reserves and esplanade areas can be beneficial for the overall outcome of subdivision activity. Accordingly, the Panel decided the relevant policies should be amended to ensure that aspect of amenity enhancement was addressed at subdivision stage. The report writer recommended that the

[5] Section 42A Report, paragraphs 88-91.

Panel may need to provide further explanation to help inform sustainable management. The Panel is of the view that the amended policies are self-explanatory.

Decision

13. The following rule is inserted into the PMEP:[6]

24.3.1.26. Landscape works proposed on road reserves, other land to vest as reserve, and esplanade strips.

14. As a consequential change to support the above new rule, Policy 12.2.1 is amended as follows:

Policy 12.2.1 - The character and amenity of residential areas within Marlborough's urban environments will be maintained and enhanced by:

(a) providing for a range of areas with different residential densities and lot sizes, including for infill, greenfield and large lot developments;

(b) ensuring there are residential areas within walkable distance to community, social and business facilities;

(c) providing for sufficient open spaces and parks that are equitably distributed, ~~and~~ integrated, accessible and safe, and vary in size, form and purpose ~~open spaces and parks~~ to meet people's recreational needs;

(d) providing for walking and cycling linkages to support connected neighbourhoods and communities, active transport options, and recreational opportunities;

(~~d~~ e) higher standards of urban design that positively contributes to public space amenity and safety, and visual interest ~~and amenity~~;

(~~e~~ f) ensuring people's health and wellbeing through good building design, including energy efficiency and the provision of natural light; and

(~~f~~ g) effective and efficient use of existing and new infrastructure networks.

15. Consequential changes have also been made to policies in Chapter 13. Policies 13.5.6 and 13.18.4 are amended as follows:

Policy 13.5.6 Maintain the character and amenity values of land zoned Coastal Living by the setting of standards that reflect the following:

… (j) the need for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.

[6] Section 42A Report, paragraph 97.

Policy 13.18.4 The environmental effects from activities within Port, Port Landing Area and Marina Zones are avoided, remedied or mitigated through the setting of standards so that:

… (g) appropriate landscaping of new roads, reserves and esplanade areas is created by subdivision.

16. A further consequential change has been made to Policy 14.5.6 and it is amended to read:

Policy 14.5.6 Where resource consent is required within the Rural Living Zone, ensure that residential development and/or subdivision is undertaken in a manner that:

… (f) provides for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.

Rule 24.1.14

In circumstances where a connection to a Council owned reticulated water supply is not possible, the applicant must provide for a minimum of 2m^3 of potable water per day for each proposed allotment (except for allotments to vest as reserve or road).

17. Three submitters support the rule in part.

18. Another submitter observes that occasionally there are 'allotments' that are amalgamated and those allotments do not require water connections.[7] The submitter seeks that the rule should be amended so that the word 'allotment' is substituted with 'Certificate of Title'.

Section 42A Report

19. In terms of the NZIS submission, the report writer partly agrees with the submitter while pointing out that the PMEP correctly uses the term 'Computer Register' instead of the old term 'Certificate of Title'. The key purpose of the submission, nonetheless, is to substitute a term for 'allotment'.

20. The purpose of the rule is to ensure that there is a sufficient water supply for a dwelling where there is no connection to a Council owned reticulated supply. A computer register can contain more than one allotment and under the current wording of the rule this would mean that the applicant would have to provide multiple quantities of 2 m^3/day to reflect the number of lots on one computer register, but only one dwelling is permitted on the site (other than the Urban Residential 1 Zone).

21. The writer therefore recommends that the rule should be amended to refer to 'computer register' instead of 'allotment' to be consistent with the zone rules.[8]

Consideration

[7] NZIS (996.31).
[8] Section 42A Report, paragraphs 141-144.

22. The PMEP is a modern document and should reflect modern legal and statutory terminology wherever possible. The term 'record of title' is a modern term reflecting the digitalisation of the Land Transfer system and should be applied wherever relevant in the Plan. Its use in preference to the word 'allotment' or the phrase 'certificate of title' is agreed to by the Panel.

Decision

23. Rule 24.1.14 is amended as follows:

24.1.14. In circumstances where a connection to a Council owned reticulated water supply is not possible, the applicant must provide for a minimum of 2m^3 of potable water per day for each proposed ~~allotment~~ Record of Title (except for allotments to vest as reserve or road).

