

Proposed Marlborough Environment Plan

**Section 42A Hearings Report for Hearing Commencing 2 July
2018**

Report dated 1 June 2018

Addendum to Section 42A Report dated 20 June 2018

**Report on submissions and further submissions
Topic 19: Soil Quality and Land Disturbance**

Report prepared by

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Introduction

1. This report is an addendum to my main section 42A report dated 1 June 2018, containing recommendations to the Hearing Panel on submissions made on Volume 1, Chapter 15, Resource Quality (Soil)¹ and the permitted activity rules and standards relating to land disturbance in Volume 2. This includes submissions made on cultivation, non-indigenous vegetation clearance, excavation, filling and firebreak construction. This addendum should be read in conjunction with the Section 42 Report dated 1 June 2018.
2. In general, this addendum addresses:
 - a. Submissions made on definitions and provisions not addressed in the Section 42A Report dated 1 June 2018; and
 - b. Typographical errors.
3. My name is Hannah Goslin, I am a Resource Management Consultant from Incite (Ch-ch), based in Christchurch. My qualifications and experience are as follows:
4. I hold a Bachelor of Science in Geography from Canterbury University. I have 4 years' planning experience working in both local government and the private sector. My experience includes both regional and district council resource consent processing which includes large scale land development, municipal infrastructure projects, coastal permits and discharges to land, water and air. I was involved in the development of a paper titled 'Erosion Control Treatment Trials on Loess Soils'¹ which was based on an experimental field study to test the effectiveness of erosion control treatments on the highly erodible loess soil of Canterbury's Port Hills.
5. I was not involved with the preparation of the MEP. I was contracted by the Marlborough District Council (Council) in August 2017 (after the MEP submission period had closed) to evaluate the relief requested in submissions and to provide recommendations in the form of a Section 42A report.
6. I have read Council's Section 32 reports.

Code of Conduct

7. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it.
8. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.
9. I am authorised to give this evidence on the Council's behalf.

Scope of Addendum

10. This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA).
11. As noted above, this report is an addendum to my main section 42A Report dated 1 June 2018 and should be read in conjunction with that section 42A Report.

¹ Issues 15f and 15G; Objectives 15.4 and 15.5; Policies 15.4.1; 15.4.2; 15.4.3; 15.4.4; 15.4.5; 15.4.6; 15.5.1; 15.5.2; 15.5.3; 15.5.4; 15.5.5 Methods 15.M.38; 15.M.39; 15.M.40; 15.M.41; 15.M.42; 15.M.43; 15.M.44; 15.M.45; 15.M.46; 15.M.47; 15.M.48; 15.M.49 and 15.M.50.

12. This report considers submission points not addressed in the section 42A Report, on the following topics:
 - a. Policy 15.4.3, 15.4.4 and Rule 3.5;
 - b. Methods;
 - c. Standard 3.3.13;
 - d. Definitions;
 - e. Miscellaneous submissions; and
 - f. Typographical errors.

Policy 15.4.3, 15.4.4 and Rule 3.5

13. Policy 15.4.3 is a Regional-level policy which states:

“Control land disturbance activities to retain topsoil and minimise the potential for eroded soil to degrade water quality in lakes, rivers, significant wetlands and coastal waters.”

14. Other submissions on Policy 15.4.3 were assessed in my original section 42A Report. In addition to those, Hort NZ (769.73) support the intent of Policy 15.4.3 of the MEP but seek the discretionary activity status referred to in the policy explanation is amended to a restricted discretionary activity status for cultivation activities. Hort NZ (769.101) also submitted on Rule 3.5 (restricted discretionary activity status rule) seeking a restricted discretionary activity status for cultivation activities. Hort NZ submit that the matters set out in Policy 15.4.4 should form the matters of restricted discretion for such a rule.
15. As I understand it, when considering a resource consent for a restricted discretionary activity, the Council is able to exercise discretion as to whether or not to grant consent or to impose conditions, but only in respect to those matters over which it has restricted discretion in the plan. This is different to a discretionary activity where the Council is able to exercise full discretion when undertaking an assessment. Currently, if cultivation is unable to comply with the relevant activity standards, the activity status defaults to discretionary. Policy 15.4.4 sets out the matters which Council shall have regard to when considering an application for resource consent. As Council is only required to have ‘regard to’ these matters, other matters may be considered relevant depending on the potential adverse effect which may arise from the activity proposed.
16. As the potential adverse effects arising from the cultivation activity are variable depending on location, cultivation method and other factors, I consider the flexibility of a fully discretionary activity allows council to assess all potential adverse effects and provide for Policy 15.4.3. Accordingly, I do not recommend adoption of the relief sought by Hort NZ with regards to Policy 15.4.3 or Rule 3.5.
17. Policy 15.4.4 is a Regional-level policy which sets out the matters which Council shall have regard to when considering any land use consent application. Other submissions on Policy 15.4.4 were assessed in my original section 42A Report. Following the release of my original section 42A Report it was found that a submission made by Transpower (1198.33) was incorrectly assessed.
18. In relation to Policy 15.4.4, Transpower note that they are generally supportive of the policy, however seek a minor amendment to recognise the impact of land disturbance activities on the National Grid. In my view, the relief sought by Transpower would not assist in achieving Objective 15.4 which seeks the maintenance and enhancement of the quality of Marlborough’s soil resource. I note matter (g) of Policy 15.4.4 requires Council to have regard to *“whether the land disturbance is necessary for the operation or maintenance of regionally significant infrastructure.”* I consider this matter goes some way to address the concern raised by Transpower. On this basis, I recommend Policy 15.4.4 is retained as notified.

