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# **MARLBOROUGH ENVIRONMENT PLAN**

## **Section 32 Report**

### **Chapter 9: Public Access and Open Space**

**Publically notified  
9 June 2016**

# Contents

Overview.....	1
Background.....	1
Key changes .....	2
Summary of reasons for the proposed provisions .....	3
Description of issues .....	5
Statutory obligations.....	6
Information and analysis .....	6
Consultation.....	8
Evaluation for Issue 9A .....	11
Appropriateness of Objective 9.1.....	11
Appropriateness of Objective 9.2.....	21
Other options considered to achieve Objectives 9.1 and 9.2 .....	22
Methods of implementation.....	23
Risk of acting or not acting.....	24
Evaluation for Issue 9B .....	24
Appropriateness of Objective 9.3.....	24
Appropriateness of Objective 9.4.....	28
Other options considered to achieve Objective 9.3 and 9.4 .....	30
Methods of implementation.....	31
Risk of acting or not acting.....	31
Appendix A – Section 32 of the RMA.....	32
Appendix B – Bibliography .....	34

## Overview

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### Background

Section 32 of the Resource Management Act 1991 (RMA) requires that in the process of reviewing its regional policy statement and resource management plans, the Marlborough District Council (the Council) must prepare and publish an evaluation report. The three documents being reviewed are the Marlborough Regional Policy Statement (MRPS), the Marlborough Sounds Resource Management Plan (MSRMP) and the Wairau/Awatere Resource Management Plan (WARMP). Each resource management plan is a combined regional, coastal and district plan.

Section 32<sup>1</sup> of the RMA requires that:

- reviewed regional policy statements and plans must be examined for their appropriateness in achieving the purpose of the RMA;
- the benefits, costs and risks of new policies and rules on the community, the economy and the environment be clearly identified and assessed; and
- the written evaluation must be made available for public inspection.

The Section 32 process is intended to ensure that the objectives, policies and methods the Council decides to include in the new resource management framework have been well tested against the sustainable management purpose of the RMA. The Section 32 evaluation report for the proposed Marlborough Environment Plan<sup>2</sup> (MEP) has been prepared on a topic basis, centred on the policy chapters of Volume 1 of the MEP. Individual reports have been prepared on the following:

Topic	Volume 1 Chapter of the MEP
Introduction to Section 32 evaluation reports	
Marlborough's tangata whenua iwi	3
Use of natural and physical resources	4
Allocation of public resources – freshwater allocation	5
Allocation of public resources – coastal allocation	5
Natural character	6
Landscape	7
Indigenous biodiversity	8
Public access and open space	9
Heritage resources	10
Natural hazards	11
Urban environments	12
Use of the coastal environment – subdivision, use and development activities in the coastal environment, recreational activities, fishing, residential activity, shipping activity and Lake Grassmere Salt Works	13
Use of the coastal environment – ports and marinas	13
Use of the coastal environment – coastal structures, reclamation and seabed disturbance	13
Use of the rural environment	14

<sup>1</sup> See Appendix A.

<sup>2</sup> The Marlborough Environment Plan is a combined regional policy statement, regional plan, regional coastal plan and district plan.

## Section 32: Chapter 9 - Public Access and Open Space

Topic	Volume 1 Chapter of the MEP
Resource quality – water	15
Resource quality – air	15
Resource quality – soil	15
Waste	16
Transportation	17
Energy	18
Climate change	19

Chapters 1 and 2 of the MEP are not included within the Section 32 evaluation as they provide an introduction and background to the proposed document. These chapters do not include provisions that must be evaluated in accordance with Section 32.

The Introduction report covers the scope of the review that the Council has undertaken including consultation and the nature of information and analysis that has occurred. An overview of the Council's statutory obligations, the relationship of the MEP with other plan and strategies and working with Marlborough's tangata whenua iwi is described. A set of guiding principles the Council has used in the development of the objectives, policies and methods for the MEP is provided. The Council acknowledges that the principles have no statutory basis and do not in themselves have specific objectives, policies or methods. However, they have been included as the philosophy and values underlying the content of the MEP and consequently help to inform the Section 32 evaluation.

This Section 32 evaluation report relates to provisions for public access and open space. The policy approach for these provisions is set out within Chapter 9 - Public Access and Open Space while the rules are set out in the various zones and the subdivision rules. This evaluation report is set out as follows:

- Description of issues – this provides an overview of the resource management issues for public access and open space.
- Statutory obligations – the extent to which there are direct links with Section 6 or 7 matters and whether the provisions are directed or influenced by national policy statements or national environmental standards.
- Information and analysis – whether specific projects or other information have influenced the inclusion of provisions or other responses to dealing with resource management issues.
- Consultation – an overview of the extent and nature of specific consultation undertaken on the proposed provisions.
- Evaluation – an assessment of the provisions under each of the identified issues. Where appropriate, reference is made to supporting material that has helped to inform why a particular option has been chosen. In some cases the evaluation is undertaken on an individual provision, while in others groups of policies or methods have been assessed together.

In some parts of this evaluation report there are references to provisions within other chapters of the MEP. This is due to those provisions assisting in implementing the management framework for the subject matter of this report or vice versa. A reader should consider the evaluation for these other provisions where they are referred to in this report.

## Key changes

The key changes in the MEP from the approach in the MRPS, WARMP and MSRMP are:

- In general, a more detailed and focussed package of provisions.
- Identification of high priority areas where public access is to be enhanced. This is the first time our resource management documents will have identified specific waterbodies where public access is important.

- More focussed criteria for decision makers to consider resource consent applications where public access may be of concern and greater guidance regarding applications for waivers and reductions in width of esplanade reserve requirements.
- Specific policy to guide decisions on when paper roads can be stopped.
- A change in zone names, from Local Recreation, District Recreation and Conservation to Open Space 1, 2 and 3, respectively. A new Open Space 4 Zone has been included to provide a management framework for skifields at Rainbow and Mt Lyford. Previously, Rainbow was included with the Ski Field Zone of the WARMP however, there has been no previous management framework for Mt Lyford. Recent investigations have found that the top part of this skifield, where the ski tows and lifts are located, is actually within the Marlborough District (District). Accordingly the Open Space 4 Zone provisions now apply to this area.

## Summary of reasons for the proposed provisions

Section 32(1)(b)(iii) requires a summary of the reasons for deciding on the provisions included in the MEP. This summary of reasons for the provisions in relation to issues concerning public access and open space are set out below, however the more detailed evaluation is set out in the remainder of this report.

### *Public access*

- The main reason for identifying areas having a high degree of importance for public access and then naming or mapping these areas is that making decisions on a case-by-case basis through the resource consent process without guidance was considered inefficient and ineffective. In the past, esplanade strips or reserves have been taken where there is no other level of public access. In some locations this has created fragmentation of esplanade reserves and esplanade strips, with little likelihood that these will ever be connected. Identifying areas with a high degree of public access and where enhancements could be made was considered more effective in connecting areas where public access could occur.
- In addition to the priority areas identified in Policy 9.1.1, there may be other locations where it is appropriate to enhance public access. Policy was included to describe those circumstances.
- Two important principles that came out of the consultation process and which various groups wanted recognised in policy were acknowledgement that public access to land held in private ownership can only be granted by the landowner, and the importance placed by New Zealanders on having free and generally unrestricted access to the coast.
- Recognition of opportunities available to enhance public access, including through networks for cycling, walking and facilitating use of Council owned or administered land, has been included in the MEP as there are significant resources available.
- It was equally important to recognise the existing network of marinas and publicly owned jetties already making a significant contribution in providing public access to Marlborough's coastal areas and to enable public use of private jetties for the purposes of access to the Sounds Foreshore Reserve and legal road along the coast. This is particularly important given the requirements of the NZCPS relating to walking access.
- Esplanade reserves, esplanade strips or access strips will continue to be a significant means of enhancing public access to and along the coastal marine area, rivers and lakes. For this reason, more detailed policy has been provided to guide decision makers in dealing with applications to waive the requirement for or reduce/increase the width of a 20 metre wide esplanade reserve or strip. This has been included as many applications request a reduction in width and the current provisions are not able to deal with this adequately.
- The approach of the current resource management plans is fairly generic in assessing the impacts of activities, subdivision or structures on public access. More detailed criteria have been included in the MEP to assist decision makers in determining the potential

## Section 32: Chapter 9 - Public Access and Open Space

effects of activities, subdivision or structures on public access and provision is also included on alternative access to offset any loss of public access.

- The benefits of unformed legal road (paper roads) as a means to enhance public access has been recognised, given the resource that this potentially provides for public access. As a consequence, criteria have been included to guide applications made to stop any unformed legal road, despite this being processed under the provisions of the Local Government Act.

### *Open space*

- Open space and recreation areas serve a wide variety of purposes in Marlborough and vary in terms of significance to residents and visitors. Some areas have only local significance, while others assume regional, national or even international significance. Ensuring that a variety of open space areas and recreational facilities are equitably distributed and conveniently located throughout Marlborough is important to reflect the varying needs of the community.
- There are significant open space resources in Marlborough comprising the coastal marine area and river beds which have not received appropriate recognition in the current resource management plans. These resources are vast in area and there is specific policy in the NZPCS to recognise the need for public open space within and adjacent to the coastal marine area for public use and appreciation.
- The effects of activities on reserve land will be managed through permitted activity standards, or in some cases by resource consent. There is a clear direction that any other management of reserve land will be achieved through strategies and reserve management plans prepared under the Conservation and Reserves Acts. This approach seeks to avoid duplication of effort in managing reserve land.
- Identifying where there are or are likely to be deficiencies in the provision of open space and recreational facilities is important, as community needs will change over the life of the MEP. This includes exploring opportunities to use Council owned or managed river reserve land to enhance areas in order for recreational activities to take place and considering options for walking and cycling linkages between reserves and areas of open space.
- While it is important to provide for areas of open space and recreational facilities, it is equally important that the community know where areas of open space, reserves and recreational facilities are and what opportunities are available to access them.
- Guidance has been included that provides for the creation of allotments to enable protection of outstanding natural features including bush, riparian lands, wetlands, headlands, heritage features and ridges, which collectively contribute to open space values. These values can be protected through the subdivision process and be supported by covenants to help protect certain values. It is important that this opportunity is identified in the MEP.
- Criteria are included for decision makers to assess the impacts of subdivision or development on the potential loss of open space and the need to provide alternative open space as compensation for this loss, or to provide for recreational facilities. Criteria are also included on matters of consideration when undertaking activities on reserves. While the current resource management plans have elements of the criteria, the new policy has simplified the framework, which can now be assessed across Open Space 1, 2 and 3 Zones. (The exception is that specific guidance has been included for the Open Space 4 Zone, as this zoning has been applied to the sensitive high country environments of Marlborough's two ski fields.)
- Ensuring that recreational activities using river and coastal margins do not diminish natural values or increase bank instability has been addressed in policy, as these areas often provide for a range of different activities and experiences that can occur at the same time. It may be necessary to control some activities to limit adverse impacts on safety, amenity and ecological values.

