

Proposed Marlborough Environment Plan

**Section 42A Hearings Report for Hearing Commencing
12 March 2018**

Report dated 26 February 2018

**Addendum to Report
Dated 12 February 2018
on submissions and further submissions topic:
Significant Wetlands**

Report prepared by:

Rachel Anderson, Policy Portfolio Manager

and

Peter Hamill, Team Leader - Land and Water

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List of Abbreviations

AWUG	Awatere Water Users Group
BRIL	Blind River Irrigation Limited
Federated Farmers	Federated Farmers of NZ
LINZ	Land Information NZ
MEP	Proposed Marlborough Environment Plan
NZ	New Zealand
NZTA	New Zealand Transport Agency
Panel	MEP Hearings Panel
Pernod Ricard	Pernod Ricard Winemakers New Zealand Limited
Rarangi Residents	Rarangi District Residents Association
RMA	Resource Management Act 1991
SNA	Significant Natural Area
Te Ātiawa	Te Ātiawa o Te Waka-a-Māui

Introduction

1. This report is an addendum to our main report, dated 12 February 2018, containing recommendations to the Hearing Panel on submissions made on Significant Wetlands. This addendum should be read in conjunction with the 12 February 2018 report, including the background and explanation within it.
2. This addendum addresses:
 - The omission of submissions for assessment in relation to Standard 3.3.13.4;
 - A correction to information discussed in the assessment of NZTA's submission point 1002.279;
 - Correction of typographical errors.
3. Our names are Rachel Anderson and Peter Hamill.
4. Rachel is a Policy Portfolio Manager in the Environmental Policy Group at the Marlborough District Council. Rachel's qualifications and experience are as follows:
 - Bachelor of Science – Geology and Geography;
 - 13 years experience in resource management.
5. Rachel was involved in the preparation of the Proposed Marlborough Environment Plan (MEP) in her role as Policy Portfolio Manager. Of particular relevance to this hearing topic, Rachel was involved in the development of the provisions relating to Significant Wetlands and the landowner consultation during the identification of Significant Wetlands.
6. Peter Hamill has been employed by Marlborough District Council as the Team Leader - Land and Water in Council's Environmental Science and Monitoring Group since June 2017. Previous to this position Peter has held the following positions since his employment at the Marlborough District Council began in 1994 –Senior Environmental Scientist, Environmental Scientist - Aquatic Biota, Policy Analyst - Information Management, Resource Information Officer and Consents Officer.
7. Peter's qualifications and experience are as follows:
 - Bachelor of Science and Post-Graduate Diploma in Science (University of Otago, 1989);
 - Involvement with the Council's Significant Natural Areas programme since its inception and was involved with the development of the criteria for determining significance used in the SNA programme. Peter was the lead in the identification and assessment of significance of wetlands across Marlborough and has personally visited over 200 wetlands and assessed them in relation to the assessment criteria.
8. Peter was involved in the preparation of the MEP in a limited context by providing information and specialist advice to the Environmental Policy Group on areas where he has expertise, mainly in relation to biodiversity, wetlands and freshwater management.
9. We have read Council's Section 32 reports relating to Indigenous Biodiversity.

Code of Conduct

10. We confirm that we have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and agree to comply with it.
11. We confirm that we have considered all the material facts that we are aware of that might alter or detract from the opinions that we express, and that this evidence is within our area of expertise, except where we state that we are relying on the evidence of another person.

12. We are authorised to give this evidence on the Council's behalf.

Scope of Hearings Report Addendum

13. This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA).
14. As noted above, this report is an addendum to our main report dated 12 February 2018.
15. Since the release of the 12 February 2018 report it has come to the writer's attention that, due to a database reporting error, 12 submissions on Standard 3.3.13.4 were not included in the assessment of submissions on Significant Wetlands.
16. In addition, there is an error in the information expressed in the 12 February 2018 report with regards to NZTA's submission point 1002.279, so this addendum is used to make a correction accordingly. This opportunity is also taken to correct a number of typographical errors.
17. This addendum:
- The omission of submissions for assessment in relation to Standard 3.3.13.4;
 - A correction to information discussed in the assessment of NZTA's submission point 1002.279; and
 - Correction of typographical errors.
18. As submitters who indicate that they wish to be heard are entitled to speak to their submissions and present evidence at the hearing, the recommendations contained within this report are preliminary, relating only to the written submissions.
19. For the avoidance of doubt, it should be emphasised that any conclusions reached or recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions or decisions having considered all the evidence to be brought before them by the submitters.