Rule 24.1.16

In accordance with Section 230 of the RMA, in respect of any subdivision of land in which any allotment of less than 4 hectares is created, an esplanade reserve or esplanade strip of 20m must be provided, unless the property adjoins the Waikawa Marina or Picton Marina.

24. Mr T Hawke a Marlborough surveyor sought that the rule be amended to change the word 'must' to read 'may', or a controlled activity approach for waivers, so as to more readily enable waivers of the esplanade reserve or strip requirements in s 230 of the RMA. The NZIS submission on this rule sought similar relief.

Section 42A Report

25. The report writer was opposed to that course because of a range of complications the report described, but particularly for the very strong reason that s 6 RMA provides that maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance.

26. The report writer pointed out that s 230(3) RMA provides for rules to enable waivers and that if a full-width reserve is not provided the outcome of the rules regime in the PMEP would mean that the proposed subdivision would default to a discretionary activity under Rule 24.5.1 which is the general non-compliance provision which provides:

> *24.5 Application must be made for a Discretionary Activity for the following:*
>
> *24.5.1. Any subdivision of land that does not comply with Rules 24.1.1 to 24.1.18.*

27. In summary the report stated:

> *154) If the process of waiving or reducing the esplanade width is to be done through a subdivision rule then there has to be certainty that that outcome is the appropriate outcome in every case which will be very difficult to achieve. So while it is technically possible to provide a complete list of waterbodies (those for public access and those for*

conservation value) within the MEP, this would not be an easy task, and I believe would be beyond the scope of these submissions.

28. The report writer then concluded that it was preferable for a site by site assessment to be made as to whether a waiver was appropriate and that could be best achieved by the default discretionary activity process. Accordingly, the report recommended rejection of any amendment to the notified rules in respect of this issue..

Consideration

29. The Panel agrees with the general approach taken in the report that s 6 and s 230 RMA both emphasise the importance of the provision of esplanade reserves or strips to provide for access or conservation purposes. It also agrees that any waiver or reduction sought from that general proposition requires individual site by site assessment.

30. The Panel considers, though, that while the effect of the provisions of rule 24.5.1 do enable discretionary activity applications as the avenue for waiver or reduction in width, that could be made more specific if the rule actually said that rather than the avenue for that being expressed generally in relation to subdivisions not complying with standards.

31. That can be readily provided for by a new discretionary activity rule making that avenue open expressly.

Decision

32. Insert a new rule at 24.5.2 as follows:

[D]

24.5.2 Any waiver or reduction of the esplanade reserve or esplanade strip requirements of Rules 24.1.16, 24.1.17 or 24.1.18 in accordance with Section 230(3) of the RMA.

24.5.3.~~2.~~ Any permitted activity, controlled activity or restricted discretionary activity subdivision of land that does not meet the applicable standards.

24.5.4.~~3.~~ Any subdivision of land not provided for as a permitted, controlled or restricted discretionary activity.

Standard 24.3.1.4

The land being subdivided must not have direct access to or from a State Highway.

33. KiwiRail supports the rule in part, but seeks that it be amended to include '*or via a level crossing*'. To ensure that the adequacy and safety of a level crossing to accommodate additional traffic is able to be considered.[9]

34. NZTA supports in part the standard but also has concerns about new subdivisions on roads that lead to a state highway because of safety concerns at intersections from increased traffic.[10] It requests to add '*or access to a road that leads to a state highway'* added to the standard. This is opposed by NZIS as it is too vague and ambiguous, as all roads lead to a state highway.[11]

Section 42A Report

35. The report writer identifies that media coverage around the country identifies that there are obvious potential safety issues arising from uncontrolled level railway crossings, particularly with private level crossings. Even if such accidents in Marlborough are low, they could still result in serious or fatal outcomes.

36. The writer therefore considers it appropriate to include wording as requested to enable subdivisions to be declined should Council not be satisfied that potential adverse effects on the land transport network will be minimised, as sought by Objective 17.4 and 17.AER.2.

37. The only reservation the report writer has with the relief sought is that the wording proposed is not perfectly clear. Some users of the PMEP may find it ambiguous or confuse reference of a level crossing with vehicle entranceways, or be unsure if it relates to subdivisions that are down the road from a level crossing. The writer has recommended slightly different wording to help clarify when it applies, and to be consistent with the existing wording in relation to state highways.