## Description of issues

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Two important elements of community wellbeing of regional significance in Marlborough are the ability for the public to be able to gain access to our rivers, lakes, high country and coast (including the coastal marine area) and to enjoy areas of open space for recreation and other purposes (whether in urban or rural environments).

Public access is very important in resource management terms, as Section 6(d) of the RMA requires public access to and along the coastal marine area, lakes and rivers to be maintained and enhanced as a matter of national importance. Being able to enjoy these areas, as well as being able to access high country areas, are important components of maintaining and enhancing amenity values (see Section 7(d) of the RMA).

In Marlborough there is a very high public expectation in being able to access and use coastal areas. Given that there are some 1,800 kilometres of coastline in the District, with a large proportion of this occurring in the intricate waterways of the Marlborough Sounds, public access to these coastal areas is particularly important. For high country areas, public access is sometimes made through legal routes on land administered by the Crown or the Council. Often, however, the areas for which access is sought, such as high country parcels, rivers and streams, can only be reached through private property and at the discretion of the landowner.

Areas of open space contribute significantly to the quality of life that people experience in Marlborough. Open space areas, which include land and water, range from relatively undeveloped to the highly modified and managed. The more developed areas are usually readily accessible to the public and include public landscaped areas, playing fields, parks and play areas, legal roads and river reserves in towns. The degree of development is complementary, necessary or appropriate to the use and enjoyment of the open space. For example, community facilities such as halls, public jetties, clubrooms, pavilions, courts and swimming pools may provide for or encourage recreation.

There is a close relationship between providing for public access and areas of open space. This is particularly the case where open space areas can only be enjoyed by the wider community through some form of public access. There are therefore close links between policies for public access and open space.

There are two resource management issues identified for public access and open space in Chapter 9:

*Issue 9A – Trying to meet community expectations that public access will be available to rivers, lakes and the coast.*

- There is a history of community expectation that public access will be available to rivers, lakes, the coast and high country areas. Being able to meet those expectations is an issue in some cases, especially where access over private land is involved and where activities can impede public access.
- At times public access needs to be restricted to protect certain values or health and safety.

*Issue 9B – Ensuring the provision and management of suitable open space meets the present and future recreational, conservation and landscape needs of the community.*

- There are wide ranging purposes of reserves and areas of open space and it can be challenging at times to ensure there are suitable areas available to meet the needs of the community.
- While Marlborough has vast areas of open space in public ownership with relatively easy access for most in the community, it is important that the public open space network is well managed so that the characteristics of these open spaces remain highly valued by the community.

## Statutory obligations

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Section 6(d) of the RMA requires as a matter of national importance that the Council recognise and provide for the *'maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.'* Public access to these areas and the ability of the public to enjoy areas of open space for recreation and other purposes are important elements of community wellbeing in Marlborough.

Section 7 of the RMA is also relevant for the provisions of this chapter on Public Access and Open Space, especially those provisions relating to open space environments that serve a variety of purposes. In this context, Section 7(c) (*the maintenance and enhancement of amenity values*) and 7(f) (*the maintenance and enhancement of the quality of the environment*) are highly relevant for social and cultural wellbeing. Access is also a component of amenity values.

Policy 18 of the New Zealand Coastal Policy Statement 2010 (NZCPS) promotes the provision and enjoyment of public open space in and near the coastal marine area, including its waters. Public open space values in and near the coastal marine area are highly valued by New Zealanders as these spaces are often a major contributor to people's experience of the coast. Additionally, Policy 19 of the NZCPS seeks to maintain and enhance public walking access to, along and adjacent to the coastal marine area. Restrictions on access are provided for only when necessary, where specified values are likely to be adversely affected. Additionally, and specifically in relation to the coastal marine area, rights of free public access over and through the common marine and coastal area<sup>3</sup> and the right of coastal navigation are recognised and protected through the Marine and Coastal Area (Takutai Moana) Act 2011.

The Walking Access Act 2008 also affects public access around New Zealand. The Act is intended to enhance and extend walking access throughout the country. The Walking Access Act sits alongside and does not duplicate existing RMA provisions. The New Zealand Walking Access Commission implements the Act and provides leadership on walking access issues. The Commission maps walking access routes, provides information to the public, has developed a code of responsible conduct, assists with dispute resolution and negotiates new walking access.

The Local Government Act 1974 is important in relation to paper roads, which are legally established and recorded in survey plans, but may not necessarily have been 'pegged out,' i.e. public land legally identified for roading but not formed into actual roadway. These paper roads are able to be used by the public. From time to time, applications may be made by a landowner to stop a paper road and the process for this is set out in the Local Government Act.

The Council also has a range of statutory functions set out Sections 30 and 31 of the RMA, which enable it to establish management frameworks in response to the identified issue.

## Information and analysis

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While no specific project on public access and open space occurred through the review, a number of other projects and analysis have helped to inform the provisions for the chapter. An overview of these bodies of work is provided below.

### Freshwater values

Marlborough has been divided into a series of water management units based on catchment boundaries. An assessment of the various natural and human use values of the waterbodies in these water management units has been prepared and includes ecological, habitat and natural character values, as well as recreational values where access along waterbodies is an important consideration.

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<sup>3</sup> The marine and coastal area is the area between the line of mean high water springs (the 'wet' part of the beach covered by the ebb and flow of the tide) and the outer limits of the territorial sea (12 nautical miles from shore). It includes the air space and water space above the land, the subsoil, bedrock and other matters below.



## Perception surveys

The Council has undertaken nationwide surveys to assist in determining the perceptions of New Zealanders regarding the values of the Marlborough Sounds. The initial survey in 2001 came in response to a large number of marine farm applications being received at the time. The most recent survey in 2012 found that the majority of respondents considered it important that the Marlborough Sounds were available to be used now and by future generations, that the Sounds were important to people throughout New Zealand as a recreational resource and that they are important in contributing to the image of New Zealand as a whole.

The values that led to these responses were also surveyed. The scenic beauty of the Marlborough Sounds was the most significant value in both surveys, followed by peace and tranquillity, then natural environment/absence of development. Recreational boating and fishing also rated highly in the 2012 survey as characteristics and qualities with which the public identified.

## Joint project with Department of Conservation

The Department of Conservation (DOC) and the Council together undertook a project to identify a community vision for the Marlborough Sounds. This was termed the Marlborough Sounds “Outcomes for Places” Project and was to help in the review of the Nelson/Marlborough Conservation Management Strategy (CMS)<sup>4</sup> and the regional policy statement. The project was run with guidance from the Marlborough Sounds Advisory Group and involved a series of four interactive, participatory workshops/hui. The purpose of the project was to define a collective community vision for the Marlborough Sounds as an important first step in setting objectives for the management of the Sounds. The aim was to prepare a shared common community vision for both the CMS and the regional policy statement, which would then be much more likely to be realised.

The workshops/hui were designed to build upon the responses the Council had received to discussion papers prepared for the review. Participants were asked to consider:

- the factors that make the Sounds special and/or that participants valued;
- the elements of the Sounds that are at risk and the factors contributing to that risk; and
- how the Sounds should look in 50 years’ time and what must happen to achieve that vision.

The activities that participants were specifically asked to consider included residential development, pastoral farming, marine farming, commercial forestry and tourist and public facilities for access and recreation. The outcomes from the project were then used in the development of new policy for the Council’s resource management framework, including confirming the importance of public access as an issue for coastal areas in the Marlborough Sounds.

## Determining areas that are a high priority for public access

Section 6(d) of the RMA requires that the Council recognise and provide for as a matter of national importance the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers. Most opportunities to enhance public access to and along waterbodies arise through the subdivision provisions of the RMA, whereby the Council is able to consider the need for esplanade reserves or esplanade strips.

In considering how best to recognise and provide for Section 6(d) and in the knowledge that there are only limited resources available to do so, the Council undertook an assessment of areas with a high degree of importance for public access. This included areas in close proximity to significant sources of population, such as coastal sites and waterbodies on the Wairau Plain, which have had a long history of public use. This list of priority waterbodies has been set out in Policy 9.1.1 and will provide greater support for the Reserves section of the Council in prioritising where reserves/strips should be taken relative to available resources.

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<sup>4</sup> The Nelson/Marlborough Conservation Management Strategy is prepared by the Department of Conservation under the Conservation Act 1987. It establishes objectives for the integrated management of the natural and historic resources managed by the Department.

## Consultation

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### Early consultation

The first round of consultation initially undertaken in 2006 for the review of the MRPS consisted of a community flyer sent to all ratepayers advising of the review, with the aim of finding out the community's views of the most important resource management issues that Marlborough might face over the next ten years. Approximately 380 responses were received, with comments received as follows on public access in the context of this chapter of the MEP:

- A roadway from Taylor Pass Road was suggested to allow people to drive up to a point on the Wither Hills to enjoy a view of the region.
- Greater effort was sought to increase opportunities to expand and improve the linkages for cycling and walking networks around our towns. It was also suggested that the eastern town boundary should have a connection from the Wither Hills in the south to the Ōpaoa River in the northeast, to enable cycle and walking traffic to circumnavigate the town.
- The need to improve public access within rural communities established through subdivision was identified, with a suggestion of pathways to enable people to travel without the use of a car or having to cycle/walk along narrow roads. It was noted that reserve fund contributions are not often required with these subdivisions, as they are above one hectare. However, there are many one hectare subdivisions in these communities, so more money needs to be put into facilities for people to better enjoy their immediate surroundings.
- Concerns were expressed over greater public access giving rise to security problems and loss of privacy for landowners. It was suggested that public access through or adjacent to residential sites should only be provided where security and privacy can be maintained.
- Preservation of 'paper roads' to allow 'permitted' access both on foot and by vehicle into Marlborough's hinterland was seen as important. It was stated that legal roads should only be stopped after proper consultation with adjoining landowners, local iwi and the local community. Further, where a landowner asks the Council to stop a road, there is a need for policy that negotiates for the stopped road to be swapped for alternative public access in the property.
- People requested guarantees to ensure that they will still be able to 'get out and about' and that the Council should apply pressure to central government (through the Local Government Association) to reduce landowner responsibility for occupational health and safety issues where public access is allowed.
- Some considered public access to natural resources such as riverbeds and natural water was paramount for recreational activities and that this should be provided for.
- Greater leadership and financial commitment was sought from the Council in relation to the Queen Charlotte Track, in order to protect and provide a sustainable situation for walkers, cyclists and landowners.
- The costs of and lack of facilities for launching boats in Picton was identified as an issue regarding access to the Sounds. A perceived lack of balance between commercial versus existing user rights was communicated, in terms of the costs of access and existing areas being inadequate.

Following this initial consultation, a series of discussion papers were prepared by the Council and released for public feedback in late 2007. Two of these papers are particularly relevant to this Section 32 evaluation report: *Discussion Paper 4: The Future of the Marlborough Sounds* and *Discussion Paper 10: Transport and Access*.