Further Submissions not Considered

20. The following further submissions have not been considered in the assessments within this report as, in my (Rachel) opinion, they are not intended to apply to the provisions addressed in this report or are insufficiently detailed to make that determination.

Pernod Ricard

21. The reasons provided for Pernod Ricard's further submissions on the submissions of Wine Marlborough, Villa Maria and Federated Farmers that are considered in this report are ambiguous and require – an assessment of the original Pernod Ricard submission on the MEP, consideration of the whether the decisions sought by Wine Marlborough, Villa Maria and Federated Farmers achieve the purpose of the RMA, and subsequently a determination by the reader as to whether that assessment and consideration equates to Pernod Ricard indeed being in opposition or support of Wine Marlborough, Villa Maria and Federated Farmers' submission points. It is inappropriate for the writers to make assumptions or determinations regarding the intent of the Pernod Ricard further submissions, therefore these further submissions are not specifically considered further in this report. Pernod Ricard may choose to refine their further submissions at the hearing.

Te Ātiawa

22. Te Ātiawa have made further submissions on the whole of the submission for Federated Farmers and all of the submission points of this submitter have similar reasons stated by Te Ātiawa for making their further submission. The reasons centre around the view of Te Ātiawa being that the submitters seek reduced iwi consultation, reduced recognition of tangata whenua and kaitiaki, devaluing of Iwi Management Plans and compulsory recognition in the MEP of all sacred sites. Also, that the

submitters overstate the benefits of their own activities and focus on economic values over cultural values. In the writers view this further submission is not intended to specifically apply to the submissions of Federated Farmers that are the subject of this report and are therefore not considered further. Te Ātiawa may choose to refine their further submissions at the hearing.

Key Matters

23. In alignment with the 12 February 2018 s42a report, the analysis of the submissions points covered in this addendum are set out by matter under the headings:

- ***Matter 1: Standards with 8m setbacks to Significant Wetlands;*** and
- ***Matter 7: Mapping - General.***

Matter 1: Standards with 8m setbacks to Significant Wetlands

The following paragraphs replace paragraphs 134, 135, 137, 138, 139 and 198 of the s42a report dated 12 February 2018, to the extent that they cover Standard 3.3.13.4.

Submissions on cultivation provisions

24. Standard 3.3.13.4 is a standard that applies to the Permitted Activity of cultivation in the Rural Environment Zone (Rule 3.1.13) and reads as follows – *“Cultivation must not be in, or within 8m of, a Significant Wetland, except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case cultivation may occur up to the fenced boundary”*.
25. Standard 3.3.13.4 attracted 13 submissions, two submissions in support from C Tozer (319.27) and K Loe (454.85) seeking retention of the Standard as notified, six submissions in support from S and R Adams (321.1), Wine Marlborough (431.83), Longfield Farm Limited (909.74), Middlehurst Station Limited (970.27), Rarangi Residents (1089.26) and Villa Maria (1218.77) but seeking amendments to the Standard, one submission in opposition from Federated Farmers (425.540) seeking removal of the Standard from the MEP, and four submissions in opposition from Accolade Wines NZ Limited (457.80), BRIL (462.37), Delegat Limited (473.64) and Dairy NZ (676.85) but seeking amendments to the Standard.
26. Federated Farmers received three further submissions, two in opposition from Te Ātiawa and Forest & Bird, and one in support from Pernod Ricard. For the reasons explained in paragraphs 21 and 22, the further submissions from Te Ātiawa and Pernod Ricard are not discussed further. Forest & Bird do not support Federated Farmer’s submission as it seeks to remove controls on activities in the rural zone that would have implications for the protection of wetlands. Wine Marlborough received two further submissions in support from Pernod Ricard and AWUG. For the reasons explained in paragraph 21 the further submission from Pernod Ricard is not discussed further. AWUG state it generally supports the whole of Wine Marlborough’s submission on the MEP. Villa Maria received three further submissions in support from Lion - Beer, Spirits & Wine (NZ) Limited, Pernod Ricard and AWUG. For the reasons explained in paragraph 21 the further submission from Pernod Ricard is not discussed further. Lion - Beer, Spirits & Wine (NZ) Limited and AWUG support Wine Marlborough’s submission. No further submissions were received on the other submission points on Standard 3.3.13.4.
27. Consideration of the submissions on Standard 3.3.13.4 should bear in mind that the overriding Rule 3.1.13 received 19 submissions in support seeking retention of the Rule as notified, and no submissions opposing the Rule and seeking its removal from the MEP.
28. S and R Adams, Wine Marlborough, Longfield Farm Limited, Middlehurst Station Limited, Villa Maria, Accolade Wines NZ Limited, BRIL and Delegat Limited seek an amendment to Standard 3.3.13.4 as follows –