38. The report writer expects that the concerns from NZTA relate to larger controlled activity subdivisions on no exit roads that intersect a state highway having the potential to create adverse traffic effects. Such proposals should default to being a discretionary activity so that either appropriate conditions can be imposed, or that the activity could be declined if mitigation measures were not possible. The current proposed wording in NZTA's submission, however, does not reflect this, and the report writer therefore agrees with NZIS that the proposed wording is too vague and could be taken as meaning any road, and include urban subdivision.

[9] KiwiRail (873.171).
[10] NZTA (1002.221).
[11] NZIS, further submission to 1002.221

39. The report writer acknowledges that he has been unable to craft any suitable alternative wording that may meet NZTA's needs. The company needs to narrow down the criteria with new wording so that only the subdivisions that are likely to create an issue with state highway intersections are caught by the rule before he could consider recommending any change. Even then Council has the ability to impose conditions under Controlled Activity Standard 24.3.1.15 if deemed necessary without the need to impose further restrictions as proposed by NZTA.

Consideration

40. As to the NZTA's request to expand the restriction on subdivision of any property with road access leading to a State Highway, at the hearing NZTA proposed alternative wording options. In the Panel's view the overall outcome of those options was still to cause any proposed subdivision of a property with access indirectly to the state highway system defaulting to a discretionary activity. The Panel agreed with the concerns expressed by the NZIS and the report writer that was unnecessarily restrictive. The controlled activity status for other subdivisions can provide the necessary consideration of traffic effects and conditions needed to address those effects can be imposed. The rule defaults proposed subdivisions with direct access to state highways to discretionary activity which is a reasonable level of restriction justifying detailed consideration of a recognised traffic risk.

41. In terms of the KiwiRail request the evidence is clear that access directly across railway lines which are not controlled by barriers carries a level of increased risk which should not be allowed as a controlled activity.

Decision

42. The Panel rejects the relief sought by NZTA.

43. Rule 24.3.1.4 is amended as follows:

The land being subdivided must not have direct access to or from a State Highway<u>, or have direct access to or from a level railway crossing</u>.

Standards 24.3.1.17 and 24.3.1.22

44. Omaka Valley Group supported the provisions. Tony Hawke supported the rule in part, seeking an exemption be added for esplanade reserves or strips on minor boundary adjustments. NZIS supported his proposal[12].

Section 42A Report and consideration

45. The Panel agreed with the report writers recommendations to amend Standard 24.3.1.22 to include consideration of sediment discharges and for the insertion of a new standard 'Controls

[12] Omaka Valley Group (1005.27), Tony Hawke (369.13), NZIS further submission on 369.13

to mitigate the adverse effects on the cultural values of tangata whenua iwi' as set out in the Addendum to the Right of Reply.

46. The Panel also considered the inclusion of additional wording to Standard 24.3.1.17 was required to ensure the potential for the enhancement of indigenous biodiversity and so that the manner in which that could be achieved was within the Council's specified control on subdivisions.

47. Finally, the Panel decided as part of the various requests from some of Marlborough's tangata whenua for rules and standards to recognise their cultural values that a new standard enabling controls to protect those values is inserted in the subdivision standards.

Decision

48. Standard 24.3.1.17 is amended to read:

24.3.1.17 The provision of esplanade reserves and esplanade strips <u>including enhancement of indigenous species</u>.

49. Standard 24.3.1.22 is amended as follows:

Controls to mitigate the adverse effects of subdivision construction, <u>including effects on water quality from sediment discharges.</u>

50. A new standard in included as 24.3.1.27, as follows:

(x) Controls to mitigate the adverse effects on the cultural values of Marlborough's tangata whenua iwi

Rule 24.4.3

Subdivision of land located within 90m of the National Grid Blenheim Substation on Sec 1 SO 4246, Lot 1 DP 8572 and Pt Sec 1 SO 6959 (or any successor).

Section 42A Report

51. The opposing submission made by Karen and John Wills on related Standard 24.3.1.5 ('*The land being subdivided must not be within 90m of the National Grid Blenheim Substation'*) identified that 'the restrictions prescribed by these rules are more than required to provide the protections needed by the National Grid … particularly as the restrictions relate to the submitters' residential property at 121 Old Renwick Road'[13]. As a result of further investigations on this submission and the evidence on this controlled activity standard, Transpower proposes a restricted activity status for subdivisions within 15 metres of the Blenheim Substation and a controlled activity for subdivisions between 15 and 90 metres of the Blenheim Substation.