For *Discussion Paper 4*, an issue was included on ensuring the community can get access to and within coastal areas. This issue reflected the long history of expectation by the community of being able to access the approximately 1,500 kilometres of coastline within the Marlborough Sounds. The discussion of the issue considered the impact of structures and activities impeding public access, the

need for water access where there are no roads to a property, restrictions on public access and the overriding direction in Section 6(d) of the RMA to maintain and enhance public access to and along the coastal marine area as a matter of national importance. Feedback on this issue included the following:

- Many respondents recognised both the importance of public access to and along coastal areas and the role of jetties and moorings in facilitating this access within the Marlborough Sounds. Several people requested that the regional policy statement confirm the ability of the public to use jetties in the Marlborough Sounds to access adjoining land. Others stressed the need to ensure that jetties are properly maintained for safe public use.
- Enhanced public access was proposed through:
  - the provision of information on peoples’ right to access jetties, moorings and the Sounds Foreshore Reserve;
  - extension of the network of public moorings provided by boating clubs;
  - Council provision and maintenance of “community” jetties; and
  - provision of further reserve land along the foreshore.
- In terms of reserves, several people questioned the appropriateness of riparian rights. One respondent suggested that riparian rights should be removed to ensure community access around the coastal marine area, while another suggested that any application for resource consent on private property with riparian rights should be rendered void. The Department of Conservation suggested that the Council enhance access to the coastal marine area through the creation of access strips or acquisition of reserves at the time of subdivision.
- The Marine Farming Association and marine farming interests agreed that community access to and within coastal areas was a significant issue and indicated that marine farming sites have been established in such a way to enable adequate navigation.
- The Department of Conservation recommended managing coastal structures as part of an integrated approach to managing residential development in the Marlborough Sounds, so that the effects of providing access to lots are considered at the time of land subdivision. The Department suggested the first point for any consideration of coastal structures should be that the coastal marine area is publicly owned and that any private benefits that accrue from this occupation should be assessed on the basis that they should not compromise the public’s rights to use and enjoy publicly owned resources.
- One respondent suggested that policy direction be expanded to recognise the importance of air access to properties in the Marlborough Sounds.

*Discussion Paper 10: Transport and Access* included a specific issue on maintaining and enhancing public access, including to rivers and lakes. The issue noted that as in coastal areas, New Zealanders have high expectations of being able to access back country areas and waterways. Most access is via legal public routes on land administered by the Crown or the Council. In some cases this includes the use of ‘paper roads’ – road reserve land that is not used for road purposes but to which the public have a right of access. However, more often than not access to back country areas and stream, river and seaside riparian strips can only be achieved through private property. It was also highlighted that back country and riparian public access is a complex and highly emotive political issue, both at a central and local government level.

Responses on this discussion paper were received from 49 individuals, iwi, industry and environmental groups. Comments received through the feedback noted the following:

- Several respondents commented on central government’s involvement in dealing with public access issues; that the Government has resolved this issue and therefore there is no need for the Council to address it. One respondent suggested that the regional policy statement must clearly state that it intends to implement any strategies that come out of offered by central government’s Walking Access Review. Another respondent commented on the financial implications of access and suggested that any Council

expenditure on access issues should be received from those demanding the service, not the general public.

- Responses stated that public access should be decided upon by landowners, as they are ultimately responsible for the safety of people on their property. While supporting a policy of providing the Queen's Chain along coastlines and rivers, one response stated that it was very important that public access over private land is not forced.
- A more comprehensive assessment of issues associated with public access was sought. It was thought that options need to be qualified so that proposals to restrict public access to lakes and rivers would take into account the national importance of maintaining and enhancing public access. It was also suggested that the regional policy statement should be unequivocal about impacts on public access to areas where the public have a reasonable expectation of access for recreational pursuits. This issue was considered critical in the resource consent process for any subdivision or activity. Conversely, one respondent raised a concern over the use of subdivision to achieve public access.
- Securing public access wherever possible over paper roads, lakes and rivers was believed necessary, especially when trying to connect areas. It was suggested that the regional policy statement recognise the public's right to public resources such as paper roads, lakes and rivers and manage access to these resource for the public good. The Council was identified as having a significant role in ensuring that appropriate esplanade reserves are taken whenever the opportunity arises, as well as considering strategic purchases of other land to maintain or enhance access.
- A number of respondents commented on issues concerning paper roads. Some felt that landowners have developed and maintained paper roads over the years as if these resources were their own land. This has included costs of pest and weed control, fencing and fertiliser. Some respondents saw no reason to change the present system where stopping of roads involves a public notice and other safeguards. Others considered that closures of public roads must not result in a net loss of public access and that any road closures must be compensated for by providing access in another, perhaps more appropriate, way or area. Acting on the side of caution for the community's benefit was the desired result.
- Several respondents also commented that the regional policy statement must merge public health issues with public access by promoting fitness through outdoor activities such as walking and cycling.

### **Later consultation**

Early on in the review process, the Council decided on an iterative approach in developing provisions for the MEP. This approach sought to 'test' as many of the provisions as possible before the new resource management documents are formally notified under the First Schedule of the RMA. The rationale for this was that the greatest flexibility for change to provisions exists prior to notification of a proposed document; once notified, only those provisions submitted on can be changed, and then only within the scope of those submissions.

To achieve this, the Council set up a number of focus groups with the task of reviewing the provisions to discuss their likely effectiveness or otherwise. The aim was to have as much community participation in developing the provisions as possible to reflect the communities' views and to resolve any substantive issues prior to notification.

In terms of the external focus groups, the policy provisions for the Public Access and Open Space chapter have been considered and refined with the assistance of the Sounds Advisory Group, Iwi Working Group, Rural Focus Group, Freshwater Focus Group, Marine Focus Group and a Practitioners Group. The range of groups considering this chapter reflects the nature and significance of public access and open space values. This is from a perspective of public expectations regarding access to rivers, lakes, the sea and other areas for recreation, as well as from a statutory context (i.e. through direction in Sections 6 and 7 of the RMA and the NZCPS).

Given the Council's dual management role with the Department of Conservation for the coastal marine area, the direction of the NZCPS and in consideration of the Department's role in managing large areas of public land in Marlborough, the Council has also undertaken specific consultation with the

Department. This includes consideration of large areas such as Molesworth Station. The Council has also undertaken specific consultation with operators of Marlborough's two ski field areas.

All of the MEP policy provisions drafted by mid-2013 were made available for feedback to the focus groups and any other person or organisation with an interest in the review process. Although only limited feedback on Chapter 9 was received through this opportunity for feedback, there was some refinement of the provisions as a consequence.

## Evaluation for Issue 9A

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*Issue 9A – Trying to meet community expectations that public access will be available to rivers, lakes and the coast.*

### Appropriateness of Objective 9.1

*Objective 9.1 – The public are able to enjoy the amenity and recreational opportunities of Marlborough's coastal environment, rivers, lakes, high country and areas of historic interest.*

#### *Relevance*

Objective 9.1 is considered highly relevant, given the direction through Section 6(d) of the RMA to maintain and enhance public access and Policy 19(1) of the NZCPS in which there is a requirement to "recognise the public expectation of and need for walking access to and along the coast that is practical, free of charge and safe for pedestrian use."

The objective reflects an existing expectation of the community regarding access to the areas identified. Given the extensive nature of Marlborough's land, freshwater and coastal environments, a wide range of recreational and amenity opportunities are available for people to experience. The objective also identifies the importance of providing access to high country areas and places of historic interest.

Marlborough is fortunate to be served by networks of rivers, tributaries and streams that bring with them significant opportunities in terms of access. Many rivers have legal roads or other forms of public reserve running along their edges. However, some land for which access is sought, such as high country parcels and river margins, can only be reached through private property.

For the coastal environment, public access is important from the land to the coastal edge, within the coastal marine area, from the sea to the land and along the foreshore itself. Although many public roads run close to the coast, private ownership of land between the road and the coast can be a significant barrier to public access.

#### *Feasibility*

Objective 9.1 is considered feasible. However, an element of uncertainty exists regarding areas in which access can be enhanced. In some cases this will rely on a non-regulatory approach in working with landowners to improve access to areas where none currently exists. In other cases there is a reliance on sub dividers/developers to undertake an activity adjacent to rivers, lakes or the coastal marine area in which an assessment can be made to determine if there is a need to enhance public access.

Similar provisions in the current MSRMP and WARMP have demonstrated that such an objective is achievable, as there has been an overall increase in areas with enhanced public access.

#### *Acceptability*

Overall there is acceptance within the community of the importance of providing for public access. This has been demonstrated through the consultation and community feedback received through the review process. Specifically in relation to the coastal marine area, through the Marine and Coastal Area (Takutai Moana) Act 2011, certain rights for free public access over and through the common marine and coastal area<sup>5</sup> and the right of coastal navigation are recognised and protected.

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<sup>5</sup> The marine and coastal area is the area between the line of mean high water springs (the 'wet' part of the beach covered by the ebb and flow of the tide) and the outer limits of the territorial sea (12 nautical miles from

## Section 32: Chapter 9 - Public Access and Open Space

Subsequently there is a strong mandate (at least in the coastal marine area) for rights of access and navigation for the public to be maintained.

There is a cost to achieving the objective, but this is to a large extent inevitable given the direction through Section 6(d) of the RMA and Policy 19(1) of the NZCPS. The costs can be offset to some extent where the Council purchases or provides compensation for acquiring private land. In this context there is still a cost to ratepayers but the expectation of the community in terms of having public access means that this cost is warranted.

### Assessment of provisions to achieve Objective 9.1

#### Policy 9.1.1

Policy 9.1.1 – The following areas are identified as having a high degree of importance for public access and the Marlborough District Council will as a priority focus on enhancing access to and within these areas:

- (a) Wairau River from State Highway 63 bridge to the sea;
- (b) high priority waterbodies for public access on the Wairau Plain and in close proximity to Picton, Waikawa, Havelock, Renwick, Seddon, Ward and Okiwi Bay;
- (c) coastal marine area, particularly in and near Picton, Waikawa and Havelock, Kaiuma Bay, Queen Charlotte Sound (including Tory Channel), Port Underwood, Kenepuru Sound, Mahau Sound, Mahikipawa Arm and Croisilles Harbour, Rarangi to the Wairau River mouth, Wairau Lagoons, Marfells Beach and Ward Beach;
- (d) connections would be made with other public land (including esplanade reserves) or other land where esplanade strips or access strips already exist; and
- (e) the Queen Charlotte Track.

#### *Benefits*

The major benefit of identifying these areas in the MEP to enhance public access is that it provides a focus for where effort should be directed. This is important, as although there is direction through Section 6(d) to recognise and provide for as a matter of national importance the maintenance and enhancement of public access, there are limited resources within the Council specifically for enhancing public access. Highlighting important areas will help to direct application of those limited resources.

The policy also assists decision makers considering subdivision applications for properties adjacent to a river, lake or the coast regarding areas where public access is particularly important and needing to be enhanced. An added benefit of identifying these areas is their assistance in other planning processes (both internally for the Council, including the Reserves Department, and for external groups such as the Department of Conservation) Having responsibility for the many kilometres of foreshore reserve adjacent to the coastal waters of the Marlborough Sounds, the Department has a significant interest in public access. The Nelson-Marlborough Fish and Game and Game Council also has an interest in public access to rivers around Marlborough. Identifying the priority areas through Policy 9.1.1 provides a focus for the activities of these external groups.