*“Cultivation must not be in, or within 8m of, a Significant Wetland, except where the wetland is fenced in accordance with the wetland boundaries mapped in the Plan, in which case cultivation may occur up to the fenced boundary **or where the land slopes away from the Significant Wetland in which case cultivation must not be within 1m of the Significant Wetland.**”*
29. S and R Adams, Wine Marlborough, Longfield Farm Limited, Middlehurst Station Limited, Villa Maria, Accolade Wines NZ Limited, BRIL and Delegat Limited provide no information to support the amendment sought, or to satisfy the writers that there would be no impact on wetland values more than the existing Standard would anticipate. There is also some concern around the looseness of the wording *“where the land slopes away”*. What degree of slope? Any? Over what distance? What if it slopes away for a short distance but then the slope increases toward the wetland again? Of most concern is the potential for the drainage of a wetland if cultivation was enabled immediately down slope within 1m of the wetland. Fencing a wetland usually occurs just outside the wetland proper as solid ground is needed for fence posts, this provides a small buffer but more importantly it creates a barrier to stock so naturally there is greater establishment of wetland plant species around the wetland

perimeter, which offers greater protection to the whole wetland than if there was no fence. So, there is a difference in the impact of allowing activities to occur up to a fenced boundary, as the Standard currently provides for, and the impact of activities if allowed within 8m (or 1m as proposed) of an unfenced wetland. There is also a concern that, given the proposed setback of 1m being so small, if the wetland was not fenced, then where would the 1m measurement be taken from? It should be the mapped boundary in the MEP, which with a setback of 8m is still effective even allowing for a margin of error, however with a setback of only 1m it would seem unrealistic to be able to identify on the ground the difference between the boundary and 1m from the boundary, without a fence in place demarcating the wetland boundary.

30. Rarangi Residents seek retention of Standard 3.3.13.4 but also seek that explicit boundaries are included that provide a GPS definition of the boundary of the Rarangi Significant Wetlands, so as to know where the edge is to measure 8m from. The writers are of the view that the current mapping is sufficient for purpose when taking into consideration the ability to use digital technology to zoom in and out of mapped wetland boundaries on aerial photographs. The data behind the mapping (including GPS co-ordinates), while not explicitly in visible in the MEP, is available as public information on request.
31. Federated Farmers seek the removal of Standard 3.3.13.4 from the MEP. Federated Farmers are concerned about the loss of productive land due to this Standard, it is assumed it is referring to situations where a Significant Wetland is not fenced and therefore cultivation must not be within 8m of the wetland. Federated Farmers states it supports setbacks for cultivation to reduce sedimentation and loss of top soil but disagrees with the extent of the setback. Federated Farmers have not proposed an alternative setback and have sought complete removal of the Standard from the MEP. Removing the Standard would not protect the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.
32. Dairy NZ seeks a review of the 8m setback in relation to scientific literature and good management practice, however the submitter provides no further information about which literature or practices should be considered. Dairy NZ also seek the exclusion of artificially constructed wetlands. Man-made wetlands were not included in the identification of Significant Wetlands, where it was known they were artificial. As not all landowners sought a site visit when given the opportunity, it is possible some mapped wetlands may not be entirely naturally occurring but presumably the landowner is comfortable that they are mapped in the MEP anyway.

Recommendations

Submissions on cultivation provisions

33. It is recommended that C Tozer's **submission point 319.27** and K Loe's **submission point 454.85 are accepted** seeking retention of Standard 3.3.13.4 as notified protects the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.
34. It is recommended that the S and R Adams' **submission point 321.3**, Wine Marlborough's **submission point 431.83**, Longfield Farm Limited's **submission point 909.74**, Middlehurst Station Limited's **submission point 970.27**, Villa Maria's **submission point 1218.77**, Accolade Wines NZ Limited's **submission point 457.80**, BRIL's **submission point 462.37**, Delegat Limited's **submission point 473.64 are rejected** as amending Standard 3.3.13.4 as requested would not protect the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.
35. It is recommended that the Rarangi Residents **submission point 1089.26 is accepted in part** as retaining Standard 3.3.13.4 as notified protects the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP, however specifying GPS co-ordinates in the MEP is considered impractical, and unnecessary given the information is publically available.
36. It is recommended that the Federated Farmers' **submission point 425.540 is rejected** as removing Standard 3.3.13.4 would not protect the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.