[13] Karen and John Wills (66.2).

52. Transpower's investigations considered the company's requirement for a restricted discretionary activity within 90 metres of the Blenheim Substation on the basis that potential electrical risks would be overly onerous.[14] Nevertheless, the 90 metre setback manages other adverse effects including reverse sensitivity effects. Having considered these, and the costs to owners of neighbouring properties, it was Ms McLeod's conclusion that the extent of regulation on subdivision (and land use) could be reduced.

Consideration and decision

53. After hearing the evidence of Ms McLeod[15], together with the recommendations of the report writer,[16] the following amendments she proposes to the provisions of the PMEP are accepted for the reasons given:

54. Rule 24.2.1 is retained as notified.

55. Controlled Activity Standard 24.3.1.5 is deleted.

56. A new controlled activity rule is inserted with an additional matter added by the Panel with cross-referencing to the other matters:

24.3.3. Except as provided for by Rule 24.2.1 and Rule 24.4.1, subdivision of land within 90m of the designation boundary of the National Grid Blenheim substation:

Standards and terms:

24.3.3.1. All allotments shall identify a building platform for a principal building or any dwelling that is to be located greater than 15 metres from the designation boundary of the National Grid Blenheim substation.

Matters over which the Council has reserved control:

24.3.3.2. The extent to which the proposed development design and layout on the proposed allotments enables appropriate separation distances between activities sensitive to National Grid lines and the substation.

24.3.3.3. The risk of electrical hazards affecting public or individual safety, and the risk of property damage.

[14] Transpower, Ainsley McLeod, Evidence, paragraph 21, citing Andrew Renton, Senior Principal Engineer, Transpower, pers.comm., 12 March 2018.
[15] Transpower, Ainsley McLeod, Evidence, Attachment C, page 1.
[16] Section 42A Report, second Reply to Evidence, page 24-16.

24.3.3.4. Measures proposed to avoid potential adverse effects, including reverse sensitivity effects, on the operation, maintenance, upgrading and development of the substation.

24.3.3.5. The matters set out in 24.3.1.8 to 24.3.1.27.

57. The following additional standard is inserted in Rule 24.4.1.:

24.4.1.10. For allotments within 90m of the designation boundary of the National Grid Blenheim substation, all allotments shall identify a building platform for a principal building or any dwelling that is located greater than 15 metres from that designation boundary.

58. Rule 24.4.3 is amended so that it acts to determine status (such as restricted discretionary activity) in the event of non-compliance of the new controlled activity rule or new restricted activity standard for the Urban Residential-Greenfields Zone, as follows:

24.4.3. Subdivision of land located within 90m of the designation boundary of the National Grid Blenheim Substation that does not comply with Rules 24.3.1 or 24.4.1.10.~~on Sec 1 SO 4246, Lot 1 DP 8572 and Pt Sec 1 SO 6959 (or any successor)~~.

59. Standard 24.4.3.4 is amended by removing the words 'or mitigate' as follows:

24.4.3.4 Any other measures proposed to avoid ~~or mitigate~~ potential adverse effects, including reverse sensitivity effects, on the substation.

Rule 24.4.4

Subdivision of land within the National Grid Corridor.

Matters over which the Council has restricted its discretion:

24.4.4.1 The matters set out in 24.3.7.1 to 24.3.7.17.

24.4.4.2 The extent to which the subdivision may adversely affect the operation, maintenance, upgrade and development of the National Grid.

24.4.4.3 Technical details of the characteristics and risks on and from the National Grid.

24.4.4.4 The location, design and use of the proposed building platform or structure as it relates to the National Grid transmission line.

24.4.4.5 The risk of electrical hazards affecting public or individual safety, and the risk of property damage.

24.4.4.6 The nature and location of any vegetation to be planted in the vicinity of the National Grid transmission line.

60. Transpower is concerned that the rule does not fully give effect to Policies 10 and 11 of the NPSET to the extent that the proposed rule does not 'avoid' reverse sensitivity effects. The company requests the following:

- a minor amendment to ensure that any subdivision undertaken by Transpower as a utility can still be a permitted activity under Rule 24.2.1;
- an additional standard be added that requires the location of the dwelling on the proposed allotments be identified in the application;
- that an additional standard be added that requires access to National Grid assets to be maintained;
- include reference to compliance with New Zealand Electrical Code of Practice (NZECP 34:2001) in relation to the matters Council has restricted it discretion to[17]; and
- a non-complying activity status be added for any subdivision that does not meet the above standards.[18]