Overall, Policy 9.1.1 helps to contribute to Marlborough's social, economic, cultural and economic wellbeing.

#### *Costs*

In identifying these high priority areas, there is a risk that some areas may be missed. Furthermore, views differ on where public access should be enhanced and an inference could be taken from the policy that enhancing public access in other locations is not important. However, Policy 9.1.2 qualifies the approach taken in identifying the high priority areas by stating the need for enhancement of public access in other locations and circumstances to also be considered.

Although there are potential financial implications of acquiring esplanade reserves or requiring the setting aside of esplanade strips through subdivision consent, these provisions of the RMA, when

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shore). It includes the air space and water space above the land, the subsoil, bedrock and other matters below.

coupled with the matter of national importance in Section 6(d), have long been known. Costs arise where, upon subdivision, land is set aside for the creation of an esplanade reserve or strip. Landowners may not be able to realise their aspirations on this portion of land, although there are some compensation provisions available for allotments created that are over four hectares in area<sup>6</sup>.

In terms of the extent of costs however, it is not known when a subdivision application may be proposed; this is solely in the hands of a landowner. However, the intent of the policy is to specifically identify the areas where there is a known high priority for enhancing public access.

#### *Efficiency*

Policy 9.1.1 is considered efficient as it helps to make use of available resources to enhance public access. It builds on areas already known to be important historically for public access or where public access already exists.

#### *Effectiveness*

The policy is regarded as effective as it provides guidance and therefore certainty regarding where public access is important. This will assist decision making on subdivision applications particularly. The community will also be aware of areas where public access is likely to be enhanced.

Policy 9.1.1 will be very important in helping to achieve Objective 9.1 and (as a consequence) community expectations about public access. The policy will also be effective in the application of other policies, because if high priority areas were not identified it may be more difficult to achieve positive outcomes for public access through the other policies alone. Overall, the policy is considered to be effective in helping to address Issue 9A.

#### **Policy 9.1.2**

Policy 9.1.2 – In addition to the specified areas in Policy 9.1.1, the need for public access to be enhanced to and along the coastal marine area, lakes and rivers will be considered at the time of subdivision or development, in accordance with the following criteria:

- (a) there is existing public recreational use of the area in question, or improving access would promote outdoor recreation;
- (b) connections between existing public areas would be provided;
- (c) physical access for people with disabilities would be desirable; and
- (d) providing access to areas or sites of cultural or historic significance is important.

#### *Benefits*

The benefits assessment for 9.1.1 is also applicable here, as although specific areas are not named, a range of circumstances where public access may be important is identified. It builds on the types of areas where the Council is aware that public access is important, such as areas where existing recreational use occurs. It therefore broadens the consideration of where access is important and in doing so helps to address the assessment of Costs in Policy 9.1.1, which highlighted a possible perception that if an area was not listed in Policy 9.1.1 then public access was not important. Like Policy 9.1.1, this policy helps to contribute to social, economic, cultural and economic wellbeing.

#### *Costs*

The costs assessment for Policy 9.1.2 is the same as for 9.1.1.

#### *Efficiency*

It is difficult to assess the efficiency of this policy as the Council does not know when or where an application for subdivision or development may be made and therefore cannot predict when to apply the policy. However, it is considered that overall there would be a community benefit from

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<sup>6</sup> Section 237F of the RMA states: “Where any esplanade reserve or esplanade strip of any width is required to be set aside or created on an allotment of 4 hectares or more created when land is subdivided, the territorial authority shall pay to the registered proprietor of that allotment compensation for any esplanade reserve or any interest in land taken for any esplanade strip, unless the registered proprietor agrees otherwise.”

## Section 32: Chapter 9 - Public Access and Open Space

implementing the policy, as it provides further guidance regarding the circumstances where public access may need to be enhanced.

### *Effectiveness*

The effectiveness of Policy 9.1.2 is largely the same as for Policy 9.1.1, although there is not the same certainty of outcome in relation to priority areas. An area of difference is that Policy 9.1.2 recognises that different types of access may be needed (for example, for individuals with disabilities). The other difference with this policy is that it enables new access opportunities to be created, whereas Policy 9.1.1 focussed on enhancing existing public access.

### **Policy 9.1.3**

Policy 9.1.3 – Where public access is enhanced in priority locations, steps shall be taken to ensure this does not result in:

- (a) adverse effects on the wider environment of that location from littering, unsanitary disposal of human waste or damage to vegetation; or
- (b) conflicts between users that would detract from public enjoyment of the area.

### *Benefits*

The policy recognises that there can be consequences of recognising and providing for Section 6(d) of the RMA. These consequences arise from the cumulative nature of individual actions and can affect public enjoyment of an area or cause adverse environmental effects. It is considered that the most effective way to avoid, remedy or mitigate these cumulative effects is to influence the choices made by individuals, through bylaws, public awareness programmes, provision of supporting facilities, use of signs and working with local communities and community groups. The policy acknowledges that steps will be taken to ensure that, despite the imperative to maintain and enhance public access, this cannot be at the expense of the wider environment or community wellbeing.

### *Costs*

The costs of implementing Policy 9.1.3 arise when intervention is needed to address those situations that may result as a consequence of maintaining or enhancing public access. However, the costs are difficult to quantify as they will depend on the situation and extent of adverse effects being experienced. There is the potential for social costs to arise through implementing the policy through impacts on amenity values. If there is a need for signage, rubbish bins or other infrastructure to support enhanced public use of an area, this may have the unintentional effect of detracting from the remoteness and natural values associated with the area.

### *Efficiency*

The policy is considered efficient as any response needed to respond to the effects of maintaining and enhancing public access will be specific to a particular situation if and when it arises. Any costs are considered to be beneficial to the wider community while also resulting in no loss of public access.

### *Effectiveness*

Policy 9.1.3 recognises that adverse effects or conflicts may detract from the experience that public access enables. It acknowledges that at a local level, despite the national imperative to maintain and enhance public access, there is a need for an integrated response to address issues that may arise from public access.

### **Policies 9.1.4 and 9.1.5**

Policy 9.1.4 – Acknowledge that public access to land held in private ownership can only be granted by the landowner.

Policy 9.1.5 – Acknowledge the importance New Zealander's place on the ability to have free and generally unrestricted access to the coast.

### *Benefits*

Collectively, these two policies effectively recognise an existing situation. Access to beaches, rivers and high country frequently relies on landowner goodwill in allowing people to cross private land. Policy 9.1.4 is therefore important as the Council respects the private property rights of the landowner and accepts it is their prerogative to grant or refuse permission for people to cross their land. At the



specific request of rural landowners, this policy was included through the development of the policy framework for public access. At the time of developing the provisions rural landowners were concerned that, along with a central government led review of legislation relating to walking access, there would be greater demand for access across private land. Policy 9.1.4 was therefore included to make clear that access across private land can only be granted by the landowner. Such a definitive statement is considered beneficial for rural landowners who can continue to make decisions about how to manage their land but is also beneficial in providing certainty to the wider community.

In relation to Policy 9.1.5, the public has an expectation that access to coastal areas and use and enjoyment of our beaches, foreshore and the sea is free and in most cases, generally unrestricted. This policy recognises that expectation and states that in most circumstances, public access to Marlborough's coastline will be unrestricted, particularly as a significant part of the District is within a coastal environment. However, it is important to also recognise that there is no right of public access to reach the coast over private land and there are some circumstances where walking access can be restricted (see Policy 9.2.1). This policy also assists in giving effect to the NZCPS objectives and policies to maintain and enhance public walking access to, along and adjacent to the coastal marine area.

#### *Costs*

There are no costs expected as a result of these policies; they simply state that the rights of private landowners are protected as they relate to providing for or enabling public access.

#### *Efficiency*

The policies hold no financial cost and can be considered efficient relative to the wider community benefit.

#### *Effectiveness*

The policies are considered effective in that the rights of public access are not definitive in all locations, despite the direction in Section 6(d) of the RMA, but rather are tempered by property law.

### **Policy 9.1.6**

Policy 9.1.6 – Continue to assess the need to enhance public access to and along the coastal marine area, lakes and rivers.

#### *Benefits*

The benefit of this policy is that it acknowledges that in some areas of Marlborough (such as the Sounds), there is good information about where public access is available. In other parts of the District however, the same level of information is not apparent. A record stating where public access is available is important in terms of providing the public with information, but is also essential in establishing which areas are in need of enhanced public access. Therefore the Council needs to establish a comprehensive overview of the nature and location of existing means of public access. Having established this, the Council will undertake a gaps analysis to determine where there is a demand for further public access. This may include additions to Policy 9.1.1 where new priority areas are added, or in some cases areas may be removed.

#### *Costs*

There is a cost to ratepayers in maintaining records and subsequent reassessment of public access needs. However, the monitoring provisions of Section 35 of the RMA require the Council to gather information and undertake or commission such research necessary to effectively carry out its functions under the RMA. In particular, the Council is required to make publically available information on the location and area of all esplanade reserves, esplanade strips and access strips in the District. There is therefore already a strong direction for the Council to undertake the intent of Policy 9.1.6.

#### *Efficiency*

The policy is considered efficient as it focusses on assessing the need for enhanced public access and is clearly related to the Council's functions and responsibilities under the RMA. There is considered to be a wide community benefit to result from implementing this policy.

### *Effectiveness*

Policy 9.1.6 is effective in its approach as ongoing assessment of the need for enhancing public access is necessary to achieve Objective 9.1 in the long term. It also reflects changing community needs for public access.

### **Policy 9.1.7**

Policy 9.1.7 – Recognise there is an existing network of marinas at Picton, Waikawa and Havelock, publicly owned community jetties, landing areas and launching ramps that make a significant contribution in providing access for the public to Marlborough’s coastal areas.

### *Benefits*

There is an existing network of marinas, jetties and launching ramps that enable the public to access the coastal marine area. This network includes substantial marinas in Havelock, Picton and Waikawa through to access points across the foreshore at locations such as at Wards Beach, Marfells Beach, the Wairau Diversion and Ohingaroa Bay in Mahau Sound. The policy recognises this existing network as contributing significantly to enabling public access to the coast and thereby giving effect to the matters of national importance in Section 6 of the RMA.

The existing physical infrastructure of the three marinas has also been recognised as regionally significant infrastructure in Chapter 4 - Use of Natural and Physical Resources (see Policy 4.2.1). This infrastructure has been recognised as having social, economic, environmental and health and safety benefits.

### *Costs*

There are no direct costs associated with implementing Policy 9.1.7. Ongoing costs for the Council and others exist in maintaining physical infrastructure, but such costs are already a requirement of resource consent conditions and are incurred irrespective of this policy.

### *Efficiency*

Relative to the costs of the policy, there is community benefit in acknowledging the existing network of jetties, marinas and launching areas as important means of achieving the maintenance of public access to Marlborough’s coastal areas. As indicated in the Costs assessment, any costs would be incurred irrespective of the policy.

### *Effectiveness*

Policy 9.1.7 will be effective in terms of the maintenance aspect of Section 6(d) of the RMA, as the policy acknowledges the significance of the existing infrastructure to assist in providing public access. The policy is also effective when combined with Policy 13.14.3 (of Chapter 13 - Use of the Coastal Environment), in which the linkages provided by existing ports, marinas and community/commercial jetties and port landing areas between the different modes of transport are recognised as significant in contributing to the social, economic and cultural wellbeing of Marlborough.