Methods

19. There are two sets of methods within the ‘Resource Quality (Soil)’ Chapter. Methods 15.M.38 to 15.M.44 sets out the methods proposed to implement policies 15.4.1 to 15.4.6 and achieve Objective

15.4. Methods 15.M.46 to 15.M.50 set out the methods proposed to implement policies 15.5.1 to 15.5.5 and achieve Objective 15.5.

20. The Oil Companies (1004.24) seek a new method is included in each of the resource management sections within Chapter 15 (water, air and soil). Given the general nature of this submission, I have limited my assessment of the submission point in relation to the Chapter 15 provisions related to soil quality. It is my understanding that this point will also be assessed in other section 42A reports in terms of the water and air quality provisions.

21. The Oil Companies seek the following wording for a new method:

“Industry Initiatives

In developing plans and strategies for the management of resources, and when making decisions on resource consents, Marlborough District Council will recognise and promote any relevant industry guidelines and codes of practice that represent appropriate industry practice and management approaches.”

22. In my view, the relief sought by the Oil Companies (in relation to soil quality) is already provided by the MEP. It is in part provided by Policy 15.4.4(b) which requires Council to have regard to any industry standards that are relevant to the activity when considering any land use consent application to undertake land disturbance. Additionally, Method 15.M.40 ‘Information’ requires Council to provide information to land owners to promote recognition of soil quality issues, and encourage the adoption of practices and techniques to avoid the degradation of soil quality. As a result of giving effect to Policy 15.4.4(b) and Method 15.M.40, I consider the relief sought by the Oil Companies is already provided for, and therefore do not consider the additional method sought is necessary.

Standard 3.3.13

23. Standard 3.3.13 sets out the permitted activity standards that apply to cultivation in the Rural Environment Zone (Chapter 3). Other submissions on these standards were assessed in my original section 42A Report. In addition to those, BRI (462.36) request that standard 3.3.13.3 is amended to read:

“3.3.13.3 On any slope ascending above a river (except ephemeral river, or intermittently flowing river when not flowing), lake or coastal marine area where the slope is less than or equal to 10° cultivation must not be within 3 m of the river, lake or coastal marine area.”

24. BRI did not provide reasons in their submission for the amendment sought. Currently, standard 3.3.13.3 requires cultivation to be setback 3m from a river (except an ephemeral river or intermittently flowing river when not flowing), lake or coastal marine area, regardless of whether the slope is ascending above a river. I consider use of the term ‘*ascending above a river*’ is unclear and would likely result in issues during implementation of the plan as the interpretation of a ‘*slope ascending above a river*’ may differ from person to person.

25. Accordingly, I do not recommend adoption of the relief sought by BRI.

Definitions

26. The original section 42A Report undertakes an assessment of submissions made on the definition of ‘*cultivation*’, ‘*vegetation clearance*’, ‘*excavation*’, ‘*fill, filling and fill material*’, ‘*cleanfill*’, ‘*slope*’ and ‘*land disturbance*’. In addition to those, one submission has been made on the definition of ‘*cultivation*’ and two submissions have been made on the definition of ‘*bare ground*’ which were not addressed in the original section 42A Report.

Cultivation

27. Hort NZ (769.120) oppose in part the definition of 'cultivation' in the MEP. Hort NZ seek the definition of 'cultivation' is expanded to include other activities required to undertake cultivation including ancillary erosion and sediment control activities to manage the potential loss of sediment. The following alternative definition is sought:

"Means breaking up, turning and mounding of soil ~~such that the surface contour of the land is not altered~~ in preparation for sowing and harvesting a crop, including ancillary erosion and control methods to minimise sediment runoff to water"

28. I agree in part with the alternative definition requested by Hort NZ. As I understand it, cultivation is predominantly undertaken to prepare land for sowing and when a crop is harvested. To ensure the definition captures cultivation undertaken for both cropping and pasture, I consider including 'or pasture' to be an appropriate addition. Further, I consider 'planting' should also be included as a method of establishing a crop as 'sowing' typically refers to the establishment of crop via seed.
29. I consider the addition of 'including ancillary erosion and control methods to minimise sediment runoff to water' as requested by Hort NZ is likely to be a mitigation measure employed to comply with the relevant activity standards. As such, I do not consider this requested relief is necessary to include in the definition.
30. The amendment sought by Hort NZ results in the deletion of the term 'such that the surface contour of the land is not altered.' Through the deletion of this part of the definition, I consider there may be potential for the recontouring of land to occur as a result of undertaking cultivation. In my view, this does not provide for policies 15.4.3 or 15.4.6 which seeks that land disturbance activities are controlled and the management of erosion risk associated with loess soils. To prevent this from occurring, I recommend the wording "but excludes the recontouring of land" is included in the definition. On this basis, I accept the in part the relief sought by Hort NZ.