Section 42A Report

61. Transpower's submission seeks a limited amendment to Rule 24.4.4 to clarify that the rule does not apply to subdivision of land associated with utilities.[19]

62. The report writer supports changing Rule 24.4.4 to exclude utility subdivisions as he doubts that the proposed rule was intended to capture subdivision. There will be no impact on any other person compared to other utility subdivisions that could be captured by subdivisions undertaken under Rule 24.2.1. The report writer also does not support the need for any subdivision that does not meet these standards defaulting to a noncomplying activity, and in his opinion defaulting to a discretionary activity under existing Rule 24.5.2 is sufficient and will still enable Council to decline subdivision applications if needed.[20]

Consideration

63. The Panel agrees that utility subdivision activity was not sought to be included in Rule 24.4.4 and that needs to be clarified by an amendment to that rule.

64. As to the other requests made by Transpower the Panel did not accept reference to the NZCEP was necessary as compliance with that is required by statutory regulation. It also agreed with the report writer's view that default to non-complying status was unnecessary. The default to discretionary activity status for non-compliance with standards is the consistent approach taken in the Plan, and in the event of serious non-compliance in terms of effects on the Grid

[17] Transpower NZ (1198.149)
[18] Transpower (1198.150 and .151).
[19] Transpower, Ainsley McLeod Evidence, paragraphs 28-29.
[20] Section 42A Report, paragraph 331.

discretionary activity consent could be declined. The other matters sought by Transpower are accepted as being reasonable requests and amendments are made accordingly.

65. The Panel notes that Standard 24.4.4.1 in the PMEP as notified, incorrectly identifies 24.3.7.1 to 24.3.7.17 as the matters over which Council has restricted its discretion. The matters should reference 24.3.1.9 to 24.3.1.26. This error has been corrected as part of this decision.

Decision

66. Rule 24.4.4 is amended as follows:[21]

24.4.4. Except as provided for by Rule 24.2.1, ~~S~~subdivision of land within the National Grid Corridor

67. A new title and new standards are inserted as follows:

Standards and terms

24.4.4.1. All allotments shall contain an identified building platform for the principal building and any dwelling/sensitive activity to be located outside the National Grid Yard.

24.4.4.2 Access to National Grid assets shall be maintained.

68. The existing standards are amended as follows:

Matters over which the Council has restricted its discretion:

24.4.4.~~1~~3 The matters set out in 24.3.1.8~~7.1~~ to 24.3.1.28.~~7.17.~~

24.4.4.~~2~~4 The extent to which the subdivision may adversely affect the efficient operation, maintenance, upgrading and development of the National Grid.

24.4.4.~~3~~5 Technical details of the characteristics and risks on and from the National Grid.

24.4.4.~~4~~6 The location, design and use of the proposed building platform or structure as it relates to the National Grid transmission line.

24.4.4.~~5~~7. The risk of electrical hazards affecting public or individual safety and the risk of property damage.

24.4.4.~~6~~8 The nature and location of any vegetation to be planted in the vicinity of the National Grid transmission line.

[New] Rule 24.4.5 – Boundary Adjustment

[21] Transpower, Ainsley Jean McLeod Evidence, Attachment C, pages 1-2.

69. One submitter seeks to have boundary adjustments specifically provided for as a specific plan, similar to Standard 27.3.3.1.3 of the MSRMP as follows:[22]

> *27.3.3.1.3 Boundary Adjustment*
>
> *The Council may consent to the re-subdivision of existing lots where one or more lots do not comply with the minimum area requirements as set out in Rules 27.2.1 and 27.3.1 provided that the following standards are met. The proposed subdivision shall not create additional allotments or new titles (excluding any reserves) which are smaller than those the subject of the application unless:*
> *a) Each lot provides sufficient area for a dwelling meeting the standards for permitted activities;*
> *b) Any significant environmental features on the lot are protected through covenants or similar means as a consequence of the subdivision; and*
> *c) Access and servicing, as required by the Plan, is available to each lot.*
> *Allotments comprised in the application must be contiguous in all zones except in the Rural Zone where they may be separated by a road, river, rail line or reserve.*