### **Policy 9.1.8**

Policy 9.1.8 – Enable public use of jetties for the purposes of access to the Sounds Foreshore Reserve and legal road along the coast.

### *Benefits*

A major benefit of Policy 9.1.8 is that the many jetties around the Marlborough Sounds (nearly 1,600 in total) can be used to provide access to the Sounds Foreshore Reserve or legal road along the coast. This helps significantly in enhancing public access as required by Section 6(d) of the RMA. The Sounds Foreshore Reserve is a strip of land generally 20 metres wide, which has as its main purpose the right for the general public to come ashore from the sea and to traverse the reserve for any lawful reason. The policy implicitly recognises private property rights in that enhanced access is for the sole purpose of access to the Sounds Foreshore Reserve or legal road along the coast. Enabling public use of jetties will support community wellbeing and lead to enhanced amenity values.

### *Costs*

The policy itself is already implemented through conditions of resource consent, so no additional costs are expected beyond those currently experienced. There is the potential for additional maintenance

costs through increased public use of these jetties as well as a potential social cost for the jetty owner relating to public behaviour over use of the jetty. For example, members of the public may tie their boat to a jetty for longer than reasonably necessary to provide access to the foreshore.

#### *Efficiency*

Policy 9.1.8 is considered efficient as it encourages multiple use of a structure within public space. This is important in regard to Section 7(b) of the RMA, which directs “*the efficient use and development of natural and physical resources.*” Providing for multiple use of a structure for public access means other areas of the coastal marine area are available for other activities.

#### *Effectiveness*

The policy is effective as it creates the potential for public access where it might otherwise be limited. It is also effective when linked with Policy 13.10.16, whereby to reduce the impact on public use and access to, within and along the coastal marine area, a jetty will be conditioned to be made available for public use. Policy 9.1.8 is also effective in helping to address issues where exclusive use of structures such as a jetty is sought. Therefore there is a link with this policy and Policy 9.1.13(e) to consider the exclusive use of structures in public access terms.

Overall, the policy is considered to assist in achieving Objective 9.1 and in helping to deal with Issue 9A.

#### **Policy 9.1.9**

Policy 9.1.9 – Enhance public access through:

- (a) development of networks for cycling and walking in both rural and urban areas; and
- (b) facilitating public access and recreational use of Marlborough District Council owned or administered land.

#### *Benefits*

The policy takes advantage of the opportunities provided for dual use of Council owned/managed land, particularly in terms of 9.1.9(b). For example, in the more populated area of the Lower Wairau Plain there is a recorded history of flood plain management with stop-banked river floodways. Much of this floodway land is in Council ownership, thus public ownership of riparian margins is high and public access can be readily achieved.

The policy has social and cultural benefits through supporting and promoting community wellness through physical activity.

#### *Costs*

There is a cost to ratepayers in developing and maintaining facilities for the public. However, these costs are considered to be offset by the wide community benefits, including enhanced amenity resulting from the availability of walking and cycling areas. In addition, there may be some impact on third party use of Council land that is leased and a consequent loss of revenue to the Council if there are restrictions on that lease due to having to accommodate public access.

#### *Efficiency*

The approach in the policy is considered efficient when combined with a specific method of implementation; that is Method 9.M.5, which describes the Walking and Cycling Strategy for Marlborough. This strategy is supported by a Walking and Cycling Action Plan, which sets out locations and actions where cycling and walking opportunities can be enhanced for both urban and rural areas. While there is the potential for widespread community benefit to result from implementation of the policy, it is difficult to determine the significance of this benefit relative to the cost of enhancing and developing walkways and cycleways.

#### *Effectiveness*

The effectiveness of the policy can only be determined by having regard to the implementation of the Walking and Cycling Strategy for Marlborough. For this reason an anticipated environmental result has been included in the MEP to address the ongoing development and improvement of walkways and/or cycleways through the actions of the strategy.

**Policies 9.1.10 to 9.1.12**

Policy 9.1.10 – The creation of esplanade reserves, esplanade strips or access strips will be a significant means of enhancing public access to and along the coastal marine area, rivers and lakes.
Policy 9.1.11 – An esplanade reserve to be taken for public access purposes will be preferred to an esplanade strip or access strip in the following circumstances: <ul style="list-style-type: none"><li>(a) for those sites that adjoin existing esplanade reserves or other reserves vested in either the Marlborough District Council or Crown;</li><li>(b) where the site adjoins the coastal marine area; or</li><li>(c) where the site is or is likely to be a high use area.</li></ul>
Policy 9.1.12 – In considering whether to waive the requirement for, or to reduce/increase the width of an esplanade reserve or esplanade strip of 20 metres in width, the Marlborough District Council shall have regard to: <ul style="list-style-type: none"><li>(a) whether the application is in an area identified as having a high degree of importance for public access, as set out in Policy 9.1.1; and</li><li>(b) the width required to effectively provide physical access along the waterbody;</li></ul> while taking into account the following special circumstances: <ul style="list-style-type: none"><li>(c) whether significant ecological, conservation or cultural values exist that may be incompatible if general public access to the site is allowed;</li><li>(d) whether significant ecological or conservation values warrant a wider esplanade reserve or esplanade strip;</li><li>(e) whether topography renders the 20 metre width inadequate or excessive for public access;</li><li>(f) whether the site is in an urban zone, where a reduced width of esplanade reserves/strips to 8 metres is generally considered sufficient;</li><li>(g) whether the provision of public access along the esplanade reserve or esplanade strip would result in health or safety risks to the public using the reserve or strip; and</li><li>(h) taking an esplanade reserve or esplanade strip would not enhance public access to or along the waterbody over time.</li></ul>

**Benefits**

By providing for public ownership, management of or access to the margins of the coast and other waterbodies, esplanade areas are an important mechanism for achieving the goals of the RMA in terms of public access. The RMA specifically provides for esplanade areas as one method of providing public access and enabling public recreational use of them. Policy 9.1.10 clearly states that the main method of enhancing public access (especially in new locations) will be through the creation of esplanade areas. This is supported by Policy 9.1.11, which sets out certain circumstances under which an esplanade reserve for public access purposes is preferred over an esplanade or access strip. This helps to provide certainty for landowners and developers and acknowledges the advantages of a reserve relative to a strip.

Under Section 230 of the RMA, esplanade reserves of 20 metres width are required where any allotment of less than four hectares is created when land is subdivided adjacent to the coast, lakes and rivers. The Council has the discretion to waive or vary the requirement for esplanade reserves or strips. Policy 9.1.12 identifies those circumstances where in public access terms, a waiver or reduction in width may be appropriate. This approach provides decision makers with guidance about when a waiver or reduction in width is appropriate, which should lead to more consistent decision making. The guidance in the policy recognises that 'one size does not fit all' in terms of the 20 metre requirement and flexibility is built into the policy to acknowledge this.

**Costs**

Developers may perceive that the costs associated with these policies are greater than they have been previously. However, the RMA clearly states the circumstances under which an esplanade reserve, esplanade strip or access strip is to be taken when land is subdivided adjacent to the coast, lakes and rivers. There may also be a perception of social costs in terms of loss of privacy or safety concerns where public access is provided for in esplanade areas. However, issues concerning safety and loss of privacy as reasons why the requirement for esplanade areas should be waived, have been

tested through the Environment Court and found to be matters that do not override the direction to maintain and enhance public access in Section 6(d) of the RMA.

These policies are only triggered where a subdivision is proposed adjacent to the coast, lakes and rivers and esplanade areas do not already exist in the location. Therefore it is difficult to determine the exact costs of the policies, as they will depend on an application being made by a landowner and also what the nature of the proposal is. Where an application for subdivision is for allotments greater than four hectares in area and an esplanade reserve is to be taken, then there is a requirement for the Council to compensate the landowner for this.

*Efficiency*

The policies are considered efficient as they provide a consistent approach for decision makers, particularly in determining whether a waiver for an esplanade area or width reduction is appropriate. The approach builds on the Council's experience in assessing such issues on subdivision consents since the RMA was first introduced. Policy 9.1.12 should result in a reduced cost to landowners and developers as a framework is provided for considering whether to waive or reduce the width of an esplanade area. Without this framework, an esplanade area 20 metres in width for sub four hectare subdivisions would be taken in all circumstances.

*Effectiveness*

The policies will be effective in enhancing public access, though this will rely on there being subdivision applications adjacent to the coast, lakes and rivers in which the taking of esplanade areas for public access purposes can be considered. Methods are already prescribed in the RMA but these policies build on this framework and describe how the RMA methods will be applied in response to local circumstances.

**Policies 9.1.13 and 9.1.14**

<p>Policy 9.1.13 – When considering resource consent applications for activities, subdivision or structures in or adjacent to the coastal marine area, lakes or rivers, the impact on public access shall be assessed against the following:</p> <ul style="list-style-type: none"> <li>(a) whether the application is in an area identified as having a high degree of importance for public access, as set out in Policy 9.1.1;</li> <li>(b) the need for the activity/structure to be located in the coastal marine area and why it cannot be located elsewhere;</li> <li>(c) the need for the activity/structure to be located in a river bed and why it cannot be located elsewhere;</li> <li>(d) the extent to which the activity/subdivision/structure would benefit or adversely affect public access, customary access and recreational use, irrespective of its intended purpose;</li> <li>(e) in the coastal marine area, whether exclusive rights of occupation are being sought as part of the application;</li> <li>(f) for the Marlborough Sounds, whether there is practical road access to the site of the application;</li> <li>(g) how public access around or over any structure sought as part of an application is to be provided for;</li> <li>(h) whether the impact on public access is temporary or permanent and whether there is any alternative public access available; and</li> <li>(i) whether public access is able to be restricted in accordance with Policies 9.2.1 and 9.2.2.</li> </ul> <p>Policy 9.1.14 – Where existing public access to or along the coastal marine area, lakes and rivers is to be lost through a proposed use, development or structure, alternative access may be considered as a means to mitigate that loss.</p>
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*Benefits*

The benefits of these two policies are that they provide guidance for decision makers when considering resource consent applications in or adjacent to the coastal marine area, lakes and rivers. Flexibility is provided through Policy 9.1.14 for offsetting, whereby environmental benefits in terms of adverse effects on public access may still be obtained by requiring enhancement of public access preferably in the same area or, if this is not possible, in a different area with equivalent amenity value. The intent is that the individual responsible for the activities causing permanent loss of public access should consider, as a means of mitigating that loss, the provision of alternative or upgraded access in

## Section 32: Chapter 9 - Public Access and Open Space

a reasonable and practical alternative location. Collectively, the policies will ensure that there is no reduction in the level of public access to the coastal, lakes and rivers.

### *Costs*

There is a potential economic cost to developers and landowners as they may not be granted the exact outcomes they sought to achieve, including at the location they have applied for. However, the actual cost cannot be determined as it is dependent on the aspirations of individual landowners and developers. Offsetting through Policy 9.1.14 may also increase costs over and above development costs.