Matter 7: Mapping - general.

Submissions and Assessment

37. The following paragraph replaces paragraph 370 in the s42a report dated 12 February 2018, amendments are shown by strike through and underline. There is no change to the recommendations associated with the submission, i.e. no change to paragraph 374 or the table in Appendix 2 of the original s42a report.

38. NZTA's submission point 1002.279 seeks the reassessment and clarification of the mapped extent of Significant Wetlands. Its reasons indicate that the concerns are specifically with Significant Wetlands that overlap, or are within, the road network corridor. NZTA seeks the Council reassess the accuracy of these wetlands, however has supplied no information specifically identifying which of the Significant Wetlands mapped in the MEP it considers to be inaccurately mapped. ~~Like all landowners, NZTA were given opportunities to request site visits during the landowner consultation process but chose not to take up those opportunities.~~ As the landowners of the land containing the road network corridor, LINZ (effectively landowners on behalf of the Crown) were given opportunities to request site visits during the landowner consultation process but, while it did seek clarification around some Significant Wetlands, they did not consider site visits to be necessary. Should more specific information be provided by NZTA at the hearing, and if the Panel wishes, I (Peter) am available, with the permission of LINZ if necessary, to visit any Significant Wetlands within the road network corridor to do an on-site assessment to confirm whether they meet the criteria and the wetland boundaries.

Typographical error corrections.

39. The following typographical errors have been discovered in the s42a report dated 12 February 2018, which require correction as detailed below.
40. Paragraph 200 should be amended as follows (strike though and underlined) –
*“It is recommended that the Dairy NZ **submission point 676.131 is rejected** as it is unclear the specific relief sought with regards to Standard ~~4.3.11.4~~ 4.3.12.4.”*
41. Paragraph 201 should be amended as follows (strike though and underlined) –
*“It is recommended that the Federated Farmers’ **submission point 425.797 is rejected** as removing Standard ~~19.3.5.3~~ 4.3.12.4 would not protect the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.”*
42. Paragraph 204 should be amended as follows (strike though and underlined) –
*“It is recommended that the Federated Farmers’ **submission points 425.545, 425.550, 425.555, 425.731 and 425.822 are rejected** as removing Standards 3.3.14.3, 3.3.14.9, 3.3.16.8, ~~4.3.12.4~~ 19.3.5.3 and 19.3.6.4 would not protect the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.”*
43. Paragraph 205 should be amended as follows (strike though and underlined) –
*“It is recommended that the Nelson Forest **submission point 990.143 is rejected** as amending Standard ~~4.3.12.4~~ 4.3.13.3 as requested would not protect the values of Significant Wetlands as sought by the provisions in Chapter 8 (Indigenous Biodiversity) in Volume 1 of the MEP.”*
44. Paragraph 342 should be amended as follows (strike though and underlined) –
*“On the basis that it is within the scope of the decision sought by Forest and Bird to implement the changes through Appendix 25 instead of Standard ~~3.3.2.1~~ 3.3.27.1, it is recommended that the Forest and Bird **submission point 496.98 is accepted**.”*

Appendix 2: Recommended decisions on decisions requested

The submissions in the table below are additional to those in Appendix 2 of the 12 February 2018 s42a report, however for completeness submission point 319.27 (S and R Adams) against Standard 3.3.13.4, that was previously assessed, has also been included in the table.

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
321	3	S and R Adams	2	3	3.3.13.4	Reject
319	27	C Tozer	2	3	3.3.13.4	Accept
425	540	Federated Farmers	2	3	3.3.13.4	Reject
431	83	Wine Marlborough	2	3	3.3.13.4	Reject
454	85	K Loe	2	3	3.3.13.4	Accept
457	80	Accolade Wines NZ Limited	2	3	3.3.13.4	Reject
462	37	BRIL	2	3	3.3.13.4	Reject
473	64	Delegat Limited	2	3	3.3.13.4	Reject
676	85	Dairy NZ	2	3	3.3.13.4	Reject
909	74	Longfield Farm Limited	2	3	3.3.13.4	Reject
970	27	Middlehurst Station Limited	2	3	3.3.13.4	Reject
1089	26	Rarangi Residents	2	3	3.3.13.4	Accept in part
1218	77	Villa Maria	2	3	3.3.13.4	Reject