70. NZIS requests the retention of the existing subdivision Rule 28.3.7 from the WARMP and Rule 27.3.3.2 from the MSRMP, with boundary adjustments to be a permitted activity if certain standards are met and the new site area does not differ by 10% net area, or to be a controlled activity if the standards are not met.[23]

71. Okiwi Bay Limited refers to contiguous boundary adjustments being a permitted activity under the recent Resource Legislation Amendment Act 2017.[24]

Section 42A Report

72. The report writer considers:

- Providing boundary adjustments to be a permitted activity would be problematic with no ability to make an assessment under s 106 for natural hazards or impose conditions. Most boundary adjustments are already approved as a discretionary activity under the WARMP and MSRMP, and recommended as such by the PMEP. If they were a controlled activity there would be no ability for the Council to decline them. Under the PMEP the only difference will be there are no standards or assessment criteria so any determination will be based on adverse effects, objectives and policies. Introducing a

[22] Rikihana Clinton Bradley (436.1).
[23] NZIS (996.33).
[24] Okiwi Bay Limited (458.3).

more lenient activity status may introduce tension and difficulty to achieve the anticipated results listed in the PMEP.

- Okiwi Bay's reference to contiguous boundary adjustments being a permitted activity is incorrect – they may be confused with the reference in their identified legislation to permitted boundary activities which relate only to land use activities (recession plane encroachments).
- Okiwi Bay and NZIS also seek to retain the old special subdivision rules, and Rikihana Bradley wants the boundary adjustment rule maintained. There is no benefit in this because these rules will still be a discretionary activity under the PMEP. The objectives and policies in the PMEP have, if anything, tightened up a little on rural subdivisions so introducing a more lenient activity status for subdivisions is not recommended.
- Footnote 2 to Standard 24.3.1.2 of the PMEP, is intended to ensure that there is a suitably sized and shaped building site available on each allotment to provide for a range of options for dwelling shape and location for new owners (examples given of previous problems with controlled activities in the WARMP). These problems could be avoided as a difficult subdivision can default to a discretionary activity where the applicant would need to obtain appropriate land use consents at the same time as the subdivision, or provide alternatives, to satisfy Council.[25]
- Footnote 3 is seen by the report writer as intending to solve a problem where a right of way to a rear allotment was included in the total road frontage width of the front allotment. In these situations it would mean that the usable area of land on the front lot would be narrower than anticipated by the PMEP. The footnote should be amended to clarify that the building shape factor must exclude rights of way.

73. A new rule is recommended to be inserted into the PMEP as follows:

24.4.5. Boundary Adjustments

24.4.5.1. Available in the Rural Environment Zone, excluding the Wairau Plain and Omaka Valley overlay areas

The Council may consent to the re-arrangement of boundaries between adjacent existing Computer Registers where one or more proposed allotments do not comply with the minimum area requirements as set out in Rule 24.3.1.2, provided that the following standards are met:

[25] Section 42A Report, paragraph 221.

Standards and terms:

24.4.5.2. The proposed subdivision shall not create any additional Computer Registers (excluding any reserves), or any additional permitted right to erect a dwelling.

24.4.5.3. All new allotments must demonstrate adequate access and servicing is available as required by the Plan, and each lot provides sufficient area for a dwelling meeting the standards for permitted activities in relation to building setback and/or recession plane controls.

24.4.5.4. Allotments comprised in the application may be separated by a road, railway, drain, water race, river or stream.

Matters over which the Council has restricted its discretion:

24.4.5.5. The extent that the boundary adjustment will result in adverse effects on productive land.

24.4.5.6. The extent that the boundary adjustment is likely to result in reverse sensitivity conflicts arising.

24.4.5.7. The matters set out in 24.3.1.8 to 24.3.1.27.

24.4.5.8. Amalgamation conditions.

Consideration

74. In terms of proposed boundary adjustment rule, the Panel notes that 'subdivision' has its own extended definition in s 218 RMA and does not qualify as a term for 24.4.5.2. Accordingly, the term 'subdivision' is amended to 'boundary adjustment' in 24.4.5.2.

75. In the Reply to Evidence the report writer provided examples of difficulties that had arisen from attempts to avoid the policy restrictions on the creation of new allotments in the Wairau Plains and Omaka Valley overlay areas and in the Coastal Environment Zone by use of boundary adjustment proposals. For those policy reasons which seek to restrict intensive residential use, those areas were recommended to be excluded from this new rule. The Panel agrees that the policy protection requires those exceptions.