### *Efficiency*

Despite the evaluation in terms of cost, the policies are considered efficient as they help to maintain and enhance public access as required by Section 6(d) of the RMA and also in terms of Policy 19 of the NZCPS. Greater community wide benefits are therefore obtained through the policies when compared to the costs to individual landowners and developers.

### *Effectiveness*

The effectiveness of Policy 9.1.13 is largely related to the clarity provided about how adverse effects of activities and structures near and in the coastal marine area and adjacent to lakes and rivers can be avoided or managed. This helps to achieve Objective 9.1 and as indicated above, gives effect to the policies for walking access set out in the NZCPS.

### **Policies 9.1.15 to 9.1.17**

Policy 9.1.15 – Recognise the benefits of the presence of unformed legal road as a means to enhance access to and along waterbodies (including the coast) and to public land.

Policy 9.1.16 – In considering an application to stop any unformed legal road, the Marlborough District Council shall consider the following:

- (a) current level of use, including whether the unformed legal road is:
  - the sole or most convenient means of access to any existing lot(s) that is public land or feature (for example, a river or the coast); or
  - used as a walkway or to access conservation land;
- (b) opportunities for future use, including whether the unformed legal road will be needed:
  - to service future residential, commercial, industrial or primary production developments; or
  - in the future, to connect existing roads;
- (c) alternative uses of the land, including its current or potential value for amenity or conservation functions, e.g., walkway, utilities corridor, esplanade strip or access way to features such as a river or the coast;
- (d) whether there is alternative and practical existing public access to the same end point of the unformed legal road; and
- (e) whether acceptable alternative access can be provided to offset the stopping of the unformed legal road.

Policy 9.1.17 – Where an unformed legal road provides access:

- (a) to or from a public road or reserve;
- (b) to or along a waterbody or the coastal marine area; or
- (c) provides primary access to an esplanade reserve or other reserve land;

and there is no other access to the areas identified in (a) to (c), the Marlborough District Council will not stop an unformed legal road unless an equal or better alternative is provided.

### *Benefits*

Legal road that has not been formed or used for road purposes (often referred to as a paper road) provides an important resource for public access purposes as the public have a right of access over these roads. The current MSRMP and WARMP provide no guidance about the benefits of unformed legal road. Recognising the benefits of this resource is important, particularly when there is an opportunity to connect areas identified as having a high priority for public access such as those set out in Policy 9.1.1.

Occasionally the Council receives requests from landowners to purchase portions of unformed legal roads, which are then added to private land. However, there is a core principle that this land is owned by the public and has potential value for high country, coastal and/or riparian access purposes. Although applications from the public to stop unformed legal roads are processed under the Local Government Act, it is important that regard is had to other legislation such as the RMA, which provides imperatives to recognise and provide for public access to and along the coastal marine area, lakes and rivers as a matter of national importance. The main benefits of Policies 9.1.16 and 9.1.17 therefore are that they provide guidance in determining whether it is appropriate to stop legal unformed roads.

Policy 9.1.17 is particularly important in preventing any loss of public access in certain circumstances, unless an appropriate alternative is available.

#### *Costs*

There is a cost associated with the stopping of a unformed road, but this is administrative (resulting from Local Government Act processes) and already applies irrespective of whether or not these policies are included in the MEP. From an RMA perspective the costs are difficult to determine as the Council cannot know when a landowner may wish to stop any one of hundreds of unformed roads throughout the District.

#### *Efficiency*

It is unlikely that any additional cost will arise from implementing these policies (over that which currently exists). The proposed approach is efficient as it states clearly the matters to be considered by the Council in assessing a request to stop an area of unformed legal road.

#### *Effectiveness*

The policies are expected to be effective in achieving the objective. The policies recognise the potential for unformed roads to enhance public access and provide a transparent and rigorous process to guide the Council's decision making. Collectively, the policies ensure that the implications of proposals to stop unformed legal road are fully considered.

## **Appropriateness of Objective 9.2**

*Objective 9.2 – Identification of circumstances when public access to and along the coast and the margins of lakes and rivers can be restricted.*

#### *Relevance*

Objective 9.2 is particularly relevant for the coastal environment given the requirements of the NZCPS but is equally relevant for freshwater bodies given the requirement in Section 6(d) of the RMA to recognise and provide for the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers. The objective provides a framework for limiting (at least in part) the circumstances under which the community's expectations for public access cannot be met and in doing so provides guidance for decision makers.

#### *Feasibility*

Having been included previously within the current resource management plans, the objective is known to be feasible as it has been shown to be achievable in various situations.

#### *Acceptability*

Community feedback through the review process highlighted the importance for the public to be able to access Marlborough's coastal areas, high country environments and rivers and lakes. Therefore there is expected to be wide community acceptance of limits identifying when public access can be restricted.

## **Assessment of provisions to achieve Objective 9.2**

### ***Policies 9.2.1 and 9.2.2***

Policy 9.2.1 – Public access to and along the coastal marine area and the margins of lakes and rivers may be restricted to:

- (a) ensure a level of security consistent with the purpose of a resource consent or designation;

- (b) protect areas of significant indigenous vegetation and/or significant habitats of indigenous fauna;
- (c) protect cultural values of Marlborough's tangata whenua iwi;
- (d) allow for foot access only;
- (e) protect public health and safety and animal welfare and to manage fire risk;
- (f) protect heritage, natural or cultural values; and
- (g) in other exceptional circumstances sufficient to justify the restriction, notwithstanding the national importance of maintaining that access.

Policy 9.2.2 – Aside from the circumstances in Policy 9.2.1 above, constraints on public access shall not be imposed unless:

- (a) there is no practical alternative; and
- (b) the effects on public access would be no more than minor.

### *Benefits*

These policies clearly recognise when it may be appropriate to constrain public access and acknowledge the occasional exceptional circumstance when public access is not desirable. There is likely to be some economic benefit to landowners where and when access can be restricted, dependent on what activity is occurring close to rivers, lakes or the coastal marine area. Collectively, the policies make it clear that public access can only be restricted in certain circumstances.

### *Costs*

There will be some lost opportunity to the public where public access has to be foregone where the circumstances in Policy 9.2.1 are apparent. In some cases restrictions may be temporary (for example, in protecting animal welfare), while in others they may be more permanent. In respect of the coastal environment Policy 9.2.1 is virtually identical to the provisions of the current resource management plans so no additional costs are anticipated. Although there is a national policy statement relevant to freshwater bodies, there is no equivalent direction within the NPSFM requiring the maintenance and enhancement of public walking access to and along lakes and rivers. However, a matter of national importance identified in Section 6(d) of the RMA directs this to occur, and therefore rivers and lakes have been included in Policy 9.2.1.

### *Efficiency and Effectiveness*

The policies clearly achieve the aim of Objective 9.2 and for the coastal environment help to achieve Objective 4 and Policy 19 of the NZCPS. The approach, which is already largely included in the current resource management plans, has been proven to be efficient and effective.

## **Other options considered to achieve Objectives 9.1 and 9.2**

Two other options were considered by the Council to achieve Objectives 9.1 and 9.2. These were:

### *1. Status quo in terms of the existing provisions of the MRPS, the MSRMP and the WARMP*

Objective 5.1.13 of the MRPS requires "The preservation of the natural character of wetlands, lakes and rivers and their margins and the maintenance and enhancement of amenity values." Policy 5.1.14(b) under this objective seeks to maintain and enhance public access and recreational use of wetlands, lakes and rivers and their margins for the benefit of the community, including for future generations. Policy 7.2.5 also sets out that private use of the margins of wetlands, lakes and rivers will only be possible after considering the effects on public access as the continued public use of these margins is essential to the social and cultural wellbeing of the community. There are similarly worded policies in relation to the coastal marine area. There is also guidance related to circumstances when it may be appropriate to restrict public access.

The MRPS policies are fairly general in their approach to providing for public access. This is to be expected from a regional policy statement, as it provides higher level direction for resource management plans. However, one specific method is provided, relating to protecting opportunities for recreation and public access: a direction that the resource management plan would restrict marine farming from Queen Charlotte Sound (Method 7.2.11(c)). This method was subsequently implemented through the provisions of the MSRMP in terms of the prohibited activity status for marine farming in Queen Charlotte Sound. Other methods identified that criteria should be included in the



resource management plans stating where esplanade areas would be necessary to maintain and enhance public access to or along rivers, lakes and their margins and the coast. However, such criteria were not identified in either the MSRMP or WARMP.

Chapter 8 of the MSRMP contains policies for public access but again, these are general, with an 'avoid, remedy or mitigate' approach to activities or structures affecting public access. For the coastal environment there is also an 'avoid' approach to activities and structures affecting public access. This policy stems from the 1994 NZCPS and a similar policy is expressed in the current NZCPS in relation to walking access (Policy 19(2)(b)). There are also policies for esplanade reserves and strips to be taken and a policy similar to that in the MRPS regarding the circumstances under which public access can be restricted.

Chapter 8 of the WARMP contains policies for public access very similar to those within the MSRMP. Two main differences are the specific recognition in the WARMP of the "*benefits of the use of unformed public roads as a means to enhance access to and along water bodies*" (Policy 8.3.1.9) and that "*public access to and within publicly owned land, be maintained and enhanced*" (Objective 8.3.2 and subsequent policies). Both of these matters have been recognised within the provisions of the MEP.

Overall, the Council has preferred the more detailed approach set out in the MEP. The policies of the current resource management plans are generic and do not provide the guidance necessary when assessing consent applications for subdivision, development or activities. Retaining the existing provisions would have made it more difficult to achieve the purpose of the RMA, particularly the matter of national importance in Section 6(d). Additionally, it would have been more difficult to give direction to the objectives and policies of the NZCPS relating to public access.

### *2. Not identifying high priority areas for enhancing public access*

The Council considered the option of not identifying specific areas within the MEP where enhancement of public access is to be a priority. This is effectively what happens under the current MSRMP and WARMP (and could have been considered under the 'Status Quo' above) however, the Council considered that continuing with this approach was neither efficient nor effective. The main reason for this is that involves making decisions on a case-by-case basis without guidance. For example, in some locations esplanade strips or reserves have been taken previously where there is no other level of public access, creating fragmentation of esplanade reserves and strips with little chance of these being able to be connected. Identifying areas in which there is a high degree of public access to which enhancements could be made was considered more effective in connecting areas where public access could occur. This means there is greater likelihood of Objective 9.1 being achieved.

Policy 9.1.11, in regarding circumstances when an esplanade reserve is preferred to be taken for public access purposes rather than an esplanade strip or access strip, is also relevant to why it is important to identify high priority areas. In some circumstances, such as in high priority areas where a greater level of control and management is warranted along the margins of the coast, lakes and rivers, it will be easier to achieve maintenance and enhancement if the Council or Crown has ownership of the land.