Bare ground

31. The term 'bare ground' appears in the permitted activity standards that apply to 'cultivation' and 'non indigenous vegetation clearance' and is defined in the MEP as:

"Means ground not covered by vegetation or a vegetation canopy as viewed vertically from a point higher than the tallest vegetation on the site"

32. Hort NZ (769.119) oppose in part the definition of 'bare ground' in the MEP. Hort NZ seek the definition of 'bare ground' is amended to exclude land that is part of a rotational growing system where it is between crops. Federated Farmers (425.379) seek the definition is deleted from the MEP as it is uncertain and unnecessary.
33. I do not support the amendment sought by Hort NZ. As there is no temporal element limiting the duration of time between crops, the proposed amendment could result in large areas of exposed soil for long periods of time, where the land is considered part of a rotational growing system. Given the direction of Policy 15.4.3 which seeks to control land disturbance activities to retain topsoil and minimise the potential for eroded soil to degrade water quality, I consider such activities should be captured and resource consent required.
34. With regards to the relief sought by Federated Farmers, there are several permitted activity standards related to cultivation and non-indigenous vegetation clearance that refer to 'bare ground'. I consider deleting the definition of 'bare ground' would result in difficulty when assessing compliance with the standard as the interpretation of 'bare ground' may differ from person to person.
35. On this basis, I do not recommend the relief sought by Hort NZ or Federated Farmers and recommend that the current definition of 'bare land' is retained as notified.

Recommendation

36. I recommend the definition of cultivation is amended to the following:

“Means breaking up, turning and mounding of soil such that the surface contour of the land is not altered in preparation for sowing, planting or harvesting a crop or pasture. But excludes the recontouring of land.”²

Miscellaneous Submissions

37. Following the release my original section 42A Report, it was identified that some submission point numbers relevant to Topic 20 (Utilities and Designations) had not been explicitly mentioned within the section 42A Report. I have reviewed the following submission points and am comfortable that the issues raised and relief sought has already been assessed in the Topic 20 (Utilities and Designations) section 42A Report. The submission point numbers are as follows:

- a. 425.661 and 425.552 Federated Farmers; and
- b. 1198.113; 1198.90 and 1198.101 Transpower.

38. On this basis, I have not assessed these submission points further.

39. Footnote 25 of the original section 42A Report should be amended as follows (underlined):

²⁵ *Te Atiawa 1186.118; 1186.121; 1186.126; 1186.125; 1186.139; 1186.164; 1186.172; 1186.178; 1186.191; 1186.196; 1186.202; 1186.133; 1186.134; 1186.140; 1186.147; 1186.148; 1186.150; 1186.153; 1186.153; 1186.153; 1186.156; 1186.208; 1186.210; 1186.213; 1186.119; 1186.127; 1186.163; 1186.170; 1186.171; 1186.177; 1186.192; 1186.197; 1186.203.*

Typographical Errors

40. Paragraph 140 of the original S42A Report should be amended as follows (underlined):

“The MEP defines ‘river’ as the same meaning in Section 2 of the RMA which is a “continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including irrigation canal, water supply race, canal for the supply of water for electricity power generation and farm drainage canal.)”

² 769.120 Hort NZ

Appendix 1: Recommended decisions on decisions requested

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
425	379	Federated Farmers of New Zealand	Volume 2	25 Definitions	25	Reject
425	552	Federated Farmers of New Zealand	Volume 2	3 Rural Environment Zone	3.3.15.1	Reject
425	661	Federated Farmers of New Zealand	Volume 2	4 Coastal Environment Zone	4.3.14.5	Reject
462	36	Blind River Irrigation Limited	Volume 2	3 Rural Environment Zone	3.3.13.3	Reject
769	73	Horticulture New Zealand Limited	Volume 1	15 Resource Quality (Water, Air Soil)	Policy 15.4.3	Reject
769	101	Horticulture New Zealand Limited	Volume 2	3 Rural Environment Zone	3.5	Reject
769	119	Horticulture New Zealand Limited	Volume 2	25 Definitions	25	Reject
769	120	Horticulture New Zealand Limited	Volume 2	25 Definitions	25	Accept in part
1004	24	Z Energy Limited, Mobil Oil New Zealand Limited and BP Oil Limited	Volume 1	15 Resource Quality (Water, Air Soil)	15	Reject
1186	121	Te Atiawa o Te Waka-a-Maui	Volume 2	3 Rural Environment Zone	3.5	Reject

1198	33	Transpower New Zealand Limited	Volume 1	15 Resource Quality (Water, Air, Soil)	Policy 15.4.4	Reject
1198	90	Transpower New Zealand Limited	Volume 2	3 Rural Environment Zone	3	Accept in part
1198	101	Transpower New Zealand Limited	Volume 2	4 Coastal Environment Zone	4	Accept in part
1198	113	Transpower New Zealand Limited	Volume 2	7 Coastal Living Zone	7	Accept in part