76. We note that in one of the documents put to us, the word 'stream' had been deleted, but the report writer subsequently identified that 'stream' is included in s 2 RMA within the definition of 'water body'.

77. In terms of 'Matters over which the Council has restricted its discretion', the matters identified in 24.4.5.7 are in error. The numbers 24.3.1.8 to 24.3.1.27, require amending to read: *24.3.1.9 to 24.3.1.26.*

78. The report writer subsequently clarified that 'required by the Plan' in recommended Standard 24.4.5.3 equates to Rules 24.2.4, 24.1.14, 24.1.15 and Standard 24.3.1.3.

Decision

79. A new Rule 24.4.5 is inserted into the PMEP as follows:

24.4.5. Boundary Adjustments

24.4.5.1. Available only in the Rural Environment Zone, excluding the Wairau Plain and Omaka Valley overlay areas

The Council may consent to the re-arrangement of boundaries between adjacent existing Records of Title where one or more proposed allotments do not comply with the minimum area requirements as set out in Rule 24.3.1.2, provided that the following standards are met:

Standards and terms:

24.4.5.2. The proposed boundary adjustments shall not create any additional Records of Title (excluding any reserves), or any additional permitted right to erect a dwelling.

24.4.5.3. All allotments must demonstrate adequate access and servicing is available as required by Rules 24.1.4, 24.1.14, 24.1.15, and Standard 24.3.1.3, and each lot provides sufficient area for a dwelling meeting the standards for permitted activities in relation to building setback and/or recession plane controls.

24.4.5.4. Allotments comprised in the application may be separated by a road, railway, drain, water race, river or stream.

Matters over which the Council has restricted its discretion:

24.4.5.5. The extent that the boundary adjustment will result in adverse effects on productive land.

24.4.5.6. The extent that the boundary adjustment is likely to result in reverse sensitivity conflicts arising.

24.4.5.7. The matters set out in 24.3.1.8 to 24.3.1.28.

24.4.5.8. Amalgamation conditions.

Definition - Computer Register

80. Federated Farmers requests the term 'Computer Register' be deleted from the PMEP because:

a) it would not be understood by readers;

b) the definition does not enlighten the reader as to what it means;

c) it is not a term used by other Councils, nor in wide use; and

d) it will impact significantly on farming activities as the term sets out permitted limits for vegetation clearance and excavation amongst other activities.[26]

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81. The report writer recommends replacing 'Computer Register' with 'Certificate of Title'. This comes about through the change in definition due to old paper copies of titles being converted to electronic copies at Land Information New Zealand. LINZ changed the name of these records in 2001 to 'computer registers' including 'computer freehold registers', 'computer interest titles', 'computer unit title registers' and 'composite computer registers' – all relating to their various interests. Computer interest registers are for licences and leases that have a lesser interest in land then a computer freehold register, and the definition in the PMEP excludes them because they can often be created without Council approval.

Consideration

82. The Panel's decision above at paragraph 15 observed that the PMEP is a modern document and should reflect modern legal and statutory terminology wherever possible, which has changed since the Section 42A Report was prepared. The term 'record of title' is a modern term reflecting the digitalisation of the Land Transfer system and should be applied wherever relevant in the Plan. Its use in preference to the word 'allotment' or the phrases 'certificate of title' or 'computer register' is agreed to by the Panel.

Decision

83. The definition for Computer Register is replaced as follows:

Record of Title	*has the same meaning as in section 5 of the Land Transfer Act 2017 and, until a record of title is created for an estate or interest in land for which there is a computer register or certificate of title, includes the computer register or certificate of title*

Landscaping

84. Three submitters, Helen Ballinger, Robin Dunn and Mark Batchelor, sought that provision for landscaping is included in the subdivision rules in Chapter 24. The submitters all highlighted the importance of landscaping in providing for improved amenity outcomes. They felt that a means of achieving this outcome was for landscaping to be considered and required as part of the process of subdividing land.

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[26] Federated Farmers (425.389).

85. The report writer agreed that landscaping was an important matter to be considered as part of the subdivision consent process. In doing so, he highlighted that this can be practically achieved through works on what would become public domain (i.e., roads, reserves, esplanade reserves).

86. The report writer considered the existing policy framework and its provision for landscaping. He noted that the policies in Volume 1, Chapters 12, 13 and 14 placed emphasis on maintaining and enhancing character of urban, rural and coastal environments and the amenity values in those environments. Importantly in the context for his subsequent recommendations, the report writer pointed out that the policies did not specifically mention landscaping and the contribution landscaping makes to character/amenity values.