### *3. Not including guidance for applications to stop unformed legal road*

The Council could have chosen to exclude Policies 9.1.15 to 9.1.17, which provide guidance about unformed legal road that has not been formed or used for road purposes over which the public have a right of access. As described in the benefits section for these policies, such unformed roads provide a potential resource for public access purposes. Occasionally the Council receives requests from landowners to purchase portions of unformed legal roads, which would then be added to private land. This is a process that is determined under the provisions of the Local Government Act. However, this land is owned by the public and because the RMA contains imperatives to recognise and provide for public access to and along the coastal marine area, lakes and rivers as a matter of national importance, the Council considers it is more effective and efficient to provide guidance on the matters to be considered in any application to stop legal unformed road.

## **Methods of implementation**

The methods of implementation are very similar to those in the current resource management plans. One significant new method is the inclusion of the Walking and Cycling Strategy, which particularly

helps to implement Policy 9.3.7. This strategy was not in place when the previous plans were prepared but has been developed to encourage greater participation in walking and cycling in Marlborough and extends to setting out locations and actions in both urban and rural areas where walking and cycling opportunities can be enhanced.

## Risk of acting or not acting

In terms of Section 32(2)(c) of the RMA, which requires an assessment of the “*risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions*” the Council considers that it does have certain and sufficient information on which to base the proposed policies and methods.

## Evaluation for Issue 9B

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*Issue 9B – Ensuring the provision and management of suitable open space meets the present and future recreational, conservation and landscape needs of the community.*

### Appropriateness of Objective 9.3

*Objective 9.3 – A wide range of reserves and open space areas are available that contribute to the social and economic wellbeing of residents and visitors.*

#### *Relevance*

The objective reflects community expectations that a wide range of reserves of varying types and open space areas, including the coastal marine area, will be available for Marlborough residents and visitors to use. It also reflects that different types of open space and recreational opportunities need to be available, depending on the ability of the community to access them. This signals a strong connection with the public access policies under Issue 9A, as without appropriate access to open space and recreation areas it will be difficult to achieve Objective 9.3.

Overall the objective is very important for community wellbeing and is considered highly relevant. It also assists in achieving a number of the matters in Section 7 of the RMA, including Section 7(c) (*the maintenance and enhancement of amenity values*) and 7(f) (*the maintenance and enhancement of the quality of the environment*).

#### *Feasibility*

Marlborough is fortunate to have vast areas of open space in public ownership, such as those in the Marlborough Sounds or along the major rivers on the Wairau Plain, with relatively easy access for most of the community. A significant community resource is also currently provided through the network of reserves around Marlborough, both within urban and rural environments. Therefore, to a large extent the objective is already being achieved and can be considered feasible.

It can be challenging to ensure that suitable open space areas are available to meet all of the needs of the community. Influences that affect the Council's ability to ensure there is adequate open space areas include urban intensification, with smaller section size potentially resulting in the loss of environmental quality including opportunity for large trees and recreation areas. Changing recreation patterns through increased population can also result in changes to the type, location and number of open space areas required. This poses a potential risk in attempting to achieve the objective; however, the level of risk is considered small.

#### *Acceptability*

Given the previous development of open space and recreational areas (especially more formal areas, such as reserves, swimming pools etc), there is a community expectation that such facilities will continue to be provided. Although in some cases this will result in costs to the ratepayer, it is considered justified in terms of the benefits to community wellbeing. In other cases, a developer may be required to provide new areas of reserve or open space and there will be costs associated with that. However, this already occurs and there appears to be a level of acceptance for it.

There is also an expectation that the public can use less developed areas of open space, such as in and along rivers, the coastal marine area or public land in high country environments, for recreational

activities. This was reflected in the feedback received during the early stages of the review as well as through focus group consideration of the draft policies.

### Assessment of provisions to achieve Objective 9.3

#### **Policies 9.3.1, 9.3.2 and 9.3.4**

Policy 9.3.1 – Ensure that open space areas and recreational facilities are equitably distributed and conveniently located throughout Marlborough.
Policy 9.3.2 – Seek diversity in the type and size of open spaces and recreational facilities to meet local, district, regional and nationwide needs by: <ul style="list-style-type: none"> <li>(a) identifying areas with conservation value;</li> <li>(b) enabling a wide range of organised sports, recreation and community activities;</li> <li>(c) enabling low-key, everyday recreation and community activities to serve local communities; and</li> <li>(d) recognising and protecting the value of open space in the coastal marine area, high country environments and river beds.</li> </ul>
Policy 9.3.4 – Identify those areas of Marlborough where there are or are likely to be deficiencies in the provision of open space and recreational facilities.

#### *Benefits*

Collectively, the implementation of these policies provide significant benefits to social wellbeing and therefore to Section 5 of the RMA. In particular, ensuring that access to and distribution of open spaces and recreational facilities around the District is important. An equitable distribution is crucial in achieving convenience of access to open space and recreational opportunities, recognising the particular role or function of the open space or recreational facility in meeting the differing needs of the community.

To achieve Objective 9.3, it is important to recognise different types of open space/recreational facilities are required. Policy 9.3.2 sets the framework for the creation of zones to accommodate different types of open space areas or recreational facilities, ranging from land administered by the Department of Conservation through to neighbourhood reserves, sports fields, walkways, indoor sports facilities, swimming pools and other recreation facilities.

Subclause (d) of Policy 9.3.2 acknowledges the significant contribution made by the coastal marine area and river beds to open space in Marlborough. Protecting these open space values may see some activities being regulated in specified areas. This policy also gives effect to the NZCPS by recognising the value of open space in the coastal marine area. The existing open space areas used for skiing activities in Marlborough's high country environment also add to the diversity and range of open space areas available.

#### *Costs*

There is a ratepayer cost in providing some of the types of facilities and open space areas identified in Policy 9.3.2. However these areas, such as the open space environments of the coastal marine area, river beds and Crown land in high country environments, are public spaces to which the public have a right of access.

There will be costs to subdividers or developers when proposing activities that generate an assessment of the need for a new reserve, particularly in the case of a new residential subdivision. The creation of small neighbourhood parks often occurs through this process. However, there are no additional costs from the implementation of these policies other than that which currently occurs through the MSRMP and the WARMP, as this assessment is already in place.

#### *Efficiency*

The policies are efficient as they acknowledge the need for a range of different types of open space and recreation areas in different locations to meet community wellbeing. Policy 9.3.4 is also important in this regard as it recognises the need to monitor the quality, type, number and location of reserves and facilities to ensure the needs of the community are met on an ongoing basis. Wide community benefits are expected from these policies.

*Effectiveness*

The management framework established by these policies, especially 9.3.2 (which sets out the different types of open space areas), will be important in helping to effectively achieve the objective. This approach is consistent with the current MSRMP and the WARMP.

**Policy 9.3.3**

Policy 9.3.3 – Support the management of reserves through strategies and reserve management plans prepared under the Conservation and Reserves Acts.
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*Benefits*

The main benefit of this policy is that it recognises there are other statutes that assist in managing the provision of open space areas; for example, the integrated management of the resources contained within reserve land comes under the control of the Conservation Act 1987 and Reserves Act 1977. Generally, the types of activities (and consequently the acceptable effects) to take place within a reserve are indicated by management plans under the above legislation. The general intent of the MEP is therefore to take on those matters requiring management or control under the RMA where they are not already covered under other legislation.

*Costs*

There are no additional costs associated with the introduction of this policy; indeed, it is possible that the inclusion of this policy will reduce costs as there will be clear direction that duplication of process relating to reserves will not occur under the provisions of the MEP. The main difference between this policy and those of the current resource management plans are the change in rules. A permitted activity that enables “any land use activity carried out in accordance with a Management Plan prepared under the Reserves Act 1977 for the area” has been deleted in the new policy, as such activities will only be controlled as necessary for resource management reasons.

*Efficiency*

Because there is no cost associated with this policy, and there is integration through other statutes having a role in managing open space areas as well as any duplication of assessment being removed, the policy is considered efficient.

*Effectiveness*

For similar reasons as described in the Efficiency evaluation, the policy is considered effective. It is particularly important that the integrated management of these open space areas occurs, as the extensive areas in question are public space. For example, 45 percent of Marlborough’s land area in Marlborough is administered by the Department of Conservation.

**Policies 9.3.5 to 9.3.7**

Policy 9.3.5 – Ensure the community is adequately informed about areas of open space, reserves and recreational facilities and the opportunities available to access them.
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Policy 9.3.6 – Explore opportunities to use Marlborough District Council owned or managed river reserve land to enhance areas for recreational activities to take place.
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Policy 9.3.7 – Provide walking and cycling linkages between reserves and areas of open space in, around and between towns where appropriate, and maintain and enhance these areas.
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*Benefits*

These policies recognise that there are a range of opportunities for the public to use areas of open space and move between these areas. This has close links with the public access policies in the first part of this evaluation report and is especially the case for the considerable area of floodway land on the Wairau, Taylor, Ōpaoa and other rivers, that is managed primarily for flood control purposes. Policy 9.3.6 aims to consider ways in which the use of river reserve land for the public can be enhanced, as many recreational activities do not conflict with the primary flood control purpose, while Policy 9.3.7 looks for opportunities to enhance the linkages between areas of open space.

Educating the public about their ability to access these areas is important and already occurs to a significant extent through publicly available information on the Council’s website and through visitor

centres. Making this information available should lead to greater or enhanced use of these areas, which in turn will lead to enhanced community wellbeing.

#### *Costs*

There are some costs associated with enhancing public access to open space areas, which again highlights the close link with the public access policies under Objectives 9.1 and 9.2. There is the potential for some loss of revenue associated with leases of Council managed river land where a lease might be modified to enable public access and recreational use of an area of floodway land. However, this is publically owned land, which if used for public access and recreational purposes, can result in a wide community benefit.

There may also be costs associated with establishing linkages in, around and between towns as a means to increase recreational opportunities. Where this is to be provided by the Council, the costs for such work will be provided for within the Long Term Plan.

#### *Efficiency*

Relative to the costs, Policies 9.3.6 and 9.3.7 may seem inefficient. However, as the resources involved are already publically owned, there is less cost than there might otherwise have been. In addition, the policies are considered an efficient means of achieving Objective 9.3 on an ongoing basis.

#### *Effectiveness*

The policies are considered effective as they use existing resources in relation to exploring opportunities to enhance public access to areas of open space.

### **Policy 9.3.8**

Policy 9.3.8 – Provide for the creation of allotments to enable protection of outstanding natural features including bush, riparian lands, wetlands, headlands, heritage features and ridges, which collectively contribute to open space values.

#### *Benefits*

The policy reflects a need to provide for the creation of allotments that protect natural features including bush, riparian lands, wetlands, headlands, heritage features and ridges, where such protection contributes to open space values. Whilst accepting the potential impacts of subdivision and associated developments on natural features, it is acknowledged that as a land management tool, subdivision can be an appropriate mechanism for protection in terms of contributing to open space values. This can have a range of social, cultural and environmental benefits.

#### *Costs*

The intent of the policy is to enable circumstances where a landowner may wish to undertake a subdivision to protect the values contributing to an area, rather than for another reason. However, without knowing what an individual landowner's aspirations might be, it is difficult determine the extent of costs.

#### *Efficiency*

As the policy is intended to be enabling, it is considered efficient and will result in improving the protection of areas with open space values.