87. The report writer went on to recommend the addition of landscape works as a specific matter of control for Rule 24.3. Due to the lack of specific reference to landscaping in the notified policies, the report writer also recommended that landscaping be added to notified policies 13.5.6, 13.18.4 and 14.5.6.

Consideration

88. The Panel is in agreement with the submitters and the report writer with respect to the importance of landscaping as a matter of control when determining subdivision consent applications. On considering the notified policies referred to above and also Policy 12.2.1, it is clear that the Plan has placed significant emphasis on maintaining and enhancing the character and amenity values of urban, rural and coastal environments. A method for implementing this direction is to ensure that there is regard to landscaping at the time of subdivision. The subdivision of land typically acts as a precursor for land use change or the intensification of existing land use. It therefore presents an ideal opportunity to implement Policies 12.2.1, 13.5.6, 13.18.4 and 14.5.6 at an early stage. For this reason, the Panel agrees with the recommended addition to Rule 24.3. If this matter was not added, the Council could not impose conditions requiring landscaping works to occur.[27]

89. The Panel's view is that the exercise of control would be assisted through more specific policy guidance. The Panel concurs with the report writer in terms of the policies that require addition (13.5.6, 13.18.4 and 14.5.6). The Panel has considered the wording additions recommended by the report writer and agrees with the intent of that wording. However, the Panel believes that minor changes are required to the recommended wording for Policies

[27] Section 104A of the RMA

13.5.6 and 13.18.4 to provide for improved integration with the notified intent of those policies. Those changes are incorporated into the decision below.

90. The Panel noted the report writer's reference to the Topic 10 Section 42A Report in terms of equivalent recommendations to the notified wording of policy in Chapter 12 (Urban Environments).[28] Those recommended changes have been adopted by the Panel and therefore are not specifically referred to in the Topic 10 decision. The decision below includes those changes for completeness and to enable those changes to be considered alongside the equivalent changes for the rural and coastal environment policies.

91. Consideration was given to whether the Plan should go further than outlined above. The submitters did specify a number of prescriptive landscaping measures in their submissions. On balance, the Panel agreed with the report writer[29] that it is not appropriate to include prescription in the rule. That is because the environmental setting for the subdivision will be influential in determining the appropriate nature of any landscaping provision. It is therefore important to retain the flexibility for making this determination as part of the subdivision consent process. The Panel is confident that the matter of control recommended by the report writer, supported by the addition to the policies, will achieve this outcome.

Decision

92. Policy 12.2.1 is amended as follows:[30]

The character and amenity of residential areas within Marlborough's urban environments will be maintained and enhanced by:

(a) providing for a range of areas with different residential densities and lot sizes, including for infill, greenfield and large lot developments;

(b) ensuring there are residential areas within walkable distance to community, social and business facilities;

(c) providing for sufficient <u>open spaces and parks that are equitably distributed</u>, and integrated, <u>accessible and safe, and vary in size, form and purpose</u> ~~open spaces and parks~~ to meet people's recreational needs;

<u>(d) providing for walking and cycling linkages to support connected neighbourhoods and communities, active transport options, and recreational opportunities;</u>

[28] Topic 10 Section 42A Report, page 24-25
[29] Section 42A Report, page 17
[30] Note that this decision reflects the Panel's adoption of recommendations in the Topic 10 Section 42A Report at paragraphs 93 and 723.

(~~d~~e) higher standards of urban design that positively contribute to public space amenity, safety, and visual interest ~~and amenity~~;

(~~e~~f) ensuring people's health and wellbeing through good building design, including energy efficiency and the provision of natural light; ~~and~~

(~~f~~g) effective and efficient use of existing and new infrastructure networks; and

(h) street and road reserve areas that are attractively planted and maintained, including trees appropriate to the character and amenity of the area.

93. An additional matter is added to the listed matters of Policy 13.5.6, as follows:

(j) the need for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.

94. An additional matter is added to the listed matters of Policy 13.18.4, as follows:

(g) appropriate landscaping of new roads, reserves and esplanade areas is created by subdivision.

95. An additional matter is added to the listed matters of Policy 14.5.6, as follows:

(f) provides for appropriate landscaping of new roads, reserves and esplanade areas to be created by subdivision.