#### *Effectiveness*

The policy provides another opportunity to achieve the outcomes sought for open space areas that might otherwise be constrained by 'normal' minimum allotment standards. It recognises that subdivision may be an effective means of achieving open space outcomes, particularly if coupled with other mechanisms such as covenants to protect the values of the open space area.

### **Policy 9.3.9**

Policy 9.3.9 – In assessing the impacts of subdivision or development through resource consent applications, consideration shall be given to the need for public open space and recreation areas to provide for:

(a) additional neighbourhood parks needed as a result of additional residential and visitor

- accommodation across Marlborough;
- (b) additional open space necessary for visual relief and plantings amongst the built environment; and
  - (c) the development of neighbourhood parks and open space areas that are useable and enjoyable.

### *Benefits*

The subdivision and development of land creates opportunities for various activities to be established. If communities continue to grow through subdivision and building development without providing for the recreation and open space needs of the community, adverse environmental effects may arise. This could occur through a lack of neighbourhood parks in new subdivisions or in areas where infill housing and redevelopment is taking place, reduced accessibility to parks and/or a lack of visual relief in the form of open space amongst the built environment. The policy therefore directs that when subdivision and development activities are to be assessed through a resource consent, that the need for open space and recreation areas must be considered. This will ensure that the social wellbeing of the community is appropriately provided for.

The policy also provides developers with the opportunity to consider how open space needs can be provided for within the context of the development proposed.

### *Costs*

The policy does not generate a need for resource consent, so the extent to which costs are relevant in the assessment are limited to what is proposed through an application, as well as the determination by a decision maker as to whether this is appropriate in the circumstances. Depending on the outcome of such an assessment, a developer may not be able to realise their initial aspirations for development. However, the approach in the policy is not new as developers must already consider the need for public open space and/or recreation areas within a subdivision or development proposal under the current resource management plans.

### *Efficiency*

While there is the potential for open space or recreation areas through the resource consent process as a result of this policy, it is difficult to determine efficiency as costs will be specific to applications. Effectiveness

It is also difficult to determine effectiveness of the policy, as this is reliant on applications for resource consent being made. However, past practice would indicate that this approach is effective.

## **Appropriateness of Objective 9.4**

*Objective 9.4 – The establishment or development of open space areas and recreational activities does not have adverse effects on the environment.*

### *Relevance*

Activities associated with open space and recreational facilities can have a range of adverse environmental effects. Potential adverse effects can include: noise, resulting from recreational activity and the social activity of clubrooms and their hours of operation; glare, particularly from flood lighting; attraction of increased numbers of people and vehicles into an area; the impacts of building scale or shading of adjoining properties; and damage to vegetation (including trees), waterways or sensitive habitats upon development. Other effects may include a loss of openness and tranquillity, pest control for ecological management purposes or competition for space between exclusive-use sports and the general public. The objective aims to address these matters and ensure that the matters in Section 7 of the RMA, including Section 7(c) (*the maintenance and enhancement of amenity values*) and 7(f) (*the maintenance and enhancement of the quality of the environment*) are had regard to.

### *Feasibility and Acceptability*

The objective is considered feasible, as the same approach has proven effective in the current resource management plans. As a consequence there is a level of community acceptability regarding this approach.

## Assessment of provisions to achieve Objective 9.4

### Policies 9.4.1 to 9.4.5

Policy 9.4.1 – Manage the scale, size, design and location of buildings so as to avoid, remedy or mitigate any adverse effects on the amenity of surrounding areas and the function and character of the open space.
Policy 9.4.2 – Manage activities in open spaces to ensure that adverse effects of activities on the surrounding environment are minimal and/or temporary.
Policy 9.4.3 – Ensure the recreational activities that use river and coastal margins do not create significant adverse effects such as diminished natural value or increased bank instability.
<p>Policy 9.4.4 – When determining applications for resource consent to carry out activities on reserves, the following matters must be considered:</p> <ul style="list-style-type: none"> <li>(a) the existing character and amenity of the reserve and the locality in which the site is set;</li> <li>(b) the location and design (including colour) of any proposed structure on the reserve itself;</li> <li>(c) the effect of the proposed activity regarding daylight, shading and light spill on adjoining properties and the reserve itself;</li> <li>(d) the effects of traffic flow to and from the reserve site and the locality in which the reserve is set;</li> <li>(e) the effects of noise from the proposed activity on adjoining properties;</li> <li>(f) access points onto the reserve;</li> <li>(g) any historical, conservation, ecological, archaeological or waahi tapu values associated with the reserve;</li> <li>(h) design and location in terms of enabling people to provide for their safety, either at the reserve or on adjoining properties; and</li> <li>(i) the effect on other users of the reserve.</li> </ul>
<p>Policy 9.4.5 – When determining applications for resource consent to carry out activities in the Open Space 4 Zone, the following matters must be considered:</p> <ul style="list-style-type: none"> <li>(a) the sensitive alpine character of the Open Space 4 Zone and how the proposed activity will avoid or mitigate any adverse effects on this character;</li> <li>(b) the location and design (including colour) of any proposed structure; and</li> <li>(c) any other policies of the Marlborough Environment Plan related to discharges to water, land or air, land disturbance, the clearance of indigenous vegetation and the taking and use of water.</li> </ul>

### *Benefits*

These policies provide the management framework for the Open Space Zones set out in the maps and rules. They establish a range of matters that will enable activities within each of the zones to be permitted activities subject to standards, but also provide guidance for decision makers when faced with determining whether a particular activity is appropriate. Specific guidance is provided for the Open Space 4 Zone in recognition of the unique alpine environments in which ski fields are located and operate.

Policies 9.4.2 and 9.4.3 are more generic in that they do not specifically relate to Open Space Zones but provide guidance for areas such as coastal and river margins where recreational activities can affect these areas, e.g. bank stability, ecological values (including interfering with wildlife habitat) and public safety. These effects must be avoided, remedied or mitigated and in some cases, activities will need to be controlled to limit adverse impacts on safety, amenity and ecological values.

Implementation of the policies will see the appropriate character of the open space areas retained so that people can continue to enjoy these areas and their natural values. The standards are set to help maintain the character of adjoining zones, so that activities are not inappropriately located. In doing so, the policies also seek to avoid conflict between users. Collectively, the policies will help to achieve social, cultural and economic wellbeing for the Marlborough community and visitors.

### *Costs*

There are costs associated with the policies where a resource consent is required and mitigation may be required through consent conditions to address adverse effects. This situation could apply to the

Council as it is responsible for many reserves around the District. This approach is not new however, as the current resource management plans also require consent for some activities within reserves and there is the ability to impose conditions.

#### *Efficiency*

The policies are efficient as they provide an enabling approach for a range of activities within Open Space Zones as well as guidance for decision makers in determining resource consent applications in these zones. As this approach has been used previously and appears to have worked effectively, the same approach has been carried through to the MEP.

#### *Effectiveness*

The policies are considered to be an effective means in achieving Objective 9.4. The policies are intended to reduce cross boundary effects between Open Space Zones and other zones through the establishment of standards and where consent is required, a process by which the potential for cross boundary effects can be appropriately assessed. The policies (particularly 9.4.2 and 9.4.3) are also intended to help reduce conflict between multiple users of the same space.

### **Other options considered to achieve Objective 9.3 and 9.4**

Two other options were considered by the Council to achieve Objective 9.4. These were:

#### *1. Status quo in terms of the existing provisions of the MRPS, the MSRMP and the WARMP*

Within the MRPS, Policy 8.1.6 relating to the natural character of the coastal environment is the only provision where there is recognition of open space areas. Here open space is recognised as playing an important role in the qualities contributing to natural character. Recreational use is frequently referred to in other policies and explanations of the MRPS concerning public access, so the evaluation under the 'Other options' assessment to achieve Objective 9.1 and 9.2 is also relevant here.

The MSRMP identifies open space as important for recreation activities, conservation values and landscape or visual reasons (Chapter 12). Open space areas in the MSRMP have been distinguished by the use of a Local Recreation Zone, a District Recreation Zone and a Conservation Zone. An objective is detailed for each zone, with related policies describing the characteristics of and appropriate activities within the zone. Related rules implement this policy approach. A similar approach is also used in Chapter 13 of the WARMP.

As highlighted through the evaluation of the MEP open space provisions, although there is similarity between what is proposed in the MEP and what currently exists in the two resource management plans, a review of the existing framework was necessary:

- as the MSRMP and the WARMP each have slightly different policies and there needed to be some rationalisation of this;
- because of the links with the importance of public access when providing for areas of open space;
- to remove duplications in providing for activities within reserves; and
- to include Marlborough's two ski field areas within a new Open Space Zone.

After considering the current provisions and those proposed for the MEP, the Council has decided that the new policies provide more guidance about the importance of open space areas and how these should be managed.

#### *2. Requiring and/or providing more significant areas of open space for community wellbeing*

Requiring more open space areas, either through greater requirements on developers or through the Council providing such areas, would help to achieve Objective 9.3. However, the requirement for developers to provide more areas of open space could only occur in a resource consent situation through conditions of consent. Furthermore, many other activities that can be established through permitted activity rules, do not attract the same requirement for providing areas of open space, so there could be considered to be an element of inequity in this approach.



If the Council were to make provision for purchasing more land for open space opportunities or recreational facilities, this would incur a significant cost to ratepayers. While the provision of such facilities may contribute to community wellbeing, it is difficult to determine what additional benefit might arise beyond those identified through the MEP policies. In particular, Policy 9.3.5 has been included to acknowledge that there may be deficiencies in the provision of open space and recreational facilities in the District and that this needs to be assessed on an ongoing basis.

Additionally, neither of the approaches recognises nor acknowledges that there is already a considerable pool of public open space within Marlborough when the coastal marine area, river beds, Crown land and network of reserves are taken into account. The Council therefore considers that a 'tougher' stance on requiring the provision of open space is unnecessary.

### **Methods of implementation**

The methods of implementation proposed are very similar to those in the current resource management plans.

### **Risk of acting or not acting**

In terms of Section 32(2)(c) of the RMA, which requires an assessment of the "*risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions*" the Council considers that it does have certain and sufficient information on which to base the proposed policies and methods.

## Appendix A – Section 32 of the RMA

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### 32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
  - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
  - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
    - (i) identifying other reasonably practicable options for achieving the objectives; and
    - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
    - (iii) summarising the reasons for deciding on the provisions; and
  - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- (2) An assessment under subsection (1)(b)(ii) must—
  - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
    - (i) economic growth that are anticipated to be provided or reduced; and
    - (ii) employment that are anticipated to be provided or reduced; and
  - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
  - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.
- (3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—
  - (a) the provisions and objectives of the amending proposal; and
  - (b) the objectives of the existing proposal to the extent that those objectives—
    - (i) are relevant to the objectives of the amending proposal; and
    - (ii) would remain if the amending proposal were to take effect.
- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.
- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
  - (a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
  - (b) at the same time as the proposal is publicly notified.

(6) In this section,—

**objectives** means,—

- (a) for a proposal that contains or states objectives, those objectives:
- (b) for all other proposals, the purpose of the proposal

**proposal** means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

**provisions** means,—

- (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:
- (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

## Appendix B – Bibliography

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